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### WELCOME

Richardson & Tyler, LLP is pleased to bring you the spring edition of our 2009 newsletter. This newsletter is to share new matters of general interest with our clients. It is not intended to provide legal advice. Please speak to an attorney before applying this information to your specific situation. If you would prefer to be taken off of our mailing list, please call or e-mail [richardsonandtyler@rtelgal.com](mailto:richardsonandtyler@rtelgal.com) and let us know.

### PENSION PLANS, LIFE INSURANCE, DIVORCE & ESTATE PLANNING

A recent Supreme Court case highlights a *potential pitfall* for those who don't follow through after divorce, estate planning or other life changes.

In a divorce, the wife waived rights to the husband's pension. The husband neglected to file a new *beneficiary designation* with the pension plan administrator. (A *beneficiary designation* is a form filed with your pension plan or life insurance company, telling them whom to pay upon death). When the husband died, the wife filed a claim with the pension plan, collected the money, and spent it. The husband's daughter tried to recover from the pension plan, but the court held that the plan administrators needed to look no further than the latest *beneficiary designation*. The daughter was out of luck and out of her inheritance!

#### What do we recommend?

If you divorce, change your estate plan, or lose a family member, [review your beneficiary designations](#). It is a simple matter to obtain the form (usually one page) and mail it in. It is best to send it via certified mail or another method that calls for a delivery receipt.

### ESTATE PLANNING FOR FAMILIES WITH CHILDREN

You've probably given careful consideration to whom you want to be your child's guardian. But did you know that guardianship ends when the child turns 18?

A guardian is required to turn over all remaining funds to the child on their 18<sup>th</sup> birthday, and the child no longer receives court supervision or protection for the money.

For some young adults, inheriting a large sum at 18 may be too much responsibility.

A *living trust* is a tool that parents can use to assure their child will have financial assistance and guidance after the age of 18. The trust provides *guidelines for using trust money*. These guidelines can be strict, loose, or somewhere in between. And unlike guardianship, *there is no specific date on which the trust must end*.

Since you know your child best, you can shape the trust to provide as much, or as little, assistance as you think appropriate for your child.

A living trust is a flexible instrument that can be fashioned to fit the needs of every parent and child. Please give us a call if you'd like to learn more about incorporating a family trust into your estate plan.

**MORTGAGES, FORECLOSURES, & WORKOUTS IN THE SUBPRIME LENDING CRISIS**

The full impact of the Attorney General's new regulations for "predatory" mortgages is yet to be felt. Prohibited practices include:

- Lending money to a homeowner who cannot repay it.
- Loans without income verification.
- Loans that are not "in the borrower's best interest".
- Inadequate disclosure by brokers who profit by selling a higher rate loan, when a lower rate is available.

We have found that judges are increasingly willing to consider injunctions against foreclosure, or claims for damages, when borrowers have suffered from unfair practices and fallen behind on their payments. In turn, lenders then become willing to "re-write the deal" or take back the property, when faced with a well-prepared legal claim.

What do we recommend?Borrowers.

- Have you fallen behind? Shut off your phone to avoid creditors?
- Speak to the lender – foreclosure is expensive & they may discuss restructuring your loan.
- Speak to counsel – you may have other options & lenders are more receptive to a realistic, detailed proposal.

Lenders. While foreclosure is an option consider other remedies:

- It is possible to amend a note to provide temporarily for interest only.
- A "short sale" (permitting a sale for less than the mortgage balance) may yield more than a foreclosure, in less time.
- A "deed in lieu of foreclosure" may permit you to take possession without costs and delays associated with foreclosure, bankruptcy, or a predatory lending claim.

Whether you are a lender or a borrower, feel free to call R & T for "the latest information" on this rapidly evolving area of the law.

**LEASES, LANDLORDS, TENANTS, EVICTIONS, NUISANCE**

Most landlords know that:

- "Eccentric" tenants may remain undisturbed if they pay the rent.
- Tenants may be evicted on 14 days notice for non-payment, or 30 days notice (tenants at will) for other reasons, or at the end of the lease term (written lease).

There is an exception for tenants who are more than eccentric.

Cindy and Alfred Moore (not their real names) rented the second floor apartment in their 3-family house to a family who seemed normal before they moved in. Soon, the family's teenage son began experimenting with homemade bombs he learned to build on the Internet - first blowing up dolls on the driveway and then blowing out the neighbor's windows. Fearing for their safety, the Moores came to us for quick relief.

Fortunately, a little known Massachusetts law permits a landlord to void the lease if the tenant creates certain nuisances. We helped the Moore's quickly remove the tenants within the month.

If you need to remove a problem tenant quickly, let us know. We can provide a comprehensive assessment of all your options.

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**A NEW LAW AFFECTING ESTATES AND TRUSTS**

On January 15<sup>th</sup> Governor Patrick signed into law sweeping changes to the state's probate system. The new law, called the Uniform Probate Code, is a set of rules that has been used successfully by many other states.

The new law will:

- Modernize the way that the court manages estates and trusts;
- Eliminate areas of confusion and inconsistency that were abundant under the old law; and
- Reduce probate expense and delay.

The new procedures are expected to be a welcome change to all those involved with the probate process. If you are an Executor, Administrator, Trustee, Guardian, Heir or Beneficiary, you should speak to an attorney about how these changes may affect you.