

Common Real Estate Pitfalls

As a result of the internet and other resources that are available to individuals, many people are taking it upon themselves to draft their own legal documents. Some people believe they can become versed on a particular topic by reading a few articles and obtaining forms that are made available online. Although this is true in some instances, it can be very risky.

I have personally seen the horrors of the “do-it-yourself” legal kits and using internet resources. This can make a litigation attorney very rich but often makes your life miserable. I have outlined three examples of real estate pitfalls that I have seen just in the last few months.

I. Joint Ownership With Boyfriends and Girlfriends

Multiple clients have come into our office indicating that they purchased real estate with their boyfriend or girlfriend. This is almost always a bad idea. I generally get involved only after the couple broke up and they expect me to fix their problems. I am usually told by my client that his/her significant other moved out of the property and my client is paying all of the bills (including a mortgage). Of course, my client believes that I can somehow remove the other person from the title to the property quickly and easily. In many instances, there is no way to cure the situation without filing a lawsuit against the other person and asking the judge to assist in clearing title. The client then finally realizes the extensive time and cost that this error has caused. The bottom line is: you better have a very good reason to purchase real estate with a boyfriend or girlfriend. If there is a good reason, the couple better have a very good plan (in writing) in the event that the relationship does not work out.

II. Deed from Parent to Child Immediately Before Death

A second example of a real estate problem that I have seen numerous times in the past year is the parent who is trying to make it “easy” on their children by conveying property just before death (in fact, one client’s parent conveyed real estate within two days of death). The children generally come into our office

and happily indicate that the parent avoided probate by conveying the real estate before death and now they need assistance in selling it. Most people do not realize that property owned at the time of death generally gets a “step up” in basis. This means that the basis of appreciated real estate is increased to equal the fair market value as of the date of death. For example, if a parent purchased real estate for \$10,000 and it is worth \$50,000 on the date of death, then the property will have a basis of \$50,000. Theoretically, if the children then sold the property on the date of death, they would not have to pay any capital gains taxes. If the parent conveys the property before death, then the property does not receive any step up in basis and the beneficiaries (children) have to pay capital gains taxes on \$40,000 of income. Transferring property before death is not always a bad idea but you certainly want to make sure that it is done in a thoughtful way.

III. Transferring Property Between Businesses

Many business owners believe that they can simply transfer real estate between themselves and various business entities without legal consequences. The transfer of real estate (even if no money is exchanging hands) often causes an increase in the amount of property taxes that the owner will have to pay in the future. Whenever there is a “transfer of ownership” in real estate, the “taxable value” can be increased to equal the assessed value. This is generally called “uncapping” of the taxable value. This

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topic is complicated and is beyond the scope of this article. However, one should be extremely careful whenever property is transferred between businesses or to/from an owner of that business because it can drastically increase your property taxes.

If you need assistance in navigating through the technical world of real estate transactions, you may want to consult with an attorney or other specialist in this area.

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The Ending of a Long-Term Marriage

Michigan is a no-fault divorce state which means the court will grant a divorce without a showing of fault-based grounds, even if the non-filing spouse does not want the divorce. The court is required to make an “equitable” division of marital property. In general, each spouse is entitled to 50% of the assets acquired throughout the marriage unless equity dictates otherwise. Long-term marriages raise various issues with property division, since the marriage may have produced pensions, retirement plans, various investment accounts, real estate and long-term investments.

Spousal Support and the New Tax Code

The most recent concerns involve spousal support. Under the new tax code and effective in 2019, spousal support will be taxed to the payer, not the payee as has been done in the past. This means that there may be less money for both the payer and payee because the spousal support may be taxed at a higher tax bracket. This, of course, does not maximize the distribution available for the parties.

The Marital Home

The largest asset in a long-term marriage is often the marital home. In the current economy, the marital home may be an encumbrance to the settlement because there may be high levels of equity in the home. In addition, if you have been in a long-term marriage and were the primary caregiver of your children, refinancing may be more difficult due to the lack of sufficient income. If awarded the home, you may be responsible for ongoing expenses associated with the house.

Qualified Domestic Relations Order

The division of pensions and retirement accounts also may require a “Qualified Domestic Relations Order” or QDRO. This is an order entered by the court contemporaneously with the judgment of the divorce to divide these types of accounts. A QDRO must be specific to the retirement plan in question, since each plan has different rules. A financial planner should be considered to manage the monies received pursuant to a QDRO to ensure growth long after the marriage has terminated.

Whether the property is titled in one spouse’s name over the other is not an indicator of the party whom will receive the property. In addition, the expenses of children over 18 years of age will not be considered by the court. Generally, it does not matter if one spouse is paying for a child whom has reached the age of majority, so the courts will not require parties to support a child after the age of 18 years.

