

INSIDE THE LAW

Summer 2015

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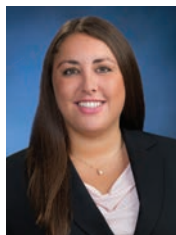
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FIRST-TIME HOME BUYERS FREQUENTLY ASKED QUESTIONS

By Michelle M. Labbe, Esq.

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Q: When should I meet with a lender to see if I qualify for a mortgage?

A: You should meet with a lender before you are ready to get serious about your home search. Ideally, you want to have a mortgage preapproval, which requires an actual application with the lender. A preapproval can market you as a stronger buyer, which could be used to help strengthen your offer in the eyes of a seller. Sellers will often look for a preapproval letter to see that you are a serious buyer capable of taking the next steps and obtaining the necessary financing.

Q: Who are some of the professionals I will need to help me through the process?

A: You will need a real estate agent that you feel comfortable with, a knowledgeable loan officer or mortgage broker to work with your individual financial situation, an inspector that you trust to conduct a thorough home inspection, and an attorney.

Q: What is included in an Offer to Purchase?

A: Your real estate agent or your attorney will help you fill out the Offer to Purchase. The Offer will include the purchase price and the amounts of any deposits. The Offer will also include important dates and deadlines such as a deadline for inspections, a date by which a Purchase and Sale Agreement must be negotiated and signed, a deadline for obtaining a mortgage commitment for financing, and the closing date. The Offer will list items to be included in the purchase, including any fixtures, appliances or furnishings. The Offer should also list any specific contingencies you may want included, for example any obvious repair items or requiring that the property appraise at a certain amount.

Q: How long will the process take once my offer is accepted?

A: Generally, the process will take between four to eight weeks from the time that your offer is accepted until the date of closing. However, many factors can affect this timeline including the seller's personal timeline, possible inspection and negotiation issues, title defects that take time to resolve, and financing delays.

Q: What is the role of the attorney in a Massachusetts real estate transaction?

A: Massachusetts law requires that an attorney presides over a residential real estate closing. A buyer's attorney usually steps in after an Offer has been accepted. The attorney works with the seller's attorney to draft and negotiate a Purchase and Sale Agreement and any Addendums, including a Repair Addendum, in the buyer's best interest. The lender will also have an attorney. Oftentimes, the buyer's attorney can and will also serve as the lender's attorney. The attorney reviews title to the home to determine that there are no title defects, and to resolve title defects if there are any, in order to assure that you will be receiving good title to the home. If the home is a condominium, the attorney will also review the condominium documents and budget. Your attorney works with the seller's attorney to make sure that you receive everything that will be needed at closing, including the deed to the property. The lender's attorney prepares the settlement statement, conducts the closing, ensures that title is clear and all documents are properly recorded at the Registry of Deeds, and disburses any funds and proceeds.

Q: What additional costs might I see at closing?

A: There will be costs associated with the loan from your lender including the costs of the appraisal, credit report, lender's fees, underwriting fees and prepaid interest. You will be asked to prepay a full year of hazard insurance and provide evidence of such insurance with an insurance binder prior to closing. The lender usually requires a couple of months of escrow for taxes and/or insurance to be escrowed. If your closing falls within sixty days of the next real estate tax bill being due, you will be asked to prepay that amount in full. There will be recording fees for documents that must be recorded at the Registry of Deeds, such as the Mortgage. There will be attorney's fees and third party fees such as the cost for a title examination, Municipal Lien Certificate from the town in which the home is located, and a survey showing the location of structures on the property and whether the property is located in a flood zone requiring flood insurance. You will see a onetime premium fee for the Lender's Title Insurance Policy and for your own Owner's Title Insurance Policy if you so choose.

You should meet with a lender before you are ready to get serious about your home search.



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Q: Do I need an Owner's Title Insurance Policy?

A: The lender will require that you obtain a Lender's Title Insurance Policy by paying a onetime premium fee at closing. However, this policy will only protect the lender's interests in the property and therefore it is still recommended that you obtain an Owner's Title Insurance Policy to protect your interests. A Title Insurance Policy protects you from issues that may later arise due to unknown or latent title defects. Although a title examination will be completed prior to closing to discover any title defects, title examinations will only discover matters of public record. A Title Insurance Policy protects you from a loss or encumbrance that may arise, for example, from a forged deed, invalid power of attorney, mistakes in legal documents, fraud, misdocketing of instruments, or inheritance or probate issues. Title insurance may enable you to sell the property in certain instances where a title defect is later discovered that would otherwise hinder the sale. Title insurance would pay for defending a lawsuit attacking your title, and the insurer will either clear up the title issues or pay the loss.

Q: What will happen on the day of closing?

A: The closing attorney will prepare a HUD-1 Settlement Statement listing the purchase price, deposits, closing costs, any adjustments, and the money that you owe. The seller will provide a Deed granting the property to you and may be required to sign any documents required by your lender or the closing attorney. You will sign the lender's closing package, including a Promissory Note, Mortgage, and a significant number of other documents and disclosures. The Deed, Mortgage, and any other required documents, such as a Municipal Lien Certificate, will be recorded at the Registry of Deeds. Once the documents are recorded, you will receive the keys to the home!

