
ABENDROTH & RUSSELL, P.C.

Volume 2, Issue 3

2536 – 73rd Street
Urbandale, Iowa 50322
(515) 278-0623

September 2007

Welcome

2007 is a landmark year for ABENDROTH & RUSSELL, P.C. because it marks the 20th anniversary of the formation of the firm. To celebrate, the firm is hosting an open house on **Thursday, September 13, 2007, beginning at 4:30 P.M.** in conjunction with the Urbandale Chamber of Commerce. If you are receiving this newsletter, then you are one of the clients who has helped this firm grow over the last two decades. Please stop by and enjoy the fun.

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.

Our past newsletters are now archived on our website. Visit www.ARPCLaw.com to read past issues that you might have missed. ♦

MARK U. ABENDROTH
DAVID B. RUSSELL
ROSS F. BARNETT

CHRISTOPHER L. LOW
MATTHEW F. HRUBETZ

INSIDE THIS ISSUE

- 1 *Welcome*
- 2 *Noisy Neighbors*
- 3 *Common Law Marriage*
- 4 *Legal Latin*
- 5 *ASK JACK – Wills Part I*
- 6 *History of the Firm*
- 7 *Employee Spotlight*

NOISY NEIGHBORS

At Your Wit's End Over Next-Door Noise?

Whether you live in a private residence or in an apartment, problems often arise because of noise made by your neighbor. Barking dogs, the bass of a stereo that reverberates through your bedroom, and car engines warming up can all make life difficult. Before you pound on the neighbor's door and yell something you'll regret (or resign yourself to just living with the noise), try some more constructive alternatives:

1. Talk to Your Neighbor

Your first step is to talk to your neighbor and try to resolve your differences in person. It's hard to believe, but sometimes neighbors are not aware that they are causing a disturbance. Sometimes, a rational discussion with your neighbor can solve the problem.

2. Get a Copy of Your Local Ordinance

Your next step is to get a copy of your local noise laws. Most cities and counties have ordinances that control the times, types, and loudness of noise. For example, many local ordinances prohibit unreasonable vehicle noise (like honking the car horn early every morning for a carpool) or dogs barking all night long every night. Noisy neighbors are in for a warning or even a fine. You can look up your local ordinance at city hall, a law library, or the public library. Make at least two copies of it, one for your neighbor and one for yourself.

3. Warn Your Neighbor in Writing

If things don't improve, ask your neighbor again – this time in writing – to quiet down. Don't make threats, but state that if the situation doesn't improve you'll be forced to notify the authorities or seek legal counsel. Enclose a copy of the noise ordinance. Keep a copy of your letter; you may need it later.

4. Suggest Mediation

Polk County offers free or low-cost mediation services, which means they provide an impartial mediator who will sit down with you and your

Noisy Neighbors

continued on page 2

neighbor and try to help you resolve your differences. Just call the mediation service; someone there will contact the neighbor and suggest mediation. These people are very good at convincing others to give mediation a chance.

5. Call the Police

If you have done all of the above and your neighbor has responded by turning up the volume, now is the time to call the police (or the Animal Control officer if the problem is a barking dog). Try to get the police to come while the noise is occurring. Of course, you can call the police on a noisy neighbor the first time the music gets too loud for your taste. But the police will be more sympathetic to your situation if they see that you have tried to solve the problem on your own.

Legal action should be your last resort when dealing with noisy neighbors.

6. Get an Attorney

An attorney can tell you exactly what the law says and what your rights are. An attorney can also assist you in looking at the matter objectively and coming up with a solution that prevents you from doing something you'll later regret. A strongly-worded letter from an attorney is often enough to get the most disagreeable neighbor to quiet down.

7. Sue

If all else fails, you can get your neighbor's attention by bringing a legal claim. You can sue your neighbor for nuisance if your neighbor's noise unreasonably interferes with your enjoyment of your property. You may be entitled to money to compensate you for the interference with your right to peacefully enjoy your home.

In a lawsuit, you can also ask for a court order directing the neighbor to keep the noise down and stipulating the consequences if the neighbor fails to do so. You can obtain an injunction against your neighbor, legally preventing him or her from causing the noise again. ♦

COMMON LAW MARRIAGE

Elements and Legal Consequences

Does living with another person constitute common law marriage? In general, it doesn't. Couples sometimes described themselves as "common law" spouses when they don't truly meet the required legal elements. It isn't as simple as stating that you are "common law" spouses or signing an affidavit.

