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Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life. If you have any questions about any of the articles herein, please don't hesitate to contact us.

-- CAR INSURANCE WARNING --

Our client, a pleasant mother of three, was involved in a minor automobile crash. Her car struck the rear of a car traveling in front of her. At the scene, it appeared no one was hurt in the crash. Our client carried the minimum insurance required by the state of Florida: Personal Injury Protection (PIP) and property damage liability insurance, which paid the \$4,000 cost for fender repairs to the Mercedes our client collided with.

Five years went by while our client heard nothing further about the incident. However, it turned out that the driver of the other car claimed injury, and received an \$8,000 payment from her own insurance company under her "uninsured motorist" (UM) insurance coverage. More than 5 years after the accident, our client was sued by the Plaintiff's insurance company seeking recovery of its \$8,000.

Normally, under Florida's Statute of Limitations law, a party only has 4 years to bring a personal injury action against the person who is injured as a result of an automobile accident. But in the famous Metropolitan Casualty v Tepper case 2 So 3d 209 (Fla.2009),

the Florida Supreme

Court ruled that the Statute of limitations is *extended* for an insurance carrier who must pay an uninsured motorist claim. The court ruled that the statute does not begin to run until "final resolution" of the uninsured

motorist claim. What this means is that if you are involved in an automobile accident in Florida, the uninsured motorist carrier has up to 9 years to sue you. Our client was shocked that she was being sued 5 years after the accident.

Unfortunately, most of the witnesses had little recollection of the incident, and it was difficult to defend her in the case. In the end, a settlement was reached. But other clients should be warned: Never assume a case is over until the last uninsured motorist claim is paid.



Moral to the story?

Always carry bodily injury liability insurance, and not just the minimum required by Florida law.

CASE OF THE MONTH

Our client's father passed away, leaving behind a \$100,000 estate. Our client's father had a will which named our client as his sole heir. Normally our client would have inherited the entire \$100,000, but because the decedent was married when he died, his wife had the right to Florida's "Elective Share" described in F.S. § 732.207. This statute provides that if a man leaves his wife out of his will, she may claim an "elective share" of 30% of his estate, even if his will left her nothing.

Before the 30% is paid out to the wife, all valid claims of the estate must be paid, and all mortgages, liens, security interests, and assets of the estate must be deducted.

Practice Tip: Always write a will. If you are married, include your spouse in your will to avoid probate litigation.



What is the latest in the Foreclosure Wars in Florida?

The various courts of Florida over the last year have greatly reduced the number of defenses available to homeowners in foreclosure lawsuits.

Most mortgages contain a clause that the bank must write a letter at least 30 days before filing suit giving the homeowner the right to cure the default and informing the homeowner of the exact amount due, among other notice requirements. As of 2016, courts are forgiving minor errors in such correspondence.

Substantial Compliance is now the Law

The appellate courts in Florida have recently concluded that a default letter which is inaccurate but which "substantially complies" with the requirements of the mortgage is sufficient to inform a homeowner of what he must do to cure the default. In Greentree Servicing v. Milam, 177 So. 3d 7, (Fla. 2d DCA 2015) the court ruled that a homeowner must show that the notice failed to *materially comply* with the notice requirements contained in the mortgage. Other cases imply that the homeowner must also show she was prejudiced by this material failure.

For example, if the amount of missed payments total \$7,000, and the bank's default letter demands \$14,000 there is a great likelihood that the court will find the letter to be deficient in that it failed to *materially comply* with the requirements of the mortgage. (Of course the homeowner should show she had the money to pay the \$7,000, but not the \$14,000 to show prejudice!)

Other issues in foreclosure cases include the "statute of limitations" contained in Florida Statute Chapter 95. The 2nd District Court of Appeal, that hears Tampa cases recently ruled that Florida's 5 year statute of limitations does not prevent the bringing of a foreclosure lawsuit for a default that occurred more than 5 years before the lawsuit was filed so long as the letter sent to the homeowner makes a claim that the homeowner missed payments within the 5 year period prior to the date the lawsuit was filed.

The end result has been that homeowners' defenses have been greatly reduced by the Appellate Courts in Florida.

What is the big foreclosure issue facing Florida's courts today?

Currently, there is the famous Bartram case that is pending before the Florida Supreme Court. This case will determine whether or not the statute of limitations applies when a bank loses a foreclosure case and then attempts to re-file a suit more than 5 years after the loan was "accelerated"

Some legal commentators have concluded that the courts of Florida have attempted to abrogate and render meaningless the statute of limitations statutes in the state of Florida. We'll see what the Supreme Court has to say in the coming year.

