

## Willingham & Côté, P.C. attorneys & counselors at law

### TRANSFERRING REAL ESTATE TO YOUR CHILDREN: HOW TO AVOID TAX PENALTIES



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A Michigan law was recently enacted, which will allow parents to transfer real estate to their children without certain property tax increases.

Although the substance of this law will not go into effect until December 31, 2013, it is important to keep this law in mind when considering how your real estate should be owned – both now and in the future.

I recently published an article titled *Jointly Owned Real Estate: New Planning Options*. That article outlined certain planning techniques involving jointly owned property, which related to the same general concerns of passing property to the next generation without creating large property tax increases. If you read that article, the principles in the next section will sound familiar but it is worth revisiting them.

#### **The “Uncapping” Problem**

The transfer of real estate often causes an increase in the amount of property taxes that the recipient will have to pay in the future. In order to understand the problem, it must be understood that real estate has a “state equalized value

(SEV)” and a “taxable value.” The SEV represents one-half of the fair market value of the property, as determined by the local assessor. The taxable value is the amount that is subject to property taxes. In the year after you acquire real estate, the SEV and taxable value are the same. In determining your property taxes, municipalities multiply the **taxable value** (not the SEV) of your property by the millage rate. Michigan law limits the yearly increase of the **taxable value** of real estate (not the SEV) to the rate of inflation or 5%, whichever is less. Since the SEV is always based on fair market value, the SEV often increases more than the taxable value.

Generally, the longer that real estate is owned, the greater the gap between the SEV and the taxable value (since property values have generally increased over time). Upon a “transfer of ownership” (as defined by Michigan law), the taxable value is adjusted upward to equal the SEV. This is commonly called “uncapping” of the taxable value. This property transfer and the resulting “uncapping” can greatly increase the amount of property taxes that will be owed.

#### **Tax Relief**

Historically, a transfer of real estate from a parent to a child was considered a “transfer of ownership” that uncapped the taxable value of the real estate. That often caused large increases in the property taxes that a child would have to pay.

Beginning on December 31, 2013, there will be no uncapping of the taxable value of real estate if: (1) a parent

transfers residential real estate to a child (or from a child to the parent); and (2) the use of the property does not change following the transfer. This law allows parents to transfer property characterized as “homestead” property, as well as other types of residential property, such as cottages. The child would have to use the property in the same manner as the parents. In other words, the child could not lease the residential property or establish a commercial enterprise (presuming the parents were not doing so).

There is one major problem with the new law. It is currently unclear whether the law allows a personal representative of the parent’s estate (or a successor trustee of the parent’s trust) to transfer the property to the child after the death of the parent. Tax practitioners are attempting to get clarification on this issue through an amendment to the law. This uncertainty makes real estate planning even more essential, because there are other techniques that may be used to address these concerns.

If you own real estate and intend on transferring it to your children (either before or after death), it would be wise to take another look at how and when this property will be transferred.

If you would like to discuss your situation in more detail, you may contact Scott A. Breen at (517) 324-1021 or [sbreen@willinghamcote.com](mailto:sbreen@willinghamcote.com).

## WATCH FOR EXPANDED POLICE PRESENCE ON THE ROADS:

### BE SAFE FOR THE HOLIDAYS



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Motorists can expect an increased police presence on Michigan roads and highways this Thanksgiving, in an effort to crack down on drunk driving. Last year, the Michigan Office of Highway Safety Planning used federal traffic safety funds to increase patrols from over 100 law enforcement agencies in 20 counties across the State including Ingham, Jackson, Calhoun and Washtenaw counties.

The police presence over the Thanksgiving weekend should be especially high. As the day before Thanksgiving is well-known as a busy day for bars across Michigan, picking a reliable designated driver or planning ahead to use public transport is a must for revelers who plan on going out with friends or family.

Even a first drunk driving charge can cost a defendant many thousands of dollars in legal fees, fines and costs. A drunk driving conviction can increase automobile insurance premiums and driver's license fees and even cause the loss of a job. Repeat offenders can have their driver's license revoked and vehicle impounded. Many courts impose jail time, even for a first offense, with mandatory jail time for repeat offenders.

As the saying goes, "**Think Before You Drink.**" We are headed into one of the most dangerous times of the year to be on the roads. Look out for yourself and your fellow motorists this holiday season. Be responsible, have a plan and save yourself and your family from the tremendous burden of a drunk driving arrest.

