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# ABENDROTH & RUSSELL, P.C.

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## HAPPY HOLIDAYS!

It's hard to believe that 2007 is already at a close. This year marked the 20<sup>th</sup> anniversary of ABENDROTH & RUSSELL, P.C. and each of this year's newsletters has been devoted to highlighting not only the current status of our firm, but its history as well.

From a small two-person operation to a mid-size specialist firm, ABENDROTH & RUSSELL, P.C. has succeeded only because of its clients.

You are receiving this newsletter because you are a valued client of the firm. Our goal is to inform you about different legal topics that may affect you. Obviously, this information is not a substitute for legal advice, but we hope that we can provide you with information that is interesting and topical.

Our past newsletters are now archived on our website. Visit [www.ARPCLaw.com](http://www.ARPCLaw.com) to read past issues that you might have missed. Have a great 2008! ♦

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

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## WHEN TO HIRE A LAWYER

For most people, the prospect of hiring an attorney is a daunting one. With a multitude of attorneys to choose from, finding the right one is no easy task. However, it is easy, and generally cost effective, to get a legal perspective to avoid negative consequences that can result from major decisions.

It is important to understand the role that lawyers fill in our society. Attorneys have doctorate degrees and have passed a stringent exam dealing with the laws of Iowa in order to be allowed to practice in the state. They are bound by the Iowa Rules of Professional Conduct to represent their clients zealously within the bounds of the law, to act on behalf of their clients' best interest, and to advocate for their clients. They are trained, licensed professionals whose job it is to help others navigate the law.

It is a good idea to hire an attorney when you have been arrested or charged with a crime; when a lawsuit has been filed against you; when you are seeking or have been served with a divorce; when you are involved in an employment dispute; when you want to start your own business; when you are buying or selling real estate; when you are signing a lease or contract; or when you need to draft a Will, set up a Trust, or need assistance in estate planning.

Obviously, no single attorney can fill all of these needs. It is simply impossible for an attorney to have a detailed knowledge of many different areas of the law. You need to ensure that you engage a specialist. Finding a lawyer can be as simple as asking friends, relatives, or co-workers for the name of an attorney they have used. The phone book and the Internet offer other ways to search for an attorney.

Ask about an attorney's fees up front. Most attorneys have an hourly rate, but some offer services on a flat-fee basis. This is especially true in areas such as real estate or estate planning.

It is also very important to make sure the person offering legal services is qualified to do so. In order to avoid thinking that a decision is legally based, only to find out later it is not, you should investigate the

**When To Hire a Lawyer**

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person or company offering a traditionally legal service. Many of these services are increasingly being offered by those with no legal training and no accountability.

For example, it is not uncommon for a real estate agent, or someone even more removed from the process, to prepare real estate documents. Often, neither the buyer nor the seller has a licensed attorney who is looking out for his or her best interest, reading over the documents, and making sure there are no negative legal consequences. Similar potential legal problems can occur with promissory notes, mortgages, and other significant debt instruments.

Estate transfers, Wills, and Trusts are sometimes offered by insurance vendors. Unless the vendor is a licensed attorney, he or she cannot ensure that the documents will hold up under the law when the time comes to activate them.

The Internet and office-supply stores offer do-it-yourself legal kits for everything from Wills to residential leases, aimed at people who want to save money. These are generally very broad and not state-specific. Using a “how-to” legal kit is usually a bad idea because the person using the forms has no formal training and therefore cannot anticipate or prevent problems.

Look at it this way: *At any number of stores, you can purchase a home haircutting kit. It includes all the tools you need – scissors, electric trimmer, comb. It would be very cheap to have your spouse or best friend cut your hair. But you don't do that. Every few weeks, you go to someone you trust to have your hair cut and styled. That person is a licensed professional who has specialized training. Over the course of a year, you spend a lot of money on a stylist. And you don't think anything of it, because your appearance is important to you and you want it done right.*

Your legal health – title to your home, the status of your estate, your investment in a business – is at least as important as your hair, isn't it? Contact our attorneys at ABENDROTH & RUSSELL, P.C. for your legal needs. ◆

## TALKING TURKEY

Besides making for some good eating on Thanksgiving Day and at Christmas, most Americans know little about our nation's favorite holiday bird – the turkey. To give you a better understanding of this animal, we've compiled a few fun facts and tidbits:

