

Briefings

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TN TOP 5

Reasons to Update Your Estate Plan Today

With the current economic downturn, many of us are experiencing reduced home and investment values. While we are all trying to save more and spend less, investing in your estate plan, especially if any of these five situations apply to you, is money well spent.

1. You are married and have assets totaling more than \$1 million. We hear a lot about the federal estate tax exemption (still in flux), but often forget that Minnesota's estate tax kicks in after \$1 million. If you're married and your total assets, including the value of life insurance, exceed \$1 million, estate planning allows you to take advantage of options that may eliminate or at least delay the payment of estate taxes until the surviving spouse's death.

2. You have a minor child or grandchild. A will is one of the few ways you may nominate a guardian for your minor child (or state who you don't want as guardian). A will or trust can also prevent your minor child or grandchild from receiving her or his inheritance outright and the resulting requirement (and expense) of the Probate Court supervising the investment and expenditure of any funds or property inherited by the minor child.

3. You are unmarried and wish to leave your assets to your partner. Unmarried partners in Minnesota do not inherit from one another

unless their wills or trusts so direct, or unless they jointly own property. Additionally, unmarried partners have no rights under Minnesota law to make decisions for an incapacitated partner. A current health care directive and power of attorney can ensure that your partner (rather than a blood relative) has the power to make decisions for you if you are unable to speak for yourself.

4. You want to provide for specific family members, charities or others. Even if you are inclined to hold your assets close today, you may wish to give a gift to family or charity upon your death. Proper estate planning and beneficiary designations can ensure that those gifts are made and used according to your wishes, and that you obtain the best tax consequences.

5. You've undergone life changes, such as loss of a job, retirement or divorce. Life-changing events often mandate a change to your existing estate plan. For example, divorced persons who fail to update their estate plans and beneficiary designations nearly always end up leaving something to their former spouses. Only when it's too late do family members realize the implications of the decedent's failure to plan.

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Ivory L. Ruud and Dennis M. Patrick contributed to this article. They can be contacted at iruud@tn-law.com, dpatrick@tn-law.com or (952) 835-7000.

The Changes, The Impact and the Current Status of the Federal and Minnesota Estate Tax

It is difficult and often foolhardy to project where Congress or the Minnesota Legislature might end up with any piece of legislation. In order to measure the possible impact on the assets you are planning to leave to your beneficiaries, it is necessary to look at both the present and prospective Federal and Minnesota estate tax laws in order to make any necessary changes or to revise your estate plan to protect your assets in the future.

Under the current Federal law, every individual is entitled upon his or her death to leave up to \$3.5 million to his or her non-spousal beneficiaries without incurring any Federal estate tax; any amount in excess of \$3.5 million is subject to a 45 percent tax. This law will expire for a period of one year at the end of 2009, and be reinstated in 2011 with the Federal law reducing the amount you can pass tax free to non-spousal beneficiaries to only \$1 million. Qualified estate assets passing to a surviving spouse are tax exempt (Federal and Minnesota) regardless of the size of the assets.

In his campaign, President Obama went on record as supporting a continuation of the \$3.5 million exempt amount (with a tax rate of 45 percent on the excess) after December 31, 2009. Congress has introduced several bills in the past couple of years, but none have passed, or were sent to the President for his signature. With the current emphasis on pending legislation in other areas, it appears doubtful that a new estate tax bill will be passed this year. Congress will most likely vote to extend the present estate tax law (\$3.5 million/45 percent) for another year or two.

With no anticipated change in Minnesota estate tax law, you still must remain cognizant of the gap between the Federal and Minnesota exemption amounts to avoid facing the unpleasant surprise of paying a large Minnesota estate tax upon the death of the first spouse. Individuals who are, or believe they are subject to these law changes, should regularly review their situation. Even if you're not directly impacted by the current and prospective laws, remain vigilant and periodically review your estate plan before drifting into a tax or nontax situation under the Federal or Minnesota tax laws that is detrimental to your family's goals and objectives for the distribution of your assets. Contact the Estate Planning team at Thomsen & Nybeck for guidance on all of these issues.

-- Gordon V. Johnson contributed to this article.

Property Managers: Enhance Your Value

Association board members expect and want input, involvement and education from their management companies. That is the general consensus from an informal survey of community association board members that Thomsen & Nybeck conducted earlier this year.

Surveying more than 60 respondents, we learned that association management companies are fairly involved in the day-to-day needs of the association and do make an effort to educate and communicate regularly with board members. Among our key findings:

- Managers act primarily as regulations enforcers, dues collectors and vendor selectors.
- Board members would like more education and advice on pertinent issues such as law changes and budgetary concerns.
- About half of respondents expect the management company to "step up" if the association faces litigation. The board would pay for that involvement.
- Board members prefer a regular newsletter as the best form of communication with their management company as opposed to email or flyers in the lobby. They also believe that the management company should be located near the developments they manage and speak regularly with each board member.

