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# ABENDROTH & RUSSELL, P.C.

2536 – 73<sup>rd</sup> Street

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(515) 278-0623

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## Happy Holidays!

2006 is almost over. This year has seen many changes at ABENDROTH & RUSSELL, P.C. New employees have replaced those who have retired or moved on to other companies. We have refocused some of our practice areas to provide better services to our clients.

But it is true that the more things change, the more they stay the same. Continuity is the backbone of our firm. Mark and Dave have been together as the senior partners of the firm since 1987. Our core practice areas have remained the same: consumer collection, corporate representation, real estate, estate planning, and probate.

2007 will mark our 20<sup>th</sup> anniversary. Our clients have played such a large part in that milestone, so it is only fitting that the members and employees of ABENDROTH & RUSSELL, P.C. thank you and wish you a happy new year. ♦

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

CHRISTOPHER L. LOW  
MATTHEW F. HRUBETZ

## BUSINESS REVIEW

Now that 2006 is at a close, it is important to start the new year with a review of your small business. The following checklist offers items you should consider when planning for the upcoming year. Specifically, consider whether an item should be updated, amended, or modified to meet the present and future needs of your company or organization.

### Business Advisors

List your accountant, insurance representative, business manager, bank or banker, and legal counsel. Do you have the correct contact information for each business advisor listed? Does your company work well with each of these business advisors? Do the business advisors timely respond to your questions and other matters? Do you need to change or acquire new advisors?

### Corporate Records

Determine whether the corporate record or minute book is up to date. When is your next biennial report due? Have all major company actions been recorded? Are all documents signed by the appropriate parties? Are there any matters that have not yet been completed?

### Employee Matters

What is the date of last review for the Employee Handbook? Does the Employee Handbook need to be revised to include new policies? If you don't have an Employee Handbook, you should strongly consider one.

Review bonus and incentive arrangements for the upcoming year. Review employee benefit plans for the upcoming year. Do the benefits plans meet the needs of your employees?

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Business Review

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**Loss of Key Employees**

What effect would the death, disability, retirement, or resignation of a key employee have on company operations? What provisions or plans are in place to maintain operations if the company loses one or more key employees? Do you have “key man” insurance? Do you have a buy-sell agreement in place to accommodate the death or retirement of a business partner?

**Audits**

Are there any audits (financial or governmental) planned for the upcoming year? If so, when will the audits take place? Who needs to be involved?

**Business Agreements**

List all contracts and agreements currently executed. Which contracts and agreements will expire in the upcoming year? Which contracts and agreements will automatically renew? Does the company wish to terminate, renew, or modify any contracts or agreements? Does the company have any leases that need to be reviewed?

**Record Retention and Disposition**

Does your company or organization have a policy concerning record retention and disposition? If so, does the policy need to be updated?

After reviewing these items, prioritize the matters that the company needs to address, and contact the appropriate business advisor for any necessary assistance. Because this list is not complete, always consult with the company’s business advisors to ensure successful business operations in the upcoming year. ◆

## Title to Your Home

The start of the new year is a good time to review how you hold title to your home. When you purchased your house, the seller executed a deed. The deed contained important vesting information – the names on the title and the legal relationship between those titleholders.

If you are married, you probably want to ensure that both spouses are on title to the house. This may not be the case if the parties were married after one bought the house, or if it is a second marriage. You also probably want to ensure that, if one titleholder was to die, the house would pass to the survivor.

A simple review of who holds title and how title is held can prevent expensive and time-consuming problems later.

**Tenancy in Common** is a way of holding title to real estate where each titleholder owns an undivided fractional or percentage interest. For example, two titleholders could each own an undivided one-half of the property. Or, one titleholder could own 70% and one could own 30%. Upon the death of one tenant in common, the interest passes to the decedent’s estate. This means that an estate must go through probate before the surviving spouse can acquire title to the property. The law presumes tenancy in common, unless a specific provision is made otherwise.

**Joint Tenancy** is a way of holding title to real estate where each titleholder owns an interest in the entire real estate. Joint tenants have the same interest, which they gain through the

Title to Your Home

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## Legal Latin

*fiat* – command; literally “let it be done.” Example: “He commanded me never to drive a Fiat”

*nolo contendere* – a criminal plea that does not admit the charge, but does not dispute it either; literally “I do not wish to contend”. The phrase can also be translated to “I didn’t do it, but I’ll never do it again”

*lis pendens* – while judgment is pending; a case in progress. The Court maintains a *lis pendens* docket of current cases

*testify* – to bear witness; to make a solemn declaration under oath or affirmation. From the Latin “testis” or “testes”, meaning “witnesses” because ancient affiants would swear an oath with one hand on their genitals

same conveyance, and which commences at the same time. Here, a right of survivorship is the most important aspect. Upon the death of one joint tenant, the others automatically succeed to the interest. Joint tenancy must be specifically created. When a joint tenant dies, legal steps must be taken to transfer title to the survivors.

