



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

ATTORNEYS AT LAW

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Will your Business Survive without You?

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As business owners, you have enough to worry about. The day-to-day struggles of managing staff and keeping costs under control, along with the ongoing need to grow your customer base leaves little time to think about much else. One of the most overlooked aspects of business planning is how (and if) your business could survive without you. Fortunately, there are some very effective and affordable ways to plan for such an event, one of the best of which is to purchase insurance.

Many businesses are solely owned and operated and have only one shareholder. Usually, the assumption is if that person dies, liquidating the business' assets will net more than enough funds to cover the outstanding debts. Often this is not the case. With some businesses, the value of the product or idea passes with its owner. With others, a family may be forced to sell assets quickly at a large discount. And now more than ever, business owners are being forced to use their

personal assets as collateral or sign a personal guaranty in order to secure the funds needed to run their business. When business assets are not enough to pay the debt, the bank's only option is to pursue claims against the owner's estate. Adequate life insurance provides the necessary cash upon death to avoid this problem. The premiums are usually quite affordable and may even be tax deductible.

In the case of a business with multiple owners, buy-sell agreements are often used to establish the terms and price for which a deceased owner's share will be purchased. Funding these agreements with life insurance provides available funds and guarantees that the deceased owner's family will be compensated fairly and promptly. Without insurance, assets may have to be sold which may disrupt the business.

One last issue to consider is disability. It is possible to purchase a policy that covers an owner who becomes disabled. A disabled owner creates a

two-fold problem for the business. First, that owner is most likely still entitled to receive income and second, the other owners may be forced to work even harder to fill the gaps if that owner can't contribute. Similar to life insurance, a disability buy-out plan funds an agreement to provide the remaining owners with the funds to purchase the disabled owner's interest. The payment can be made in a lump sum or through a series of periodic payments.

Proper planning for death and disability is critical and could be the difference between the life and death of an entire business. If you're not sure what would happen with your business in such an event, let us help you develop a plan. We can set you up with the proper buy-sell agreement and refer you to qualified insurance agents who specialize in the types of insurance your business needs.

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

Update on Michigan's Smoke-Free Status

The close of 2008 also brought to an end the most recent legislation to make Michigan smoke-free. In 2008, both the House of Representatives and the Senate agreed to outlaw smoking in most public places. However, disagreement over the particulars destroyed enactment of any smoke-free legislation. The disagreement between the House and the Senate centered around exemptions

to the ban for Detroit's casinos and for establishments that pay a state fee to allow their patrons to smoke. In May the Senate approved a full ban with no exemptions by a 25-12 vote. The House voted on the Senate version but it was 6 short of the minimum required for passage in the House. Governor Jennifer Granholm vowed to sign the bill if it crossed her desk. Legislators will have to start the

process over in 2009. Another possible option would be to bypass the Legislature and appeal directly to Michigan's voters through a ballot proposal, possibly in 2010.

Although smoke-free legislation has been introduced in Michigan every session for over 10 years, 2008 was the first year a vote was taken on the issue. Currently, over 70% of the United States population is covered by a

complete smoking ban. There is a distinct trend towards smoke-free workplaces, including bars and restaurants, both in the United States and across the globe. It's probably just a matter of time for Michigan.

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

Attorney David Lefere to Present National Online Seminar on Mold and Tool Lien Laws



David Lefere

Attorney David Lefere, who specializes in representing the tool, die and mold making industries in Michigan, in conjunction with the American Mold Builders Association (AMBA), will present a national online seminar titled *Mold Lien Laws: What can these Laws do for You?* This online seminar will be held on Tuesday, January 27, 2009, at 1 PM EST.

The original tool and mold lien laws were designed primarily for mold builders, who could hold the mold for non-payment of parts, making possession of the mold a key. The mold maker wasn't protected by the laws when the mold maker did not have possession. In 2002, the American Mold Builders Association and

its three Michigan chapters worked to implement a true mold lien law and special tools lien law that provided legal means for the tool and mold manufacturers to recover payment notwithstanding possession.

Attorney Lefere is now working to amend and revise the current laws to further benefit and protect the rights of tool and mold manufacturers. During the online seminar he will:

- Address topics that include what mold lien laws can do for the tool and mold builder;
- Explore scenarios in which a lien law can be effective;
- Discuss obstacles and issues that exist with law currents;

- Explain the importance of following the strict letter of any lien law; and
- Explain the processes of getting lien laws enacted or amended.

Registration can be done online at www.amba.org, and clicking on the Event Calendar. This online seminar is free to AMBA members and available to anyone else for a \$25 registration fee. Participation is limited, so register early.

For additional information, call Sue Daniels at the AMBA office at (847) 222-9402 or David Lefere at (616) 531-7711.

Know your Rights when Injured in an Auto Accident

This is the season when many people become injured in an automobile accident as the result of their vehicle, or another vehicle, losing control on snow or ice. Sustaining an injury in an automobile accident can be devastating in many ways, particularly for an individual who is unable to work for a period of time because of the injuries he or she sustained in the accident.

With very few exceptions, persons who are injured in an automobile accident, even if it doesn't involve a second vehicle, are entitled to have all medical bills and lost wages reimbursed by the appropriate insurance company. Lost wages are available for persons who are self-employed, and even those who may be

temporarily unemployed. Furthermore, the insurance company is obligated to reimburse an individual, even if it is a spouse or family member, who helps take care of them while they are recovering from the injuries.

In many cases, confusion arises because the injured person, or their family, doesn't understand whether their health insurance company is responsible to pay the medical bills or if the automobile insurance company is obligated to do so. Unfortunately, the injured person may become a victim a second time if the insurance companies engage in a round of finger-pointing, with neither being willing to take responsibility to pay outstanding (and, eventually, overdue) medical bills.

