



Newsletter

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Our office will be closed for the following holidays:

July 4th, 2006 – Independence Day

September 4th, 2006 – Labor Day

Our next newsletter will be mailed out the beginning of October 2006.

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 September 15th for our October newsletter.

INSIDE THIS ISSUE

- 1 **Estate Planning**

- 3 **Foreclosures and Repossessions**

ESTATE PLANNING

HIPPA PRIVACY LAW

The recent federal legislation, Health Insurance Portability and Accountability Act (42 U.S.C. Section 1320d) (HIPAA), designed to protect your medical privacy may also restrict your health care agents under your durable power of attorney or your trustees of your trust from accessing information. In order to avoid difficulties when trying to access the information needed to prove your inability to make financial decisions or health care decisions, to gather information to make medical decisions on your behalf, and to obtain medical information to process medical claims the AUTHORIZATION FOR USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION is needed.



YOU MUST PLAN YOUR ESTATE WISELY

Estate planning is the mechanism which allows an individual to provide the guardian for their child or children, to avoid the expense of probate and court, to maintain privacy, to direct the disposition of their assets before they die and after their death. Estate planning usually includes wills and trusts, as well as durable powers of attorney and other relevant documents. Both state and federal law impact estate planning. In order to ensure that your desired outcomes occur an experienced estate planning lawyer is an essential professional facilitating your unique estate planning goals.

POWERS OF ATTORNEY

A durable power of attorney (DPA) is a document that confers power on someone to act for another person in certain circumstances. The DPA may be used for health related matter such as medical decisions or for the management of business interest and other financial transactions. In a power of attorney, one person (the principal) names someone to act as his or her "agent" (also called an "attorney-in-fact"). The attorney-in-fact steps into the shoes of the principal, and can make legally binding decisions for him or her. Powers of attorney can grant broad powers or limit the attorney-in-fact to particular situations.

WILLS & TRUST

Wills direct a person's heirs and the courts how that person wanted to distribute his or her money and property. A Will is also used to designate the guardian for minor children. A current and valid Will is crucial to ensure that an individual's goals are met. However, in circumstances where assets exceed one hundred thousand (\$100,000) dollars the Living Trust or the revocable trust, as part of an estate plan to help minimize taxes, minimize court expenses and maintain the ability to provide for loved ones. A living trust is also referred to as a revocable inter vivos trust, meaning a trust created during one's lifetime.

The Living Trust creates the methods of control over certain property and assets while providing the Settlor, the person(s) who created the Living Trust, the right to make changes such as altering the disposition of property, changes trustees, contributing or removing assets from the trust, etc.. A Living Trust is only revocable while the settlor(s), are alive and competent. Once the settlors pass away or lose capacity, their Living Trust becomes irrevocable.

Estate Planning Needs of the Elderly

Elder law deals with the legal, financial, and health needs of senior citizens. However, baby-boomers are also faced with health issues and legal concerns they had not anticipated in their youth. Estate planning for elders can be particularly beneficial by establishing guardianships and conservatorship when needed and by preparing for long-term health care needs, applying for government programs, addressing financial fraud, and combating physical abuse of the elderly.

Q: What is an estate?

A: An estate is everything that a person owns or has control over. Typically, this property is in the person's name (like a house, bank accounts, brokerage accounts or a car), however individuals also may

have ownership interests in entities such as trusts, partnerships, and jointly owned property. If the person has life insurance, that may also be a part of the estate.

An estate includes:

real estate and buildings on real estate; personal property (including vehicles, bank accounts, stocks and bonds, mutual funds, stock options, cash, furniture, jewelry, art); business interests, whether wholly-owned businesses or interests in companies or partnerships; the right to direct who gets someone else's property; life insurance and annuity contracts, pension benefits, IRAs, 401(k)s; debts; and all claims against others, such as claims involving a personal injury.

Q: What is a will?

A: A will is a written legal document with instructions for disposing of assets after death. The Probate Court must rule on the validity of the Will. Each state has its own legal requirements that a will must meet to be enforceable.

Q: Can a person change a will?

A: A will is valid and effective until it is changed, revoked, destroyed, or invalidated by writing a new will. Changes or additions to a valid will can be made by following specific legal protocols and formality. Wills cannot be changed by simply crossing out existing language or adding new provisions, because those changes usually do not comply with the requirements of each state's will execution statutes.

Q: What is a trust?

A: A trust is a legal entity that is created to hold assets for the benefit of other persons or entities. There are many types of trusts that a person or entity can use to achieve their particular goals. Trust helps families to avoid Probate Court.

Q: What is a probate estate?

A: A probate estate is the deceased person's assets that go through probate, sometimes called estate administration. Usually this includes assets that were in the name of the deceased, as well as those paid to the estate. Assets in a trust also do not typically go through probate.

Q: What is the federal estate tax exemption?

A: It is the amount of an individual's estate that is exempt from federal estate taxes. During the years of 2006-2008, the exemption amount is \$2.0 Million. Under current law, it is scheduled to increase to \$3.5 million by the year 2009, to disappear in the year 2010 (when the federal estate tax is scheduled to be repealed), and to return in 2011 at \$1 million.

Q: What is a living trust?

A: It is a written document that creates an entity to which a person transfers ownership of their assets. The legal document contains the transferee's instructions for managing their assets during their lifetime and for their distribution upon their incapacity or death. A living trust avoids probate at death and court-appointed conservatorship in the event of incapacity.

Q: What is a conservatorship and how do I avoid it?

