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# ABENDROTH & RUSSELL, P.C.

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## Welcome

As in last quarter's newsletter, we have announcements of new hires and transitions.

Our new receptionist is Stephanie, who brings great aptitude and enthusiasm to the position. She comes to us from Broadlawns hospital.

Cindy, our prior receptionist and former real estate specialist, left the firm to pursue other opportunities.

Our collection department is happy to announce two new additions. Lori is a recent graduate of DMACC who has been hired as our new litigation support clerk. Jill is our newest phone collector. We welcome them both and the firm is excited about this expansion.

Our summer law clerk is Holly. She just completed her first year at Drake Law School. She will be assisting the attorneys with research.

Congratulations to Peggy, our office manager. Peggy and her husband Jeff recently adopted a baby girl, whom they named Grace Olivia. She's a keeper! ♦

MARK U. ABENDROTH  
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## MOVING CHECKLIST

When you purchase real estate, you need to negotiate with the seller, draft a legal purchase agreement, find a lender, and execute your mortgage documents. But receiving the keys to your new home is just the start. There are other things you need to do when you move in.

### 1. Change your locks

When you get to your new place, your first step should be to secure it. Unless your house is newly-constructed, chances are good that the sellers, their family, and the neighbors have keys to your house. Changing the locks is an inexpensive safety precaution.

### 2. Add safety gates and secure pets

If you have infants or toddlers, setting up safety gates is a must – you don't want them underfoot while you're moving large furniture. Also, find a safe place for your pets to stay while the house is being unpacked. You don't want them to escape in a strange neighborhood (and possibly return to your old house). *Large dogs should be given an opulent room with lots of comfy chairs and couches; babies are best secured in locked cages – Jack.*

### 3. Set up utilities

You want running water and power in your new home. Well before closing, contact utility providers in your new location and arrange for service at your new home. These may include gas, electric, cable, phone, water, and garbage.

### 4. Change your address

Get a change-of-address kit from the post office, and have your mail forwarded to your new address. Then send change-of-address notices to any organization or business from which you receive mail. Make sure you change your mailing address with every company from which you receive a bill (or risk a negative entry on your credit report when you don't get a bill paid within 30 days). Going through your wallet or purse can help you remember little-used credit cards or other important contacts.

Don't forget to change your mailing address for your accounts at online stores. Many organizations now allow you to change your address on the phone or

**Moving Checklist**

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online, and e-mail is a good way to give your family and friends your new address.

#### 5. Update your insurance

Talk to your insurance providers about new rates and procedures in your new location. You probably already changed your homeowners' insurance in connection with your mortgage, but don't forget your automobile insurance, health insurance, and life insurance carriers.

#### 6. Update your vehicle registration

When you move, Iowa Code §321.41(1) requires you to notify the county Treasurer of your new address in writing within **10 days** of moving.

#### 7. Transfer deliveries and subscriptions

These might include newspapers, newsletters, magazines (don't forget law firm newsletters!), alumni mailings, or even your favorite catalogs.

#### 8. Transfer memberships

Transfer or cancel any memberships in health or sports clubs and local religious or civic organizations.

#### 9. Close and open bank accounts

If your current bank has a branch in your new location, you won't have to make any changes (other than contacting the bank to change your address). If it doesn't, you'll need to close your current accounts and open new ones with a bank in your new location.

#### 10. Close and open safe deposit boxes

Pick up your valuables and close your safe deposit box. When you transfer your bank account, open a new safe deposit box and deposit your valuables.

#### 11. Switch schools

Check with your children's new school about what records and transcripts they'll need. Arrange for transfer of the records. The current school may be able to send them directly.

#### 13. Change your address again

The initial change-of-address form usually expires six months after you send it in. This may not be enough time to identify all of the people or companies who send you mail. Six months after you move in, send another change-of-address form. ◆

## ESTATE PLANNING

### *Planning for the Future Today*

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.

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 decisions. You should have in place contingent plans – a financial power of attorney, a health care power of attorney, and a living will – that nominates somebody else to help you make decisions.

A health care power of attorney appoints somebody else to make medical decisions for you if you are incapacitated. Your living will provides a guide for making those decisions. Finally, a financial power of attorney is a powerful tool that allows a trusted person to make financial decisions, pay bills, and conduct your business if you can't.

#### 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.

Estate Planning

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## Legal Latin

*non sequitur* – “It does not follow.” A logical fallacy in which the conclusion does not logically follow from the premise. For example, “All lawyers carry briefcases. I am carrying a briefcase; therefore, I must be a lawyer”

*in dubio pro reo* – when in doubt, favor the accused. From Corpus Juris Civilis

*post hoc, ergo propter hoc* – “After this, therefore because of this.” A logical fallacy of false cause and effect. For example, “I won my first trial after I forgot to put on underwear. Now, whenever I have an important hearing, I go commando”

*prima facie* – at first appearance



## ASK JACK

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

This month's answers are very specific about a spouse signing real estate documents.

### **Q: Why does my spouse have to sign the deed?**

**A:** That's a good question. Often, titleholders will acquire property and will subsequently marry. Other times, a married person will purchase property in his or her name alone, without the spouse being on title. But when the titleholder sells the property, the spouse is asked to sign the deed even though the spouse was never on title.

Pursuant to Iowa Code §561.13, if the subject property is the titleholder's homestead, if the owner of a property is married, and the owner's spouse doesn't join in the conveyance, the attempted conveyance is **invalid**. It remains invalid until the spouse signs a deed.

