
ABENDROTH & RUSSELL, P.C.

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Volume 1, Issue 2

June 2006

Welcome

This quarter's newsletter contains new information about legal topics that may be of interest to you. You are receiving this newsletter because you are a valued client of our firm. This is also a forum where we can inform you of changes in our firm.

James W. Steinberg left ABENDROTH & RUSSELL, P.C. for a position with the legal department of Wells Fargo Bank, N.A. We are sorry to lose Jim, but we wish him great success in his new endeavor.

Leah Johnson, a collection specialist in our collection department, married Josh Holcomb on Saturday, June 3rd. Congratulations, Leah! ♦

MARK U. ABENDROTH
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INSIDE THIS ISSUE

- 1 *Neighbors and Lot Lines*
- 2 *Prenuptial Agreements*
- 3 *Legal Latin*
- 4 *What Is An Abstract?*
- 5 *ASK JACK – Advance Directives*
- 6 *Military Servicemembers*
- 7 *Abstract Specifics*
- 8 *Employee Spotlight*

Neighbors and Lot Lines

You probably know the extent of the real estate you own – the dimensions of your lot, your boundaries, and where your neighbors' land begins. But when the lot lines are not clear, problems can arise between adjoining landowners. If an encroachment exists, such as a fence or garage built over the lot line, your neighbor may be able to either take title to a piece of your land or claim an easement over your property.

Adverse possession is a statutory legal concept that can take away ownership of land from one person and give it to another. The concept is rooted in the history of our country, from a time when absentee landlords owned huge tracts of land and people were unsure of where boundaries lay. Adverse possession rewards a person who occupies and improves land that isn't theirs by giving them title to it if they meet certain criteria.

To enforce a claim of adverse possession, the claimant must have openly occupied the land to the exclusion of others for a period of at least ten years. With today's well-defined lot lines, it is unlikely that a claimant will be successful with an adverse possession claim.

It is important to note that permissive use can never become a claim of adverse possession. If a neighbor plants flowers or trims bushes on your land with your knowledge and consent, the neighbor will not be able to take your land for his own.

It is also important to understand the distinction between title and an easement. Title is ownership – you can buy and sell the property, take out loans against it, and can exclude others from the land. An easement is a right of somebody else to come onto the land. The person with the right of access doesn't own the land. They just have permission to be on it under certain circumstances. An easement typically is tied to a specific area and cannot be sold, transferred, or mortgaged.

Neighbors and Lot Lines

continued on page 2

A neighbor may be able to enforce an easement over part of your property under essentially the same conditions as a claim of adverse possession. The difference between the two is that adverse possession gives your neighbor title to your land; an easement gives your neighbor a right to be on your land, but title remains in your name.

If an encroachment exists, such as a fence or garage built over the lot line, your neighbor may be able to either take title to a piece of your land or claim an easement over your property.

If you think that your neighbor is encroaching on your land, here's what you should do:

1. Consult your abstract and look at the plat map of your property. Measure the distances of your lot and check them against the map.
2. Find the stakes, pins, or caps that indicate the dimensions of your lot. They should be in the corners, but may be buried.
3. If you still have questions, hire a qualified engineer to prepare a survey. Often called a "real property inspection report," a boundary survey, or location survey, the drawing will show the dimensions of the lot, along with buildings and driveways. The engineer will also locate or place the corner pins.
4. If you note an encroachment, calculate how long the problem has existed. Remember that your neighbors have certain rights after a period of time has elapsed as well.
5. Determine whether the encroachment is permissive. You may have to check with prior owners of your land.
6. Contact your attorney, ABENDROTH & RUSSELL.

Prenuptial Agreements

Premarital agreements (also called "ante-nuptial" agreements) are legally-binding contracts entered into by an engaged couple prior to marriage. Prenuptial agreements accomplish the twin goals of asset protection and inheritance by children of a prior marriage.

These agreements are typically neutral. They give each party the same rights and treat both identically. They can allow a person to keep pre-marriage assets separate from a new marriage if the parties desire. They can also allow a spouse to protect his or her children's interests in their inheritance more effectively.

Marriage confers certain rights on the parties, including, in Iowa, the right to claim one-third of the spouse's estate at death (regardless of the terms of the deceased spouse's Will) and certain rights in the other's real estate. As a result, the party owning the real estate cannot sell or mortgage it without both spouses' signatures on the deed or mortgage. Finally, each spouse has a right to a share of the marital property if the parties divorce.

The purpose of a premarital agreement is to modify or waive the marital rights before they accrue. Essentially, each party agrees that he or she will have no claim against the property that the other spouse brings into the marriage. This means that neither spouse can claim a share of the other's property at death. It also means that in the event of a divorce, each spouse will get to keep the assets he or she brought into the marriage. The joint property acquired after the marriage generally is split equally upon divorce, just as if there were no premarital agreement.

Iowa law requires that each party be separately represented by an attorney at the time a premarital agreement is drafted and signed. As a result, the

Legal Latin

corpus delicti – the principle that it must be proven that a crime has occurred before a person can be convicted of committing the crime; literally "body of crime"

habeas corpus – a writ that orders a prisoner or other person to be brought before the court to determine whether he or she is being held unlawfully; literally "you are to produce the body"

quid pro quo – a favor for a favor, or something for something else; literally "this for that"

subpoena – a writ commanding a person to appear in court to give evidence; literally "under penalty" because the person was bound to appear *sub poena centum librorum* [under penalty of being fined £100]

agreement is generally unassailable after marriage. Iowa courts have looked unfavorably on a spouse who claims that he or she was “coerced” into signing a premarital agreement. The contract will be binding.

It is essential to attach complete financial statements of both parties to the premarital agreement. This allows assets to be “traced” as they evolve over time.