If you, a friend, or a family member have been injured in an automobile accident and have questions regarding lost wages, the payment of medical bills, or other reimbursement related to injuries sustained in an accident (even if the person was injured as a result of their own driving mistake), please contact us for a free consultation. With over 40 years of experience handling personal injury claims, one of our experienced attorneys will be happy to meet with you at our offices, your home, or even at the hospital, if necessary.

Mike Risko is a litigation specialist who handles civil and criminal trials.



Housing & Economic Recovery Act of 2008

While there seems to be little to be excited about regarding the economy as we begin 2009, there are a few bright spots in the *Housing & Economic Recovery Act of 2008* that might help raise your bottom line:

- The first-time homebuyer tax credit is essentially an interest-free loan from the government. Taxpayers who take the credit, which equals 1% of the purchase price (up to \$7,500 for single individuals and married couples filing jointly);

\$3,750 for married individuals filing separate returns) must repay the credit and have 15 years to do so.

- The property deduction for non-itemizers is a significantly less complicated deduction that gives non-itemizers a limited deduction for state and local property taxes by increasing the amount of their standard deduction by the lesser of the amount of property taxes paid or

\$500 (\$1,000 for a married couple filing jointly).

- Borrowers who are trying to refinance mortgages that offered low teaser rates, but whose rates have now skyrocketed, may be helped by the \$11 billion more in mortgage revenue bonds. Qualified subprime borrowers may be able to tap into these bonds to refinance into a loan with more favorable rates.

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The Land Contract Option

In this economy, with lending standards and the lending environment having changed, land contracts have become an attractive option for many buyers and sellers of property.

A land contract is a contract between a buyer and seller of real estate where the seller provides financing to the buyer to buy the property for an agreed-upon purchase price, and the buyer repays the contract in installment payments. Under a land contract, the seller retains title to the property, while permitting the buyer to take possession of the property. The purchase price is typically paid in periodic installments, often with a short-term balloon payment at the end of the term. When the purchase price has been paid in full, the seller is obligated to convey valid legal title of the property to the buyer. An initial down payment from the buyer to the seller is often required by the seller. A memorandum of the land contract is typically recorded at the register of deeds, while the deed conveying the

property isn't recorded until the land contract is paid in full.

Although land contracts can be used for a variety of reasons, the most common use is as a form of short-term seller financing. There can be other advantages of using a land contract as well, although there are significant risks attached. Most lenders, in order to protect their mortgage interests, will require title insurance, appraisals, inspections, surveys, etc., which can add significant costs to any real estate transaction. A land contract can avoid some of those costs in some situations, if the parties are willing to take some risks, although those risks are sometimes not advisable. The land contract should be carefully drafted so the parties know the mutual expectations and obligations. At the same time, with land contracts, easy financing and a simple sale transaction may be a good selling point for a seller to offer a buyer, especially a buyer with a limited credit history, poor

credit, or an inability to obtain a conventional mortgage.

There are pitfalls to land contracts, especially as they relate to the payment of taxes, the seller's payment of the seller's mortgage obligation (if any), and the possibility of the buyer's default on payments. If the buyer defaults on the land contract, Michigan law has a process for the land contract to be terminated, which can be compared to the foreclosure process for mortgages in default. If the buyer defaults, the land can revert back to the seller, regardless of any improvements made by the buyer, and regardless of whether or not the buyer had any equity in the property. If you are considering a land contract, we strongly recommend that you consult with an attorney prior to signing any agreement.

Joel Baar works in the areas of Business, Employment, Real Estate and Construction Law.





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Housing & Economic Recovery Act of 2008 *(continued from pg 3)*

- Businesses are encouraged to increase investment by the bonus depreciation offered by the Act. However, companies in a loss position cannot take advantage of bonus depreciation because they do not have any taxable income against which to take the deduction. The Act allows corporations to use accumulated alternative minimum tax credits as well as R & D tax credits to make investments that would qualify for bonus depreciation, if the taxpayers were profitable.
- The home sale exclusion is one of the most popular tax breaks in the Tax Code. Married couples filing jointly can exclude up to \$500,000 in gain (single individuals up to \$250,000). Before the new law, if a second home became a principal residence, after 2 years the owner could sell it and exclude up to \$250,000 in gain from their income or up to \$500,000 for couples. The new law prorates the exclusion between the time that a home is used as a principal residence and the total length of ownership. As good news to those who have owned property for a while and have seen it appreciate, non-qualifying use before the Jan. 1, 2009 effective date of the provision is not used in the calculation; neither are periods after a qualified use of the property or temporary absences of less than 2 years.
- Seller-funded down-payment assistance programs had provided cash assistance to homebuyers who could not afford to make the minimum down payment or pay the mortgage closing costs, but these programs have been criticized for helping to inflate home prices. The Act bans seller-funded down-payment assistance programs.
- The Act includes many provisions to help military personnel on active duty and help veterans avoid foreclosure.
- Tax-exempt housing bonds and the low-income housing tax credit help fund the construction of affordable housing units, but the rules are extremely technical. The Act simplifies these rules and makes other positive changes including tax breaks for taxpayers in the Gulf Opportunity Zone.
- The Act completely overhauls government regulation of Fannie Mae and Freddie Mac, creating a new regulator for these entities, which own or guarantee nearly half of all U.S. mortgages. Additionally, the new law sets minimum standards for mortgage brokers, strengthens the Truth in Lending Act and funds foreclosure prevention counseling.

If you have any questions about how the new law may effect you, feel free to contact one of our tax law attorneys.

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