

# LEGAL NEWS

## TWOMEY LATHAM SHEA & KELLEY LLP

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## REVIEW YOUR CREDIT REPORT

When the time comes for an important transaction for an individual, such as buying insurance, taking out a mortgage, or applying for a job, having good credit can be critical. Second only to having good credit is being able to prove it in writing, in a consumer report compiled by one of the credit reporting agencies (CRAs) that have credit information on millions of Americans. If you have ever applied for a credit card, insurance, or a personal loan, one or more of the three major CRAs have a file on you.

By law a consumer has the right to request a copy of a report from a CRA, and that should be exercised annually to check on the accuracy of the report's contents. Such oversight has added significance if a major purchase is being considered. Rectifying any errors ahead of time, which itself can be time-consuming, can shorten the waiting period for loan approval.

A CRA must divulge everything that is in a consumer report including, in most instances, the source of information. The consumer also has the right to know who has requested the report during the preceding year, or two years if the request is related to employment. Aside from reports prompted only by the consumer's initiative, a report can be requested when a consumer is notified that a company has turned down the consumer's application for credit. That notice, including the CRA's name, address and phone number, is required by law.

If you detect errors in your report,

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## TLSK OFFERS FREE ESTATE PLANNING BROCHURE

An informative brochure entitled "How To Complete Your Estate Plan and Protect Your Family" has been prepared by our estate department in hopes of answering some basic estate planning questions. Set in a question and answer format, the

### INSIDE:

- *Volunteers Get Tax Break*
- *Buy-Sell Agreements For Small Businesses*
- *Retirement Savings*
- *Community Service Scholarships Awarded*

brochure answers the most frequently asked questions about wills, trusts, health care proxies, and a variety of other estate planning documents. Included in the back of the brochure is a one-page estate planning questionnaire to help you get started on your estate plan.

Estate planning is the art of transferring your assets to those of your choice while at the same time saving significant federal and state taxes. With proper documents, you can save substantial fees and other costs while reducing the stress and anxiety for your loved ones.

A basic estate plan consists of a Will, Durable Power of Attorney, Health Care Proxy and Living Will. Advanced estate planning includes other documents

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## SELLING YOUR HOME: RELOCATION EXEMPTIONS

According to the Internal Revenue Service (IRS), you can exclude from your income all or part of any gain from the sale of your primary home if you meet their ownership and use tests and, during the two year period ending on the date of the sale, you did not exclude gain from the sale of another house.

The ownership test states that you must own the home for at least two years, while the use test states that you must live in the home as your primary residence for at least two years. If both tests are met, you can claim the maximum exclusion of \$250,000 for a single owner and \$500,000 for joint owners.

But what happens if you don't meet the tests and need to relocate? The good news is you can still claim exclusion if you are selling due to an employment change, health reason, or certain unforeseen circumstances. The bad news is that the amount of the exclusion will be reduced.

The IRS defines a change in place of employment as the start of work with a new employer or continuation of work with the same employer as long as the new place of employment is at least fifty miles farther from your home than the former place of employment was.

The health test definition states that you can sell your primary residence to obtain, provide, or facilitate the diagnosis, cure, mitigation, or treatment of disease, illness, or injury of any family members including in-laws, adopted children, step children and

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the process of setting the record straight involves contacting both the CRA and the provider of the information of dispute. A consumer's rights concerning errors in a consumer report are as follows:

- If disputed information cannot be verified, the CRA must delete it;
- If there is inaccurate information, the CRA must correct it;
- If there is incomplete information, such as a record that shows that a consumer made late payments but does not show that the consumer is current, the CRA must complete it;
- The CRA, having changed or removed information after a reinvestigation, may not put it back in the file unless the information provider verifies the information and the CRA gives advance notice to the consumer;
- The CRA must delete any account not belonging to the consumer;
- If requested by the consumer, the CRA must send notices of a corrected report to anyone who received it in the preceding six months, or two years if received for employment purposes.

*Second only to having good credit is being able to prove it in writing ...*

If the credit story told by a consumer report is sad but true, the best ally for a consumer who has changed his ways is the passage of time. As a general rule, accurate negative information in a report can stay there for only seven years. There are some exceptions, for which the "shelf life" of negative information is extended. For example, bankruptcy information may be reported for ten years, and there is no time limit for information on criminal convictions. Similarly, there is a time limit for credit information stemming from an application for a job paying more than \$75,000, or an application for more than \$150,000 worth of credit or life insurance. ■

## VOLUNTEERS GET TAX BREAK

According to Governor Pataki Suffolk County volunteer firefighters and ambulance workers will be getting additional relief in their real property taxes.