Previously thought of as a legal vehicle for only the wealthy, premarital agreements have become a popular and effective vehicle for “average” persons looking to protect their assets. These agreements are becoming more commonplace as people attempt to protect the potential inheritance of their children from prior relationships and marriages.

Such an agreement, when properly prepared, can accomplish this and allow the wishes of your Will to be followed. Contact our firm to review, revise, or prepare your prenuptial agreement. ♦

What Is An Abstract?

The abstract of title is the history of all of the transactions that affect a particular piece of real estate. The abstract is unique to your property – there is only one and it is transferred to the new owner when the real estate is sold. The abstract starts with the original patent when the United States government granted land in the Territory of Iowa in 1856 to settlers who formed the new state.

As the land is subdivided, platted, and sold off, new abstracts are created for the new parcels. For each transaction (a sale or a new loan, for example), the abstractor adds to the end of the abstract, creating a document that is unique.

Because there is only one for each tract of land, the abstract is very expensive to recreate. You should keep your abstract somewhere secure where you can still access it. You will need it if you sell or refinance your home. ♦



ASK JACK

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

Q: What is an advance directive?

A: Competent adults have the right to refuse or accept medical treatment after being informed of the procedures and risks. However, there is growing concern over how medical care decisions will be made when people are unable to make decisions for themselves. An advance directive states your health care choices in writing while you are still able to articulate your decision.

Q: Can someone make health care decisions for me without an advance directive?

A: Yes. If you have not executed an advance directive and are

unable to make decisions, others will make health care decisions for you, in consultation with your physician. However, an advance directive both expresses your health care choices in writing and nominates someone to carry them out. Without a written advance directive, you have no control over who makes the decisions or what choices they make.

Q: What is a Living Will?

A: A Living Will is a document directing your physician that certain life-sustaining procedures should be withheld or withdrawn if you are in a terminal condition and unable to express your wishes yourself.

Q: What is a Durable Health Care Power of Attorney?

A: A Durable Health Care Power of Attorney is a document through which you name another person to make health care decisions for you if you are unable to make them. The person nominated is required to make decisions according to directions you

provide. If your wishes are not known, your agent will make decisions in your best interest. The document is “durable” because it is still effective even if you become incapacitated or incompetent.

Q: How will my agent know my wishes?

A: It is very important to discuss your wishes with the person who will be your agent. In addition, you should use a Living Will form that allows you to clearly set out your wishes under certain circumstances.

Q: What if I change my mind?

A: You may change or revoke an advance directive at any time regardless of your mental or physical condition. While Iowa law does not require you to revoke an advance directive in writing, your physician must be informed. ♦

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

Military Servicemembers

What landlords need to know about enlisted tenants

Recent changes to Federal and State law provide for an expedient termination of tenancy for actively-serving members of our military.

A service member may terminate a rental agreement by providing written notice to the landlord at any time following the date of the beginning of the period of military service. This notice can be given by regular mail. In addition to the written notice, the service member must provide a copy of his or her activation orders.

If a service member is activated at any point in a lease agreement, as long as the service member provides a written notice of termination and a copy of the activation orders, the service member is not responsible for the balance of the lease agreement.

The notice is treated the same as a termination of tenancy – it is effective to terminate the tenancy thirty days after the next time rent is due. The tenant still owes rent for that period of time, but any pre-paid rent must be refunded.

A person who knowingly seizes, holds, or detains the personal effects or other property of a service member or who interferes with the removal of property from the rental unit commits a simple misdemeanor.

Still have a question? Please contact one of our attorneys at ABENDROTH & RUSSELL, P.C. ♦



EMPLOYEE SPOTLIGHT



Sandy Parks

Sandy Parks is the legal assistant for Ross F. Barnett, handling for-sale-by-owner (FSBO) files, landlord / tenant litigation, relocation transactions, and other general legal matters. Sandy has been with the firm for almost six years. Prior to coming to A&R, she worked at the Polk

County Clerk of Court's Office. Sandy has a large assortment of M&M™ collectibles, each filled with chocolaty goodness.

Abstract Specifics

Useless information gleaned from abstracts

The Town of Penoch was platted on September 5, 1851 in Dallas County. Penoch was later re-named Adel. The original name is pronounced "pen-oak" and was an Indian name given to Adel by its earliest settlers in 1837.

In 1857 the Iowa State legislature combined East Fort Des Moines, Demoine, South Fort Des Moines, Fort Des Moines, West Fort Des Moines and all the additions to each town into one city and renamed it Des Moines.

The Town of Capital Park was platted on June 30, 1884, by the owners of the land, J. S. Polk and F. M. Hubbell. Hoyt Sherman was the lawyer who assisted with the platting and who signed as attorney-in-fact for Frances E. Hubbell. The original boundaries of the Town of Capital Park were a line to the east of East 13th Street (now known as York Street) on the East, East 9th Street on the West, Polk Avenue (now known as Cleveland Avenue) and the right-of-way of the Des Moines and Minnesota Railway Company on the North, and East University Avenue on the South. At the time, University Avenue was the northern boundary of Des Moines.

In 1889 the Iowa State Legislature combined Des Moines, Clifton Heights, Greenwood, University Place, North Des Moines, Chesterfield, Gilbert, Sevastopol, Grant Park, Easton Place, and Capital Park into a unified metropolitan city called Des Moines, for a single more efficient governing body.

On March 7, 1917, forty-seven residents filed a petition seeking the incorporation of the Town of Urbandale.

The Town of Crestwood was incorporated on January 6, 1956 on the western suburbs of Des Moines. On May 9, 1958, the Town of Crestwood was dissolved and its land annexed to Windsor Heights. ♦