

## The Secure Act and How it Affects You

On December 20, 2019, President Trump signed the Secure Act into law effective January 1, 2020. The Secure Act may affect your retirement benefits and potentially your estate plan.



The Secure Act was enacted to make it easier for people to sign up for 401k retirement plans and encourage the public to save for their own retirements. If you retired before January 1, 2020, the Act will have less of an impact on you than those who are still employed.

### What Is Changed?

The Secure Act has raised the required minimum distribution age from 70 1/2 years to 72 years old. The age cap has also been removed for funding traditional (non-Roth) IRAs so individuals over 70 1/2 years of age may make contributions to a traditional IRA as long as they are still receiving earned income. This allows you to take further advantage of the tax-deferred savings offered by retirement plans. In addition, for those of us still employed, it entices small businesses to offer 401k plans by providing a tax credit because most small businesses do not currently have 401k accounts for their employees. It also mandates employers of long-term, part-time employees the ability to participate in 401k plans.

### Who Is Impacted?

The most significant changes most likely affect your estate plan. Before the Secure Act, non-spouse beneficiaries such as your children and/or grandchildren were able to inherit your IRAs and/or 401ks and were able to stretch out distributions and defer taxes throughout their lifetime based on their age. The Secure Act, however, has eliminated the lifetime stretch for your non-spousal beneficiaries. The Secure Act requires that your non-spouse beneficiary receive the entire retirement account within 10 years following the death of the original account owner. There are exceptions such as surviving spouses, minor children (not grandchildren), and disabled or chronically ill persons.

### What Do I Need To Do?

Prior to the Secure Act, "conduit trusts" were utilized as an estate planning method to allow distributions to non-spousal beneficiaries to pass through the trust to specific beneficiaries to ensure a lifetime stretch of the retirement account assets based on that beneficiary's age. This also allowed protection for the beneficiaries from their creditors because the assets would pass through a trust and the retirement account owner could control the manner in which the beneficiary would receive the distribution from the trust. However, the Secure Act has made conduit trusts irrelevant as part of the estate planning process because the distribution of all of the retirement plan assets must occur within 10 years of the death of the original account owner.

### IN THIS ISSUE

- 2 | *Article: Land Contracts and Other Real Estate Financing*
- 3 | *Wealth Planning Seminar*
- 3 | *Firm News*
- 4 | *Staff Announcements*
- 4 | *Other Announcements*

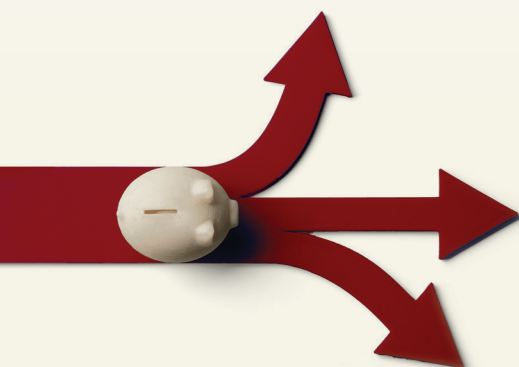
At this time if you are unsure how the Secure Act has impacted you or your estate plan, you should consult with your financial managers or seek the assistance from legal counsel. You may have to revisit your estate plan to ensure that you are limiting your tax exposure and protecting your beneficiaries as much as possible.

*Torree J. Breen is an attorney and shareholder at Willingham & Coté, P.C. in East Lansing, Michigan. She specializes in the areas of family law, estate planning and liquor license violations. Ms. Breen may be reached at 517.324.1034 or [tbreen@willinghamcote.com](mailto:tbreen@willinghamcote.com).*



Torree J. Breen  
517.324.1034  
[tbreen@willinghamcote.com](mailto:tbreen@willinghamcote.com)

Commercial Litigation  
Divorce & Family Law  
Estates & Gifts  
Hospitality & Alcohol Law





# Land Contracts and Other Real Estate Financing

Many of our clients wish to buy or sell real estate but are unsure how the purchase price should be financed. If the buyer does not have the entire purchase price in cash, the three main ways to finance a real estate transaction are by: (1) land contract; (2) purchase money mortgage; and (3) third party financing. Each of these methods of financing are legitimate and the decision simply depends on the facts and circumstances.

If the buyer insists on receiving the entire purchase price at closing, then the buyer will need to obtain a third party loan from a bank or other source. However, there are situations where the buyer cannot obtain a third party loan and does not have the cash on hand. In those situations, the seller may wish to consider a land contract or a purchase money mortgage.