WEIRD LAWS YOU'VE LIKELY NEVER HEARD OF:



Under F.S. section 316.6135 it is illegal to leave a child younger than 6 years of age in an unattended motor vehicle for any period of time if the vehicle is running. If a child is harmed as a result of being left unattended, the responsible party commits a felony of the third degree.

Recently, many children have died in Florida as a result of being left in the car by their parents. (A good way to remember that your child is in your car is to put your wallet or cell phone near the child's car seat so that you remember to retrieve your child when you leave a car in a hot parking lot.

Dog, Cat and Ferret alert!

Dog, cat and ferret owners must register their animals in Hillsborough County, Florida (Code section 6-22) and all owners are required by law to keep their animals from running at large upon any streets or sidewalks (Code 6-28). Animals are allowed to run free on private property with the property owner's consent.

We get occasional calls from clients asking **how many dogs or cats they can legally own**. In Hillsborough County, you may own as many dogs, cats, and ferrets as you can properly take care of. However, many homeowner associations (HOAs) have restrictions on pet ownership, and subject residents to fines for violations of their bylaws.



What responsibility do parents have for their minor children's violations of the law?

Florida Statute Chapter 322.09 states that a person who wishes to allow their minor child to drive must first sign a statement agreeing to be jointly and severally liable for any liability or damages in connection with the child's driving. The law states that any negligence or willful misconduct of a minor under age 18, when driving a motor vehicle, shall be imputed to the person who signed the application on behalf of the minor. (We always caution clients to think carefully before signing an unlimited liability document to allow a child to drive.)

What other liability statutes are parents facing for their minor children?



Florida Statute 741.24 provides for a civil action against parents for willful destruction or theft of property by a minor. The statute states that any school, municipal corporation of county, or religious organization shall be entitled to recover damages from the parents of a minor

child if the child destroys or steals property. What is the exception? If the child does not live with the parent, the parent is not liable.

FACTS AND FIGURES

- If you turn 65 and don't sign up for Medicare, you will be penalized by the government. Don't forget to sign up!
- An SR-22 is documented proof of insurance that you must show to get your driving privileges reinstated after committing a serious traffic offense. This will also help get your driver's license back after being at fault in a crash and not having insurance. Drive safely, always carry insurance, and the SR-22 will not apply to you.
- Traffic deaths are up 9% so far in 2016, and up 18% over the last two years in the U.S. PLEASE...slow down, and be careful when driving on the mean streets of Tampa Bay.
- Does your Florida small business own more than \$25,000 worth of equipment (cars, trucks, furniture, computers, etc.)? If so, you must pay "Tangible Personal Property" tax and file form DR-405 before April 1st each year.



New rules for operating drones in the United States

Drones are unmanned aircraft that weigh less than 55 pounds. The rules are pretty straight forward:

- Drones must remain within the line of sight of the pilot commanding the drone.
- Drones may not be allowed to operate over any persons, unless the person is under a covered structure or in a vehicle.
- Drones must be only operated during daylight hours
- Drones must yield the right of way to other aircraft.
- Drones may not exceed 100mph, or fly higher than 400 feet above ground. Drones may not operate in airspace around airports without permission from an air traffic controller.
- Drones may not be operated recklessly or carry hazardous materials.
- Lastly, all drone operators must register their drones. If the drone weighs more than a ½ pound, it must be registered with the United States Federal Aviation Administration. The last requirement began in January 2016. Happy flying!



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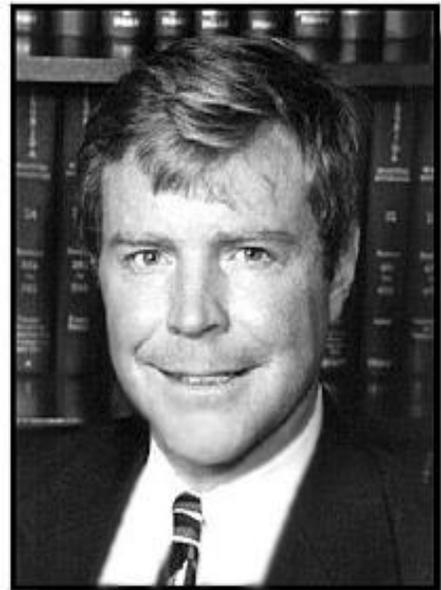
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