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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 in this newsletter please don't hesitate to contact us.

CHILD SUPPORT is now retroactive for up to two years!

In the old days child support had an inherent unfairness: women in paternity cases could seek child support for an *unlimited* time for children born out of wedlock whereas women seeking divorce could only ask for child support from the *time of separation*.

In 2010 F.S. section 61.30 (17) was enacted making the law uniform for both situations: Separated parents can *only* seek child support for *up to two years* in both paternity cases and divorce cases.

Moral? If you have custody of a child and the other parent does not live with you, don't wait more than 24 months to ask a court for child support. Otherwise you waive your rights.

What new types of alimony exist in Florida?

The Florida legislator recently enacted a new type of alimony called "**durational alimony**".

The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration. Such alimony may not exceed the length of the marriage.

Florida now has at least four types of alimony. Durational, bridge the gap, rehabilitative and permanent alimony.

How do you transfer a homestead to yourself when your spouse dies?

Answer: record your spouse's death certificate.

If your homestead is held as "tenants by the entireties"- that is, jointly, the recording of the death certificate is sufficient to transfer the home.

Practice note: If the decedent has assets in his or her name only, a probate of such assets may be required to transfer title to the heirs. See a lawyer to help with probate issues and remember: it is always wise to have a properly written will in case you or your spouse dies owning assets in Florida.

MEDICAID LIENS AND OBAMACARE: Do you have to worry about the state of Florida taking your house when you die?

One of the interesting aspects of Affordable Care Act is that millions of new people have signed up for Medicaid. Medicaid is a program of free health insurance provided to poor people.

Although the medical care itself is free under this government program, there is a *lien against estate assets* for any Medicaid payments made for any individual who received benefits *after* he or she reached 55 years of age.

Example: If your grandmother is in a nursing home which is paid for by Medicaid, upon her death the Medicaid program would have a right to claim against your grandmother's estate for all amounts paid for her nursing home care for the time after she reached age 55.

In some states, a Medicaid lien will result in the loss of a homestead to the government. This is an unintended consequence Affordable Care Act

However, in Florida Medicaid recipients do not have to worry about the Obama care effect on Medicaid.

Why?

Because Florida, unlike almost every state in the union provides that a *homestead is exempt* from all claims except the mortgage company.

Since Medicaid is administered by the state and not the Federal Government, Medicaid liens do not apply to homestead property.

Bottom line:

You do not have to worry about the state of Florida taking your home when you die, even if you were on Medicaid.

WHY DO YOU NEED A HEALTH CARE SURROGATE?

A health care surrogate is also known as a health care substitute and is a type of a power of attorney that allows another person to talk to your physicians about your health care.

Many physicians will not speak to family members where it is not clear that the family member has a legal right to find out medical care information about their loved one.

Moral to the story?

Always have a health care surrogate in place prior to your hospitalization or other major medical procedure.

CASE OF THE MONTH: How our client won her case against a mortgage insurance company.

Our client had a rental property that she lost in a foreclosure. Part of the settlement with the bank was that the bank would waive a "deficiency judgment" against her if she agreed to allow the bank to foreclose on the property and take it back.

Three years later our client was sued by a mortgage insurance company that asked the court to force her to pay the deficiency to the mortgage insurance company.

(The deficiency is determined by measuring the difference between the amount of foreclosure Final Judgment and the amount the property was worth on the day of the foreclosure sale. This amount was in excess of 100,000.00.)

Fortunately we were able to stop the mortgage insurance company from making its claim by showing the judge the written waiver of a deficiency by the bank.

Moral to the story?

Whenever you are involved in a foreclosure situation see an attorney because even though you lose a house you could be sued later for a deficiency judgment by the bank or by a mortgage insurance company.

WHAT ABOUT INCOME TAX ON AMOUNTS WRITTEN OFF IN A FORECLOSURE?

The Mortgage Forgiveness Debt Relief Act expired on December 31, 2013. As a result of the expiration of this law anyone who is involved in a foreclosure case in which a "short sale" takes place or in which there is a write off of a balance due can expect to receive a form 1099 from the bank for the amount written off.

Under the current federal law, (26 USC section 108) income tax is owed on any amounts that are written off on indebtedness.

What can you do in this situation: There are ways to avoid income tax on forgiven indebtedness including bankruptcy and proof of insolvency.

Moral to the story?

If you are negotiating with a bank that is about to write off a balance due on a mortgage you should make sure you consult with a tax specialist before you accept any deal.

THE DEADLINE TO GET HEALTH INSURANCE UNDER THE LAW IS MARCH 31, 2014

The Affordable Care Act requires everyone in the United States obtain health insurance. There is a penalty for not doing so. In the first year penalty is 1% of your income.

Poor people can get health insurance with substantial subsidies based on income.

FORECLOSURE UPDATE

Here are some of the latest trends in foreclosure law in Florida:

The Statute of Limitations misconception:

Many clients have a fundamental misunderstanding of Florida's Statute of Limitations contained in Florida Statute chapter 95 and how it relates to foreclosure law. The law itself is straight forward: A creditor has 5 years to sue on a written contract.

In foreclosure law, most courts agree that the date the Statute of Limitations begins to run on the date the bank files its lawsuit declaring all future payments due immediately because of a default (non-payment) of the mortgage.

Where the confusion comes in is that clients think that if a case goes on for over 5 years the

Statute of Limitations has "run out". This isn't true. The case can continue and the court will allow the case to proceed to trial, even if the case has been in the system over 5 years.

However, if a dismissal of the case occurs, then the Statute of Limitations has run on the case.

The "Free House" myth:

Many people who are in a house where their case has been dismissed and the Statute of Limitations has run think they have a "free house". While it may be true that the bank would find it difficult, if not impossible to sue again once the Statute of Limitations has passed, the mortgage is still a public record that can act as an impediment to selling the house to another person.

This is because title companies are hesitant to issue title policies if there is a recorded mortgage of record against the property.

What about a "Quiet Title" suit?

Sophisticated clients and most lawyers know about the right to file suit to remove obsolete and erroneous claims on a title. And in theory an unenforceable mortgage can be stripped in a quiet title suit.

However, many attorneys are hesitant to help homeowners with such cases given the extreme dynamics of having a judge declare a mortgage to be unenforceable and stricken from a property.

Fisher's Law Office, P.A. normally advises simply letting the bank (or Fannie Mae) continue to pay the taxes and insurance on the property until the homeowner dies or decides to move.

Education:

1977

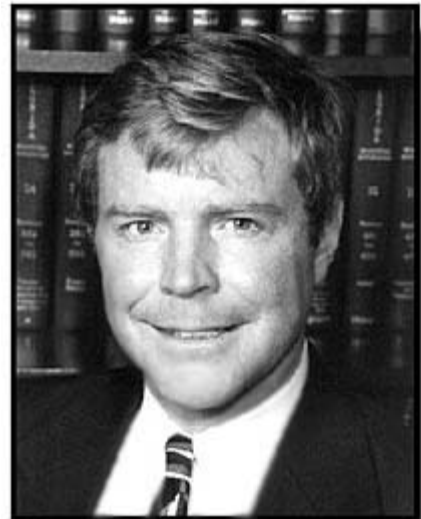
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**Memberships:**

- Florida Bar Association www.flabar.org
- BV rated by Martindale Hubbell
- Gaucho Association www.gauchoassn.com

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