



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

ATTORNEYS AT LAW

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House Considers Reinstating Accident Victims' Rights

Michigan's legislature has been working on reinstating the rights of innocent victims of automobile collisions. These rights were limited in 2004 by a narrow majority of the Michigan Supreme Court in the case *Kreiner v Fischer*.

Because of the *Kreiner* decision, innocent victims of drunk drivers and people who have suffered life-altering and devastating injuries have lost some of their rights to recover compensation for their injuries.

House Bill 4680 was introduced by Representative Mark Meadows and was recently referred out of subcommittee for consideration by the full

House. If passed, the Bill would reinstate the rights of innocent victims to recover compensation for their injuries. The Bill has the broad support of the Michigan Health and Hospital Association, the Disability Network of Michigan, the Michigan State Medical Society, AARP, and numerous other professional and consumer groups. Additional information can be learned about the pending legislation at www.protect-no-fault.com.

If you support reinstating the rights of victims, contact your local representative and inform their office that you support voting "yes" on House Bill 4680. It is expected that the

vote will occur sometime in the next month or two after which the Bill would move to the senate.

Attorneys from the Bolhouse Law Firm have over 30 years of experience in representing the victims of automobile accidents. Please feel free to contact our office for a free consultation if you, a friend, or family member has been injured in an automobile accident or has outstanding medical bills or lost wages related to an automobile accident.

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A Kinder, Gentler Divorce?

The Kent County Circuit Court has implemented its new **Cooperative Parenting Project** along with the Michigan Supreme Court and the Family Law Section of the Grand Rapids Bar Association. Parents with minor children filing for divorce in Kent County will have to comply with the project's requirements. The intent of the project is to change the tone of divorce cases involving minor children and to get the parents to consider the children's needs first when a divorce is filed. The pilot program attempts to do this in three ways:

First, instead of using adversarial terms such as *divorce*, *plain-*

tiff, and *defendant*, the program requires the use of terms such as *mother*, *father*, *parenting time*, *financial responsibility*, etc. By taking adversarial terms and language out of the court documents, the hope is that the parties will be less adversarial as they work through their divorce.

A second requirement is that when a divorce is filed, the parent who files must also submit with their court documents a parenting plan, outlining what he or she suggests as appropriate shared parenting of the minor children. Rather than fighting during the divorce process about how the children will be shared between the parents, the parent filing for the divorce

needs to think about what is fair and appropriate regarding parenting ahead of time, and have it in writing.

The third major component is the court's requirement that the parents participate in alternative dispute resolution (ADR) very early in the divorce process. Again, the goal is to get the parents to commit to moving their case in the quickest, most efficient and civil manner as possible, with the best interest of their children being the primary concern.

The new pilot program has some admirable goals. How the system will actually function and whether it will be effective in all situations in light of the fact

that each divorce is factually different remains to be seen. Unfortunately, the project's requirements will end up costing both parents more money as there are more steps, more court documents, and the added cost of ADR early on in the divorce process.

If you are facing the possibility of a divorce and have questions concerning this issue, please feel free to contact our office.

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.

Don't Make your Heirs have to Chase after their Inheritance

You have a will and you think everything is in place to make things easy on your family when you pass on. But if you have out-of-date beneficiaries (like an ex-spouse) on your financial accounts, your heirs may end up chasing your money for years. Make sure that doesn't happen by knowing the following rules:

- (1) Accounts with beneficiary designations aren't governed by your will. Even if you wrote an ex-spouse out of your will, if you never changed the beneficiary on your IRA, your ex-spouse may still be entitled to it.
- (2) Retirement accounts have different rules for spouses and children. If you name your spouse as your beneficiary, your spouse can roll the amount into their name and postpone distributions and taxes until age 70 1/2. But if your child inherits, they must start taking distributions and paying tax on

them the year after your death. If you list your estate as beneficiary, heirs must then empty the account within 5 years, which may cost them investment gains and put them in a higher tax bracket.

