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ATTORNEYS AT LAW

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PRIVACY RIGHTS vs FREEDOM OF SPEECH

In a case testing the limits of free speech, a Kansas group that attracted nationwide attention for its angry, anti-gay protests at the funerals of U.S. military members has won its appeal at the Supreme Court, by an 8-1 vote. The Supreme Court held that members of Westboro Baptist Church had a right to promote what they call a broad-based message on public matters such as wars. The father of a fallen Marine had sued the church, saying those protests amounted to targeted harassment and an intentional infliction of emotional distress. A jury awarded the family a large amount of money.

In overturning the jury verdict, a majority of the Supreme Court stated "Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and -- as it did here -- inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker." The primary issue in the case was determining the limits of the difficult balance between the privacy rights of grieving families and the free speech rights of demonstrators, however disturbing and provocative their message. In response to the church's

insensitive behavior, several states have now imposed specific limits on when and where the church members can protest.

In defining the limits of protection of free speech, and while ruling in favor of the Kansas group, the Court showed little sympathy for the message it promotes. "Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro's funeral picketing is certainly hurtful and its contribution to public discourse may be negligible." However, "As a nation we have chosen a different course -- to protect even hurtful speech on public issues to ensure that we do not stifle public debate."

Only Justice Samuel Alito dissented. Justice Alito -- perhaps speaking for the majority of Americans on this issue -- said the church's "outrageous conduct caused petitioner great injury, and the court now compounds that injury by depriving petitioner of a judgment that acknowledges the wrong he suffered," he said. "In order to have a society in which public issues can be openly and vigorously debated, it is not necessary to allow the

brutalization of innocent victims like petitioner."

Notwithstanding the facts of this case, the Supreme Court has never addressed the specific issue of laws designed to protect the sanctity and dignity of a memorial service, nor has the Court explicitly addressed the privacy of family and friends of the deceased. The Court has recognized a state's interest in protecting people from unwanted protests or communications while in their homes. However, the Court refused to extend that protection to a funeral.

The unfortunate irony in this matter is that our servicemen and servicewomen have died to protect the freedoms we enjoy -- including the freedom of speech that has been so thoroughly abused by this group from Kansas.

There are grieving families who do not deserve hate, but deserve to be loved and supported. If you know of such a family, or know any veteran, please take the time to thank them for their service and sacrifice to our country.

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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DON'T FORGET!

For your convenience, we are open late every Tuesday evening for no-charge Estate Planning consultations! Just call to schedule a time that is convenient for you.

COURTROOM HIGHLIGHTS: PIGS & SLANDER

Know a lawyer so good that he or she could win both sides of a single case? Abraham Lincoln was such a lawyer and Adkins vs Hines was such a case. Adkins vs Hines involved 2 issues: slander and the stealing of pigs. Mr. Hines accused Mr. Adkins of stealing 5 sows and 5 hogs. Lincoln represented Hines while Stephen Douglas, Lincoln's eventual opponent in the 1860 presidential election, represented Adkins. Hines had been heard to slander Adkins, so Lincoln took a bold course in his argument, admitting, YES, Hines had accused Adkins of stealing pigs. But this was not slander, because Hines was a pig thief! Douglas argued that it was impossible for Adkins to have stolen the pigs as he was visiting friends 20 miles away the day the pigs were stolen. Douglas' argument was dismissed and Lincoln prevailed.

Due to Lincoln's persuasive argument, Adkins was then arrested and tried for being a pig thief. Adkins couldn't afford a lawyer so the court appointed one - ironically, Abraham Lincoln! During his defense, Lincoln used the same witness that Douglas had found, and proved that Adkins was indeed out of town the day of the alleged theft and could not possibly have stolen the pigs. Adkins was acquitted, making Lincoln the winner of both sides of a single case!

LEGAL TIPS FOR FIRST-TIME HOME BUYERS

Spring is starting to show itself here in Michigan, and that means more and more homes will start showing up on the real estate market. The purchase of a home is, for most people, their single greatest financial investment. That is why being a first-time home buyer can be intimidating. First-time home buyers often don't know where to begin or what questions to ask. Following are a few key tips that first-time homebuyers need to know in order to successfully navigate the purchase of their first home.