A: A conservatorship is a court procedure to take care of an individual or the individual's estate in the event you become incapacitated. If you become incapacitated, another person can usually step in and make decisions if their name or names are listed on your assets. The need for a conservatorship can be eliminated with a DPA and a health care power of attorney. The proactive drafting of these documents can help avoid court procedures and the cost and time involved in a conservatorship.

Q: I have do-it-yourself estate planning forms and books. Do I really need to an estate planning attorney?

A: Estate planning is a very complex area of law. Mistakes and errors can invalidate documents and ruin your estate plan leaving you open serious consequences such as probate court, increased taxes, disposition of assets contrary to both your wishes and common sense. Remember that an improperly executed will is not valid. It is the same as having no will at all. The result can be costly court procedures that evaporate the estate assets that you wanted to provide to your children, to other loved ones, or to charity.

If your family has experienced the loss of a family member, you may need assistance with the legal process that occurs when a loved one passes away. If your loved one had a Will, the family will go through a process called probate. If your loved one had a Trust, the family will go through a process called trust administration.

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FORECLOSURES AND REPOSSESSIONS

A foreclosure is not a pleasant experience. Not only does it mean the loss of your family home, a valuable investment property, or some other important asset, but in its aftermath may be a large deficiency owed to the secured lender. This can jeopardize even more assets as

the lender attempts to collect whatever balance is owed.

Foreclosures can apply to any type property. However, the strategies and principles between lender and debtor are much the same whether the foreclosure involves real estate, a boat, a car, or an apartment complex. In each instance the lender is secured by specific assets as collateral. Should you default in your obligations, the lender has the right to sell the collateral and apply the proceeds to the loan. If there is a surplus, it belongs to you. If there is a deficiency, in other words, you still owe money, then you remain liable for that unpaid balance (although this is not true in all states concerning real estate).

A secured lender with specific collateral to foreclose on and sell is obviously in a considerably stronger position than an unsecured creditor. Unlike the secured lender who can sell his collateral, the unsecured creditor must first obtain a judgment. Only then can the unsecured creditor search for assets that the debtor owns, and has sufficient equity to yield a worthwhile recovery at a sheriff sale. Should the debtor file for bankruptcy during this process, the unsecured creditor can do nothing further but must wait for whatever dividends are paid to unsecured creditors. Secured creditors, in contrast, retain their rights to their collateral, even in bankruptcy, and remain in a far stronger position.

Although secured lenders are in a strong bargaining position, that doesn't mean you can't work out a reasonable solution with your lender if you're unable to pay your loan. Lenders don't want your collateral, they want payment. Few lenders enjoy the hassle of foreclosure, and excessive foreclosures on the record of a loan officer reflects poorly on his judgment. Still, no lender and borrower in a loan workout must appreciate the other's position and be willing to temporarily compromise until the problem can be permanently resolved. This is usually accomplished through new financing or voluntary sale of the collateral by the debtor.

Loan workouts can be quite creative. There are many steps you can take to show your lender you are working in good faith and protecting the lender to the extent possible. As you proceed through this chapter you'll see many illustrations, which easily modified to your own situation.

This does not suggest that as a borrower you must humble yourself before your secured lender. Lenders can be unreasonable and even go beyond the limits of the law. To succeed, you must know when to cooperate and when to fight. And you must know how to do both well.

The less experienced you are in resolving problem loans, the more you'll fear your problem. But

avoidance is the most common and costly mistake you can make. Lenders are less forgiving of borrowers who hide from their problems, and more cooperative with those who anticipate trouble and immediately negotiate an equitable interim arrangement until a long-term solution can be found.

Why are there so many foreclosures?

Newspapers in most cities are loaded with page after page of homes, investment properties, businesses, equipment, cars, boats and virtually every other asset you can name – all to be sold under the auctioneer's hammer.

The reason for foreclosure are, of course, as varied as the reasons people and companies run into economic hardship. A poor economy, unemployment, raising interest rates, business failure and personal problems head the list. Often the best solution for troubled loan is to find out why it became a problem in the first place.

The most common problem? You borrowed too much against your assets. Loans commonly exceed the value of the collateral. Your key objective then is to have the lender reduce the debt to correspond to the value of the collateral. Similarly, you may be so heavily indebted, or the loan so poorly structured, that you cannot pay the interest on the loan. This requires you to adjust the loan terms to payments you can afford. Either situation requires you to restructure your loan, whether by cancelling part of the debt, or extending the payment terms.

FIVE LENDER CONCESSIONS TO BARGAIN FOR

What points may you and your lender negotiate when you are unable to make payments on your loan? Here are the five most common concessions:

* **Extend the loan:** This is the most acceptable to the lender because your loan remains both fully performing and earmarked for full payment. Faced with a potential default, lenders frequently extend loan payments well beyond their original term.

* **Defer principal payments:** This is another common solution for reducing stranglehold payments as a large portion of a monthly payment may be principal. This concession provides little relief on newer loans that call primarily for interest on the earliest payments.

* **Defer interest payments:** Lenders more actively resist this request as it produces a non-performing loan. Alternative concessions (such as extensions) that yield the same monthly payments are more readily accepted by a lender since these loans are not considered in default.

* **Concession of interest payment:** In more severe cases a lender may concede one year's interest. Beyond that the loan should be completely restructured.

* **A freeze on all loan payments:** This is the most difficult proposition to sell, but lenders dealing with borrowers with acute cash shortages frequently have no choice but to temporarily suspend all payments. Lenders more willingly suspend payments when they are adequately secured, the collateral will retain its value, and the freeze is only a short term arrangement.

Concessions granted by a lender during a loan workout frequently change. Both you and your lender must adopt a policy of flexibility and constant reassessment of the situation to insure a workout plan that remains fair to both.

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