It is recommended that you have knowledge of all of the property that has accrued throughout your marriage. It is also important to know all the sources of debt, such as credit cards or mortgages, because in Michigan each spouse will often be responsible for some of the debt, pursuant to a judgment of divorce. Knowledge is always powerful to ensure that the assets and debts of the long-term marriage are properly divided at the time of divorce.



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Community Involvement

Our firm strongly believes in the importance of supporting community programs and events. These principles are exhibited through donations, sponsorships, and participation in community functions.



Operation Santa

Our firm “adopts” several families each holiday season as part of the “Operation Santa” program. Operation Santa’s main goal is to grant wishes for the children in the Greater Lansing area who may fall through the cracks of other social programs. Our conference room is transformed into Santa’s workshop for an afternoon. **Thank you to our staff and attorneys**, who remain very generous each and every year. **Thank you also to Jan Mayhew**, independent registered Financial Advisor, who coordinates this program to over 1200 children in the Lansing area.



Attorney Heather Gilkey
and Tinkerbell

What Do Dogs and Estate Planning Have in Common

We are pleased to announce attorney **Heather Gilkey** is supporting the members of the Michigan Canine Association, where she will educate them on the importance of estate planning and one's pets. If you see the MCA Resource Guide around town, pick one up and read her article!

And, if you have a furry loved one, don't forget to include them in your estate planning.



Attorneys Attend Women Marine's 100 Anniversary

On Sunday, December 9, attorneys **Heather Gilkey** and **Kim Hillock** (Marine) attended a celebration honoring the 100-year anniversary of women in the military. The event was held in Frankenmuth and sponsored by the Women Marines Association-Motor City Chapter. Heather presented an overview regarding estate planning to the participants and answered various questions from the audience. The Women Marines Association is the only veterans association for and about women Marines. If you are a veteran and in need of any legal assistance, please contact Kim or Heather. Kim also serves as the Judge Advocate for the Michigan Legion. Thank you, ladies, for attending and acknowledging this milestone!

Firm News

2018 SuperLawyers Announced



Anthony Kogut, Michael Stephenson and John Yeager of Willingham & Coté, P.C., have been selected to the 2018 Michigan Super Lawyers list. The firm would also like to congratulate **David Nelson** for being acknowledged as a “Rising Star,” which recognizes attorneys who are 40 and under or who have been practicing ten years or less.



Super Lawyers 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. Each year, no more than 5% of the lawyers in the state are selected by the research team at Super Lawyers to receive this honor.

Attorneys Attend Annual Bar Dinner



(left to right) Mr. John Draganchuk, Judge Joyce Draganchuk, Attorney Michael Stephenson, Attorney Joe Van Horn

For 119 years, the ICBA has provided programs and services designed to improve our local judicial system. Our attorneys remain very active in the Ingham County Bar Association.



This past month was no exception when attorneys **Michael Stephenson,**

Joe Van Horn, Kim Hillock, and Heather Gilkey attended the 124th Annual ICBA Dinner at the University Club on Thursday, November 15, 2018.

Attorneys Heather Gilkey
(left) and Kim Hillock (right)

Areas of Practice:

Appellate Work
Association Law
Business & Corporate
Commercial Litigation
Criminal Law
Family Law
Estates & Gifts
Franchise Law
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Staff Announcements



Firm Hires New Insurance Defense Attorney

Robert C. Wood (Bob) is a part of the firm's Litigation and Insurance Law Groups. Prior to joining Willingham & Coté, Mr. Wood worked at a Detroit/Grand Rapids plaintiffs' firm for three years, including serving as Managing Attorney at the Grand Rapids location. Mr. Wood litigated first and third party no-fault cases statewide.

Currently, Mr. Wood practices insurance law. He represents insurance companies by defending against disputed policyholders' claims. His practice involves mainly first party no-fault insurance personal injury protection (PIP) benefits.

Bob is a graduate of Michigan State University (B.A. in Accounting) and Cooley Law School, where he was an Honors Scholarship Recipient.

When not practicing law, Mr. Wood can be found riding his bike and spending time with his dogs. He is also an avid trivia player.

2018 Attorney Holiday Party



Raffle drawing with
associates Troy Clarke
and Cara Rumsey



Attorney John Yeager and wife Nancy

On Friday, December 7, our attorneys (and spouses) gathered at Mitchell's Fish Market in Eastwood Towne Center to celebrate the holiday season. Many of our attorneys travel extensively throughout the year, so it was a special treat to all be in one room. Thank you to the staff at Mitchell's for their excellent service.