## Land Contracts

A land contract is a written agreement between a seller and a buyer for the sale of real estate where the buyer makes payments over time and the seller continues to hold legal title to the property until the purchase price is paid in full. Both residential and commercial property can be sold on land contract. The seller will only deliver a deed when the buyer has paid the purchase price in full.

Land contracts are generally used when: (a) the buyer cannot get alternative financing (generally because of bad credit) but the seller really wants to get the property sold (e.g. cannot find another buyer); (b) family members are involved; or (c) there is a high interest rate environment and the seller is willing to accept a lower interest rate. In certain instances, a seller will desire a land contract because it provides an income stream over a period of time (receipt of principal and interest).

One of the most important issues to consider is the consequence of the buyer defaulting under the land contract. In most instances when a buyer defaults, the seller will initiate a “forfeiture” proceeding in district court. This will allow the seller to terminate the buyer’s interest in the land contract, take the property back, and retain all money that was previously received from the buyer.

The forfeiture process can take many months to finalize and, during that period, the seller generally is not receiving any payments. As a seller, it is very important to receive a large enough down payment at the beginning of the land contract to cover any potential legal fees, lost revenue, and for the buyer to have “skin in the game” to complete the payments under the contract.

Again, land contracts are a good idea in certain situations. However, the seller (and the buyer) should understand the issues and risks involved in these types of transactions.

## Purchase Money Mortgages

A purchase money mortgage is essentially when the seller is acting as a bank in the sale of the seller’s own property. The seller will “loan” the money and the buyer will execute a promissory note and a mortgage. At closing, the seller will deliver a deed to the property.

There are two main differences between land contracts and purchase money mortgages. First, in a purchase money mortgage, the buyer will own the property immediately upon closing. Second, in the event of the buyer’s default, the seller will need to foreclose the mortgage (rather than forfeit a land contract). The foreclosure process generally takes longer to accomplish.

It is relatively rare to see purchase money mortgages since the seller wants to retain legal title to the property until the purchase price (and interest) are paid in full. However, when the buyer has a good credit record and insists on a deed at the closing, this may make sense to both parties.

## Conclusion

There is definitely no “one size fits all” for every real estate sale transaction. There are also various tax implications to be considered that are outside of the scope of this article. If you need assistance in navigating through these real estate issues, you may want to consult with an attorney or other specialist in this area.

*Scott A. Breen is an attorney and shareholder at Willingham & Coté, P.C. in East Lansing, Michigan. Mr. Breen also has a Master of Laws degree (LL.M.) in taxation. He specializes in the areas of business and real estate transactions as well as hospitality and alcohol beverage law. Mr. Breen may be reached at 517.324.1021 or sbreen@willinghamcote.com.*

## Our Attorneys

### Steve L. Birn

Insurance Law

### Scott A. Breen

Association Law  
Business & Corporate  
Commercial Litigation  
Hospitality & Alcohol Law  
Real Estate Law

### Torree J. Breen

Commercial Litigation  
Divorce & Family Law  
Estates & Gifts  
Hospitality & Alcohol Law

### Troy D. Clarke

Insurance Law  
Medical Malpractice

### Stephen Fouchier

Appellate Work  
Insurance Law

### Curtis R. Hadley

Appellate Work  
Commercial Litigation  
Divorce & Family Law  
Insurance Law

### Anthony S. Kogut

Commercial Litigation  
Hospitality & Alcohol Law  
Insurance Law

### David M. Nelson

Insurance Law  
Medical Malpractice

### Michael W. Stephenson

Commercial Litigation  
Insurance Law  
Medical Malpractice

### Joseph Van Horn

Medical Malpractice  
Insurance Law

### Robert C. Wood

Commercial Litigation  
Insurance Law

### John A. Yeager

Appellate Work  
Insurance Law

### Howard E. Goldberg (of Counsel)

Hospitality & Alcohol Law

### Lee B. Reimann (of Counsel)

Business & Corporate  
Estates & Gifts



Scott A. Breen  
517.324.1021  
sbreen@willinghamcote.com

Association Law  
Business & Corporate  
Commercial Litigation  
Hospitality & Alcohol Law  
Real Estate Law



## SAVE THE DATE!

### Wealth Planning Seminar

Willingham & Coté, P.C. is proud to partner up with other area professionals to present its **Family Wealth Management and Elder Care Seminar** on **Thursday, May 7, 2020**, starting at 2:00 pm at the University Club. The firm is providing complimentary mid-afternoon desserts, tea and coffee for the attendees starting at 2:00 pm. The seminar will start at 2:20 pm and continue through 4:00 pm.

