



Grandville State Bank Bldg.
3996 Chicago Drive SW
Grandville, MI 49418
(616) 531-7711

www.bolhouselaw.com

BOLHOUSE, VANDER HULST, RISKO, BAAR & LEFERE, P.C.

ATTORNEYS AT LAW

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DON'T DRIVE WITHOUT YOUR (SOFTWARE) LICENSE

Candidly, many computer users regard copying software as 'no big deal'. A business might even consider the illegal duplication of software a 'business risk'. The penalties, however, can be severe. Software companies lose billions of dollars each year due to illegal copying of software. As a result, software companies and their trade groups are increasingly willing to enforce their legal rights against those who illegally copy software in violation of the copyright laws or license agreements.

As a general rule, it is copyright infringement to make a copy of a protected work without the copyright owner's permission. If you buy Microsoft Word from a retailer, you've bought one copy of the software. You own that copy, but you don't own the copyright. You cannot duplicate the one copy you purchased. If you have illegally copied software, and are caught, the damages are severe. You may be liable for

actual damages suffered by the plaintiff as well as the amount of profits resulting from the infringement, or statutory damages under the Copyright Act. Judges have great latitude in determining the amount of statutory damages. The Copyright Act provides for damages awards of between \$500 and \$20,000 per infringed work, and up to \$150,000 per infringed work can be awarded if the judge believes the infringement was willful.

What should you do? First, conduct a software audit. Identify all software installed on each computer and determine its accessibility from a network. There are programs available that help conduct a self-audit. Once all software is identified, you will need to determine if you have a valid license for each installed copy. It is important to keep your purchase order, invoice, and all original documentation to prove a valid license. Any unauthorized copies of software should be removed.

Secondly, educate your employees regarding acceptable use of software, and implement a company-wide policy regarding software usage. We've assisted clients who have run into problems because their employees are illegally installing copies of software from their home computers onto their work computers. Thirdly, designate an employee as the Software Manager, responsible for maintaining records and ensuring compliance with software licensing issues. In our office, our Office Manager has been delegated that responsibility. Any software purchase and installation must go through her, and all supporting documentation is housed in one location.

Establishing and adhering to reasonable policies against unauthorized copying of software are key to any company's efforts to minimize potential liability in this area.

Joel Baar works in the areas of Business Law, Employment Law and Real Estate/Construction Law. You can reach him at joelb@bolhouselaw.com.

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BOLHOUSE LAW OFFERS EVENING HOURS FOR ESTATE & MEDICAID PLANNING

Bolhouse Law is pleased to announce expanded hours for estate planning and Medicaid planning clients. With times as trying as they are, it can be difficult to take time off work to meet with an attorney to do an estate plan or get answers on Medicaid. To make things easier, Tom Vander Hulst and Mark Hofstee will be available on Tuesday evenings until 8:00 to meet with estate planning and Medicaid planning clients.

Those with questions about estate planning or Medicaid planning can either make an appointment or simply stop in with their questions – no charge.

Our goal is to insure that our clients don't just sign legal documents but understand what they are signing and why they are signing them. Consequently, we will spend as much time as necessary to make sure you are comfortable with the estate planning or Medicaid planning

process. In addition, we make sure the plan is complete. We do not end our efforts once the estate plan is signed or Medicaid qualification is obtained. With estate planning, we make sure assets are titled properly so the estate plan will work the way it was intended. With Medicaid, we discuss what other steps should be considered.

With our emphasis on client understanding, insistence on complete follow-through, and now

our expanded hours, we hope to provide clients with the best and most convenient experience possible in meeting their estate planning and Medicaid planning needs.

Tom Vander Hulst focuses his practice in the areas of Business Law and Estate Planning/Probate. Reach him at tomvh@bolhouselaw.com.



USE OF NON-COMPETE AGREEMENTS ON THE RISE



In the past few years, we have seen an increase in the use of Non-Compete Agreements, which are often used to protect a company’s investment in a key employee by preventing the key employee from leaving their job and competing with their prior employer. Many mistakenly believe in the dangerous misconception that a Non-Compete Agreement is unenforceable. While some states completely prohibit Non-Compete Agreements, Non-Compete Agreements are enforceable in Michigan so long as they are “reasonable”. They must be reasonable in terms of time, geography, and scope of work. Of course, the use of the term “reasonable” means that the

enforceability of a Non-Compete Agreement is a gray area, subject to the interpretation of the Court. However, if the Court finds a Non-Compete Agreement to be unreasonable, the Court cannot rule that the Non-Compete Agreement is unenforceable. Instead the court must re-write the agreement so that it is reasonable. Interestingly, it is the only area of law where the Court has the power to re-write a contract.