- Turkeys lived almost ten million years ago;
- The male turkey is called a tom and the female turkey is called a hen. Baby turkeys are called poults and are tan and brown;
- Turkeys' heads change colors when they become excited;
- Turkeys have great hearing, but no external ears;
- Turkeys can see in color and have a field of vision of almost 270°;
- Benjamin Franklin once proposed the turkey as the official bird of the United States, rather than the bald eagle;
- The National Turkey Federation presents the President of the United States with a live turkey each Thanksgiving. Instead of sacrificing the bird to the dinner table, the President “pardons” it and allows the turkey to live out its days on a farm;
- Wild turkeys can fly at speeds of almost 55 mph and can run up to 25 mph. However, as we learned from Les Nessman of *WKRP in Cincinnati*, commercially raised turkeys cannot fly at all;
- The heaviest turkey ever raised weighed 86 pounds – the size of a large dog (*But not as large as me. I could totally take a turkey – Jack*). ◆

### Legal Latin

*ab initio* – from the beginning

*ignorantia legis non excusat* – ignorance of the law is no excuse

*inter alia* – among other things

*pro se* – someone who represents themselves without a lawyer in a court proceeding; literally “for self”

*ad infinitum* – forever

*pro bono publico* – for the public good. Refers to attorneys taking cases free of charge

*modus operandi* – method of working

*vir prudens non contra ventum mingit* – “A wise man does not urinate towards the wind”



## 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 drafting a Last Will and Testament.**

**Q: Now that I have my Will, what should I do with it?**

**A:** A Will should be located where it can be found in the event of your death. It should also be someplace where it is safe from fire, theft, and chewing; a safe deposit in a bank or a fireproof safe in your home or office.

**Q: What if I'm the only person who can access the safe deposit box with my Will in it?**

**A:** Some financial institutions require Letters of Appointment before anybody can access a safe deposit box. **This is incorrect.** The law allows a named Executor in a Will to access the safe deposit box for the limited purpose of removing the Will.

**Q: For how long will my Will be valid?**

**A:** Forever, in the sense that it does not expire by lapse of time. Of course, certain of its provisions may lapse or become inoperative by reason of a change in the law or a change of circumstances, such as the death of a named beneficiary. You should always review your Will when a death or change of family circumstances occurs.

**Q: Should I tell anyone that I have made a Will?**

**A:** Generally speaking, it does no harm to state that you have made a Will without feeling that every

provision in the Will need be explained. You may want your main Executor or your main beneficiary to know the location of the Will so it can be readily located after your death.

**Q: What if I want to change my Will?**

**A:** If you want to change your Will, it will be necessary to rewrite your Will or make a codicil (an amendment) to the Will. In both cases, the instrument again will have to be executed and witnessed according to strict legal requirements. Do not attempt to change the Will by adding clauses, scratching out provisions, or otherwise defacing its pages. This invalidates the entire Will and makes it very difficult to probate.

**Q: What happens if I lose my Will?**

**A:** The Will must be redrawn and executed properly. Our firm keeps an electronic copy of your Will on our computer so the task should not be difficult. You are always welcome to consult this copy if you do not recall all of your Will's provisions and do not wish to disturb the original.

**Q: What if the witnesses to my Will die, move away, or disappear?**

**A:** If a Will does not have an additional section called a "self-proving affidavit," it will be necessary to track down the witnesses and have them sign an affidavit describing how the Will was executed. If those witnesses cannot be found – because they moved away or died, for example – the process of proving and validating the Will becomes very difficult. You should check any existing Will you might have to ensure that it contains a self-proving affidavit.

**Q: What if one or more of the beneficiaries named in the Will die before I do?**

**A:** In general, any gift you left to a beneficiary who predeceased you would lapse and be ineffective. However, the legal effect of such death should be considered by you in relation to your Will. If you are uncertain as to the effect of such a death, you should confer with an attorney to determine whether any changes in your Will are necessary. The same is true in the event that facts change by reason of marriage, birth, or adoption.

**Q: What if the named executor dies, moves away or becomes incapable of serving?**

**A:** If no alternate who can serve is provided for, your Will should be amended. Otherwise, you lose some of the benefits of your Will since, for instance, the party who does eventually serve may have to post a bond which could be costly to your estate.

**Q: What if the value of my estate decreases or increases or the nature of my assets change?**

**A:** While your Will is drawn to try and meet some contingencies (other than a substantial increase or decrease in your assets), occasionally specific bequests may be affected. A periodic review of your Will every 3-5 years – or especially after major changes in your estate have occurred – should solve this problem for you.

