



Willson & Pechacek, P.L.C.

Newsletter



General Edition

April 2012

HOMEOWNERS INSURANCE COVERAGE

By Philip Willson

The following are types of coverage offered in a standard policy:

- ♦ replacement cost of damage to the dwelling
- ♦ coverage for other structures on the property
- ♦ personal property and contents of the home
- ♦ loss of use
- ♦ personal property and household contents that are stolen or destroyed by fire
- ♦ medical payments to help cover medical expenses that you might

be held responsible for due to an injury sustained on your property.

Homeowners insurance insures coverage for replacement cost (not market price). A home should be insured for what it would cost to rebuild it. About 64% of the homes in the U.S. are under-insured (by an average shortfall of 19%). You can ask your agent for a customized estimate of your home's replacement cost or you can run a check on your own for about \$8.00 by going to www.accucoverage.com.

The following is a list of covered claims in order of frequency:

- ♦ wind and hail
- ♦ water damage and freezing
- ♦ vandalism and all other property damage
- ♦ theft
- ♦ fire
- ♦ lightning and debris removal
- ♦ bodily injury liability for accidents and property damages on the premises.

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PORTABILITY AND THE FEDERAL ESTATE

TAX EXEMPTION by Lonny L. Kolln II

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance, Reauthorization and Job Creation Act of 2010 (the "Act") that, in addition to extending the Bush administration tax cuts, implemented a number of changes to the federal estate, gift, and generation-skipping transfer taxes. For decedents dying in 2011 and 2012, the Act raised the federal estate tax exemption to \$5 million and instituted a 35% maximum federal estate tax rate. The Act also introduced "portability" to the estate tax exemption. Portability is giving the surviving spouse's estate the ability to use any unused estate tax exemption remaining at the

death of the first spouse. This amount is referred to as the deceased spousal unused exemption amount ("DSUEA").

An example of portability is upon the death of the first spouse, if only \$3 million of such spouse's \$5 million exemption amount was utilized, either because the deceased spouse's entire estate may have only been \$3 million, or the deceased spouse's estate exceeded \$3 million, but the excess over the \$3 million passed outright to the surviving spouse and therefore qualified for the federal estate tax marital deduction, then there remains an unused balance of \$2 million.

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CLARINDA OFFICE

Willson & Pechacek, P.L.C. is pleased to announce the opening of its Clarinda office. We will be office sharing with Millhone & Anderson at 101 East Main St. in Clarinda. Telephone: (712- 542-1070)

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Businesses Brace for New ADA Accommodation Rules

By Jamie L. Cox

The vast majority of publicly accessible properties – including hotels, stores, banks, movie theatres, doctors' offices and barber shops – will be affected by new accessibility rules under the Americans with Disabilities Act ("ADA"). This is good news for persons with disabilities, but a potential headache for the roughly 7 million public and private places of public accommodation that must now take steps to ensure compliance.

The rules, which have an enforcement date of March 15, 2012, require widespread changes. For example, one in six parking spaces must be van accessible, as opposed to one in eight under the previous rule. Small businesses with very limited parking (four or fewer spaces) must have one accessible parking space, but no signage is required.

Businesses now must accommodate mobility devices other than wheelchairs, allowing people with disabilities to use these devices in all areas where customers are allowed to go. All shelves, counters, fire alarms and other reachable objects must be no more than 48 inches high.

The ADA now requires businesses to take steps necessary to communicate effectively with customers with vision, hearing and speech disabilities.

While newly-built structures are required to comply with the new guidelines at the onset, existing facilities – the vast majority of properties affected by the rules – are required to comply to the extent it is "readily achievable". The law defines "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense". But for property owners, figuring out exactly what that means is the tricky part.

It is an evaluation on a case-by-case basis of whether or not a business can perform these modifications. Some modifications are as simple as repainting a parking space or putting up signs. However, others are much more complicated. Making that determination can require an evaluation of everything from the physical state of the building to the business' bottom line.

What "readily achievable" means is look at what you can do—what you can afford to do as well as what is physically possible to do to improve access to the disabled.