Under current law, the real property tax exemption is 10 percent of assessed value of the property up to a maximum of \$3,000 multiplied by the latest State equalization rate. The new law eliminates the \$3,000 cap, allowing eligible volunteer firefighters and ambulance workers the full 10 percent exemption.

The new law will also provide an additional incentive for local volunteer fire and ambulance organizations in Suffolk to recruit new volunteers and keep staff levels strong while providing the highest level of emergency response services for residents.

This tax break provides recognition for the efforts, training and commitment of time and dedication of volunteer firefighters and EMS personnel. It takes a strong desire to help others and a tireless sense of community to give up precious time with family and friends to respond to the needs of others.

The increased exemption is only available to members of incorporated volunteer fire companies, fire departments or incorporated volunteer ambulance services. A volunteer must have been certified as being an enrolled member for at least five years to be eligible for the exemption. At the local option of a county, town, village or school district, an exemption may also be granted for the life of an enrolled member who has accrued more than twenty years of active service.

The exemption may be granted only to applicants who reside in the municipality served by a fire company, fire department or ambulance service and applies only to the primary residence of the applicant. An application for the exemption

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including Trusts. Most individuals with less than \$1,500,000 in assets (couples \$3,000,000) need only a basic plan.

To follow are some sample questions and answers.

### Planning Your Estate

#### 1. *What is estate planning?*

■ If you are like most people, you will work an entire lifetime to accumulate assets: home, cars, savings, property, IRA, pension, stocks/bonds, and life insurance. The small amount of time and money required to create an estate plan will ensure that your assets are efficiently passed on to the people you want with the best possible tax consequences and the least cost.

### Preparing A Will

#### 1. *Why is having a Will so important?*

■ Every adult should have a Will, regardless of age, marital status, or health. It not only gives directions on the transfer of your property after death, but also designates an executor to manage your assets and carry out your last wishes, appoints guardians for minor children, provides for the management of property distributed to minors, appoints trustees for Trusts created under the Will, and could set forth estate tax savings strategies.

### The Administration Of My Estate

#### 1. *What is probate?*

■ Probate is a Surrogate's Court proceeding to determine if a Will is valid and is, in fact, the last Will. The process also includes the identification of the heirs, the estate property and its worth, the payment of any debt and estate taxes, and the distribution of the remaining property as the Will directs. The court's supervision of the probate process ensures the directions are carried out properly.

These samples give you an idea of what the other 95 Q&As are like on the inside of the Brochure. Request your free copy today, and if a question arises that is not in this Brochure, feel free to call our office or visit our website. ■

## *Buy-Sell Agreements For Small Businesses*

The transfer of ownership interests in a small business should take into account all of the considerations that make each business, and especially a family-owned business, unique. The vehicle for accomplishing the transfer is usually called a buy-sell agreement. Its name barely begins to describe the buy-sell agreement's various purposes. With professional advice, the agreement can be tailored to meet the objectives of each small business, whether the business is in the form of a close corporation, partnership, limited liability company, or some other structure.

By creating a market for the ownership interest of a shareholder who has retired, become disabled, or died, a buy-sell agreement insures that such an interest can be converted into cash when cash is more important than having shares in the company. Since small businesses often pay out most or all of their profits in salaries, an equity interest in the business would be much less valuable if its owner was not assured of being able to sell that interest back to the business or to other shareholders.

### **Valuation of the Business**

When a triggering event in a buy-sell agreement causes the interest of one owner of a business to be purchased by other owners, or by the business as an entity, a critical issue is placing a dollar value on that interest. It is difficult to set a market value for shares in closely held corporations, whose stock by its nature has little or no liquidity. An agreement can set the price for shares according to a predetermined formula, value as shown on the company's books, an appraisal by a third party, or some other method. In any event, it is important that the

provisions on the valuation and purchase price of shares in the company be kept current.

### **Orderly Transition of Ownership**

A buy-sell agreement also may serve as an orderly method for maintaining control over the company despite a change in the composition of its owners. In a family-owned business, this may mean a clause in the agreement effectively keeping the business in the family by allowing remaining family members to buy the interest of a departing owner. For children who decide not to carry on in the business, cash, perhaps generated by life insurance on a senior owner, might be an alternative to inheriting part of the business.

*Its name barely begins to describe the buy-sell agreement's various purposes.*

A typical buy-sell agreement for a family business provides that, on the death or departure of one shareholder, the remaining shareholders have the right to purchase his or her shares. Those participating in the buyout usually acquire those shares in an amount commensurate with their holdings. An alternative could give the corporation itself the right to purchase the shares. However, this option may bring into play laws for the protection of creditors that limit the power of corporations to purchase their own shares. A hybrid approach sometimes used in buy-sell agreements allows the business to buy its own shares, only to the extent permitted by relevant statutes, but the remaining

shareholders could then purchase any shares not acquired by the corporation.

