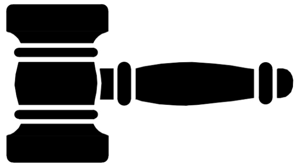

The Gavel

Issue 2/2001 December, 2001

A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**
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New Area Code: 586

Along with the rest of Macomb County, our phone numbers have a new area code. 586 replaces 810. You can use either area code during the transition period (until March 2002). To help remember, we have included a new business card with the 586 area code for the office phone number and fax number. *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

Estate Taxes:
Don't Die Just Yet

As part of the 2001 Tax Relief Act, a change was made to the so called "death tax". There is a transfer tax on assets that are transferred as a result of a taxpayer's death. The rates vary, but can be as much as 50%.

However, **each taxpayer is granted a certain amount of credit ("unified credit") for all taxable gifts and assets transferred at death.** Any taxable gifts you make while alive reduces dollar for dollar the amount you can leave free from estate taxes upon your death. For 2001, the unified credit amount is $675,000. In other words, the first $675,000 of transferred assets is exempt from taxation. So if you were to die in 2001, the first $675,000 of assets transferred by gifts during your lifetime plus assets transferred by your will or trust would be exempt from estate taxation.

Fortunately, under the Tax Relief Act, the amount of transferred assets that are exempt from the federal estate tax will begin to rise as of January 1, 2002. Starting next year, the exemption amount jumps to $1 million.. Thereafter, the exempt amount continues to rise:

2004 $1.5 Million
2006 $2.0 Million

2009 $3.5 million
2010 Estate tax repealed.

Unfortunately, in one of the stranger legislative decisions, the tax comes back with a vengeance in 2011: the estate tax not only comes back, but the unified credit amount drops to only $1 million; worse, the top tax rate for assets transferred above the exempt amount jumps to 55%.

Why such an anomaly? It appears that the Tax Relief Act was a compromise between various lawmakers, and the decision was made to 'sunset' the estate tax relief after ten years. Most political pundits expect that the 2010 v 2011 inequity will eventually be changed well in advance. **However, right now it is clear that from a tax standpoint, you should plan to hold off dying until 2010, and by no means linger into 2011.**

All of this should be factored into your estate planning, as well as consulting with your tax advisor. *As you know, we are NOT tax advisors*

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Severance Agreements

As the economy moves into uncertain times, some companies are downsizing, merging, or just going out of business. As a result, employment is being cut in certain businesses. However, instead of being handed the old fashioned 'pink slip', an employee is increasingly likely to be handed a severance agreement when notified of termination. A Severance Agreement is a double edged sword: it offers to pay additional money not otherwise entitled to the employees, and in return the employee releases valuable rights they may have against the company, particularly the right to pursue any legal claims or sue the company for any reason.

Many terminated employees, when faced with such a choice, quickly sign the severance agreement in order to receive the additional monies; money which will obviously be important as the employee is now unemployed. However, **before signing such a severance agreement, the employee must first ask himself or herself a few questions.** The first one is: do I have a discrimination claim against the employer? Some employers use the severance agreement as a 'license to discriminate'. If the employee has valid evidence that the company has discriminated against them (age, gender, race, religion, etc.), particularly in singling them out for termination, then the employee should think twice before signing the agreement. It may be that a discrimination action would be of more value than the severance agreement, or at the very least a legitimate claim can be used as leverage to negotiate an increase in the amount of severance compensation.

Other questions that the employee should ask relate to other aspects of the agreement. Often contained in such agreements is a covenant not to compete; that may be a valuable right, particularly if the employee is likely to seek (or has already found) another job in the same field or industry. Another issue is a non-disparagement clause, which essentially would negate the agreement (and force the employee to pay back the entire severance amount) if the employee is found to be making negative comments about the employer or its products. **This is not so innocuous as it may first appear.** If you are terminated from a car manufacturer, and you make negative comments about the car you are driving, you could wind up in hot water from the severance

agreement you signed long ago.