The best approach for property owners is to prioritize, using the ADA guidelines to determine which parts of the property to update first, particularly if the amended rules apply to many aspects of their facilities. The priority list should focus on the first thing visitors encounter when arriving at the property. In other words, start at the curb and work your way up to the entrance. Parking spaces, sidewalk ramps and building entrances are of highest importance. The next focus should be on the reason patrons come to the property, because they want to be able to use the service.

Since the "readily achievable" standard is evaluated on a case-by-case basis, we suspect there may be quite a bit of litigation. For existing small businesses, this probably means lawsuits filed by private plaintiffs. For new construction, the Department of Justice may get involved with audits and enforcement actions.

To protect against liability, it is a good idea for businesses to keep a detailed paper trail of all compliance-related activity. If there is no plan, it will be difficult to respond to a complaint by someone who contends the rules were broken. Wise business owners have already made plans to improve their property for ADA compliance and should document their plans.

If you want more information on the new rules, please contact our firm.

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(\$5 million exemption minus \$3 million exemption used equals a balance of \$2 million unused). The law change allowing portability preserves the DSUEA of \$2 million by permitting the surviving spouse to use the unused amount, thereby increasing the surviving spouse's total exemption amount to \$7 million (\$5 million of the surviving spouse's own exemption, plus \$2 million of DSUEA). Thus, no federal estate tax would be owed on the first spouse's estate and no federal estate tax would be owed on the first \$7 million of the second spouse's estate. However, before married couples decide to rely on the Act's new portability provision to achieve federal estate tax savings, it should be noted that the portability provision is not automatic. It is an election.

In order to take advantage of the portability, estates must timely file a Federal Form 706, U.S. Estate Tax Return. Federal Estate Tax returns are due nine months after the date of death unless an extension is requested.

The IRS assumes most estates will want to make the election so the result is that a filed return equals making the election. There is no box to check or extra form to fill out, just simply file the return. If you do not timely file the return, you have not made the election and will not be entitled to the portability provision and your deceased spouse's unused exemption lapses.

There are several issues to consider when deciding to file the Federal Form 706 in an estate even though it is not required. Filing a Federal Estate Tax return solely for the purposes of making the portability election will be an additional and not insignificant expense to the administration of the estate. Also, as of this time the portability option only applies if both married individuals die prior to December 31, 2012.

Given the current political climate there is no guarantee that the Act's portability provisions will remain in effect into 2013 and beyond.

Given these facts many individuals will not want to solely rely upon this new concept of portability and instead use more traditional estate planning techniques such as credit-shelter trusts to maximize the use of the federal estate tax exemption upon the death of the first spouse. Please contact us should you have any questions regarding your estate plan or how the portability rules apply to your current situation.

HOMEOWNERS INSURANCE *(continued from page 1)*

Look at your insurance policy to see who is named as the insured and there may be language including relatives who are residents of the household as additional insureds. Look at your policy to verify the definition of additional insureds. A standard policy will usually have a list of breeds of dogs that are not covered. Floods, earthquakes and landslides are probably excluded. Protection for damages from floods, earthquakes or landslides must be purchased separately. Intentional damage done by a member of the insured family in the family home is not covered. There will be a list in the policy of additional damages that are not covered, including mold damage, surges of electricity, overflows and trampoline injuries.

It is recommended that you make an inventory of your belongings, including documents showing costs. You can store this information free on the website of the Insurance Information Institute at iii.org/software, or keep copies in a fireproof safe, a bank safe deposit box or with someone you trust. Homeowner policies provide no protection for property of the renter on the premises of the homeowner for theft, fire or other catastrophe. Only a renter's insurance policy will provide coverage for the renter's property.

CLARINDA OFFICE *(continued from page 1)*

Willson & Pechacek, P.L.C. will be transitioning and taking over Millhone & Anderson's law practice over a period of time. Kyle Marcum, an associate with Willson & Pechacek and a Clarinda native, will be at the Clarinda office each week on Tuesdays and Fridays.

Willson & Pechacek looks forward to being a positive member of the Clarinda community and working with our clients in the Clarinda area.

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
Clarinda, Iowa (712) 542-1070
Harlan, Iowa (712) 755-1111
Oakland, Iowa (712) 482-6999
Treynor, Iowa (712) 487-3444

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