



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

ATTORNEYS AT LAW

WINTER 2010

COLLEGE FOOTBALL BOWL CHAMPIONSHIP SERIES: 15 YARD PENALTY FOR ILLEGAL USE OF THE COMPUTER

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DON'T FORGET!

For your convenience,
we are open late every Tuesday
evening for Estate Planning
appointments.

Now that we are past the holidays, we have an opportunity to reflect on the many college football bowl games that were played over the holiday season. Most of the games included teams that throughout the season had no chance to win college football's prized national title. In fact, many small conferences, the MAC (Mid American Conference) for example, have little or no chance to win a national title even if they go undefeated through the regular season.

This year, going into the bowl season, there were 5 undefeated college football teams. However, only two teams, the University of Alabama and the University of Texas, were chosen to play in the championship game. University of Cincinnati, Texas Christian University and Boise State University, while all going to bowl games, did not have an opportunity to win a national championship even though each team was undefeated.

The Bowl Championship Series, or BCS, was created a few years back in the hopes of eliminating any controversy as to who the national champion is in college football. The BCS uses a complex mathematical system through the use of computers to determine which teams should vie for a chance at the national championship. It's a system that critics say is biased against nearly half the colleges and universities that are playing Division I college football. Critics complain that the road to the college football national championship illegally favors the big conferences, such as the Big Ten and SEC, with their long, storied football histories over smaller conferences with their up and coming programs.

Recently, representatives of small conferences asked Congress to look at the issue. In fact, on December 9th, a subcommittee of the House Committee on Energy and Commerce passed H.R. 390,

which prohibits the "promot[ion], market[ing], or advertis[ing]" of a post-season Division I college football game as a national championship game unless it is the final game of a single-elimination post-season playoff tournament rather than the current BCS system. Time will tell if the bill makes it through both houses and all the way to the president's desk.

This is not the first time that the government has gotten involved in college football. In 1984, the U.S. Supreme Court held that college football's attempts to limit television broadcasts of its games ran afoul of antitrust law. The question today is, is the BCS a monopoly when it comes to crowning a national champion?

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HELP US HELP THE NEEDY IN WEST MICHIGAN

Join us as we help 2 local radio stations, **JQ99** and **1260 The Pledge**, positively impact West Michigan residents in need.

Our firm is proud to sponsor and participate in the upcoming **SHARE THE WARMTH** campaign which will run mid January through the end

of February. Working through non-profits from Muskegon, Ottawa, Kent and Allegan counties, our firm will help collect coats, hats, gloves, mittens, and blankets for distribution to people in need. Our office, located in downtown Grandville at the corner of Wilson and Chicago Drive,

will be an official drop-off location, where you can stop in and drop your donation in the JQ99 collection barrel. In addition, JQ99 will be broadcasting live from our office several Tuesday evenings during the campaign.

If you have items you wish to donate, stop by our office weekdays 8a - 5p, from mid-

January through the end of February and we'll be happy to accept them. If you are unable to get to us, please give our Office Manager, Barb, a call at 531-7711 and she'll make arrangements to get to you.

Thank you for your support in this endeavor!

THE PROBATE PROCESS

In the last issue of our quarterly newsletter, we introduced our expanded Tuesday evening hours (5:00 PM to 8:00 PM) to better meet our estate planning and Medicaid planning clients' needs. In this issue and subsequent issues, we will be looking at the various aspects of estate and Medicaid planning. The first topic we want to address is probate and estate planning in general.

Probate performs two basic functions. First, it transfers property from a deceased person to that person's heirs-at-law if there is no will, or to the beneficiaries of that person's will if a will exists. Second, probate serves to insure that the deceased person's creditors are all paid in a timely fashion. Probate involves a number of steps and will generally take a minimum of five months to complete.

In Michigan, there are three types of probate: supervised, formal and informal. In supervised probate proceedings, a

judge supervises every aspect of the probate process. Supervised probate can become expensive because a court hearing is necessary in order to obtain the probate judge's approval for most decisions. Supervised probate proceedings are usually used if there is discord in the family and a referee is desirable.

In formal probate proceedings, a judge supervises some of the aspects of the probate process. While there will be some court hearings, there will not be as many as in supervised probate proceedings but there will be more than in informal proceedings. Formal probate proceedings are typically used if there are questions as to the deceased person's heirs or whether a will is valid.

In informal probate proceedings, the personal representative administers the estate with no direct supervision by the probate judge. In informal probate all interested parties are provided with sufficient

information to police the personal representative's activities. In most cases, informal probate proceedings are used because there are usually no issues requiring more court oversight.

Estate planning by definition is planning for the disposition of one's property after death. An estate plan can utilize the probate process or avoid it. Estate planning also involves providing direction to family members in the event one becomes disabled.

There are various 'tools' used in estate planning. Whether an estate plan will be very complicated or relatively simple will depend on individual circumstances. However, an estate plan will typically include one or more of the tools we will be discussing in the next few issues.

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MICHIGAN GOES SMOKE-FREE IN 2010

Michigan will go smoke-free in May of 2010 now that Governor Jennifer Granholm has signed into law a workplace smoking ban.