Common law marriages (as opposed to ceremonial marriages) are not favored as a matter of public policy. Therefore, claims of common law marriage are carefully scrutinized and the burden of proof rests with the party asserting the claim. A common law marriage brings with it all of the rights, responsibilities, and liabilities of a ceremonial marriage, including the need to go through a legal divorce in the event of separation.

The law allowing a common law marriage is intended to formalize a relationship that has all of the hallmarks of a marriage except for a license. Common law marriage is sometimes used to ratify a marriage that was defective for some reason (one party wasn't divorced yet, or the person officiating the ceremony didn't have authority to marry the couple, for example).

In Iowa, the court system will ultimately decide whether or not a common law marriage exists. In order to prove the existence of a common law marriage, a person must show three *elements*: (1) present intent and agreement to be married; (2) continuous cohabitation; and (3) public declaration of the marriage.

The "present intent" requirement requires the consent of the parties. An express agreement is not necessarily required; the assent of one of the parties may be implied by his or her actions. A present intent to be married does not mean intent to get married in the future (engagement). It means that you think of yourself as married right now and may

Common Law Marriage

continued on page 4

Legal Latin

de facto – an expression that means "in fact" or "in practice." It is commonly used in contrast to *de jure* (meaning "by law") when referring to matters found in the common experience as created or developed without or against a regulation

de jure – See *de facto*, above. When discussing a legal situation, *de jure* designates what the law says, while *de facto* designates what happens in practice, which may differ

E pluribus unum – out of many, one. The motto of the United States

natura abhorret vacuo – nature abhors a vacuum. As does Jack

quidquid latine dictum sit, altum videtur – "Anything said in Latin sounds profound"



ASK JACK

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

WILLS – PART I

Q: Do I need a Will?

A: Yes you do. A Will is a written document that controls the way in which your heirs receive their bequests. A Will gives you the right to determine who will receive your assets after your death. By making a Will, you can select the personal representative of your estate – your Executor – who will administer your Will according to your wishes. You can use your Will to name a guardian for your minor children (or dogs) or direct that beneficiaries who are young will not receive their inheritance until they are experienced enough to handle the money.

Q: What makes a Will valid?

A: A legally-sufficient Will must comply with these requirements:

1. The maker must be at least 18 years old or married;
2. The maker must be competent (of “sound mind”);
3. The Will must be written;
4. The Will must be signed by the maker in the presence of at least two witnesses
5. The witnesses must be competent, at least 16 years old, disinterested (generally, not related to the maker or a beneficiary under the Will), and may not be a canine;
6. The witnesses must sign the Will in the presence of the maker and of each other;
7. The maker must tell the witnesses that it is his or her Will.

Q: What happens if I die without a Will?

A: If you die without a Will, the probate court will appoint an Administrator for your estate. The court’s choice may not be the individual you would have selected. The court-appointed Administrator will distribute your property according to the state intestacy laws. You have no control over where your property goes. Instead, the laws of the State of Iowa make that decision. Your assets will be distributed to your relatives in a certain manner based upon what the State assumes most people would want.

Q: What are the laws of intestacy?

A: In Iowa, if you die without a Will (intestate), and if you have no children or children only from your current marriage, your entire estate will pass to your surviving spouse. If you have children from another marriage, your surviving spouse will receive either one-half of your estate or the first \$50,000.00, whichever is greater. All of your children will share equally in the remaining portion of your estate. Iowa law also gives your surviving spouse the right to select which property will comprise this share, and the share will almost always include the principal residence (homestead).

If you have no surviving spouse, your estate will be divided equally among all of your surviving children. While this includes children adopted by you, it does not include step-children. If you have no surviving spouse and no children, the rules of inheritance follow a strict pattern to your parents, then to your siblings (the children of your parents), then to your grandparents and the children of your grandparents. If there are no surviving family members, your entire estate could revert to the State of Iowa.

Q: How is a Will different from an estate plan?

