



BUSINESS COUNSELING UPDATE

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HOW TO TAKE ADVANTAGE OF LOW INTEREST RATES IN YOUR ESTATE PLANNING

While interest rates have recently started to climb, they are at historically low levels. The low rates make some estate planning devices more attractive. Private annuities, grantor retained annuity trusts (GRATs), charitable lead annuity trusts and charitable transfers of remainder interests in a residence or farm are estate planning devices that should be implemented when interest rates are low.

Private annuities typically involve a parent transferring property to his or her child in return for the child's unsecured promise to pay the parent a fixed, periodic income for life. Entering into a private annuity when interest rates are lower results in a lower annual payment amount that the younger family member will have to make to the older family member to prevent a gift from arising on the transfer.

A GRAT is a trust in which the grantor retains an annuity interest for a specified

term at the expiration of which the trust property goes to another individual named at the outset. Lower interest rates increase the value of the annuity retained by the grantor and thus reduce the value of the gift of the remainder in a GRAT.

With respect to charitable lead annuity trusts, low interest rates will cause a larger gift or estate tax deduction for the annuity interest going to the charity and a smaller value for any gift of the remainder interest going to a private beneficiary.

A lower interest rate provides higher income, estate and gift tax deductions for a transfer of a remainder interest in a residence or farm.

If you may be interested in any of these estate planning devices, please contact us soon so you can take advantage of the low interest rates.

Angela M. Pelan

Inside this Issue

BANKING & FINANCIAL INSTITUTIONS

- Banks & LLCs

EMPLOYMENT

- Strategies for Dealing with Violence in the Workplace

ESTATE PLANNING

- How to Take Advantage of Low Interest Rates in Your Estate Planning
- Rising Estate Tax Exemption Warrants Review of Estate Plans

REAL ESTATE

- Letters of Intent: A Trap for the Unwary

TAX

- Nebraska Sales Tax Update
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LETTERS OF INTENT: A TRAP FOR THE UNWARY

Letters of intent are efficient tools that may be used on a continuing basis to commence real estate sales, leasing and other transactions. Often letters of intent focus the parties on the material terms of the deal, and provide the skeleton for what will become a contract. A letter of intent can perform important functions in the cycle of a transaction relationship. However, the letter serves its function best when its limits are properly understood and the reliance on its effect comports with its language.

Problems often result in the parties' expectations of what the letter of intent represents. On one end of the spectrum, some parties presume a letter of intent to be nothing more than a map of the prospective transaction providing directions to the execution of a legally binding contract. In this sense, the letter of intent should help speed negotiations by clearing and elevating negotiating points. This type of letter of intent is not even a pre-negotiation agreement and is used simply to set a starting point for exploratory discussions of possible terms. Most often this type of letter of intent is supposed to have no binding element.



On the other end of the spectrum, a letter of intent can be a fully binding document with all the essential elements reflected, notwithstanding that nonessential terms may be added later to complete a fully definitive contract. However, one of the parties is often very surprised by such a result. Loan commitment letters often represent this type of arrangement.

For a letter of intent to be a binding contract, it must contain a manifestation of the parties' intent to be bound as well as the parties' agreement to essential or material terms of the contract. The most fundamental ingredient in any contract is the intent of the parties to be bound. Ambiguous language about a party's intent can also lead to the creation of an enforceable contract, especially in the case of real estate transactions, when the letter of intent contains all the material terms of the transaction. The safest and best way to avoid the pitfalls of ambiguous language is simply to know the intent of the parties and clearly state it in the document.

Generally, a court will not specifically enforce a letter of intent when it does not set forth all the essential and material terms. Such essential terms generally include an adequate description of the property, the amount of the rent or purchase price, the term of the lease, the time and manner of payment and other matters typical to real estate transactions such as date of closing, representations and warranties, and brokerage commissions.

A letter of intent can impose an obligation to negotiate in good faith and can similarly provide that the parties are not so obligated. Courts

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have found that a letter of intent is at least partially enforceable based on this obligation to negotiate in good faith. Even though a letter of intent provides that it is not a binding contract, a court may enforce the parties' obligation to negotiate in good faith if an otherwise nonbinding letter of intent provides for such an obligation. If a letter of intent is intended to be completely nonbinding or the parties' desire to negate the obligation to negotiate in good faith, a provision must be clearly drafted stating so.

Letters of intent are valuable tools and can save time and money and help facilitate an ultimate contract. To be most effective, however, the letter of intent must accurately and unequivocally reflect the goals of the client. As its legal consequences can be great, a letter of intent deserves the same attention to detail that any other legal document requires, and consultation with counsel should be obtained before executing a letter of intent. Otherwise, as one commentator has put it, "a party to a letter of intent may not know what it is really signing until a jury has spoken."