In addition to Non-Compete Agreements, an employer who is concerned about the potential loss of proprietary information should also consider asking key employees to sign a Confidentiality Agreement and a Non-Solicitation Agreement. With

the increase in technology, the ability to transfer valuable data and assets has never been easier – just a few key strokes away in many instances. As such, we caution our business clients to take precautions to preserve their valuable proprietary information, ideas and assets through the use of reasonable Non-Compete, Non-Solicitation and Confidentiality agreements.

David Lefere focuses his practice in the areas of Business Law, Commercial Litigation and Collections/Creditors’ Rights, with special emphasis in the tool & die industry. You can reach him at davidl@bolhouselaw.com.

WHAT IS A HOME SELLER REQUIRED TO DISCLOSE?



Buying a home is one of the largest purchases a person will make in their life. There are many legal requirements involved in completing the transaction for both buyers and sellers. One important legal requirement is the Seller Disclosure Act.

The Act requires sellers to provide the purchaser a timely, specific, and detailed disclosure concerning the physical condition of the premises, its structures and certain fixtures in it, as well as certain broader and historical data such as the presence or absence of environmental hazards.

Today, the disclosure is a relatively standard form that can be supplied by most realtors. Sellers are required to disclose all information regarding the condition of the home within their knowledge. Sellers are not required to obtain inspections

or any independent analysis. Therefore, sellers will generally only get into trouble if they intentionally conceal defects with the home of which they were personally aware.

From the buyer’s standpoint, it can be extremely risky to rely on a Seller Disclosure Statement as a complete or accurate assessment of the property. If the home contains defects of which the seller has no personal knowledge, those defects will not be in the Seller Disclosure Statement and the Seller will not be liable for their failure to disclose them. Furthermore, the Seller Disclosure Statement is not a warranty for any of the items in the home. Therefore, Seller Disclosure Statements are not overly reliable and should never be a substitute for independent inspections of the property by an expert.

Interestingly, there are a few notable exceptions to the seller disclosure requirements including, but not limited to: newly constructed residential property, transfers pursuant to court order such as foreclosures, and transfers of more than 4 residential units.

If you have questions regarding the requirements of the Seller Disclosure Act or any real estate issues, one of our real estate attorneys would be happy to assist you.

Jeannine Bolhouse focuses her practice in the areas of Family Law, Civil Litigation and Collections. Reach her at jeannineb@bolhouselaw.com.

U.S.P.S. HONORS SUPREME COURT JUSTICES

Are the names Felix Frankfurter, William J. Brennan, Jr., Louis D. Brandeis, and Joseph Story familiar to you? For most, the answer is probably no. However, on September 22nd, these four individuals were honored on U.S. postage stamps, as they are all famous U.S. Supreme Court Justices. Each of these individuals was an extremely smart, articulate, and dedicated public servant. Each of these individuals left their mark on our country due to decisions they rendered regarding issues that were decided by the U.S. Supreme Court. Some of those issues impact every one of us yet today.

Recently, two new individuals became Supreme Court Justices. Sonia Sotomayor has just become a United States Supreme Court Justice, and Diane Hathaway was recently

elected to the Michigan Supreme Court. Both of these judges will undoubtedly leave their mark on American Jurisprudence, and decisions that they make will impact each of us for years to come.

As lawyers, we find that judges bring their own perspective to each case that they hear. It certainly is possible that issues such as gender, educational background, religious upbringing, work history, and many other factors influence how a judge views a particular case.

The attorneys in our office regularly appear before judges in West Michigan. The judges we appear before, with rare exception, are dedicated, hard-working, intelligent, and do their very best to administer justice in a fair and even-handed manner. Many of the

judges' names, like the four names mentioned above, are names that most people never hear and are certainly not familiar with. Like the four Supreme Court justices being honored by the Postal Service, our local judges exhibit the same talents and skills in dealing with cases that are before them, regardless of who the parties are, the issues involved, or their own personal beliefs. We are indeed fortunate to have talented public servants who are willing to serve our community as judges.

Rick Bolhouse focuses his practice in the areas of Family Law, Collections & Creditors' Rights and General Litigation. You can reach him at rickb@bolhouselaw.com.



