
ABENDROTH & RUSSELL, P.C.

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Welcome

2007 is a landmark year for ABENDROTH & RUSSELL, P.C. because it marks the 20th anniversary of the formation of the firm. What started as two lawyers and a single employee in 1987 has grown to a law firm with five attorneys and eighteen staff members.

In mid-March, Nicole Jones joined the firm as a closing specialist in our real estate department. We also added a new receptionist, Barb Kruse, at the end of May. Both bring experience and enthusiasm to their positions.

Alice Cross is the new legal assistant for Mark and Dave. She recently relocated from Texas, where she was a legal secretary for a large firm. Welcome aboard, Alice!

This issue of our newsletter contains more legal information that focuses on our core areas of practice: consumer collections, real estate, estate planning, and residential landlord / tenant relations. There is also a whole page of answers from Jack, the legally-trained canine.

We hope you find something interesting and informative. ♦

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ESTATE PLANNING MADE SIMPLE

The process of estate planning inevitably raises some difficult emotional and personal issues. It forces you to face the unpleasant fact of your own mortality; you are trying to plan for a time when you won't be around to make decisions. Others, particularly those you love, will be affected by the plans you make now and will be expected to exercise their own judgment once you are gone. For many people, the most difficult step in the estate planning process is deciding to do it in the first place.

To make it easier, start small and answer three questions:

1. **Who** will make financial and health decisions if I am unable?
2. **Where** will my assets pass?
3. **What** can I do to minimize taxes?

Estate planning comprises three major areas: planning for incapacity, directing your wealth, and minimizing taxes.

PLANNING FOR INCAPACITY

The first component to estate planning is often overlooked. It is very likely that, before you die, something will happen to you that will render you unable to assist in your financial or medical decisions. You should have in place documents – a financial power of attorney, a health care power of attorney, and a living will – that nominate somebody else to help you make decisions.

DIRECTING YOUR WEALTH

The second step in estate planning is to direct your wealth. Your Last Will and Testament or Living Trust will designate your beneficiaries. To whom you leave your money and property is obviously a very personal decision. Most people naturally think of planning for

Estate Planning Made Simple

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spouses, children, and relatives first. After the family is considered, perhaps a favorite charity, such as your church, an alma mater, or a research foundation, might be included as a beneficiary.

When your children are mature enough to discuss financial matters, let them know, in general terms, the size of your anticipated estate and talk over with them your plans for it. If they are old enough, you should give them the opportunity to make their preferences known. But ultimately use your own judgment to limit access as long as necessary. In Iowa, 18 is the legal adult age. However, an 18-year-old child may not be mature enough to handle the responsibilities of a sudden windfall. Evaluate at what age your children might be capable of meeting this challenge and consider strategies that can help you plan for that time.

MINIMIZING TAXES

Two things in life are certain: death and taxes. The third part of estate planning is ensuring that one doesn't cause the other. An estate is potentially liable for many kinds of taxes.

In Iowa, all estates are subject to inheritance tax, which is a tax on the amount passing to the beneficiary. Some beneficiaries are exempt from taxation, depending on their relation to you. Spouses, children, and grandchildren are generally exempt; siblings, nieces, and nephews are not.

Your entire estate, no matter its size, can pass to your spouse estate tax free. This deduction, however, does not eliminate the possibility that estate taxes may be due on assets transferred by your surviving spouse upon his or her death. For this reason, both you and your spouse must establish estate plans that will maximize asset transfers to your heirs and minimize estate taxation. We will work with your financial planner or tax professional to help you analyze and minimize your tax liability.

At ABENDROTH & RUSSELL, P.C., our experienced estate planning attorneys can assist you and your financial professionals in planning your future. ◆

COLLECTIONS PRACTICE

ONE OF THE CORNERSTONES OF OUR FIRM

ABENDROTH & RUSSELL, P.C. has been actively involved in the collection of delinquent accounts for its clients since its inception in 1987. In 2006, the law firm collected almost \$4 million for the benefit of its clients. We use a team approach that includes attorneys, paralegals, and telephone collectors in this process. Our collection manager provides oversight to the collection process for the benefit of our clients.