**Q: Can I personally change or alter my Will without returning to my attorney?**

**A:** No markings of any kind can be made on a Will after it has been signed and witnessed. Such markings are not valid and raise the question of validity of any part of your Will. A new or separate instrument is necessary. It is very simple to update your Will. ♦

Have a question? E-mail it to [AskJack@ARPCLaw.com](mailto:AskJack@ARPCLaw.com)

# HISTORY OF THE FIRM

## *Part of Our 20-Year Retrospective*

The last few years of Abendroth & Russell, P.C. have been ones of rapid growth and expansion. Between 1987 and 1999, the firm grew slowly, developing its core areas of practice in collections and real estate.

In 1999, the firm hired its first associate attorney, Trevor Reynolds. In 2000, Ross Barnett merged his practice into the firm's and quickly became a shareholder. Trevor eventually moved out of state, but he was replaced by Chris Low in 2001. Although hired as a new law school graduate, Chris rapidly mastered the intricacies of debtor / creditor law and now heads our collections department. Matt Hrubetz brought his years of practice to the firm in 2004.

Today, ABENDROTH & RUSSELL, P.C. has four attorneys other than Mark and Dave and twenty staff members. When the firm was founded, only three of our current staff members were older than 30. The majority of our employees – one attorney and eight support staff – were in their twenties. Two attorneys and four staff were teenagers, and four of our employees were four years old or younger in 1987.

The areas of practice have grown as well. In 2006, the firm collected more than \$4 million in bad debt for its clients. Our real estate department has conducted over 7,500 closings in the last six years. The firm has also developed its "For Sale By Owner" and real estate relocation services. ABENDROTH & RUSSELL, P.C. specializes in estate planning, Wills, and probate and has recently developed a niche for Title XIX (Medicaid) planning and special-needs trust planning.

Over the years, ABENDROTH & RUSSELL, P.C. has evolved from a two-person law office to a vibrant law firm. Clients like you are responsible for our success. Thank you! ♦



## EMPLOYEE SPOTLIGHT



**Ellen**

**Ellen** is one of the legal assistants for the firm. She works principally with probate and estate planning clients. Ellen previously worked as an administrative assistant at Anderson Erickson Dairy and was a teacher at Des Moines Christian School. Ellen, her husband Jeff,

and two teenagers, Courtney and Caleb, enjoy world travel and have traveled to Israel, Belgium, Amsterdam, the Caribbean, and extensively throughout the United States.

# CAPITAL GAINS TAX

Whenever real estate is sold, the seller is potentially liable for capital gains tax. Capital gains tax is a tax on the appreciation in value between the basis (what you originally paid for the property) and its ultimate sales price. However, most homestead property is exempt from taxation.

Under a tax law enacted in 1997, if your house was your principal residence for two of the last five years, no capital gains tax is owed if the sales price is less than \$250,000 (or \$500,000 for a married couple). You don't have to reinvest the money, and you can claim the exclusion every two years. This changes a previous law that allowed for a one-time full exclusion after the age of 55.

This exclusion doesn't apply if you used a portion of the property for a home-based business, if it was a rental, or if you haven't owned the property for at least two years.

But even if you don't meet the two-year rule, you can get a partial exclusion based on the time of use and ownership. There are also allowances and exceptions for military service, disability, partial residence, and other reasons, under IRS Publication 523.

If you cannot exclude some of the gain from the sale of real estate, you may be able to defer the payment of the tax through a 1031 exchange. Also called a "Like-Kind Exchange", Section 1031 of the Internal Revenue Code (26 U.S.C. §1031) allows taxpayers to defer all of the capital gains taxes resulting from the sale of investment property when they use a Qualified Intermediary, follow the IRS guidelines, and use the proceeds of the sale to buy more investment property within 180 days.

In order to obtain the full benefit of a 1031 exchange, the replacement property must be of equal or greater value, with equal or greater debt (unless the taxpayer adds cash to the deal to replace debt instead), and all of the proceeds from the relinquished property must be used to acquire the replacement property.

If you do owe capital gains tax on long-term gain (property owned for more than one year), the tax rate is 15%. This rate has been extended through 2010 as a result of the Tax Reconciliation Act signed into law on May 17, 2006. After 2010, the long-term capital gains tax rate will be 20% (10% for taxpayers in the 15% tax bracket).

Be sure to contact a tax professional if you have questions about the tax consequences of selling your home. ♦