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# ABENDROTH & RUSSELL, P.C.

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## Welcome

This is the inaugural newsletter for ABENDROTH & RUSSELL, P.C. 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. From selling your home, to starting a new business, to writing your Last Will and Testament, our firm has many different practice areas.

Our attorneys have contributed articles in their areas of specialty. 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 firm's mission statement is "To provide our clients with the best legal services available, to excel in our practice areas, to 'do what we do and do it well' for the mutual benefit of our clients and our employees." This newsletter is part of that mission. ❖

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## For Sale By Owner

Spring is the time when warm weather leads to many real estate transactions. As a homeowner, you may be able to sell your house on your own, saving thousands on realtor's commissions.

The attorneys at ABENDROTH & RUSSELL, P.C. assist both **buyers** and **sellers** with real estate transactions. Our firm specializes in residential real estate and we handle many "for sale by owner", or FSBO, transactions. We seek to excel in both quality and service in real estate transactions.

If you are purchasing a home, our firm can help the **buyers**

- prepare the offer to buy
- examine the abstract of title
- render a title opinion
- coordinate the closing with the lender
- ensure that the purchase goes smoothly

Our attorneys also represent **sellers** who are selling their own home without the help of a realtor

- understand the purchase agreement
- advise you on the required seller's disclosures
- prevent or cure title problems
- draft title transfer documents
- limit your post-sale liability

Once you and a potential buyer have come to a verbal agreement, our office will prepare all of the necessary documents for the purchase. Typically, all documents can be prepared that same day; however, we guarantee 24-hour turnaround for document preparation.

**For Sale By Owner**

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# Five Financial Essentials

*Here are five financial essentials that you need now*

## **Last Will and Testament**

A Will directs the distribution of your assets and other important legal matters upon your death. Without a Will, your property will be distributed according to state laws. This may not be the division you want, and it could be costly to your heirs to adjudicate.

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*According to a 2003 AARP survey, more than half of American adults do not have a Will; more than 40% of people age 45 or older do not have a Will.*

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Since most Wills are relatively straightforward – leaving assets to family members, naming a guardian for minor children, etc. – they’re also relatively inexpensive. If you already have a Will, remember to review it every few years or after a life-changing event such as a marriage or birth.

## **Power of Attorney**

When drafting a Will, you may want to consider a durable power of attorney. Through the power of attorney, you give a spouse, family member, or trusted friend the right to make financial decisions for you should you become incapacitated.

## **Living Will & Health Care Power of Attorney**

If you are too ill to speak for yourself, you can express your wishes and have your voice heard through a Living Will. This advance directive lets you detail your preferences for your care.

Without a medical directive, difficult decisions will typically be made by a spouse, children, parents, or a doctor – and conflicts can easily arise.

A Living Will should be accompanied by a health care power of attorney, which nominates a

**Five Financial Essentials**

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# Choice of Business Entity

When operating your own business, you should consider organizing the business as its own independent entity. A legal structure:

- Affects your business and you on a State and Federal level
- Affects the way you and your business pay taxes
- Has legal implications affecting personal liability
- May impact your ability to get insurance, borrow money, lease space, and hire employees

## **Under a Sole Proprietorship:**

- There is one owner of an unincorporated business
- All profits and losses are reported on the owner’s personal income tax return
- The owner is personally responsible for all liabilities of the business

**Choice of Business Entity**

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# Turn to Collection Firm

Debt recovery is a huge problem for business owners today. Most businesses do not have enough resources to give the proper amount of time and effort it takes to properly collect its past due receivables. Debt collection is a very arduous process, and keeping your in-house staff motivated to collect from abusive customers is difficult.

For every business owner who extends credit, it is important to establish rules. These rules govern not only when and to whom to extend credit, but also when to look to your attorney to collect if your customer refuses to pay. Our experience is a company should take collection measures when an account becomes 60 or 90

**Turn to a Collection Firm**

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**Under a Partnership:**

- Two or more people own an unincorporated business
- The partners jointly control the business
- The business files its own tax return, but the profits and losses are taxed on the partners' personal income tax returns
- Profits and losses are shared among the owners based on the partnership agreement
- Each partner individually bears full responsibility for all of the liabilities of the business

**Under a Corporation:**

- The business is a legal entity separate from its owners (the stockholders)
- The business files its own tax returns
- For tax purposes, a corporation may be a C-Corp or an S-Corp. A C-Corp pays its own taxes; an S-Corp is taxed like a partnership
- Stockholders have protection from the liabilities generated by the business

**Under a Limited Liability Company:**

- Ownership percentages, profit and loss distributions, and voting powers are defined by an agreement
- The business files its own tax returns, but offers the same tax advantages as a partnership
- The business provides the owners with personal liability protection