## PROFESSIONAL NEWS

### TRIAL CASES

*Michael Stephenson* successfully persuaded the jury that our client was not professionally negligent in regard to medical care/treatment provided to a patient. In that case the jury determined that our client did not owe any money to the plaintiff and our client was not found to have been professionally responsible for the claims asserted by the plaintiff.

*Torree Breen* convinced the Court to grant sole physical custody to our client, who shared physical custody with the mother of the child, after a multiple day hearing regarding the issue. The mother moved out of state and requested that the Court grant her sole custody; however, because the child's established custodial environment was in Michigan, the Court granted sole physical custody to our client.

### APPELLATE CASES

*Anthony Kogut* and *Kimberlee Hillock* convinced the Court of Appeals to deny relief to a plaintiff in a premises liability case. In that case the plaintiff argued that the property owner had some duty to warn in regard to an unsafe condition regarding dairy equipment on the property; however, the plaintiff's own experts conceded that a person without a background in engineering would not have the knowledge to warn of the danger. Therefore, the Court of Appeals held that our client had no liability for the injuries sustained by the plaintiff while on the premises.

## OUR STAFF

### MEET OUR SUPER LAWYERS



Michael W.  
Stephenson



Anthony S.  
Kogut

Attorneys **Anthony S. Kogut**, **Michael W. Stephenson** and **John A. Yeager** of East Lansing based Willingham & Coté, P.C. have been listed in the 2013 edition of "Super Lawyers."

The firm would also like to congratulate **Scott A. Breen**, **David M. Nelson** and **Kim A. Hillock** for being acknowledged as "Rising Stars," which recognizes attorneys who are 40 and under or who have been practicing law ten years or less.



John A.  
Yeager



Kimberlee A.  
Hillock

Each year, no more than 5 percent of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor. Super Lawyers, a Thomson Reuters business, is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The annual selections are made using a patented multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates and peer reviews by practice area. The result is a credible, comprehensive and diverse listing of exceptional attorneys.



David M.  
Nelson



Scott A. Breen

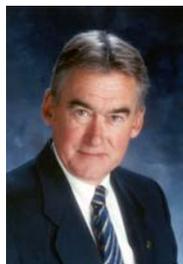
The Super Lawyers lists are published nationwide in Super Lawyers Magazines and in leading city and regional magazines and newspapers across the country. Super Lawyers Magazines also feature editorial profiles of attorneys who embody excellence in the practice of law.



Tara Bachner

### BAR BOARD APPOINTMENT

Estate Planning Attorney **Tara Bachner** currently serves as the Secretary for the Ingham County Bar Association/Young Lawyers Section and was elected to the Board of Directors for the Greater Lansing Estate Planning Council (GLEPC) for the 2013-2014 term.



Mark Meadows

### KIWANIS PRESIDENT

The Kiwanis Club of East Lansing inducted new officers and directors on Monday, October 7th. New officers include **Mark Meadows**, who was elected President. Mr. Meadows is an attorney at the firm and former East Lansing Mayor and Michigan State Representative for the 69th District.

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## ANNOUNCEMENTS

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### RED CROSS BLOOD DRIVE

Willingham & Coté, P.C., is celebrating 50 years of service and success with a blood drive, alongside the American Red Cross, entitled **“50 Pints for 50 Years.”** Fifty pints of blood is the goal for this event, to be held at the **East Lansing Marriott at University Place** on **Friday, November 15, 2013, 11 a.m. to 5 p.m.** The East Lansing Marriott is located at 300 M.A.C. Avenue. We welcome everyone to come and donate blood to this important cause. Serving the community comes naturally for the attorneys and staff of Willingham & Coté, P.C., which has been serving the legal needs of businesses and individuals since 1963. In order to celebrate this golden jubilee, a blood drive seemed a natural event, a personal commitment to share the gift of life with those who need it.



Willingham  
& Coté, P.C.  
attorneys & counselors at law

### TO DONATE

To donate blood for this worthy cause, please contact Amy M. Stephenson at [marketing@willinghamcote.com](mailto:marketing@willinghamcote.com) or you may register directly at <http://www.redcrossblood.org/make-donation>.

Everyone who registers to donate can enter for a chance to win one out of three Kindle Paperwhite tablets and one out of twenty \$20 Jimmy John's gift cards. Everyone will also receive a free Red Cross t-shirt.