Ryan N. Boe



RISING ESTATE TAX EXEMPTION WARRANTS REVIEW OF ESTATE PLANS

The Economic Growth and Tax Relief Reconciliation Act of 2001 has increased the federal estate tax exemption to \$1,000,000 this year, and the exemption is scheduled to increase to \$1,500,000 for 2004 and 2005 and to \$2,000,000 for 2006, 2007 and 2008. Whether further increases will be implemented, and whether the repeal of the estate tax in 2010 is made permanent remains difficult to predict. However, the upcoming increases in the estate tax exemption warrant a review of current estate plans, particularly those that were drafted in the early to mid-90s.

The increasing exemption amount may have lulled couples into a false sense of security causing them to avoid estate planning altogether.

Most estate plans that implement traditional estate and gift tax planning utilize a "credit shelter trust" that is funded with whatever the tax exempt amount may be at the time of death. The balance of the estate then passes, either outright or in trust, to the surviving spouse. Because funding of the credit shelter trust is tied to the amount of the estate tax exemption, significant increases in the exempt amount can have unintended consequences.

Initially, with respect to smaller estates, the surviving spouse of a decedent with a \$1,500,000 estate may not receive any property outright if the \$1,500,000 exemption passes by formula to fund the credit shelter trust. Additionally, for larger estates, if a couple's assets are held largely in joint property and/or retirement accounts, the assets disposed of under their estate plan may not be sufficient to fund the credit shelter trust, the result being unnecessary estate taxes upon the second death. Finally, the increasing exemption amount may have lulled couples into a false sense of security causing them to avoid estate planning altogether, thereby causing them to neglect addressing any special needs of their children or grandchildren.

Estate plans that were drafted more than five years ago should be reviewed to determine whether they remain current and appropriate for your objectives in the ever-changing estate and gift tax environment. Additionally, clients should prepare and review a comprehensive financial statement in order to ensure that asset titling is appropriate for the estate plan that is in place.

Year	Exemption
2003	\$1,000,000
2004	\$1,500,000
2005	\$1,500,000
2006	\$2,000,000
2007	\$2,000,000
2008	\$2,000,000
2009	\$3,500,000
2010	Repealed

Donald L. Erftmier Jr.

NEBRASKA SALES TAX UPDATE

The Nebraska sales tax will expand to include repair or maintenance services provided to personal property beginning on October 1, 2003. So if you repair or maintain tangible personal property, your services will soon become subject to sales tax which means you will be required to hold a Nebraska sales and use tax permit and collect sales tax for charges on such services. Repair labor is defined as the labor involved in restoring a used, worn or damaged item of tangible personal property to essentially its original form and condition. Repair labor includes amounts charged for service calls, trip charges and other service fees related to the repair.

Examples of taxable repair or maintenance labor include, but are not limited to, repair or maintenance on: lawn mowers and snow blowers; refrigerators and other household appliances; electronic equipment; aircraft; bicycles, golf carts, and other sports equipment; furniture; boats, jet skis and snow mobiles; shoes, clothing and jewelry; racecars, dirt bikes, ATVs, and other vehicles not legally operable on highways; and manufacturing machinery and equipment.

Examples of nontaxable repair or maintenance labor include, but are not limited to, repair or maintenance on: motor vehicles which can legally be operated on the highways; agricultural machinery and equipment used in commercial agriculture; and certain medical equipment.

Matthew J. Bock



STRATEGIES FOR DEALING WITH VIOLENCE IN THE WORKPLACE

Acts of violence in the workplace are becoming increasingly common. According to the Bureau of Labor Statistics, violence is the number one cause of workplace death among female employees and is the second leading cause of on-the-job death among male workers.

While most employers recognize a moral obligation to provide a workplace free from violence, many do not appreciate that failing to take an active role in preventing workplace violence can give rise to substantial legal liability.

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Employers can take several steps to minimize the likelihood of violence at work, including the following:

- Consider a workplace violence policy.
- Follow the policy if you implement one.
- Check prospective employees' backgrounds prior to hiring.
- Have a system for employees to file complaints.
- Investigate complaints.
- Make sure employees know procedures for threats or emergencies, such as how to contact police, fire, and security officials.
- Make sure employees with special needs are aware of emergency evacuation procedures and have assistance if necessary in evacuation situations.
- Respond to potential threats and escalating violence by using resources such as local law enforcement, medical services, human resources staff and employee assistance programs.
- Take all threats seriously.

If you are faced with a violent situation, call security or 911, keep your cool, ask the individual what is wrong, ask the individual for solutions and help the individual save face during the violent outbreak. No employer can entirely eliminate the potential for workplace violence. The strategies

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discussed above, however, are important steps toward cultivating a safer work environment.

Brian J. McGrath

BANKS AND LLCs

In the past, Nebraska has prohibited any financial institution subject to supervision by the Department of Banking and Finance from operating as a limited liability company in Nebraska. The prior prohibition has recently been lifted and, therefore, a financial institution may now utilize a limited liability company form for its operations.

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