FOX | O'NEILL | SHANNON s.c.

FOS NEWS - *Our clients come first*

Volume 1, Issue 1

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WELCOME STACEY MOORE

Fox, O'Neill & Shannon is excited to welcome Stacey M. Moore as the firm's newest attorney. Stacey has been practicing law since her 2001 graduation from the Northern Illinois College of Law.

At Fox, O'Neill & Shannon, Stacey will continue to focus on family, employment law and general litigation. Stacey has many years of experience in these areas.

In addition to her Wisconsin legal license, Stacey's Illinois license and experience provides the firm with additional resources to serve clients located in, or with matters involving, the State of Illinois.

INAUGURAL ISSUE

Welcome to the inaugural issue of **FOS NEWS**. The attorneys at Fox, O'Neill and Shannon, S.C. have looked for some time for a vehicle to provide current legal updates to clients and friends. We think this newsletter will accomplish that purpose.

Our firm has been in existence since 1962. We take great pride in having served our clients and communities for over 45 years. We welcome your comments and feedback on **FOS NEWS**.

SHOULD YOU CONVERT YOUR TRADITIONAL IRA TO A ROTH IRA?

By: Al Young

Roth IRAs have been available for about 10 years. In my experience they tend to be greatly underutilized. They offer the following advantages over a Traditional IRA:

- All distributions are tax free;
- Minimum required distributions need not be taken by the owner;
- Contributions may be made at any age.

The disadvantage of a Roth IRA is that contributions are not deductible.

A Traditional IRA may be converted to a Roth IRA. Studies have shown that, in the right circumstances, beneficiaries will receive a much larger inheritance if a Traditional IRA is converted to a Roth IRA.

Prior to 2010, only taxpayers with adjusted gross income less than $100,000 were eligible to convert a Traditional IRA to a Roth IRA. Beginning in 2010, the income limitation is repealed.

When a Traditional IRA is converted to a Roth IRA, the fair market value of the Traditional IRA on the date of the conversion is reportable as taxable income. For conversions during 2010 only, a taxpayer may elect to report one-half of the income from the conversion in 2011 and one-half in 2012.

In analyzing whether or not to convert, the following factors should be considered:

- Whether the fair market value of investments in the Traditional IRA is temporarily depressed;
- Marginal tax rates in 2010, 2011 and 2012;
- Ability to pay the tax on the conversion from other assets;
- Whether your estate will be subject to the federal estate tax;
- Current and future cash flow needs;
- Your age and the ages of your beneficiaries.

As 2010 approaches, all taxpayers with a Traditional IRA should keep this planning opportunity in mind and carefully analyze whether to convert a Traditional IRA to a Roth IRA after January 1st.

CONGRATULATIONS!

Congratulations to Bill Fox for his great work as co-chairman of the Great Circus Parade, which was held in Milwaukee on July 12th, 2009. The parade was witnessed live by over 500,000 people and seen by a national television audience. A number of the FOS attorneys and staff and their family members rode in the parade in full costume.

ADA AMENDMENTS BROADEN DISABILITY COVERAGE

By: Diane Slomowitz

Every employer should be aware that new amendments to The Americans With Disability Act ("ADA") have significantly changed how that law will affect business.

The ADA generally prevents a private employer with 15 or more employees from discriminating against a qualified individual on the basis of disability.

The statute applies to all employment practices and employment-related activities, including applications and recruitment, hiring, firing, promotion, compensation, training, tenure, layoff, leave, benefits, and advertising.

New ADA amendments, effective January 1, 2009, significantly expand the practical application of the statutory definition of "disability." The amendments were designed to overturn a series of U.S. Supreme Court decisions, and Equal Employment Opportunity Commission regulations, whose interpretation of the ADA made it difficult to prove that an impairment is a "disability."

Disability

The amendments do not change the underlying definition of "disability" as an impairment which substantially limits one or more major life activities, a record of such impairment, or being regarded as having such impairment. However, the amendments broaden how this definition is to be interpreted.

The amendments provide, for the first time, a nonexhaustive list of "major life activities," one or more of which must be substantially limited for a disability to exist.

Even so, the amendments limit coverage to impairments which are not "transitory and minor." "Transitory" is an impairment with an actual or expected duration of up to six months. The amendments also give some employer relief in this area, by providing that an employer need not reasonably accommodate an individual who is regarded as being disabled, but who either does not have an actual impairment or a record of such impairment.

Focus Shift

While these changes may appear daunting to an employer faced with an ADA issue, as a practical matter they may shift the analysis from whether an individual is disabled under the statute to what, if anything, the employer must do in response. The ADA, for example, requires only reasonable accommodation. It does not require an employer to provide an accommodation which would unduly burden the employer's business.

YOU HAVE A JUDGMENT: NOW WHAT?

By: Eric Pagels

In most cases, obtaining a money judgment against a defendant in a collection lawsuit is only the first step in collecting a debt. There are many statutory procedures in place, though, to assist in collecting on the judgment and obtaining recovery. These procedures include obtaining disclosures by a judgment debtor regarding income and assets, securing liens against the property held by the judgment debtor, and garnishing wages and bank accounts.