- (3) Naming a minor as your beneficiary causes problems. It may require the Probate Court to become involved to insure that the minor's interests are protected. This can be a cumbersome and costly process. In addition, you lose control of the payout. The solution is to have a Trust set up in the child's name. This avoids probate and you can require that your minor heirs graduate from college before getting payouts and even state at what age they can get them.
- (4) You need to name a contingent beneficiary. If your primary beneficiary

dies before you and you hadn't gotten around to naming a new one before you died, the account must be probated. Naming a contingent beneficiary also gives the primary beneficiary the option of executing a qualified disclaimer which passes the inheritance to the contingent without gift taxes.

- (5) Changing beneficiaries is easy. Call your financial firm and request a form or go on-line. Most firms have websites where you can download the form. Your Estate Planning attorney can even do it for you. You'll need the beneficiary's birth date and, sometimes, their social security number. Keep a copy of any forms you submit with your other estate planning documents.

Tom Vander Hulst focuses his practice in Business Law and Estate Planning/Probate.



Prenuptial Agreements - Do You Need One?

The word 'prenup' is not generally considered a romantic term. However, there are times when a prenuptial agreement is appropriate, and our office has been drafting quite a few of them recently.

A prenuptial agreement is a written contract entered into by parties before they are married and is designed to change the rights that Michigan law would normally give to a married couple. Most prenups are entered into for second marriages, for older couples, or where there is a large disparity in income between the parties entering into a marriage.

Prenups are enforceable in Michigan, but are not ironclad. There are very stringent

requirements regarding the form and execution of a prenup. They must be entered into voluntarily by both parties, with each party understanding their rights and the extent to which they are giving up those rights by signing the prenup. The parties are also required to disclose all material facts. In other words, each party needs to let the other know about their assets, income, etc.

Once executed, prenups are only as effective as the parties choose to make them. If they actively keep their assets and property separate during the course of the marriage, the prenup will, in almost all instances, effectively keep the property of each party separate.

However, if they choose to commingle their property and hold their assets jointly, a prenup will not successfully keep each parties' property separate in the case of death, separation or divorce. It is not uncommon for parties who sign prenups to keep most of their assets separate, while commingling some to use for joint expenses, living expenses, common bills, etc.

If you are planning to marry and are concerned about the protection of some or all of your assets, please feel free to contact our office.

Jeannine Bolhouse focuses her practice in the areas of Family Law and Civil Litigation.



OEMs Not Interested In Lien Act Amendments

As an attorney who represents many tool and die companies throughout Michigan, I have, over the past year, advocated for amendments to the Michigan Special Tools Lien Act and the Michigan Mold Lien Act (the "Lien Acts"). Working with legislators in Lansing, we came up with proposed language for the Lien Act amendments. Proposed Bills were drafted and submitted to both the Michigan House of Representatives and the Michigan Senate. The House and Senate Bills can be found on the Michigan Legislative website (<http://www.legislature.mi.gov>). The House Bills are numbered 4354 through 4359; Senate Bills are 344 and 345.

When the Bills were finally submitted, I was hopeful that they would make it to committee and ultimately called to a vote in the Michigan House of Representatives and the Senate. There was even a rally held on the capitol steps in Lansing where the Bills were introduced and tool and die representatives had an opportunity to speak with Representatives of the House and encourage them to vote for the passage of these Bills.

Recently I was asked to participate in a conference call with representatives from three Original Equipment Manufacturers ("OEMs"), specifically Ford, Chrysler, and General Motors and Representatives from both the House and the Senate. I was told that the purpose of the conference call was to discuss the status and purpose of the Bills. Instead, what I heard was that the OEMs are not in favor of the Bills, and that the Bills would be challenged. After the conference call, I was contacted by a member of the House of Representatives who informed me that more than likely the Bills would not be moving forward. The OEMs did not want to discuss the actual need for the changes to the Lien Acts, but instead wanted to talk about finding a resolution so as to avoid the consequences of the Lien Acts. They further indicated that they do not believe there is an issue with regard to tooling companies getting paid under the current structure. My question to them was, "If there is no problem with the tooling companies getting paid, then why are the proposed amendments to the

Lien Acts being challenged?" I did not get a satisfactory answer to my question. What I took away from the conference call was that the OEMs have informed their lobbyists that they are not to allow the Bills to be called for a vote, let alone pass.