What do the good managers look like? They respond in a timely manner, handle fiscal issues responsibly, communicate with board members regularly and involve them in the daily management of the property. Interestingly, these same issues were cited as things managers could improve.

More analysis and details from the survey will be available later this year. If you would like to comment or ask a question about the survey and its results, contact any member of the association practice group at (952) 835-7000.

DWI – Understanding what it is and what it can mean if you are convicted

Many of us can recall a time when, in hindsight, we should not have driven home after an evening out. It can be the result of poor planning or bad decision making. Regardless, once a person is pulled over by the police and charged with Driving While Impaired (DWI), the impact of that decision can be harrowing.

In Minnesota, a DWI becomes a part of your criminal and traffic record. Even a first time DWI can have consequences that will impact the rest of your life. Here are just a few implications to consider:

- Planning a fishing trip to Canada? You won't be able to go if you have a DWI. Canada classifies a foreign DWI conviction as a "Crown Offense." Having a DWI on your criminal record leaves you inadmissible into Canada unless you can maneuver through Canada's lengthy and expensive "rehabilitation" process.
- Looking for a job? A DWI can rule you ineligible, especially for anything related to driving such as being an EMT, paramedic or bus driver.
- If you lost your license, could you get to work, day care or school?
- Are you prepared to spend time in jail? Some jurisdictions require jail time on a first DWI offense. Fines and court surcharges can be in the thousands of dollars. Additional DWI offenses within a 10 year period can lead to more serious penalties – First-Degree DWI is a felony punishable up to seven years in jail with a \$14,000 fine.
- Could you afford the fines, license revocations, vehicle forfeitures, treatment costs and possible job loss that might be just some of the expenses you could incur after a DWI conviction?

The legal limit for driving, .08, can sneak up on you. If you are operating a commercial vehicle, the level of impermissible alcohol concentration is even less at .04. Though many factors affect alcohol tolerance and metabolism, for the average person it may only take a couple of hours of casual drinking to become legally incapable of operating a motor vehicle.

Many of these consequences can be lessened, or even avoided, with the right representation in your corner. We will review all of the State's evidence to ensure that the police performed a valid stop, arrest, interview and chemical testing procedure. Any failure of the police to adhere to strict operational guidelines may yield better results for you and the final outcome of your case.

Not having a lawyer represent you in a DWI case will have you leaving the courtroom not understanding what you've agreed to and what repercussions you may suffer for doing so. The cost of hiring a lawyer is worth the peace of mind so you're aware of all of the various consequences that apply to your individual situation, as well as give you the opportunity for a lawyer to analyze your case in order to avoid or reduce the consequences of your offense.

The lawyers at Thomsen & Nybeck have handled thousands of DWI cases. Navigating the complex and severe Minnesota DWI laws on your own can put your future at risk. Call us to find out how we can help you manage your case and the implications of a DWI arrest.

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Ryan Wood contributed to this article. Ryan focuses his practice in the areas of criminal law and general civil litigation. Ryan can be contacted at rwood@tn-law.com or (952) 835-7000.

NEWS & NOTES

We're on the Move – Literally!

As of October 1, 2009, our new offices will be located at 3600 American Boulevard W., Suite 400, Bloomington, MN 55431. Our phone numbers and email addresses will all stay the same. We look forward to serving your legal needs from the new office.



1 Congratulations to attorney **Matt Drewes (1)** and his wife Julie, who welcomed baby Eli into the world on April 29, 2009.



2 Attorney **Bill Sjöholm (2)** was reappointed as VP of the board of directors for Central Minnesota Legal Services and to serve on the Governing Council for the civil litigation section of the Minnesota State Bar Association.



3 Attorney **Brad Boyd (3)** appeared as guest speaker on the Twin Ports Radio Show in Duluth, Minn., recently to talk about real estate. He also was quoted in a Star Tribune article by Jon Tevlin, and taught several continuing education courses to real estate agents throughout the state of Minnesota in the last several months.

A team from Thomsen & Nybeck competed in the Medtronic Twin Cities 1 mile race and placed in the top ten.

Thomsen & Nybeck sponsored the Minnesota Chapter of the Community Association Institute's third annual golf tournament held on July 15, 2009, and once again offered complimentary bottles of water as golfers signed in and at the driving range. In their bid to defend last year's first-place finish, **Matt Drewes (1)** and his team finished fifth out of the 36-team field.

ATTORNEYS

This newsletter is presented to you by the attorneys of Thomsen & Nybeck, P.A.

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PRACTICE AREAS

Thomsen & Nybeck has in-depth experience and knowledge in the following practice areas. Call us at (952) 835-7000 to discuss your concerns or to determine if you have a case.

Business Law
Construction Defect Litigation
Corporations & Partnerships
Criminal Law
Employment Law
Estates, Wills and Trusts
Family Law

Financing
Litigation
Personal Injury
Real Estate
Taxation
Townhome & Condominium Law
Wind Energy

“Large enough to be effective.
Small enough to care.”