



Newsletter

JANUARY 2007

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Our office will be closed for the following holidays:
February 12th, 2007 through February 16th, 2007 –
Winter Vacation

Jan 15th, 2007 – Martin Luther King, Jr. BD

Our next newsletter will be mailed out the beginning of
April 2007.

Remember if you have an article that you would like to
contribute to our newsletter just fax it to us for our
review. We must receive the article no later than
March 15th for our April newsletter.

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WINTER VACATION February 12th through February 16th, 2007

Please note that our office will be closed for vacation. No telephone messages or emails will be checked at that time. If you choose to leave a telephone message or send an email please be aware that your email or telephone message will not be responded to until the reopening of our office on February 19th, 2007.



New Delaware Filing Requirements for Annual Franchise Tax Reports

All Delaware domestic corporations are required to file an Annual Report and pay any taxes and fees due on or before March 1st. In the past years Delaware provided a green printed paper annual report and instructions for filing for every domestic corporation. The notification process has changed. Instead of pre-printed paper reports Delaware will be sending postcard notifications which will include instructions for filing the Annual Report. You will be receiving the 5 ½ x 8 1/2" neon green post cards in January.

The notification process has been changed to encourage electronic filing of Annual Reports in

anticipation of complying with newly enacted legislation which becomes effective January 1, 2008. That legislation will require corporations to be declared void for failure to fully complete their annual report. In addition the State will be prohibited from issuing a certificate of good standing on any corporation not complying with this law. Delaware will require 2007 Annual Franchise Tax Reports (due March 1, 2008) to be filed electronically.

The Dangers of Employee Internet Use

By some accounts, a large majority of employees access the internet on company computers for personal reasons while at work. The obvious adverse effects of this on productivity are only the tip of the iceberg with regard to the potential headaches that such activities can cause for employers. Personal Internet activity by employees can pose security risks to the company's computer network itself, such as by exposing a network to a computer virus.

Less immediate but just as serious is the threat of legal liability of the employer to injured third parties. Some scenarios are not difficult to imagine. An employee uses his computer as a tool for sexually harassing fellow workers by visiting pornographic websites. Or, an employee embroiled in a bitter domestic dispute uses his office computer to communicate threats to his spouse, and the employer fails to take action.

In a recent case, one such nightmare scenario was all too real for an employer that had to defend itself against the alleged victims of an employee who used a workplace computer for conduct that was criminal, not just indicative of poor judgment. This case may be the first reported decision on the matter of an employer's liability to a third party for having failed to take action to stop an employee from using a company computer in a manner that harmed the third party. It most certainly will not be the last such case.

The case involved an employee who used his company's computer at work to visit pornographic sites, including some relating to child pornography. Over a period of time, a supervisor and some coemployees became aware of this activity and complained to management. Eventually, the offending employee was confronted and was told to stop such use of the computer, but, a few months later, he was again discovered to have accessed pornographic sites.

Eventually, the employee was arrested on child pornography charges, including allegations that he had transmitted nude pictures of his 10-year-old stepdaughter over his office computer to a child

pornography site. The employee's wife, who divorced him, sued the employer for failing to investigate and for failing to report the employee's viewing of child pornography. The case was settled, but not until a precedent was set when the lawsuit survived attempts to have it dismissed before trial.

There are limits to what companies can or should do to prevent improper use of company computers, but it is only prudent to take at least some basic measures. It makes sense to have a written e-mail and Internet use policy that clearly informs employees of what, perhaps, they should already know – that the employer has and reserves the right to monitor employees' use of the company's computers and to discipline violators. In addition, there needs to be even-handed enforcement of the policy. Even the best written policy will do little to convince a jury, if it comes to that, that a company has done all it reasonably could have done, if the evidence is that the policy was toothless or rarely enforced.

Contact David Law Associates to have your company's computer use policy or cell phone policy drafted or updated. (858)793-1220
rdavis@sandiegobusinesslaw.com

Swiss Bank Accounts

Before 9/11 we set up corporations in the Bahamas for our clients who then wanted to open up bank accounts with Barclay's Bank. After 9/11 we discontinued that service.

The calls have continued to come in asking us about setting up an offshore entity then allowing clients to put money into a foreign bank.

On a recent trip to Switzerland I went into several, of the hundreds, of banks, located on each and every corner and inquired about what a client needs to do to put money in a Swiss bank account. I was told, by all of the banks to go to Liechtenstein.

I then went to Liechtenstein and met with Mr. Wanger who gave me the following information regarding a Swiss bank account.

- Minimum deposit is \$500,000
- The money is not available for use. It is invested.
- US citizens are not allowed to invest in everything that a European citizen can. So there are some restrictions on stocks you are allowed to invest in.
- Your investments are for 3-5 years. No shorter and no longer.
- Your investments are subject to European taxes.