MICHIGAN'S AUTO ACCIDENT LAW COULD CHANGE

In July, 2004, the Michigan Supreme Court issued a decision in *Kreiner v Fisher* that made it much more difficult for individuals injured in an automobile accident to obtain compensation for their injuries. In *Kreiner*, a minimal majority of our Supreme Court determined that in order to recover damages for noneconomic loss, a plaintiff must prove that he has an *injury that affects his general ability to lead his normal life and ultimately affects the course or trajectory of his normal life*. The end result of the *Kreiner* decision has been that numerous plaintiffs with serious injuries have had their claims dismissed by various courts because those plaintiffs, through hard work and perseverance, were able to return to some semblance of a "normal life."

On August 20, 2009, the newly reconfigured Michigan Supreme

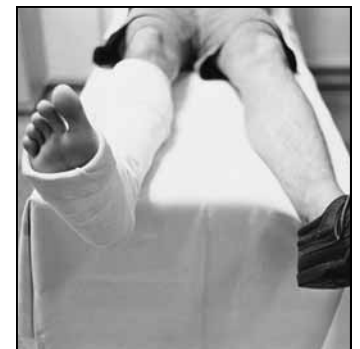
Court (former Justice Clifford Taylor was replaced by Justice Diane Hathaway) determined that it would consider a lower court's dismissal of the claim of Rodney McCormick, whose case had been dismissed by the Genesee County Circuit Court. Mr. McCormick was badly injured in January, 2005, through no fault of his own, when a truck backed over his left ankle. Mr. McCormick sustained a serious fracture of his left ankle, has had two significant surgeries and now has a degenerative joint disease in the ankle.

The lower court had dismissed Mr. McCormick's claim, based upon *Kreiner*, because the judge believed that the injury did not affect the "course and trajectory" of Mr. McCormick's normal life. That decision was upheld by the Michigan Court of Appeals,

again, based upon the *Kreiner* decision. The Michigan Supreme Court has issued an Order indicating that it will consider the determinations made by the lower courts. It is widely believed that the Michigan Supreme Court will likely reverse the *Kreiner* decision and reinstate a threshold that will result in more accident victims being able to recover compensation for their serious injuries.

If you have questions regarding compensation or insurance benefits related to an automobile accident, please give our office a call. We can provide answers to your questions or a free consultation at your convenience.

Mike Risko is a litigation specialist who handles civil and criminal trials. Reach him at miker@bolhouselaw.com.





Bolhouse, Vander Hulst, Risko, Baar & Lefere, PC Attorneys at Law

Richard L. Bolhouse

Thomas R. Vander Hulst

Michael P. Risko

Joel W. Baar

David S. Lefere

Mark D. Hofstee

Jeannine L. Bolhouse

**Grandville State Bank Building
3996 Chicago Drive SW
Grandville, MI 49418**

Phone: 616-531-7711

Fax: 616-531-7757

Email: info@bolouselaw.com

www.bolouselaw.com

YOU HAVE THE RIGHT TO REMAIN SILENT...CAN YOU?

Being charged with a crime or learning you are the focus of a criminal investigation can be one of the most stressful and terrifying experiences an individual might ever face. No matter what the charge is, attempting to navigate your way through the criminal justice system without competent representation is never a good idea.

Most people know that during a police investigation or immediately following an arrest, you have the 'right to remain silent.' The problem for many is they lack the ability. People often believe they can talk their way out of any situation. Police officers recognize this and will give you ample opportunity to say things that will ultimately be used against you. If you are questioned by the police, you should contact your attorney immediately so that they can be present during any questioning, even if you haven't yet been charged with a crime.

If you have been arrested and charged with a crime, having representation throughout the proceedings is crucial, whether you've been charged with a felony or a misdemeanor. Trying to represent yourself or simply pleading guilty to what you believe is a "minor offense" without the advice of an experienced criminal defense attorney can have catastrophic consequences. 'Minor in possession of alcohol' or 'possession of marijuana' convictions may impact your future ability to obtain a driver license, even if a motor vehicle wasn't involved in the incident. In addition, criminal convictions remain on your permanent record. Pleading guilty to any crime such as forgery or theft can be used to challenge your credibility if you are ever involved in another court proceeding. This means that years down the road, you could be involved in a lawsuit involving your business where a debtor hasn't paid you, and

your conviction for stealing a pair of sunglasses from the mall years ago can come back to haunt you.

For more than 30 years, we have provided aggressive and competent representation for clients faced with these challenges. We have experienced criminal defense attorneys who practice in all of the area courts. If you're facing a criminal investigation, give our office a call. We can help.

Mark Hofstee focuses his practice in the areas of Estate Planning, Business Law, Criminal Defense and General Litigation. Reach him at markh@bolouselaw.com.