I am committed to forging ahead and will continue working with the Representatives in Lansing. The goal still is to get the Bills pushed through to committee hearings and have Michigan's Tool & Die voice heard. I would ultimately like to see the Bills put to a vote, even if they fail to pass. At least we would know how, why, and because of whom, they were defeated.

I welcome any and all of your thoughts and comments with regard to this latest tool and die update. Contact me at davidl@bolhouselaw.com.

David Lefere focuses his practice in the areas of Business Law, Commercial Litigation and Collections/Creditors' Rights, with special emphasis in the tool & die and molding industries.

When your Customer Files for Bankruptcy

In the current economy, more and more clients of our firm are encountering customers who are filing bankruptcy. There may be ways to recoup a portion, if not all, of the goods supplied to the bankrupt customer or the balance owed by that customer.

A supplier who has delivered goods to the bankrupt customer during the 45 days prior to the customer's filing of the bankruptcy may be able to recover those goods through a "reclamation" claim. The

customer must have been insolvent when the goods were delivered to the customer.

The supplier may also be entitled to an "administrative priority claim" for the value of any goods received by the bankrupt customer within 20 days prior to the bankruptcy filing if the goods were sold in the ordinary course of the customer's business. There are strict filing and notification guidelines provided by the Federal Bankruptcy Code under each of these options.

If your company has recently supplied goods to a customer who has filed bankruptcy and you have questions regarding your entitlement to a reclamation or administrative claim, please contact us for additional information regarding the likelihood of recovery and to ensure protection of your claims.

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The Mortgage Cram Down Bill

It is no secret that we have fallen on hard economic times and the number of people losing their homes to foreclosure has increased at an alarming rate. Many have weighed in on how to remedy the situation and the new administration has made the struggling economy its top priority. One of the most aggressive and controversial measures weaving its way through the legislature is House Bill H.R. 1106, or more commonly referred to as the Mortgage 'Cram Down' Bill.

The bill would allow bankruptcy judges to modify loans. The judge would be able to reduce the principal amount owed down to a property's fair market value, something judges have been unable to do for primary residences since 1970. For many homeowners this would be a much needed break as they have watched the value of their homes decrease below the balance they owe on their mortgage.

One common misconception among homeowners is that the relief is available to any

one struggling to make their mortgage payments and a local state court judge will be able to force the bank to restructure their loan. In reality, the proposed legislation gives only bankruptcy judges the authority to rewrite these loans and the only loans that can be modified are the ones that already exist. It will not apply to any loan made after the enactment of the legislation.

On March 5, 2009 The House of Representatives passed H.R. 1106 with a vote of 234-191, and the legislation now sits before the Senate with no scheduled date for a vote. The Bill has already been modified and now includes a provision placing the burden on the debtor to show the efforts they made to contact the lender prior to filing bankruptcy. It will take 60 votes to pass in the Senate and many believe it will need further revisions if it is to have a chance of passing.

The Bill has faced a lot of opposition from both sides of the isle and has economists projecting its effects for the years to come. Proponents of the Bill say that it will

prevent as many as 600,000 homeowners from losing their homes. Opponents say the long-term effect will be an added risk passed on to all borrowers in the form of higher interest rates, larger down payments and increased closing costs. Open and closed door meetings continue with both sides trying to convince the other that their position on the Bill is the right one. Meanwhile, lenders fear the potential ramifications of the Bill and struggling homeowners wonder what is taking so long.

Regardless of the outcome, this particular Bill promises to provide some interesting conversation and speculation over the next several months.

Mark Hofstee focuses his practice in the areas of Business Law, Creditors' Rights, Estate Planning and Family Law.