Michigan will become the 38th state to enact such legislation. Smoking will be prohibited in all workplaces including bars, restaurants and hotels, according to legislation passed by the House and Senate on December 10, 2009. However,

the smoking ban exempts three Detroit casinos, cigar bars, home offices and motor vehicles. While smoking will be permitted on the casino gaming floors, it will not be allowed in casino hotels, restaurants or bars.

The state House of Representatives approved the ban 75-30 and the Senate passed the measure 24-13. Governor Granholm signed the bill on

December 18th at a Lansing-area pub.

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THE LEGAL DILEMMA REGARDING H1N1 IN THE WORKPLACE

Hopefully you have not experienced it first hand, but one of the symptoms of the dreaded and much reported H1N1 Flu virus is extreme fatigue. Small business owners are feeling this fatigue, even if they haven't had the flu - our attorneys have been fielding calls from business clients who have questions and concerns about the balance of tension between effectively and efficiently running their business and the decisions they need to make when employees have flu-like symptoms or when the flu virus forces a significant number of employees out of commission.

An employer should look first to the guidelines set forth by the Centers for Disease Control. These guidelines can be found on-line at the CDC's website. The CDC wants employers to encourage employees to stay home when they are sick, and to keep their children home from

school when they are sick. While this seems practical, business owners find this practical advice sometimes difficult to apply in an increasingly competitive market. Not only does a business owner have to worry about the competitive market aspect, but they also must be cognizant of not violating Federal and State laws when making decisions regarding employees and the flu virus. Such laws as the Family Medical Leave Act, Health Insurance Portability and Accountability Act and the Fair Labor Standards Act are a few of the laws that could come into play when employers make decisions regarding the flu virus. While employers may make decisions that they believe to be in the best interest of the company and the employee when the flu virus strikes, the employer could be unknowingly violating the law.

Employers should review their company Employee Handbook. The Employee Handbook should cover many of the issues that are of concern to the employer with regard to actions and inactions taken during a flu outbreak. Employers should make sure their employees have sufficient information to understand the H1N1 flu virus and to take necessary precautions within the workplace in order to minimize the risk of an outbreak. However, the biggest thing for employers is to not overreact; it's very easy to overreact when the media whips up a frenzy about the H1N1 flu virus.

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"RE-GIFT" WITH CONFIDENCE

It is hard to believe but the holiday season is now behind us. With record numbers of shoppers purchasing gifts online, it is clear that many were not spending countless hours combing the malls for the "perfect gift." Instead, many took the easy way out and gave gift cards.

Gift cards, as we all know, are a great way to show someone you care or you're at least paying attention to where they like to shop or dine. If you're anything like me, you wait until the last minute to pick one up, knowing that although you have several gift cards that you were given last year but never used still sitting in your desk drawer, the

temptation to 're-gift' them is outweighed by the potential embarrassment you would suffer if one you re-gifted was expired. The good news for all us procrastinators is that the Michigan Legislature has enacted a law that protects the re-gift.

In November 2008, the Michigan Consumer Protection Act was amended, prohibiting retailers from imposing inactivity, transaction or other service fees that would decrease the value of a card and also extending the life of a card to 5 years from the date it was purchased. Prior to the change in the law, most cards became worthless within a year

or two. There are a few exceptions to the new rules including cards issued through banks because they are controlled by federal regulations. But, for the most part, if your gift card was purchased anytime after November 1, 2008, you are free to *pay it forward* with confidence, knowing that the beneficiary of your generous re-gift will be able to enjoy the gift as much as your relative or co-worker originally intended you to!

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CPAs BOUND BY LAW TO KEEP CLIENT INFO CONFIDENTIAL

In Michigan, Certified Public Accountants have a duty to keep their clients' financial information confidential. Michigan law states:

Except by written permission of the client... to whom the information pertains [a CPA] shall not disclose or divulge and shall not be required to disclose or divulge information...that the [CPA]...was employed to make....information derived from or as a result of professional service rendered by a [CPA] is confidential and privileged.

CPAs are required to obtain written permission before producing information gained in the course of an engagement, regardless of their client's previous conduct. **This is true even if a CPA is served a court issued subpoena to produce privileged information.** Without the client's written permission, the only course of action is to appear as the subpoena requires, but decline to produce

records or give testimony. On the other hand, a court can compel the *client* to disclose information held by their CPA. While the information is privileged in the hands of a CPA, it is not privileged in the hands of the client.

There are two notable exceptions to the CPA's privilege. First, if the clients are a husband and wife who file joint tax returns or the client is an entity owned 50-50 by two people, both of whom were actively involved and worked with the CPA, then neither individual can invoke the CPA's privilege against the other. The CPA would be required to comply with a subpoena in a lawsuit involving the two clients, such as a divorce action.

The second exception is referred to as the "crime-fraud exception." If otherwise privileged information constitutes evidence of a present, ongoing crime or an act of criminal fraud, a court may hold that the

CPA privilege does not apply. However, a CPA's information regarding past misconduct is still covered by privilege.

Finally, it is important to keep in mind that this is a Michigan statute and may not be applicable in federal court or in federal matters such as a dispute with the IRS.

Every situation presents a unique set of circumstances and it may not be clear when a CPA is allowed to disclose and/or withhold information. Contact our office if you have questions.

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