One of the easiest and most effective tools that the judgment creditor has is the judgment lien. The judgment creditor is able to place a lien on real property owned by the judgment debtor by docketing the judgment in any county where the property is located. This lien will prohibit the judgment debtor from transferring the asset without first clearing the lien off the title to the property.

There are also statutory provisions that require the judgment debtor to disclose all assets and sources of income. Depending on the type of case, this is accomplished either through the debtor completing a written financial disclosure statement, or by taking the deposition of the debtor at a supplemental examination. If the judgment debtor does not comply with these disclosure requirements, the judgment creditor can file a motion for contempt. If the judgment debtor does not appear at the contempt hear

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DEALING WITH YOUR BANK

By: Bill Soderstrom

I wish I had a dime for every conversation I've had in the last few months with business owners or CFOs about difficulties in dealing with their banks. In the current economic climate, some banks are putting tremendous pressure on customers. Often it seems that long-term working relationships are no longer as important to the bankers as they were in the past.

I suspect that because of bad loans and the general economic situation, bank focus is now not on maintaining relationships or making new loans, but upon preventing any possibility of loss on existing loans. That focus is playing havoc with small businesses.

A plan should be developed for dealing with your bank. As part of that plan:

- Read your loan documents. Oftentimes loan documents are not reviewed after they are signed. However, loan documents often contain negative covenants and restrictions that allow a bank to call a loan early if violated. Be familiar with your current loan documentation, and make sure you do not inadvertently violate a covenant. If there is a violation, be ready with an explanation and cure for the bank.

- Be proactive. In the event you are having difficulty that would involve your bank, be prepared to explain the difficulty and the steps you have already taken to correct it. Banks like to know that a customer is handling situations without bank prodding.

- Prepare a business plan. Put in writing the steps you are taking to cut costs and increase revenues. Banks like to know that there is a plan in place for taking the company forward, especially in difficult times.

- Stay close to your banker. Loan officers currently are under tremendous pressure from internal accounting at their banks. Often internal accounting does not care greatly about the relationships that the loan officers have developed with customers. Becoming angry at your loan officer will not solve anything. Help the loan officer to present the best case to the internal accounting people as to why the bank's relationship with your company should continue.

Judgment...

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ing, the court can issue a bench warrant for the debtor's arrest.

Once the required disclosure of assets and income is made by the judgment debtor, the garnishment process can begin. There are two types of garnishment proceedings available to the judgment creditor: for earnings, and for non-earnings. The earnings garnishment allows the judgment creditor to garnish a portion of the wages earned by the judgment debtor, and receive them directly from the employer. Non-earnings garnishments give the judgment creditor a right to receive funds held by the judgment creditor in various bank accounts and other investment funds.

Although many judgment debtors will resist paying their debts even when there is a judgment against them, these and other tools available to the judgment creditor greatly improve the chances of recovery.

WISCONSIN INDIVIDUAL TAX CHANGES

You've probably seen that the Wisconsin Budget Bill enacted at the end of June decreased the Wisconsin long term capital gains tax exclusion from 60% to 30% and increased the top individual Wisconsin tax rate from 6.75% to 7.75%. The new 7.75% tax rate applies as follows:

- Single individuals – Taxable income exceeding $225,000.

- Married persons filing joint returns – Taxable income exceeding $300,000.

- Married persons filing separately – Taxable income exceeding $150,000.

What has not been well publicized is the effective date of these changes. Both changes are effective retroactively to January 1, 2009. However, underpayment penalties attributable solely to the tax rate change will be waived.

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Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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IN THIS ISSUE

A CONTRACT FOR MARRIAGE: PRENUPTIAL AGREEMENTS IN WISCONSIN

By: Mike Hanrahan

Under Wisconsin law, when a couple is married, all the property acquired by either party prior to or during the marriage is subject to a presumption of equal division in divorce, so long as the property was not acquired as a gift or by inheritance. Thus, anyone who intends to get married and has a meaningful amount of non-gifted or non-inherited property should consider the execution of a prenuptial agreement with his or her intended spouse.

While the terms of a prenuptial agreement need not be complex, it is not an agreement that should be hastily prepared and presented by one spouse to the other on the eve of a wedding. Under the law, a court can ignore the terms of a prenuptial agreement if it is inequitable to either party.

A court will only validate a prenuptial agreement that satisfies tests of procedural and substantive fairness when the agreement is entered by the parties. An agreement meets procedural fairness under the law if (1) each spouse makes a fair disclosure to the other of his or her financial status; and (2) each spouse enters into the agreement voluntarily and freely. In order to insure free and voluntary entry of the agreement, each party must be represented by independent counsel and have adequate time to review the agreement.

If the marriage ultimately ends in divorce, the divorce court will also review the prenuptial agreement for substantive fairness as of the time of the divorce. At this point, the court will primarily examine whether there has been an unexpected change in circumstances for a party. For example, if the health of one of the spouses changes or the individual property of one party is commingled with joint assets, the court could invalidate the prenuptial agreement in whole or in part.

If you are bringing a meaningful amount of property to a marriage, it is worth considering a prenuptial agreement before tying the knot.