Unlike a debt collection company, the fact that ABENDROTH & RUSSELL, P.C. is a law firm means that if attempts to collect the debt voluntarily from the debtor fail, we can proceed with suit and obtain a judgment on behalf of our clients. Whether through a voluntary debtor payment, a payment plan, or a judgment that results in attaching the debtor's assets through garnishment, we maximize the client's return.

One benefit of a judgment is that collection returns are maximized. The client doesn't have to accept a lower amount than what is owed; the judgment is entered for the full amount. The second benefit is that collection returns are accelerated. Rather than allowing the debtor to make small monthly payments, the judgment holder can garnish wages or bank accounts, up to the maximum yearly limit.

Our office employs state-of-the-art software and other tools to expedite the collection process for our clients. Our firm has won awards from our national clients in recognition of the percentage amount of bad debt that we collect.

Please call our office to assist you in the collection of your debt. The difference will make a big one where it counts ... at the bottom line.

Legal Briefs

On November 29, 1943, the Des Moines University of Lawsonsomy was founded. This school was dedicated to teaching the philosophical principles of its founder, the eccentric inventor and aircraft maker Alfred Lawson. The school existed for nine years in Des Moines, and was devoted to the teachings of Lawsonsomy, which include strict morality, reincarnation, and the abolition of charging interest.

"Escheat" is an ancient English (originally Norman French) word for the reversion of land and property to the Crown. The government officials in charge of enforcing this principle were known as "cheaters." Today, the word has retained its derogatory meaning for a person who takes property or money by unfair means.



ASK JACK

Jack is a Labrador-Great Dane mix who is happy to answer your questions about legal issues.

In last quarter's issue, Jack answered questions about locating your ideal home.

BUYING A HOME – PART II

Q: How do I determine the initial offer?

A: Calculating your offer should involve several factors: what homes sell for in the area, the home's condition, how long it's been on the market, and whether the seller is scared by your barking. By the time you're ready to make an offer, you should have a good idea of what the home is worth and what you can afford. Be prepared for give-and-take negotiation, which is very common when buying a home.

Q: Any other tips for the offer?

A: Sometimes, you can negotiate terms that assist your financing. For example, you may agree to a higher purchase price if the seller pays certain closing costs.

Q: How do I make an offer?

A: The offer (or purchase agreement) is a legally-binding contract that must contain certain key elements, such as the identification of the property, the price you are offering, the amount of earnest money paid, the financing details, and the proposed move-in date.

Your attorneys at ABENDROTH & RUSSELL, P.C. can ensure that the purchase agreement contains legal provisions that will cover all of the key terms of the transaction and will set out the responsibilities of each party.

Q: Do I need a real estate agent to buy a home?

A: Unless you have a buyer's real estate agent, remember that the realtor works for the seller. Even if a realtor is a "dual agent", it is difficult to properly represent both parties in price negotiation, especially since the seller pays the realtor's commission. In addition, the realtor has a vested interest in seeing the transaction go through, so the commission will be paid. Listen to the agent's advice, but follow your own instincts on deciding a fair price.

Q: What does the appraiser do?

A: If you are financing your home, your lender will require an appraisal of the property. The appraiser compares your new home to other comparable homes that have recently sold in the area. This gives the lender (and you) an idea of whether the house is worth what you are paying for it. However, since fair market value is ultimately determined by what someone is willing to pay, and since you have already made an offer, most appraisals come very close to your proposed purchase price.

The appraiser may note major structural or mechanical defects, but only if they negatively impact the value of the house. An appraisal is not a substitute for a home inspection.

Q: What does a home inspector do?

A: An inspector checks the safety of your potential new home. Home inspectors focus especially on the structure, construction, and mechanical systems of the house and will make you aware of any repairs that are needed. The inspector does not evaluate whether or not you're getting good value for your money – that's the job of the appraiser.

Generally, an inspector checks the electrical system, plumbing and waste disposal, the water heater, insulation and ventilation, the HVAC system, water source and quality, the potential presence of pests, the foundation, doors, windows, ceilings, walls, floors, and roof. Be sure to hire a home inspector who is qualified and experienced.