Read the Contract. The "offer to purchase" real estate, once accepted and signed by all parties, becomes a binding contract. It is very important to make sure you understand the consequences of the document you are signing. The insertion of contingency language is highly advisable and will protect you in

some instances (i.e. the inspection comes back showing multiple issues with the home).

Home Inspection. You are about to invest hundreds of thousands of dollars in a house; spend \$350-\$500 on a professional home inspection. This really should be done without question.

No Verbal Agreements. All the details surrounding the sale of the real estate should be included in the purchase and sale agreement. Verbal agreements, no matter how seemingly trivial, between you and any party should always be avoided.

Seller's Disclosure Statement. Unless an exception applies, the seller must deliver to the buyer a written disclosure statement concerning the condition of the property. One of the leading causes of legal disputes between buyers and sellers is

when the actual condition of the property differs from what the seller has disclosed to the buyer. Pay close attention to the seller's disclosure statement. Ask questions and document issues that need to be resolved before the closing.

If you are a first time home-buyer and have questions, feel free to contact me to discuss your questions and/or concerns. We can help make your purchase less intimidating and give you the necessary information so you can make an informed purchase.

David Lefere focuses his practice in the areas of Business Law, Commercial Litigation and Collections/Creditors' Rights. You can reach him at davidl@bolhouselaw.com.



REPAYING THE 2008 HOME-BUYER CREDIT

Not long ago, we experienced one of the fastest declines in real estate values in history. In an effort to try to jump start the economy and reduce the growing number of vacant and foreclosed homes, Congress passed the Housing and Economic Recovery Act (HERA).

The HERA provided a credit of up to \$7,500 for anyone who purchased a principal residence between April 9, 2008 and Dec. 31, 2008 and had not owned one for the three-year period ending on the purchase date. In 2009, Congress increased the credit to \$8,000 for first time home buyers so long as they closed prior to September 30, 2010. Then, finally, another credit of \$6,500 became available to anyone who had owned

a home for at least five of the last eight years who then purchased another home between November 7, 2009 and April 30, 2010. It seemed like anyone willing to reinvest in real estate had the opportunity to stand in line for a free gift from Uncle Sam. Not so fast...

Most people were made aware that if they sold their home within 3 years, they might have to repay some or all of the credit. However, most were not aware that of the various versions of the home buyer tax credit, one was not a credit at all, but rather a 'loan.' If you received the first-time home buyer credit for a 2008 home purchase (the first one originally passed under President Bush), your "credit" was really an interest free loan that must

be paid back over the next 15 years. If you fall into this category, you probably received an IRS notice detailing the payments you will be required to pay beginning when you file your 2010 return. To make things even more complicated, many people have reportedly received these notices in error due to improper closing dates being reported to the IRS.

If you have received a repayment notice or you are not sure whether or not you are required to repay any of the credit you received, make sure you seek proper tax advice prior to filing your 2010 return.

Mark Hofstee focuses his practice in the areas of Business Law, Estate Planning and Family Law. Reach him at markh@bolhouselaw.com.



ARE YOU PORTING YOUR 'DSUEA'?

Most readers will see the above title and say to themselves, "What?!" While you may have heard that the amount excluded from federal estate tax was raised to \$5,000,000 (the Basic Exclusion Amount) per person at the end of 2010, you may not be aware of some of the other provisions of the new tax laws, including 'porting your DSUEA'.

In the past, to take full advantage of the basic exclusion amount for both husband and wife, their estate plan needed to create two trusts (one for each) and divide their assets between the two trusts. The disadvantage of the two-trust solution was that the surviving spouse did not have unfettered access to the deceased spouse's trust. This needed to be accepted in order to get the tax benefit. Not so any longer. Under the new law we have the "DSUEA" or *deceased spouse's unused exemption amount*. This is the difference between the deceased spouse's \$5,000,000 basic exclusion

