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# ABENDROTH & RUSSELL, P.C.

2536 – 73<sup>rd</sup> Street

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## Welcome

2007 is a landmark year for ABENDROTH & RUSSELL, P.C. because it marks the 20<sup>th</sup> anniversary of the formation of the firm. What started as two lawyers and a single employee in 1987 has grown to a true law firm with five attorneys and eighteen staff members.

Like the Roman deity Janus, we will be looking both forward and backward in our next four newsletters. We will still provide topical and interesting legal information, but we will also review how our firm achieved its success.

In firm news, Jean Jones has recently retired from our real estate department. She will still work part-time, but will now be able to indulge her true passion: travel. We have also recently hired John Welch as a collection specialist. Welcome aboard, John! ♦

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

CHRISTOPHER L. LOW  
MATTHEW F. HRUBETZ

## YOUR FAMILY'S FINANCIAL FUTURE

If you and your spouse both pass away, what will happen to the money you leave to your children? It is sometimes difficult for parents to plan for their children's financial futures, especially imagining that the parents are no longer alive. After all, it is rare for children to lose both parents. But all it takes is one accident involving you and your spouse for these issues to impact your family.

In Iowa, children under the age of 18 are considered legally incompetent. If your children are minors when they inherit money, the Court will create a conservatorship. This is a legal entity which will manage the money. A conservator will be appointed – usually someone connected to your family, but not necessarily – and that person will make decisions about investing the money.

A conservator may use the funds for the benefit of your children, but almost all expenditures require prior court approval. In addition, the conservator must make annual reports to the court of the income and expenses of the conservatorship. Often, the conservator must post a bond. The bond, court costs, and attorney's fees are all expenses that will be paid from the money you left to your children.

Regardless of your children's financial maturity, a conservatorship ends when the ward turns 18. No longer subject to oversight by the conservator or the court, the teenager can spend the money any way he or she chooses.

A better alternative for most parents is to create a trust – a legal entity that will manage your

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Your Family's Financial Future

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children's inheritance – in their Last Will and Testament. This gives you control over who will invest the money, how it will be spent, and when your children receive unrestricted access to it.

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*If you had received a large sum of money at age 18, how would you have spent it? At age 25, would you have used that money to purchase something different?*

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Both a trust and a conservatorship hold the money for the wards' benefit, so the money still can be used for your children's health, education, and general welfare. A Trustee and a Conservator have similar roles: they are fiduciaries and are therefore duty-bound to manage the money wisely and preserve it for the benefit of your children. However, the trust in your Will can waive the bonding requirement, the court oversight, and the annual reporting.

Assets with named beneficiaries, such as life insurance, retirement accounts, or annuities, will pass directly to the named beneficiaries upon death. You can name your trust as the alternate beneficiary to ensure that the assets pass through the trust the way you want them to.

Perhaps most importantly, the trust terminates when you decide. While the conservatorship terminates at age 18, your testamentary trust can terminate at any age you choose. Many parents want their children to only have full access to the assets at age 22, 25, or later. You can also stagger the payout of the funds over several years.

A simple Will that contains a child trust is an easy and inexpensive way to prevent problems and to preserve your wealth for your children's future. ◆

## PROTESTING YOUR TAX ASSESSMENT

*Think your real estate taxes are too high? The problem could be that your tax assessment is wrong.*

The County Assessor's Office is responsible for fixing the taxable value of all real estate. The taxable value is the starting point for calculating the real estate tax which is due in September and March. Assessments (except for agricultural land) are based on fair market value. That is, the property should be assessed at or near its likely sales price. The Assessor must mail new assessments to property owners by April 15<sup>th</sup> of each year.

Every spring, homeowners have a chance to protest their tax assessment. Claim forms may be submitted from **April 16<sup>th</sup> to May 5<sup>th</sup> each year**. If May 5<sup>th</sup> falls on a weekend, the appeal will be accepted the following business day. The Board of Review will then read each protest. The protest may be granted or denied.

In addition, a homeowner can request an oral hearing, where a taxpayer may present a verbal argument to the Board of Review. An oral hearing is not required and a protest receives the same consideration with or without a hearing. If requested, the Assessor's office will schedule the hearing and send the protester a notice of the time and place 7 days prior to the hearing. Protesters may not select a specific date but may list the dates they are unable to attend. Hearings only last **5 minutes** and the Board normally meets only in the morning.

The homeowner must set forth the reason or reasons for protesting the assessment.

Protesting Your Tax Assessment

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### Legal Latin

*amicus curiae* – a “friend of the court.” Often used when someone who has an interest in litigation but is not a party files a brief urging the judges to decide one way or another

*ex post facto* – a law that acts retroactively, affecting facts or legal relationships that existed prior to the enactment of the law; literally “from a thing done afterward” or “after the deed”

*non compos mentis* – Not sane; literally “not in control of the mind.” This phrase uses the same root as the word “incompetent”

*in flagrante delicto* – used to indicate that a criminal has been caught in the act of committing an offense; literally “while the crime is blazing”. The colloquial “caught red-handed” is an equivalent



## ASK JACK

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

### BUYING A HOME – PART I

#### **Q: What are the differences between purchasing a home and renting?**

**A:** The one advantage of renting is being generally free of most maintenance responsibilities and long-term commitment. For example, if you chew a large hole in the bars of your metal cage, your owner will replace it for free. But by renting, you lose the chance to build equity, take advantage of tax benefits, and protect yourself against rent increases.

#### **Q: How do I begin the home buying process?**

**A:** The first step is to conduct research. Start by thinking about your situation. Are you ready to buy a home? How much can you afford in a monthly mortgage payment? How much space do you need? What areas of town do you like? After you answer these questions, create a list and begin your initial research.