You should include an inspection clause in the offer when negotiating for a home. An inspection clause gives you the ability to terminate the purchase agreement if serious problems are found or gives you the ability to renegotiate the purchase price if repairs are needed.

Q: Do I need to be there for the inspection?

A: It's not required, but it's a good idea. The home inspector will be able to answer questions concerning the current condition of the home and report any problem areas. This is also an opportunity to hear an objective opinion on the home that you would like to purchase and it is a good time to ask general maintenance questions.

Q: Do I need a lawyer to buy a home?

A: Although Iowa doesn't require one, you may want to hire a lawyer to help with the complex paperwork and legal contracts. A lawyer can review contracts, make you aware of special considerations, and assist you with the closing process. Your real estate agent may be able to recommend a lawyer. If not, shop around. Find out what services are provided for what fee, and whether the attorney is experienced at representing homebuyers. ♦

Have a question? E-mail it to AskJack@ARPCLaw.com

HISTORY OF THE FIRM

Part of Our 20-Year Retrospective

David Russell and Mark Abendroth started their first office in the Westview buildings behind the Perkins restaurant at 86th Street and Hickman Road. Initially, they had one employee.

From 1987 to 1997, the firm grew slowly, building its premier collection practice. All of the files were worked by hand; Mark and Dave had to review each file manually on a 30-day rotation. This meant that the firm was limited in the number of accounts it could service.

The bank failures of the mid-1980's led to a large amount of bad debt. When the Federal Deposit Insurance Company (FDIC) closed or took over the failed banks, the bad debt was sold off to investors. Many of those investors turned to Abendroth & Russell, P.C. to collect the debt in Iowa, leading to an explosion in this area of practice.

During this time, the firm also developed a strong practice in the area of real estate. What started as offering closing services to a few loan officers at Brenton Mortgage steadily grew into a thriving real estate practice.

The first decade of ABENDROTH & RUSSELL, P.C. was one of slow and steady growth. The firm developed its core areas of practice and established its reputation. In 1996, there were two attorneys and five staff members. All of that was about to change.

Popular movies from 1987

1. Dirty Dancing
2. Full Metal Jacket
3. Lethal Weapon
4. The Princess Bride ◆



EMPLOYEE SPOTLIGHT



Clarice

Clarice is a litigation specialist with ABENDROTH & RUSSELL, P.C. She previously worked for the Clerk of Court of Polk County and has unique insight in to the functioning of the court system. Clarice joined the firm in June of 2002, and is celebrating her 5-year anniversary with the firm.

Clarice enjoys Italian food, *The Sopranos* on HBO, and her favorite movie is *Goodfellas*.

ACCESS TO RENTAL UNIT

Tenants Have Rights, but Landlords Do, Too

If you live in an apartment, your landlord has the right to enter your rental unit under certain circumstances. This often causes tension between a tenant who values his or her privacy and a landlord or management company that is attempting to conduct its business.

A landlord has a right to enter the dwelling unit:

- to inspect the premises
- to make necessary or agreed repairs, decorations, alterations, or improvements
- to supply necessary or agreed services
- to exhibit the rental unit to prospective or actual purchasers, lenders, contractors, or tenants
- in an emergency
- at the tenant's request or with consent

A tenant may not unreasonably prevent the landlord from entering. In fact, Iowa Code §562A.19(1) imposes a duty on the tenant to allow reasonable access to the rental unit. There is **no requirement** that a tenant must be present when the landlord enters. This is a common misconception among tenants.

However, before entering for a non-emergency reason, the landlord must provide a written 24-hour notice and then enter only during reasonable times.

If a tenant refuses to let the landlord in, the landlord can obtain a court order directing the tenant to allow access. The landlord can also terminate the tenancy.

The landlord has other rights of access as well. For example, no notice is required in the case of emergency. During an tenant's absence from the rental unit in excess of fourteen days, the landlord may enter at times reasonably necessary to ensure the safety and habitability of the rental unit. If the tenant abandons the rental unit, the landlord may enter and recover possession. ◆