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ESTATE PLANNING FOR THE ADULT CHILD WHO ACTS OUT, HAS ADDICTIONS, OR IS OTHERWISE CHALLENGED

By Theresa M. Varnet, MSW, JD

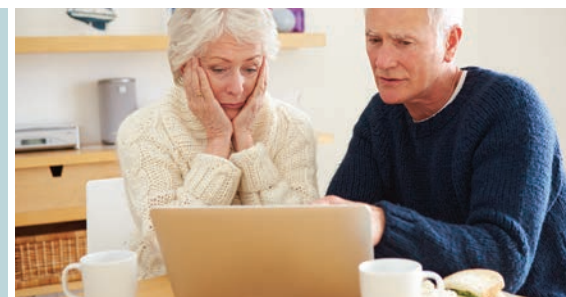
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Parenting an adult child who has behaviors that include acting out or oppositional behaviors, drug or alcohol addiction, lying, or an infrequent work record, or who exhibits psychological or emotional dysfunction, can be particularly challenging and exhausting. Often these adult children did not manifest these behaviors until their teenage or early adult years. Initially, it is easy to downplay or dismiss these behaviors as immaturity and hope that the adult child will "outgrow" them. When a child reaches his mid-20s and is still showing signs of emotional immaturity and dysfunction, it is understandable why a family would want to "divorce" the child and ban him or her from the home, or give consideration to disinheritance until he or she "straightens out." Trying to find a fix or cure for an adult child that acts-out takes a huge financial and emotional toll on the other members of the family. Parents throw up their hands, often in disgust, after numerous attempts at rehabilitation, intervention, or drug/alcohol treatments.

My experience as a former school social worker and attorney for the past 40-plus years is that many of these dysfunctional adult children suffer from a yet-to-be-determined mental health, emotional, or learning disorder. They often are challenged with undiagnosed autism or Asperger's syndrome, attention deficit disorder, learning disability, or other physiological/

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Estate planning for the family with an acting-out or addicted child requires careful thought and an experienced planner.



psychological mental health issues. It is not unusual for a child to overcompensate in school and avoid detection of a disability. Although as a child or teenager they may have escaped being identified as having a disability, the undiagnosed issue may follow them into adulthood and have a lifelong effect on their ability to function as a responsible adult.

In some cases a child may have an inherited predisposition to addiction or mental health issues. One never knows why one child with a similar predisposition is able to function in the way our society expects him or her to act, while another child is overwhelmed by societal norms and rebels against them. Parents will often question their parenting skills, wondering whether they were too lenient or too disciplined, what they could have done differently, or whether the child's school or peer group was to blame. And while environmental factors within the home or outside factors in the community can affect a child's emotional maturity, when a client comes to me with this family dynamic, it is counterproductive to try to determine what caused the dysfunction. As an estate planner, it is my job to assist the client with developing a plan that is in the best interests of the whole family. It is important that the parents get the advice they need to create an estate plan that provides for the dysfunctional adult child so that he or she is protected from exploitation and does not squander his/her inheritance on drugs, impulsive or imprudent purchases, gambling, or other wasteful acts.

A number of options are available for the family challenged with a child in this situation:

- Create a discretionary spendthrift support trust for the child's future care and support (a spendthrift trust protects the trust assets from most creditors).
- Disinherit the problem child but provide a trust for his/her children.
- Create an "incentive" trust that conditions distributions on certain behavioral or employment goals.
- Create a discretionary, spendthrift, supplemental needs trust that protects the trust assets from creditors; enables the child to qualify for needs-based government benefits such as SSI, Medicaid, subsidized housing, and food stamps; and provides flexibility in making distributions from the trust for the benefit of the problem child or his or her children.

Estate planning for the family with an acting-out or addicted child requires careful thought and an experienced planner to help each client choose the option that is right for his or her family. When planning under these conditions, there is no such thing as one-size-fits-all estate planning. Your will or trust must reflect the specific needs of your entire family, including the child with dysfunctional behaviors. **FT**



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The following article recently appeared in the *Worcester Business Journal's Annual Business Buy/Sell Directory 2015*.

IMPORTANT CONSIDERATIONS REGARDING BUSINESS SALES/PURCHASES

By Dennis F. Gorman, Esq., CPA, MST

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While the mechanics of handling a business sale or acquisition are fairly routine, the underlying issues that must be identified and addressed are typically far more critical.