#### **Q: How do I know if I am ready to buy a home?**

**A:** Buying a home is a major decision. A home is the largest purchase that you will likely make during your life. You need to focus on two major issues: good credit history so you can obtain a mortgage, and good income potential so you can pay for your new home. By asking yourself the following questions you can find out if you may be ready to buy a house:

- Do I have a steady source of income? Have I been employed on a regular basis for the last 2-3 years?
- Is my current income reliable?
- Do I have a good record of paying my bills?
- Do I have few outstanding long-term debts, like car payments?
- Do I have money saved for a down payment?
- Do I have the ability to pay a mortgage every month, plus additional costs?

#### **Q: How do I determine the type of home that I need?**

**A:** Your home should fit the way you live, with spaces and features that appeal to the whole family. Before you begin looking at homes, make a list of your priorities. Should the house be close to certain schools, your job, or to public transportation? How large should the house be? What type of lot do you prefer? Is there a big yard with lots of squirrels? What kinds of amenities are you looking for? Establish a set of minimum requirements and a wish list. Minimum requirements are things that a house must have for you to consider it, while a wish list covers things that you'd like to have but aren't essential.

#### **Q: What should I look for when walking through a home?**

- A:** In addition to comparing the home to your minimum requirement and wish lists, consider the following:
- Is there enough room for both the present and the future?
  - Are there enough bedrooms and bathrooms?
  - Is the house structurally sound?
  - Do the mechanical systems and appliances work?
  - Is the yard big enough?
  - Do you like the floor plan?
  - Will your furniture fit in the

space? Is there enough storage space? (Bring a tape measure to better answer these questions.)

- Does anything need to be repaired or replaced? Will the seller repair or replace the items?
- Imagine the house in good weather and bad, and in each season. Will you be happy with it year-round?
- Are there enough places to hide when you've been bad?

#### **Q: How can I keep track of all the homes that I see?**

**A:** If possible, take photographs of each house: the outside, the major rooms, the yard, and extra features that you like or ones you see as potential problems. And don't hesitate to return for a second look.

#### **Q: How many homes should I consider before choosing one?**

**A:** There are not a set number of houses you should see before you decide. Visit as many as it takes to find the one you want. On average, homebuyers see 15 houses before choosing one.

#### **Q: Do I need a lawyer to buy a home?**

**A:** Although Iowa doesn't require one, you may want to hire a lawyer to help with the complex paperwork and legal contracts. A lawyer can review contracts, make you aware of special considerations, and assist you with the closing process. Your real estate agent may be able to recommend a lawyer. If not, shop around. Find out what services are provided for what fee, and whether the attorney is experienced at representing homebuyers. ♦

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

# HISTORY OF THE FIRM

## Part of Our 20-Year Retrospective

David Russell and Mark Abendroth are both 1979 graduates of Drake Law School. They first worked together at another Des Moines law firm before striking out on their own in 1987, forming the firm that bears their name.

The first office was temporarily located in an office building in Urbandale. After three weeks, the construction was completed on the Westview office buildings behind the Perkins restaurant on 86<sup>th</sup> Street and the firm moved to its first permanent location.

The interior finishing was not quite complete when Mark and Dave moved to the Westview offices and many client conferences were held over a table fashioned from plywood supported by two sawhorses.

The firm had only one staff member, Lynn Munn, who acted as receptionist and legal secretary to both attorneys. Lynn determined that it was easier to say "Abendroth and Russell" than "Russell and Abendroth" and so the firm's name was decided.

### Popular songs from 1987

1. "Livin' on a Prayer" – Bon Jovi
2. "Everybody Have Fun Tonight" – Wang Chung
3. "Faith" – George Michael
4. "The Final Countdown" – Europe
5. "With or Without You" – U2 ◆



## EMPLOYEE SPOTLIGHT



**Claire**

**Claire** is a legal assistant with ABENDROTH & RUSSELL, P.C. She previously worked as the Deputy Clerk of Court of Burleigh County, North Dakota. Perhaps because she grew up in such a cold climate, Claire enjoys vacationing on tropical beaches.

Claire has been with ABENDROTH & RUSSELL, P.C. since 1997, making her one of the senior staff members.

Remember that you are not protesting your *real estate taxes*; arguments such as "the tax is too high" or "I can't pay the taxes" are not valid reasons for appealing an assessment. Instead, you must focus on a reason why the *assessed value* is not correct:

1. The assessment is not **equitable** compared with the assessments of other similar property. This is the grounds to use if you think your assessment is out of line with those of your neighbors. You should list the neighbors' addresses and their assessments on the protest form. You should be aware that the Board may resolve the inequity by raising your neighbors' assessments, instead of lowering yours. Have fun at the block party!
2. Your property is assessed for **more** than its actual value. That is, your property is not worth as much as the Assessor says it is. This is by far the most frequently used reason. However, you should do more than just claim what it's worth; you should be prepared to offer evidence that persuades the Board of Review you are right. You should produce an appraisal, sales comparisons, or inspection reports. Remember that property generally appreciates in value. What you purchased the property for is generally not reflective of its current market value, unless you bought the home very recently.
3. There is an **error** in the assessment. Check your assessment carefully to see if there has been a mistake in describing your property. For example, if you have fewer bathrooms or bedrooms, or if you removed a garage that is still assessed, you should use this ground. Be aware, however, that minor corrections may not affect your value.

Action of the board may be appealed to District Court within twenty days after its adjournment or May 31<sup>st</sup>, whichever date is later.

You may be represented by an attorney at the initial Board hearing; you would be well-advised to engage counsel before appealing the matter to the District Court. ◆