### **Avoiding Conflicting Terms**

Since one of the triggers for application of a buy-sell agreement is a shareholder's death, shareholders should avoid conflicts between the terms of the agreement and their estate plans. When the terms of an agreement and a will cannot easily be reconciled, the odds increase for litigation, rather than the smooth transition for which the agreement was designed. If a will predates the agreement, it may be necessary to draft a new will that is consistent with the agreement. A less complicated approach is to amend the will with a codicil providing that business interests are to be disposed of according to the buy-sell agreement.

Consistency between an estate plan and a buy-sell agreement is important not only as to disposition of shares, but also as to voting or management rights in the company. A shareholder should determine whether his estate or heirs should have such rights, and then be sure that the documents accurately reflect the shareholder's wishes. Similarly, a shareholder should consider whether limits on his executor's voting rights are desirable, so as to avoid the possibility that the executor will act to frustrate the shareholder's intent.

One purpose of any contract is to avoid future disputes between the parties by establishing rights and duties for future contingencies. Aside from dealing with the substantive issues raised by transferred ownership, a buy-sell agreement also can head off conflict, or at least solve it, by providing for a form of alternative dispute resolution or mediation. ■

## Retirement Savings

The President's Retirement Savings Proposal for FY 2005 was released in February, expanding the types of accounts available and replacing and updating some of the older account options. With the new proposal, the President hopes to simplify savings, yet others feel the proposal only causes confusion because there are too many options to choose from.

The idea is that the proposed package encourages savings, and greater savings translates into more investment, greater capital accumulation, and higher living standards in the future.

Below is a listing of the proposed savings options:

### Retirement Savings Accounts (RSA) – Similar to Roth IRAs

- Maximum annual contribution of \$5,000.
- Accepts after-tax dollars only.
- Available to all individuals (no income or age limits).
- Allows investor to accumulate gains and take money out tax-free after age 58 or in the event of death or disability.
- Won't get tax deduction when investor puts money in, but investor will still benefit from overall tax treatment.
- Would replace all Roth IRAs and traditional and nondeductible IRA accounts.

### Lifetime Savings Accounts (LSA)

- Maximum annual contribution of \$5,000.
- Accepts after-tax dollars only.
- Available to all individuals (no income or age limits).
- More flexibility with withdrawals as distribution rules would not apply at any age throughout investor's life.
- Won't get tax deduction when investor puts money in, but investor will still benefit from overall tax treatment.

• Could use to consolidate Coverdell Education Savings Accounts (ESAs) or Qualified Tuition Plans (QTPs), but the ESAs and QTPs will still be available under current law.

### Employer Retirement Savings Accounts (ERSA)

- Would combine the array of existing retirement plans into one simple uniform retirement plan replacing 401(k), SIMPLE 401(k), 403(b), Governmental 457, SARSEPs and SIMPLE IRAs.
- One set of rules for all workers.
- Available to all employers.
- Simplifies the administration rules making it easier for employers to administer, therefore employers, including small businesses, will be more likely to offer a retirement savings program to their employees.

### Individual Development Accounts (IDAs)

- Dollar for dollar matching contributions provided to individuals up to \$500.
- Designed to target lower income individuals to encourage savings.
- Matching contributions supported by 100% tax credit for sponsoring financial institutions that provide matches to individuals.
- Qualified withdrawals and matching funds for higher education, first-time homebuyers, and small business capitalization.

The proposal states that we are increasingly an ownership society with more than half of all households owning stock or mutual funds. With this savings package, the President hopes to further promote ownership by removing barriers to tax preferred savings, make saving simpler, and improve fairness by providing retirement savings to those least able to save for retirement. ■

step siblings.

Unforeseen circumstances can be the involuntary conversion of your home, natural or man-made disasters or acts of war or terrorism resulting in a casualty to your home, death, unemployment or change in employment

***But what happens if you don't meet the tests and need to relocate?***

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that results in your inability to pay reasonable basic living expenses, and divorce or separation.

The IRS provides worksheets and examples to help clarify these tests or you can speak with a qualified tax professional to give you guidance. You can also choose not to take the exclusion by including the gain from the sale in your gross income on your tax return. This choice can be made at any time before the expiration of a three-year period beginning on the due date of your return for the year of the sale. ■

must be filed annually in the assessor's office on or before March 1st for Suffolk County volunteers. The increased benefit will become effective with 2005 assessment rolls so applications need not be filed until March 1, 2005.

Applications are available from local assessors or may be downloaded from the State Office of Real Property Services website [www.orps.state.ny.us](http://www.orps.state.ny.us). ■