Yet another issues is references. If the employee cannot say anything negative about the employer, how can the employee ensure that the employer will respond in kind? In other words, what will happen when a prospective employer contacts the former employer about the employee? Agreeing to only give 'name, rank and serial number' is not exactly a ringing endorsement. **The employee might want to negotiate a letter of reference to be used in lieu of a generic reference.**

There is little law on this topic, and Michigan has no requirement regarding severance agreements, much less a requirement that additional compensation must be paid to an involuntarily terminated employee (California does). For federal age discrimination claims, there are some guidelines, but in most instances the employee and employer are on their own.

The point is: approach a severance agreement with caution, and think it through first. *Source: Michigan Lawyers Weekly*.

Joint Accounts as Estate Planning: Be Cautious

Many people, in an effort to avoid having their estates probated, use joint accounts instead. In the right circumstances, this can be an effective method. **However, it is fraught with pitfalls, so you should proceed carefully.**

To start, some terms need to be clarified. Setting up an account with title to two or more persons as "tenants" means that each person owns a (divisible) portion. This is referred to as "tenants in common". Each tenant can sell their 'share' to someone else, keep it, etc. If a person dies and owns some piece of property as a tenant in common, then that portion must be probated in order to legally change the title.

The more commonly used joint account is for "joint tenants" or "joint tenants with rights of survivorship" (JTWROS). The law treats this type of tenancy very differently: no joint tenant can sell off their share, and when one of the joint tenant dies, the remaining joint tenant(s) now are the titleholders of the account. In essence, the now deceased joint tenant's rights and 'share' die with him or her.

In order to avoid probate and in lieu of setting up a trust, some people retitle their property to a joint account (with rights of survivorship) with one or more of the expected beneficiaries. When the former title owner dies, title to the property automatically vests in the newly added joint tenant(s). For example, Mother and Father may own their house. In order to have the title pass to the next generation, Mom and Dad could execute a quit claim deed, naming as grantees Mom , Dad and Daughter, JTWROS. When Mom and Dad are both deceased, by operation of law title will be in daughter's name. But what happens if Mom and Dad wanted the house to be equally divided between Daughter and Son? Absent a clear intent by Mom and Dad, at the time they retitled the house, that they did it for convenience only and always intended that after their death Daughter would sell the hose and split the proceeds with Son, there is a big problem: Son is legally left out, and Daughter owns the house all by herself.

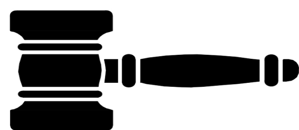
While Mom and Dad trusted that Daughter would do the right thing, and in the vast majority of families she would, **it does not always work that way (as attested by the growing number of probate battles we are involved in at present).**

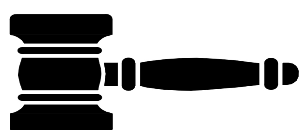
Even if Daughter is trustworthy, there can be other problems. For example, what if Mom adds Son's name to her bank accounts, and Son runs into financial problems? **With his name on the**

account, the asset that really belongs to Mom is now fair game to be seized by Son's creditors. Worse yet, Son has as much right to withdraw all of the money as does Mom. Never happen? We've handled a number of cases in which it did happen.

Use of joint accounts could also affect taxes: who is to pay the taxes on the gains made? This issue can come up in a number of ways: interest on a bank account, gains in a stock's value, or the profit from selling a house. There are even more complicated tax questions that may arise, having to do with basis (value of asset), timing, etc.

Word to the wise: Joint Accounts have an important place in your estate planning, but proceed with caution when using them. *We will be happy to discuss your estate planing issues, including use of joint accounts.*





➥REFERRALS

If you are pleased with the **service and professionalism** you have received from our office, it would be greatly appreciated if you passed the good word along. **Referrals are always appreciated and encouraged**, and we look forward to the opportunity to serve your associates and friends. If we cannot immediately service their needs, we will be happy to **refer them to the appropriate attorney specializing** in their specific area of need.

However, if you have not been pleased, contact us directly!

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