

Thou Shalt Not Fear.....Take control of your legal and financial affairs.

By: Carolyn L. Dorazio, Esq., MBA, CCM.

Part I

With spring around the corner and the individual tax deadline of April 15th just days away, it is time to fine tune your long-term financial and tax strategies. Everyone should outline their goals and prioritize your objectives with their attorney and accountant or financial advisor. Estate planning is not just about saving taxes or avoiding probate. It involves asset protection techniques, health care objectives, guardianship and trusts.

An attorney is necessary to draft legal documents and to provide the latest update on laws and regulations. Beware of the advisor who states that they are “not engaged in rendering legal, accounting, tax, financial planning, or other advice.” Despite the disclaimer, this is exactly what most people are willing to pay for, objective and expert advice.

Retirement Planning and Pension Issues

The manner in which the individual elects to take distributions from a retirement plan or IRA will affect the beneficiaries. There are now in place new “minimum distribution” rules.

In the wake of the Enron debacle, new legislation in the works provides for such things as quarterly statements for pension plans, diversification of plan assets and limitations on corporate executives trading their stock during “blackout periods”. Many clients seek legal advice only after their employer neglected to provide the complete story pertaining to their distribution election or the proper tax advice associated with their retirement plan choices. Understand that companies are not in the business of providing individual tax and legal advice to their employees.

General Estate Planning

Your legal counsel is the one responsible for drafting revocable living trusts, irrevocable life insurance trusts and family limited partnerships for that business interest. Remember all of us should have a will. Probate is easy and inexpensive in Pennsylvania. It is the unplanned for event such as a divorce or the succession of a business that can cause high estate administration costs.

Part II-Tax and Real Estate Legal Issues

With the proper attorney willing to listen and coordinate your financial and legal issues, getting your business and personal life in order and prioritized according to your goals, is achievable for everyone.

Real Estate Issues

Section 1031 of the Internal Revenue Code allows taxpayers to defer the recognition of gain when the property is used by the taxpayer in a trade or business or held by the taxpayer for investment and then exchanged for like-kind property. In a tax-free exchange, the IRS provisions permit parties to move their basis from the property owned to the property they will acquire, with several adjustments to be taken into account. The applicability of 1031 is unclear in the case of an exchange of a vacation home which has been used both for personal and for rental purposes during the taxable year or prior years where the amount of personal use exceeds the threshold as outlined in Code Section 280A(d).

Legal Aspects of Commercial Real Estate Leases and Purchases

Both owners and potential lessees of real estate should be guided by legal counsel with regards to the various provisions found in most commercial real estate leases including but not limited to, escalation of rents, percentage rent, operating costs and liability provisions. When the commercial landlord borrows money, the lease must be reviewed and approved by the lender or its counsel and a subordination, non-disturbance and attornment agreement executed. An examination of lease provisions by your attorney shall also include a review of the options to purchase and rights of first refusal, limitation on landlord's liability, assignment and subletting and termination issues.

Comparison of Entities for a Business

The choice of the form of an entity through which to conduct business invariably involves both tax and non-tax considerations. An S corporation avoids the disadvantage of double taxation. Its eligibility for special tax treatment include restrictions on ownership and type of stock. A limited liability company if set up properly, avoids double taxation, and is free from the restrictions on ownership placed on a S corporation. A tax attorney can assist in deciphering the tax code for small businesses particularly in the areas of employment-related exclusions and tax-free mergers and acquisitions.