BUYER'S CONSIDERATIONS

- *Choice of business entity* is often the first decision a Buyer must make. There are fundamental differences between limited liability companies, corporations, and other entities, including significant tax differences as well as varying levels of manager and shareholder/member liability exposure. Finally, shares of corporate stock are generally not protected from an owner's outside creditors the same way an LLC membership interest is.
- The *basic structure of the transaction*, i.e., stock purchase vs. asset purchase, is fundamentally important. Most often, Buyers prefer to acquire assets, goodwill, and non-compete agreements from the Sellers, whereas Sellers often wish to sell their stock rather than their underlying assets. Tax implications to both parties are usually the main concern; however, liability issues, third-party contractual issues, and licensing and regulatory issues also affect this decision.
- *Allocation of risk* (known and unknown) and liability must be addressed in all business transfers. Indemnification provisions are not simply boilerplate and have important consequences if not dealt with properly.
- *Labor and employment* issues should not be overlooked, for example, union contracts, qualified retirement plans, prevailing wage issues, etc.
- *Co-ownership and business succession* issues should be addressed up front. Mergers involve a myriad of highly technical considerations. Finally, if an acquisition is the tail end of the Buyer's *Section 1031 like-kind exchange transaction*, several technical issues must be addressed.

SELLER'S CONSIDERATIONS

Many of the previous issues are also important to Sellers, including some of the following:

- *Tax issues* must be fully understood by the Seller — how the transaction will be taxed and whether there are better ways to structure the transaction to minimize entity-level and/or individual-level income taxes.
- *Assumption and/or allocation of liability* between the parties may be critical to a Seller who anticipates that the Buyer will assume known and/or unknown liabilities and risks. Again, the indemnification provisions are critical in this area.
- *Co-ownership and/or succession* must often be addressed in connection with the sale of a business.
- The sale of a portion or all of an owner's stock to an *Employment Stock Ownership Plan (ESOP)* may afford the Seller significant tax advantages as well as ownership succession opportunities.
- *Section 1031 like-kind exchange* advantages may be available to defer and/or eliminate significant taxes to the Seller. Often these opportunities must be planned for in advance of the actual sale.
- *Labor and employment issues* may be critical to the Seller as well, at least in terms of understanding what exposure may continue for the Seller after the transaction is complete.

As you can see, the areas outlined above can be a minefield of potential problems if not properly considered and addressed in connection with the purchase or sale of a business. If you are considering the purchase or sale of a business and you require expert representation, please contact us to schedule an appointment.

The basic structure of the transaction, i.e., stock purchase vs. asset purchase, is fundamentally important.





FIRM NEWS

CONGRATULATIONS TO WILLIAM JALKUT ON HIS RECENT APPOINTMENT



Earlier this year attorney **William D. Jalkut** was appointed by Governor Charlie Baker to the statewide Judicial Nominating Commission, below is a portion of the article that ran in the *Telegram* on April 10:

BOSTON — Gov. Charlie Baker has appointed 21 members to the statewide Judicial Nominating Commission, including several prominent lawyers from Central Massachusetts.

The commission “is a nonpartisan, non-political commission composed of distinguished volunteers, appointed from a cross-section of the commonwealth’s diverse population that will screen applications for judges and clerk-magistrate positions,” according to a news release from the governor’s office.

“The JNC seeks judicial applicants who possess the temperament, ability and integrity to freely, impartially and independently interpret the laws and administer justice. It also hopes to recruit applicants who represent not only the geographically diverse parts of the commonwealth, but also the racial, ethnic, and gender diversity of our citizens,” the news release said.

For upcoming events, please visit the Seminars & Events page on our website: www.flechertilton.com

CONGRATULATIONS TO QUABAUG CORPORATION

Fletcher Tilton PC would like to congratulate Quabaug Corporation on the sale of its soling assets to Vibram® USA, Inc.

Since 1965, Quabaug and Vibram have partnered together on the design and manufacturing of high performance, functional rubber compounds such as Megagrip, Idrogrip and XS Grip. Together, they have served the outdoor, athletic, military and industrial categories.

“The Quabaug Corporation has a heritage of quality manufacturing dating back to 1916,” comments Kevin Donahue, Chairman of Quabaug. “Our associates are honored to join the Vibram USA team and form the world’s preeminent soling company. Vibram’s investment in Quabaug is an investment in all of us.”

Fletcher Tilton has had the privilege of representing Quabaug Corporation for over 50 years and we were honored to have the opportunity to represent them in this transaction.



KUDOS TO ATTORNEY ADAM PONTE ON A RECENT CASE



Attorney **Adam Ponte** recently won an appeal for his client before the Princeton Zoning Board of Appeals. The following is a portion of the article that ran in *The Landmark* on April 23, 2015:

Thunderous applause, screams of joy, hugs and handshakes, followed the Zoning Board of Appeals decision not to support the building inspector’s cease and desist order against Mr. Ponte’s client for violating the town bylaw by selling wood pellets from his property in Princeton, MA.

It was standing room only in the town hall annex for the April 16 zoning board public hearing on the matter. Close to 100 people were packed into the room, every seat was filled and people stood along the walls and stood five rows deep at the rear of the room. The overwhelming majority were there in support of Attorney Ponte’s client.

You can find the entire article in the Firm News section on our website.

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