**Tenancy by the Entirety** is created only between a husband and wife who together hold title to the entire property with a right of survivorship. Upon the death of a tenant, the other takes title to the exclusion of other heirs. It is essentially a joint tenancy modified by the common-law theory that the husband and wife are one person. *Iowa does not recognize or use tenancy by the entirety.*

**Community Property** is a system under which property is owned by a husband and wife, with each having an undivided one-half interest by reason of their marital status. In a common law system, each spouse owns whatever he or she earns. Under a community property system, one-half of the earnings of each spouse is considered owned by the other spouse. *Only nine states use a community property system; Iowa isn't one of them.*

Review the title to your home. If you need assistance finding your deed, or if you have questions about the legal relationships of the owners, please call ABENDROTH & RUSSELL, P.C. ♦



## ASK JACK

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

### Q: Does my Executor have to do anything with my Will?

**A:** It is a common misconception that merely possessing the Will vests someone with the authority to act on behalf of your estate. In order for a Will to be effective, it must be admitted to probate.

### Q: What is probate?

**A:** The process of court-supervised administration of an estate is generally called "probate." Your Executor must present your Will to the Probate Court for administration. If you die without a Will, the Probate Court will still have oversight over the assets of your estate.

### Q: What can I do to avoid probate?

**A:** [Grows] Some clients have a strong desire to avoid probate altogether. This is generally based on misinformation regarding the process. Court supervision of the probate process ensures that your Executor handles your estate fairly, legally, and according to your wishes. The Executor has a statutory duty to ensure that the Will or the rules of inheritance are followed.

### Q: Doesn't probate make my entire estate a matter of public record?

**A:** Probate does make the assets of the estate a matter of public record. However, the only item that is made available to the general public is the notice of opening the estate, which is published in the newspaper. For somebody to discover the assets of your estate, he or she must know how and where to access the court records and files. Even though the entire estate file is

"public record," as a practical matter most people do not know how to review this information.

### Q: Doesn't probate take a long time?

**A:** Iowa law requires that notice be published in a local newspaper. This is so that any unknown creditors of the estate can file claims. The notice must be published for two consecutive weeks. After that, the estate must remain open for four months before it can be closed. In general, the probate process should take only about six months.

### Q: Isn't probate expensive?

**A:** Attorney's fees and court costs are scaled to the value of the estate, to guarantee that excessive fees won't be charged. Attorney's fees and court costs cannot be paid until the estate closes. ♦

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

# Collection Specialist

*A Focus on One of Our Departments*

“Hello. My name is Lori. I am a debt collector with the law firm of ABENDROTH & RUSSELL, but I am not a lawyer. This telephone call is an attempt to collect a debt, and information that we may discuss will be used for that purpose.” So begins another collection call. ABENDROTH & RUSSELL, P.C. represents many clients who engage us to collect debt and the firm employs collection specialists to contact debtors to resolve delinquent accounts.

Collection specialists often have a bad reputation, but that reputation is undeserved. Consumer protection laws require that collectors be polite and straightforward. The goal is to use cooperative resolution, rather than intimidation or subterfuge, to collect debt. Lori is good at that.

As part of the Collection Department at ABENDROTH & RUSSELL, P.C., Lori handles a wide variety of calls. Sometimes Lori is calling a debtor to obtain a payment for our clients; sometimes she is responding to a call regarding wage garnishment. It could be the Sheriff or the Clerk of Court regarding a lawsuit that was filed.

Most debtors would rather enter into a voluntary payment plan than be sued and garnished. Our Collection Department is different than most because, as attorneys, we can do both. The firm will collect almost \$4,000,000.00 for the benefit of its clients in 2006 and even more in 2007, all thanks to our collection specialists. ♦



## EMPLOYEE SPOTLIGHT



Lori

Lori has been a collection specialist for thirteen years and has been with ABENDROTH & RUSSELL, P.C. for the last seven. Seven is also the number of pets she has – a German Shepherd and six cats. She loves Chinese food.

Lori enjoys decorating and shopping on E-Bay. She is a self-described “boot addict” and has over 25 pairs. ♦

# TAX BREAKS FOR HOMEOWNERS

As tax time approaches, make sure that you get the full benefit from your home. Most homeowners can deduct the following items:

- 1. Mortgage Interest**  
This break is most valuable in the early years of a traditional mortgage, when a higher percentage of the monthly payment goes to interest.
- 2. Closing Costs**  
If you obtained a new mortgage or refinanced your existing mortgage, you can typically deduct some of the closing costs, including the “points” you paid in the form of origination fees or discount points.
- 3. Interest on Home Equity Loans & Credit Lines**  
Second mortgages can be used to tap into the equity in your house – the difference between its value and the balance on your primary mortgage. You can use this equity to finance the purchase of the house, to make repairs or upgrades, to consolidate debts, or to cover other expenses. There are limits on the deduction of interest on home equity financing, but in general all of the interest will be tax-deductible.
- 4. Property Taxes**  
In general, you can deduct the full amount of property taxes levied against your real estate.
- 5. Moving Costs**  
If you had to move because of your job, you may be able to deduct some of your costs.
- 6. Home Office**  
If you or a family member use a part of your home exclusively for business, you may be able to claim a deduction.
- 7. Capital Gains Taxes**  
The biggest tax break is the capital gains tax exclusion when you sell real estate. Capital gains tax is owed on the difference between what you bought the house for (your “basis”) and its sales price. However, couples can shelter up to \$500,000 in gains, while single taxpayers can exclude \$250,000 from taxation.

If ABENDROTH & RUSSELL, P.C. has helped you purchase or refinance your house in the past year, you should have all of the documents you need for filing your taxes this spring. *Remember, this article is not a substitute for advice from a tax professional.*