If the property is not the titleholder's homestead, the spouse doesn't have to join in the conveyance. Instead, the spouse must certify by affidavit that the property is not his or her homestead and that the spouse is consenting to its sale.

In order to have a valid conveyance, it is necessary for your spouse to sign something. It might as well be the deed.

### **Q: Why does my spouse have to sign the mortgage?**

**A:** That's a good question, too, and the answer is somewhat complex. Occasionally, one person will qualify for a home loan

without needing to count the spouse's income. Or, perhaps the spouse is not a titleholder. However, the spouse still has to sign the mortgage.

First, you need to understand the distinction between the promissory note and the mortgage. The **note** is the borrower's promise to repay – it is a bearer instrument that can be enforced in a variety of ways. Only the person signing the note is responsible for the repayment of the loan.

The **mortgage** is a security instrument that makes the real estate collateral for the loan. In the event of non-payment, the mortgage gives the lender certain rights to enforce the note. Specifically, the lender can foreclose on the property and take title away from the owner.

In order to be able to enforce its lien rights against the property, however, the lender needs to be able to affect every person who has an interest in the property. A non-borrower (or non-titleholder) spouse is a person with rights in the property.

### **Q: What kind of rights?**

**A:** For starters, the right of **homestead**. Under Iowa Code §561.16, the homestead of every person is exempt from judicial sale. In fact, the only way that a homestead can be sold to pay a judgment is if the judgment creditor has a security interest – like a mortgage – in the property. If one spouse doesn't sign the mortgage, and the other spouse doesn't pay the note, the non-signing spouse can claim the protection of the homestead statute to avoid a judicial sale.

But that's not all. Your spouse also has a right to inherit or occupy certain property if you die. This right was previously called **dower** (for a widow) or **curtesy** (for a widower).

Under Iowa Code §561.11 and the provisions of Iowa Code Chapter 633, upon the death of either spouse, the survivor may continue to possess and occupy the whole homestead. If one spouse doesn't sign the mortgage, that spouse can continue to occupy the property in the event of the borrowing spouse's death, and the lender cannot enforce the mortgage through foreclosure and subsequent sale.

A non-titleholder spouse can waive their homestead exemption. But he or she can't waive the rights as a surviving spouse because those rights don't come into being until one spouse dies. That is, you can't waive a right you don't have yet. And you don't have it yet because your spouse is still alive.

Your spouse is not obligated to repay the loan, but he or she has to sign the mortgage or the lender's right will be so severely impaired that the lender will refuse to make the loan.

### **Q: Why does my soon-to-be-ex-spouse have to sign the deed or the mortgage?**

**A:** Until the final decree of dissolution is entered, you are still married, so the issues identified above still exist. If you died after purchasing your new house and before your divorce is final, your surviving spouse could occupy your house without repaying the loan and would be exempt from judicial sale. You don't want that, do you?

So, your estranged spouse still needs to sign the documents. Or, you could wait and get divorced first and then buy a new house.



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

# ABSTRACT DEFINITIONS

## Common Real Estate Terms Defined

**Acre** – an imperial measure for land. Equals 43,560 square feet; 4,047 square meters; or 0.047 hectares.

**Adverse Possession** – a method of acquiring or claiming title to a piece of land owned by another by occupying it in defiance of the other's title. Most jurisdictions have statutes that set out a certain period of time throughout which the person claiming adverse possession must occupy the land before title passes to that person by operation of law

**Attractive Nuisance** – refers to the response of children to a feature of land (whether natural or man-made) which has the potential to be harmful (an uncovered well, a swimming pool, a swift moving stream)

**Legal Description** – a description of a piece of real estate that is drafted according to legal requirements and which clearly and adequately establishes the identity of the property so described. Found in most instruments for registration on title to land

**Metes and Bounds** – an older way of describing land in registered instruments. Starting at a recognizable point (the meeting of two roads, the corner of a lot), the description then describes the boundaries of the land by indicating distances and directions for each boundary (i.e. "South 100 feet" or "South 73 degrees, five minutes west for a distance of 100 feet"), returning at the end of the description to the beginning point

**Muniments of Title** – written documents which may be used to prove an owner's title to a property

**Prescriptive Easement** – a legally enforceable right to make use of all or part of the property of another as a result of continuous and uninterrupted use of that property for a period of time as established by statute



## EMPLOYEE SPOTLIGHT



**Anna**

**Anna** began with ABENDROTH & RUSSELL, P.C. as a filing clerk and for our collection department. She is now the collection support assistant. Anna has two adult daughters and enjoys traveling; her favorite place to visit is Hawaii. She will visit the islands

again this summer. Anna has completed five marathons, including the Boston Marathon. She enjoys reading and is active in her book club.

To whom you leave your money and property is obviously a very personal decision. Most people naturally think of planning for spouses, children, and relatives first. After the family is considered, perhaps a favorite charity, such as an alma mater or research foundation, might be included as a beneficiary.

You could also establish a living revocable trust to hold your assets while you are alive and to pass them to your family at your death.

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 and tie up money 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. 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. You may already know that some estates (those with a total value of \$3,500,000 or less in 2008) escape federal estate tax altogether. However, careful estate planning also minimizes inheritance tax and preserves the recipient's basis for calculating capital gains taxes. Both you and your spouse should establish estate plans that will maximize asset transfers to your heirs and minimize estate taxation.

You are never too young to think about estate planning. It is vital for every person to be responsible enough to create a plan for themselves and their family. If you have questions, please contact ABENDROTH & RUSSELL, P.C. about estate planning issues. ◆