

# The Gavel

Issue 1/2003    October, 2003

A periodic newsletter on legal issues for clients and friends of **David B. Forest, P.C.**  
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## *The new offices are Great!*

If you haven't stopped by yet, please do! We are settled into the new offices. If you need a map to find us, go to the website [[www.forestlaw.com](http://www.forestlaw.com)], then click on the map button. While you're there, you can click on some of the text to see a few pictures of the new offices. *Disclaimer: Nothing in this newsletter is intended to be or is a substitute for legal advice.*

## Should you call TV Lawyers for a Personal Injury?



It's hard to miss all of the lawyer advertising from personal injury lawyers. These ads seem to be all over television, much less in print ads and in the phone book. So, if you or someone you knows sustains a personal injury, should you call a personal injury lawyer who advertises on TV?

By and large, the personal injury lawyers that advertise extensively have turned a lot of their law practice into a large marketing operation. So if a prospective client calls the office of some of these advertising lawyers, the first person they likely will be able to talk to is a 'screener', whose job it is to 'screen out' the non-cases and those that will not generate a lot of money. If the matter gets past the screener, great efforts will be expended to get the injured person to 'sign up'. The case will be assigned to another attorney in-house, or sent out to yet another attorney.

In many cases, the goal is to get the case to settle as quickly and effortlessly as possible, so that the lawyers involved can receive as much of a fee as soon as possible for as little amount of work as possible. If it sounds like the practice of some of these advertising lawyers is run more like a business and less like a professional practice, you get the gist of what they really are.

As many of the readers of this newsletter already know, we intentionally do not handle a lot of personal injury matters. Rather, we work with our clients and their friends who have sustained personal injuries to figure out what their best course of action is. In many cases, we consult with an attorney who is expert in a

particular field so that the injured party can make informed decisions. If the injured person feels it is in their best interest to continue the evaluation process, they are referred to an attorney who is capable of handling their personal injury case. There is no pressure, there are no shortcuts taken. **The injured person gets the legal counseling and representation best suited for their situation.** Finally, we do not charge for our consultation in personal injury cases. If the net result of the representation is that the injured party receives compensation for their injuries, the expert attorney that handles the matter pays a referral fee to our office.

So, if you or someone you know sustains a personal injury and it is the type that could lead to damages (or even if you're not sure), call our office to discuss the situation. Just as we do with all of the legal issues that come to us, we will give you the time necessary to evaluate the situation and counsel you on the best approach to resolving it.

## Do I own half the house because I'm married?

The law can be confusing in a lot of ways, especially when it comes to real estate. One of the most confounding is the concept of 'tenancy' in owning real property. Tenancy (in this context) is a form of ownership, not leasing. There are basically three types: tenants in common, joint tenants, and tenancy by the entirety. It is the last one that is most misunderstood.

**Tenancy by the entirety is how real property is owned when the legal title owners are married to each other at the time the property is titled.** If we could change the name to more accurately describe what it means, "Tenancy of the married couple" would be a better choice.



When you bought a house with your spouse, you may have noticed on the deed that your marital status was noted, usually by "husband and wife" after your names, or "his wife" after the wife's name. This was done to signify that the title was being held by **tenants by the entirety**. However, if you were not married when you bought the house, then you are not considered to own the property as husband and wife.

If you marry a person who is the title owner of the house, you do not become a title owner by the fact that you are married to the named title owner. If your name is not on the title, you are not considered the legal owner. PERIOD.

This titling is similar to joint tenants with right of survivorship ("JTWROS" for short). When the next to last joint tenant dies, the surviving joint tenant owns the entire property that started out as JTWROS. With entirety property, when one spouse dies, the surviving spouse owns the property by his or herself, usually irrespective of what a will may provide. The key difference from JTWROS property is that with entirety property, so long as the spouses are alive and married, neither spouse can sell or transfer any of their individual rights in the property.

This came about because of an old legal fiction that the two spouses are one 'person' under the law. While the legal fiction has almost disappeared, the concept of entirety still remains. Unlike what many people think (and forget Hollywood's version in movies like *War of the Roses*), each of the spouses do not own half the house. Rather, it is owned by the entirety collectively, and not half each.

This has also meant that if only one of the spouses owes a debt to someone, a lien cannot attach to entirety property, since it would adversely affect the property rights that the non debtor spouse holds. **However, the first erosion of this concept happened recently.**

A case concerning a federal tax lien owed by a Grand Rapids, Michigan man went all the way to the US Supreme Court. In *United States v Craft*, the court held that a federal tax lien could be attached to the house owned by the taxpayer and his wife. If the couple got divorced or the wife died first, then the federal tax lien could be levied on the proceeds from the sale of the house.

The *Craft* case came as a surprise, and it is **difficult right now to speculate what other entirety property rights may be eroded in the future.**

Word to the wise: it doesn't matter what you think your rights are in your house, it matters what the title

says. If you are unsure, you should pull out your copy of the deed and make sure it titled the way it should be. If it is not, we will be happy to help you get it fixed properly.

## WILL you ever do your WILL?

We've all heard that you should get your will done, and some have. But for many others, it's been **put off for various reasons** (never got around to it, too busy, still haven't decided, don't have the money right now, don't want to think about it, etc.).

As some of you know, one of the areas of law that we have become increasingly involved with is probate litigation. While we also handle 'probating an estate' (setting up and administering an estate in probate court for a deceased person or guardian), probate litigation is a little different. Once it's at the stage of litigation, something has broken down in the probate process and now the **parties are ready to fight for what they believe (or sometimes just want)**. By the time a client has come to see us, or another attorney has referred his client to us, the battles lines are already drawn, and everyone is choosing up sides. What are they fighting over? Almost always, it over money, usually the money of a deceased family member or friend. Sound horrible? Actually, it usually is (the trials can be very unpleasant!). In almost all cases, someone's greed has gotten the better of them. That leaves the other beneficiaries having to choose between fighting for what they deserve, or having to get the shaft. A lousy choice, either way.



Doing probate litigation has given us a unique perspective on estate planning. In pursuing the litigation and doing these trials, the thought has often come to us: The deceased person would not have wanted it this way. So why does this happen? In most cases, it is because the deceased person failed to write their will, or if they did write a will or trust, it was not done right.

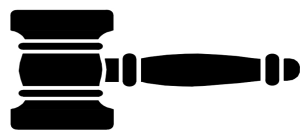
As people accumulate more wealth during their lifetime, their **estates are increasingly worth more**. Unfortunately, money tends to bring out the worst in a lot of people.

It usually happens to the people who think "This would never happen to me". In the vast majority of cases that we handle, it becomes clear that the decedent never thought this type of thing would happen after they died.... Well, it does, and much more often than most people think.

The only way to be sure that you will avoid this scenario is to **make sure that your estate planning is in order**. If you have never signed a will, you are overdue.

After our last jury trial between siblings fighting over mom's money, we have become insistent that it not happen to our clients. We are so adamant about this, we have started contacting some clients to make sure that they are properly set up. Yes, it's that important, even if you have not yet accumulated great wealth. (Do you really want your crazy aunt to be the guardian of your minor children? Did you really want your spouse's cousins to get half of your furniture?).

If you have not got your house in order, call us to discuss your estate planning. We will also discuss whether you need a trust or not. As many clients have discovered over the years, we only recommend a trust when you need it, not because somebody at a seminar said everyone should have a trust. For some, it is an unneeded expense. We have special rates for clients and referrals from clients. If you can't afford it, we will figure it out with you. Yes, it's that important.



## ↳ 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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