- They must know where the money is coming from. No robbing a bank and running to Liechtenstein.
- You must make a trip to Liechtenstein and meet Mr. Wagner in person to set up an account. He was also pretty adamant about this one.

If this is of interest to you, contact us for Mr. Wagner's information.

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The price of greatness is responsibility.

Winston Churchill

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HOW TO PROTECT AN INHERITANCE FROM CREDITORS

Creditors cannot reach an inheritance until distributed from the estate and delivered to the beneficiary. A spendthrift clause in a trust will prevent creditors of a beneficiary from anticipating the inheritance and seizing either principal or sums due the beneficiary. A spendthrift clause does not safe-keep funds already paid to the beneficiary. These should be protected in some other way. Two strategies help safe-keep inheritances:

- If the beneficiary has serious creditor problems, then the beneficiary should declare bankruptcy well before the inheritance is received. The bankruptcy should be at least six months before the anticipated receipt of the legacy, because inheritances received within six months of the bankruptcy can be claimed by the bankruptcy trustee. Inheritances received later are safe.
- Disclaim the inheritance. If you are a beneficiary, this will allow your inheritance to safely pass to the next generation. This is an effective strategy when you want your children to have the inheritance, and you have serious financial problems. Your children, in turn, can loan or gift funds back to you.

A disclaimer is a complete and unqualified refusal to accept rights or property. It applies to both gifts and inheritances. You may disclaim an inheritance, for example, when you have creditors - including the IRS - waiting to seize any inheritance you receive. You will particularly want to disclaim property when the alternate beneficiaries are your children, or other individual(s) you prefer to receive the property, For disclaimers to be valid:

- * The disclaimer must be in writing.

- * The recipient must not have accepted any part of the property or the benefits of ownership.

- * The written disclaimer must be received by the transferor no later than nine months after the date on which the transfer creating the interest is made.

If you are the testator bequeathing the property, you must decide how you will transfer your assets free of claims from your own creditors. Most people are sufficiently solvent to fully pay their debts from their estate. But this is not always the case. You may have more debts than assets. How then can you by-pass probate and this last opportunity for creditors to file a claim against your assets?

Several strategies can be used to avoid probate – and creditor claims that can be filed against your estate in probate, they include:

- living trust
- insurance trust
- joint tenancies
- gifts during your lifetime

TRANSFERS CREDITORS MOST EASILY ATTACK

The most vulnerable transfers? Gifts to family members. Unfortunately, these are also the most common transfers, because many debtors mistakenly believe that all they need to do to protect themselves is to transfer title to a spouse, or put their property in the name of a child or parent. To the extent such transfers are without consideration and leave the debtor insolvent, creditors in these cases have the least difficulty proving a fraudulent conveyance or recovering the property. Outright gifts to family members should only be considered if you don't have major creditors at the time of the gift – and you don't contemplate bankruptcy anytime soon.

When you do make gifts be certain that the necessary gift tax returns are filed. This prevents creditors from claiming you intended to reclaim the property later.

HOW YOUR AUTOMOBILE SHOULD BE OWNED FOR MAXIMUM SAFETY

Automobiles are usually a small part of a debtor's total assets. Still, the automobile is one of the first assets investigated by creditors. An automobile should be titled or leased to the less vulnerable spouse, if only to protect against uninsured accidents.

For asset protection purposes, it is usually sufficient to simply refinance the vehicle so there is little or no equity available for creditors. Refinancing is the easiest and most practical protection strategy – and also the safest.

An asset, such as an auto, boat, airplane, or recreational vehicle, will be safe from creditors if it has loans against it for about 75 percent of its value. These assets, at auction, seldom bring more to produce a surplus for creditors.

DANGERS OF TITLING ASSETS WITH YOUR SPOUSE

Worried about creditors? Why not put all your assets in your spouse's name? There are, as you might expect, several problems with having your assets owned by your spouse.

First, you cannot be certain your spouse will always remain creditor-free. Liability frequently strikes the spouse assumed to be relatively free of potential problems.

Secondly, divorces do occur. Divorce courts can make an equitable distribution of marital assets regardless of how titled, however, a spouse who holds title may sell or conceal the assets before the court can freeze the property.

Third, concentrating all assets on one spouse may create an estate in excess of \$600,000 and cause an estate tax that's avoided by distributing assets between spouses.

These same pitfalls also apply to titling your assets in the name of another relative or friend. These individuals may be quite trustworthy and still run into financial problems that jeopardize your assets.

Your best bet: Hold title in a limited partnership, corporation or trust. The finances of another individual won't cause you to lose your assets or your sleep.

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We grow great by dreams. All big men are dreamers. They see things in the soft haze of a spring day or in the red fire of a long winter's evening. Some of us let these great dreams die, but others nourish and protect them, nurse them through bad days till they bring them to the sunshine and light which come always to those who sincerely hope that their dreams will come true.

Woodrow Wilson

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