



Willson & Pechacek, P.L.C.

Newsletter



General Edition

July, 2011

FLOOD INSURANCE ALERT — UPDATE ON MISSOURI RIVER FLOODING AND YOUR FLOOD INSURANCE POLICY

In a memo dated June 6, 2011, Federal Emergency Management Administration ("FEMA") provided that the Garrison Dam, North Dakota, water release occurring on June 1, 2011 triggered a flood in progress that extended to the Missouri River Basin below Garrison Dam. According to the memo, FEMA's Standard Flood Insurance Policy ("SFIP") must have been in effect on or before May 1, 2011, to avoid the flood in progress exclusion in the SFIP.

Because SFIP requires a 30-day waiting period, the memo appears to suggest that an individual or business must have had a SFIP in place on or before May 1, 2011 to have insurance coverage. However, the memo also provides that subsequent flood losses caused by flooding could be unrelated to the water releases from Garrison Dam, and thus applicability of the flood in progress should be evaluated individually for all claims.

FEMA representatives would not comment on the FEMA memorandum or provide our law firm with more specific information on the flood in progress date. It has been reported that United States Senators John Thune (South Dakota), Ben Nelson and Mike Johanns (Nebraska), and Charles Grassley (Iowa), met with FEMA representatives on June 22, 2011 and learned that each individual claim

(Continued on page 2)

TIMELY ESTATE PLANNING

Estate planning is a topic many individuals try to ignore. Talking about one's death can be uncomfortable and making decisions regarding how an individual's property and health decisions should be handled are not easy. However, failing to deal with issues surrounding your estate plan does not make the problems go away. Rather, it only delays those decisions until there is a medical emergency or death.

The cornerstone of any estate plan is a will. Most individuals should have a will. Contrary to

popular belief, wills are not just for the wealthy. Without a will, the state has a default plan in place, known as the intestacy statutes, which decide what will happen to your property upon your death. By making a will, you are able to control this decision and choose how to leave your property.

This is particularly important for those who wish to leave specific assets to specific individuals. Additionally, a will allows someone with minor children to nominate guardians who will

(Continued on page 3)

IRS INCREASES MILEAGE RATE

The rate will increase to 55.5 cents a mile for all **business miles** driven from July 1, 2011 through December 31, 2011. This is an increase of 4.5 cents from the 51 cent rate in effect for the first six months of 2011.

Deductible medical or moving expenses also increase by 4.5 cents to 23.5 cents a mile, effective July 1, 2011.

For 2011 tax returns, be sure to keep track of your mileage in two parts—the first six months and the second six months of 2011.

Continued from page 1

FLOOD

would be assessed regardless of the date flood insurance was purchased because individual flooding occurrences may not be directly related to the June 1 flood in progress date.

At this time, our law firm advises our individual and business clients to maintain thorough records of any costs you incur relating to the flood. Even if you do not have flood insurance, in certain situations, casualty losses may be available. You should keep a list of all property destroyed or damaged, determine the original cost of the property, determine the fair market value of the property immediately prior to the loss and immediately after the loss, and document any insurance or other reimbursement you receive.

Landlords Beware: New Eviction Notice Rules in Iowa

Iowa landlords can no longer use certified mail to notify residential tenants of eviction hearings, the Iowa Supreme Court ruled in *War Eagle Village Apartments v. Plummer*. The Court held the law providing that notice can be served by "sending notice by certified mail or restricted certified mail... whether or not the tenant signs a receipt for the notice" violates the due process clause of the Iowa Constitution. Since the *War Eagle* decision, the affected law has been amended.

Under the old law, a landlord could initiate an eviction pro-

ceeding by filing an original notice in Small Claims Court, or a Petition in District Court. The hearing was required to take place within seven days from the day on which the landlord filed the Original Notice or Petition. Additionally, the tenant must be served with notice of the hearing not less than three days prior to the hearing.

There were two options for the method used to obtain service of the Original Notice or Petition upon the tenant: (1) by personal service (i.e., having the sheriff or a process server personally deliver a copy of the Original Notice or Petition to the tenant); or (2) by sending notice by certified or restricted mail, whether or not the tenant signed a receipt for the notice. If a landlord used certified mail, it was possible that service could be valid even if the tenant did not actually receive notice before the eviction hearing. In *War Eagle*, the Court examined this precise scenario.

In *War Eagle*, the landlord served the tenant with a notice on July 17, stating that an eviction proceeding would be initiated unless the tenant paid her delinquent rent within three days. The tenant failed to pay the delinquent rent, so the landlord initiated an eviction action by filing an Original Notice on July 24. The court scheduled the eviction hearing for July 31, which was within the statutorily mandated seven day win-

dow. The landlord also mailed the notice to the tenant by certified mail on July 24. The tenant failed to appear at the hearing, so the court entered a default judgment and ordered the tenant to vacate the premises. The tenant appealed the default judgment claiming that she did not receive the notice informing her of the July 31 hearing until August 2 when she retrieved a certified letter from the post office.