The goal is to help educate our clients and the friends of our clients with an array of topics to ensure that you not only maximize your wealth preservation, but also educate you and your family members regarding care for our loved ones in transition towards their last journey in life. The topics will be discussed by the estate planning and real estate attorneys from our firm as well as additional support from financial planner, **Lynn Colby** of Stifel; accountant, **Thomas Rice** of Fairchild, Lebel & Rice, P.C.; and some service providers of elder care. We recognize that multiple professionals are necessary to ensure our loved ones are adequately prepared to handle transitions in life and now is your time to ask questions over dessert and beverages.

If you would like to attend, please call **517.3424.1037** or email **events@willinghamcote.com** to reserve your spot.



**Willingham & Coté, P.C.**

INVITES YOU TO ITS

## 2020 WEALTH PLANNING SEMINAR

**May 7 • 2pm**

**Complimentary Mid-Afternoon Desserts**

University Club  
3435 Forest Rd., Lansing

## Firm News

### Attorney Wins Legal Excellence Award

**Michael Stephenson** was given the Ingham County Bar Association's *Leo A. Farhat Outstanding Attorney Award* named after legendary Lansing-area attorney Leo A. Farhat, founder of the Farhat & Story law firm. Mr. Stephenson is a shareholder at the firm and specializes in medical malpractice defense.

The Farhat Award is given to a member of ICBA who has "distinguished himself or herself by manifesting exemplary character, integrity, judgement and legal scholarship while adhering to and advancing the highest principals and traditions of the legal profession."

Stephenson was nominated for the award by fellow Willingham Coté, P.C. shareholder, **Torree Breen**. In her application Breen noted that she is not aware of another attorney more respected in the field of medical malpractice defense than Stephenson. Medical malpractice is a legal specialty requiring not only legal but medical knowledge. **Kim Martin** is a Claims Director at The Doctors Company, a carrier working with many of the health care providers for whom Stephenson provides counsel. After working with Stephenson for many years, she says that he is "an attorney who we know we can always count on to aggressively defend our insured members and support our mission to advance, protect and reward the practice of good medicine. His strong litigation skills and legal acumen have resulted in many defense verdicts and dismissals. We consider our partnership with him as integral to our continued success."

*Congratulations to Michael and his entire medical malpractice team for this honor.*



*Attorney Chuck Barbieri presenting Michael Stephenson the Ingham County Bar Association's Leo A. Farhat Outstanding Attorney Award.*

## Areas of Practice:

Appellate Work  
Association Law  
Business & Corporate  
Commercial Litigation  
Criminal Law  
Family Law  
Estates & Gifts  
Franchise Law  
Hospitality & Alcohol Law  
Insurance Law  
Professional Licensing  
Real Estate Law



## Willingham & Coté, P.C.

Attorneys at Law | [www.willinghamcote.com](http://www.willinghamcote.com)

East Lansing, MI: 517.351.6200 | 333 Albert Ave., Suite 500

Traverse City, MI: 231.714.5055 | 400 W. Front St., Suite 205



PRSRT STD  
U.S. Postage  
**PAID**  
Lansing, MI  
Permit #515



## Staff Announcements



### Firm Hires New Insurance Law Attorney

**Stephen Foucher** is a member of the insurance practice group and focuses the majority of his practice defending insurance companies in first-party no-fault cases and insurance policy-holders in third-party auto cases. Stephen also handles appeals, coverage disputes, and premises liability cases. In addition, he has

experience in the field of construction law, with an emphasis towards construction defects.

Prior to joining Willingham & Coté, P.C. Stephen served as judicial law clerk for the Honorable Rosemarie E. Aquilina of the Ingham County 30th Circuit Court for 1 year, and then worked as an associate attorney at Hackney Grover, PLC, for 2 years.

Stephen is a graduate of the University of California, Los Angeles (B.A.) and Michigan State University College of Law, where he graduated Magna Cum Laude and was a Merit Scholarship Recipient.

## Other Announcements



### Connect with us on Social Media

Did you know our newsletter is just one way in which we communicate with clients. Our Facebook page is another. If you are a Facebook user, please find us on Facebook (@WillinghamCote) and “**Like**” and “**Follow**” us. Via our page, you can access informative legal blogs, view engaging video, receive staff announcements and other firm news. We also welcome client reviews and interactive comments. Facebook also allows for easy “sharing” of legal news that may be of interest to your friends and family on Facebook. Join us today!