A: An estate plan is a set of documents that includes your Will and any additional documents created to plan for your death or disability. Estate planning documents include not only a Will, but powers of attorney, living will, and Federal estate tax planning documents. Your estate plan should be reviewed from time to time to take into account change in the laws.

Q: What property is not covered by a Will?

A: Certain assets are not covered by your Will or may pass contrary to the bequests you set out in your Will:

1. Jointly owned property;
2. Life insurance;
3. Certain types of annuities;
4. “Transfer on Death” (T.O.D.) or “Payable on Death” (P.O.D.) accounts.

Q: Is making a Will time-consuming?

A: It shouldn’t be. The hardest thing about drafting a Will should be making the decision to call an attorney. Once you meet with the attorney and provide some basic information, it takes only a matter of days to draft your Will. Often, you can schedule an appointment to sign your estate planning documents within a week of your first meeting.

Q: Is making a Will expensive?

A: No. At ABENDROTH & RUSSELL, P.C., we believe that nobody should be dissuaded from making a Will because it’s too expensive. Almost all of our estate-planning services are priced on a flat-fee basis. ♦

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

HISTORY OF THE FIRM

Part of Our 20-Year Retrospective

A cornerstone of the firm's practice has always been debt collection. Throughout the 1980's and 1990's, banks, hospitals, credit card companies, and other businesses with unpaid bills turned to reputable firms such as ABENDROTH & RUSSELL, P.C. to help them collect the bad debt.

In 1997, the firm switched to a computer-based collection tracking system to stay abreast of the ever-changing debt collection landscape under Federal and state laws. This system exponentially increased the amount of work the firm can accommodate. Automatic tracking means that demand letters, filing dates, status reports, and court hearings are never missed.

At the same time, the firm developed another key area of practice – real estate closings. As a law firm, ABENDROTH & RUSSELL, P.C. can provide title examination services, can clear title objections, and can draft legal documents in addition to conducting the escrow closing of a real estate transaction.

The closing department started with one employee. All settlement statements were generated by hand and the accounting was done manually. Our systems are now fully computerized, including software that helps generate settlement statements and calculates tax proration. The firm also has a separate accounting department, which manages the trust account for real estate and collections.

Popular TV Shows from 1987

1. The Cosby Show (NBC)
2. Roseanne (ABC)
3. Cheers (NBC)
4. The Golden Girls (NBC)
5. Who's the Boss? (ABC) ◆



EMPLOYEE SPOTLIGHT



Cindy

Cindy is a closing specialist in our real estate department, where she focuses on pre- and post-closing file management. Cindy is also very active in marketing our firm and regularly attends Urbandale Chamber of Commerce meetings and other social functions.

Cindy always has a ready smile and a quick laugh to help inspire the other members of her team. She loves her two children, Caitlin and Carson, and keeps very busy attending their activities.

not know that you aren't officially married.

"Continuous cohabitation" is the second element of common law marriage. Because married couples live together, continuous cohabitation must be present for the finding of a common law marriage. Cohabitation alone cannot establish common law marriage; the cohabitation must be tied to the present intent and agreement to be married.

Finally, the requirement for "public declaration" of marriage is crucial to a finding of common law marriage. The couple must substantially hold out to the public that they are married in order for a common law marriage to be established. You must think of yourself as married, and others must think it as well.

Courts consider many factors:

- length of cohabitation;
- whether both parties conducted themselves consistently as a married couple;
- whether the parties filed joint tax returns;
- whether the parties lists one another as spouses on financial or insurance forms;
- whether the parties own property jointly;
- whether the parties commingle their finances;
- whether the parties share the same name;
- whether the parties receive their mail under names that would indicate they were married;
- whether the parties raise children together;
- whether the parties share the cost of living;
- the manner in which couples make travel arrangements/hotel reservations;
- and whether the parties discuss the present existence of a marriage.

A couple who resides together and has children together may think of themselves as "common law" spouses. But if that couple files individual tax returns, acknowledge to friends that they aren't officially married, and otherwise conduct themselves as single individuals, a court is very likely to find that no common law marriage exists. Courts especially disfavor claims of common-law marriage only when it is convenient to one party.

If you have questions about common law marriage, contact ABENDROTH & RUSSELL, P.C. ◆