On appeal, the Iowa Supreme Court held that the certified mail option was unconstitutional as a violation of the due process provision of the Iowa Constitution, which provides that "no person shall be deprived of life, liberty, or property without due process of law". The Court recognized that a significant property interest is at stake within the eviction context – the tenant's right to continue living in her home. The Court concluded that the law's certified mail option, when combined with the provision that says service is complete upon mailing (i.e., it is not necessary that the tenant actually receive the letter), allows a process that is not reasonably calculated to provide tenants with adequate notice of their eviction hearings.

The Iowa legislature responded by amending the law governing notice of eviction proceedings.

Under the new law in effect today, notice can be served on the tenant by one of three ways.

(Continued on page 3)

(Continued from page 2)

LANDLORDS BEWARE

First, the tenant, or someone over the age of 18 who resides in the rental property can sign and date an Acknowledgment of receipt of the notice. Second, the sheriff may personally serve notice of eviction proceedings on the tenant or someone over the age of 18 who resides in the rental property. Third, the sheriff may post notice of the eviction proceedings on the rental property after making two unsuccessful attempts at personal service. At the eviction hearing, the landlord needs to make sure the sheriff has submitted an affidavit that two unsuccessful attempts at personal service were made before posting. In addition to posting the notice, the notice must also be mailed to the tenant by regular mail and certified mail.

If you are a landlord or a tenant and you have any questions or concerns about this new law, be sure to contact your attorney.

By: Jamie L. Cox

(Continued from page 1)

ESTATE PLANNING

care for those children in the event of death. Wills also allow you to name a personal representative to handle your estate upon death, including giving the personal representative certain powers that may be exercised in handling the estate, which if not provided in a will, would require court approval.

Trusts are another common estate planning tool. Trusts can be living trusts, which are those created during the grantor's (or creator's) lifetime, or testamentary trusts, which are trusts created in your will, which do not come into existence until your death. Additionally, some trusts are revocable and can be revoked or amended at any point during the grantor's (creator's) lifetime, while others are irrevocable such that once in existence, the terms cannot be changed. Trusts are used for a variety of reasons: to help save, or avoid, Federal Estate Taxes; to provide management of assets for one's beneficiaries if one believes these individuals are not capable of handling the assets; and to protect assets from creditors, to name a few.

Other decision-making documents most people should have in place are financial powers of attorney, healthcare powers of attorney and living wills. The financial power of attorney is a document which allows a selected person(s) to have authority to make financial decisions on your behalf, such as paying

bills or managing your property. Having a valid financial power of attorney in place early can help avoid the need for the appointment of a conservator to handle your financial affairs.

Living wills are documents that allow you to determine the types of life-saving medical treatment you wish to receive if you are unable to communicate those decisions at some date in the future. A complement to the living will is the healthcare power of attorney, which appoints a person to make medical decisions on your behalf when you are unable to do so and the decision is not already made in your living will.

There is not one estate plan that will fit all individuals. Each plan should be tailored to your specific needs. Once in place, these plans should be reviewed from time to time as circumstances change.

If you wish to discuss your estate planning needs, feel free to contact our office for an appointment.

By Christopher Juffer

2011 IOWA LAW CHANGES 2010 TAXES

Recently enacted Iowa law changed the tax provisions in effect for 2010 to match the Federal provisions. Most notable of the several changes is the increase of the Section 179 deduction from \$134,000 to \$500,000 (this new amount is also the limit for 2011). However, the new Iowa law did not provide for a match to the Federal "bonus" depreciation. Iowa taxpayers who took the Section 179 deduction and were subject to Iowa's \$134,000 limit should consider amending their Iowa return. The Iowa legislature is currently considering options for Iowa taxpayers to report their changes in lieu of filing amended returns, but it appears that nothing will pass in the near future. In the meantime, if this new change in the law pertains to you, we suggest you schedule an appointment to review your 2010 Iowa tax return.

A full list of all the changes can be found at www.iowa.gov/tax

By Lee Rankin

Willson & Pechacek, P.L.C.**Newsletter**

Willson & Pechacek, P.L.C.
421 West Broadway, Suite 200
P.O. Box 2029
Council Bluffs, Iowa 51502
(712) 322-6000

Website: www.willsonpechacek.com

Email: info@willsonpechacek.com

Branch Offices:

Omaha, Nebraska (712) 322-6000
Carroll, Iowa (712) 792-0001
Harlan, Iowa (712) 755-1111
Oakland, Iowa (712) 482-6999
Treynor, Iowa (712) 487-3444

Circular 230 Disclosure: Pursuant to recently enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.