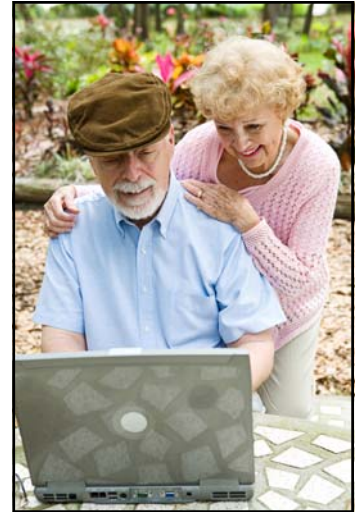
amount and the amount actually used at the deceased spouse's death. For example, if \$2,000,000 of the deceased spouse's basic exemption allowance was used at his or her death, then the DSUEA would be \$3,000,000. "Porting" is transferring the DSUEA to the surviving spouse on the deceased spouse's estate tax return. The result is that the surviving spouse's estate tax exemption is greater than \$5,000,000. The greater exemption is called the Applicable Exclusion Amount which equals the surviving spouse's basic exclusion amount (\$5,000,000) plus the DSUEA (in our example, \$3,000,000) for a total of \$8,000,000.

This may all be fine in theory but what does it mean for most people? Because we can now "port" basic estate tax exclusions, we no longer need 2 trusts – we can simply "port" the basic exclusion amount of the first spouse (the one who

died) to the surviving spouse. This allows the surviving spouse to have complete access to all of the couple's assets right up to the time of his or her death. However, the election to "port" must be made on the estate tax return of the first spouse to die. Another result is that those with two trusts may be able to combine the trusts into one joint trust.

If you would like your estate plan reviewed in light of the new tax laws, we have attorneys who specialize in estate planning who would be happy to meet with you.

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



DAVID LEFERE SELECTED AS 2011 "THOUGHT LEADER IN LAW"

Congratulations to David Lefere who was recently selected as a 2011 "Thought Leader in Law" by Business Review West Michigan, for his tireless efforts on behalf of Michigan's manufacturing industry. He is a staunch industry advocate for a market that was previously underserved.

For the past several years, David has focused his practice in business and corporate law, business litigation and creditor's rights with a specialty in working with businesses in the tool, die and special machine

industry. He has collected millions of dollars for numerous Michigan tool and die companies at risk of closing down, which in turn has helped save hundreds of jobs.

David's efforts include working with Michigan's legislators to draft legislation to benefit and protect the rights of Michigan's manufacturers.

David has conducted seminars and webinars, drafted industry specific articles and taken part in numerous speaking engagements in an effort to keep the tool, die and special machine

industry up-to-date and educated in the legal areas that are highly specific to their industry.

His work with his tool and die clients also includes counsel in the areas of employment matters, contracts, collections, commercial litigation, succession planning and commercial real estate.



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As Michigan's winter gives way to spring, many of us are anxious to get outside for a nice walk or an all-out run. I myself much prefer walking outdoors to the alternatives of a mall or a machine. One of the few downsides to walking outside, however, is the possibility of being attacked by a dog.

While most dog owners will confidently tell you that "Fluffy" won't bite, sadly that is not always the case. Over the past few months there have been several stories in our local newspapers and media about people being severely bitten and injured by dogs, the most serious of whom was a runner in the Ionia area.

Being attacked by a dog or having someone you know attacked by one can be a devastating experience. Dog bites can result in serious injury, extensive medical bills, scarring, and ongoing issues including counseling, plastic surgery, etc.

"FLUFFY WON'T BITE!"

Michigan has a strict liability statute, meaning if you are bitten by someone's dog, *in virtually every instance*, the dog owner is responsible. This is true even if you're on the dog owner's property. It is not neces-



sary that the dog be known to be dangerous or violent.

For many of the dog bite cases we handle, we're able to work out a resolution with the dog owner's homeowner's insurance carrier. Often this happens without the need to even file a lawsuit.

As you head out into the fresh spring air for your exercise or any other activity, enjoy yourself and be safe. But, if you find yourself bitten by a dog, give us a call to learn what your options may be. Our firm has experienced attorneys who have been handling dog bite cases for years, and would be happy to assist you in gathering the necessary information, analyzing your claim, and helping you determine the best way to proceed to be fairly and properly treated and compensated.

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