To select the right legal structure for your company, consult with your attorney and your accountant. These professionals can advise you based on your specific needs. ❖

You should obtain from your buyer the following information and provide it to us so that we can complete the documents:

1. Sale price
2. Closing date
3. Details on the buyer's financing
4. Reserved items that the sellers will take with them
5. Appliances and non-built-in items staying with the house
6. Seller-paid closing costs (if applicable)
7. Any special contingencies, such as the sale of the buyer's home

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*Selling your home on your own can save you thousands of dollars.*

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Our attorneys are highly qualified and work with a team of support professionals to ensure that residential and commercial real estate clients receive a prompt response to all inquiries and accurate and timely production of all required real estate documents. ❖

Turn to a Collection Firm

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days past due. At that point, your attorney can assist you in evaluating the potential for collecting the monies owed to you. Using a law firm gives you additional leverage and saves you a step when you move from collection attempts to litigation.

When it comes to debt collections, what is common sense is not always common practice. Most of the time, the attempts to collect debt consume a lot of time and are very emotional. This in turn causes a great deal of frustration. If you find yourself emotional or angry about not getting paid, you might consider using professional debt collection. ❖

**Legal Latin**

*affidavit* – a sworn deposition

*certiorari* – a type of writ seeking judicial review; literally “to be ascertained”

*ex parte* – prejudiced; literally “from a party.” Usually refers to communication with the court by one party without the other party's knowledge.

*in camera* – in private; literally “in a room”

*mandamus* – a writ [so called from the first words “We command...”]

*res ipsa loquitur* – an open and shut case; literally “the thing speaks for itself”

specific person to make any and all medical decisions for you. The two work together; your attorney-in-fact must follow the instructions you leave in your Living Will.

### **Life Insurance**

Although some employee benefit plans provide life insurance, it may not be enough. One rule of thumb is to have insurance equal to at least five times your annual income. Of course, the actual amount will depend on the future financial needs of your dependants and the amount of savings you have.

There are two general types of life insurance. Term life covers you for a specified period of time, such as 20 or 30 years, and pays a benefit only if death occurs during that time. The premiums for term life insurance are typically lower, but the insurance expires when the term is over. Whole-life policies include an investment component, allowing you to build cash value over time that can be paid out or borrowed against during your lifetime. The premiums are higher, but whole-life policies allow you to build equity.

### **Disability Insurance**

Social Security Administration studies show that a 20-year-old worker has a 30% chance of becoming disabled before reaching retirement age. Can your savings cover you for a long period without income? If the answer is "no", then disability insurance is crucial. It protects a certain amount of your income if an accident or serious illness keeps you from working for months or years at a time. ❖



## **EMPLOYEE SPOTLIGHT**



**Jennifer Owens**

**Jennifer Owens** is the manager of our collections department. She has been with ABENDROTH & RUSSELL, P.C. for more than nine years, making her the senior staff employee. Before coming to our firm, Jenny worked at the Polk County Courthouse.

Jenny enjoys reading and spending time with her son.

## **What Is Small Claims Court?**

For most people, the thought of filing a lawsuit in order to recover a claim brings feelings of dread. Litigation practice is expensive, time-consuming, and definitely a job best left to professionals. If you are not already aware, the judicial system in Iowa is not set up like "the Peoples Court." However, there is one legal venue that is specifically designed to simplify the litigation process: Iowa's Small Claims Court system.

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*Iowa Code Chapter 631 establishes Iowa's Small Claims Court system. Small Claims court avoids the time, expense, and formal procedure of litigation in District Court.*

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Generally speaking, civil claims (as opposed to criminal claims) may be brought in Small Claims court if the amount in controversy is \$5,000.00 or less. The filing fee for a Small Claims case is \$50.00, instead of the \$100.00 filing fee for District Court matters. The proceedings provide an expedited process for resolving claims; the statute provides that cases must be resolved within 90 days or less. The rules governing the form and content of legal pleadings is relaxed in the Small Claims. Forms are standardized, and except as specifically provided by the Code, no separate written pleadings or motions are filed. Examination of the witnesses is to be in such a way to "bring out the truth."

Although the proceeding itself is generally designed to be informal, the standards governing what evidence is necessary and acceptable to prove the case are not. A party must still focus on the legal issues, understand the governing statute or case law, present admissible evidence, and argue the correct legal principles.

Unlike some other states, Iowa allows an attorney to represent a party in Small Claims Court. This can be a huge advantage to a litigant. The presence of counsel in a Small Claims proceeding can often be the determining factor between winning or losing a case, especially in a situation where the other party is unrepresented.

Done correctly, Small Claims is a very cost-effective way of resolving claims. This specialized division of the judicial system provides an inexpensive, quick, and informal venue for dispute resolution. Always seek legal advice before choosing to proceed in any legal proceeding. ❖