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Legal Bytes

Welcome Our Newest Associate Attorney

Alyssa Snyder is the newest attorney at the Law Firm of Sweet & Maier, S.C. Alyssa has come to us after having gained a wide variety of experience in employment and business law as an associate in the Des Moines, Iowa law firm of Newkirk, Zwagerman, P.L.C.

Alyssa was born and raised in Lake Geneva, Wisconsin. She received her undergraduate degree from the University of Wisconsin – Madison in 2007. Following her undergraduate studies, Alyssa attended Drake University Law School, graduating with honors in 2011. She was admitted to practice law in the State of Iowa in 2011.

"We sought Alyssa out," said John Maier, "because of her experience in employment and business law and because she has ties to Walworth County.

Attorney Snyder will concentrate her practice primarily in the areas of employment law, business law, civil litigation, estate planning, and real estate.

Ms. Snyder has advised clients on employment law, discrimination, and civil rights. In doing so, Alyssa represented employees who had been denied equal employment, equal opportunity, and who were harassed at work based on their race, gender, age, and other personal characteristics.



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A Great Lawyer Story

But is it Fact? Or "Urban Legend"?

A Charlotte, North Carolina lawyer purchased a box of very rare and expensive cigars, then insured them against fire, among other things. Within a month, having smoked his entire stockpile of these great cigars and without yet having made even his first premium payment on the policy, the lawyer filed a claim against the insurance company.

In his claim, he stated the cigars were lost in a series of small fires. The insurance company refused to pay, citing the obvious reason that the man had consumed the cigars in the normal fashion.

The lawyer sued...and WON?

In delivering the ruling, the judge agreed with the insurance company that the claim should not be possible, but ruled nevertheless that the lawyer "held a policy from the company in which it had warranted that the cigars were

insurable and also guaranteed that it would insure them against fire, without defining what is considered to be "unacceptable fire", and was obligated to pay the claim.

Rather than endure a lengthy and costly appeal process, the insurance company accepted the ruling and paid \$15,000 to the lawyer for his loss of the rare cigars lost in the "fires."

NOW FOR THE REST OF THE STORY!

After the lawyer cashed the check, the insurance company had him arrested on 24 counts of ARSON! With his own insurance claim and testimony from the previous case being used against him, the lawyer was convicted of intentionally burning his insured property and was sentenced to 24 months in jail and a \$24,000 fine.

Could this be true? See page 3 for your answer.

US Supreme Court Rules That Inherited IRAs are not Protected from Creditors

The Supreme Court has now weighed in on the question of whether an IRA inherited from a deceased person is protected from creditors, and their ruling is important to take into consideration in your estate planning.

The background is that in 2005 the federal bankruptcy law was revised. One of the revisions eliminated a patchwork of state rules and made clear that IRAs, and similar retirement accounts are protected assets in a bankruptcy. Creditors cannot be awarded these assets in a bankruptcy.

But the Supreme Court has now ruled that the law is not as comprehensive as many thought. In a case just decided, a married couple declared bankruptcy after their pizza shop failed. Their main asset was \$300,000 in an IRA the wife had inherited from her deceased mother. They owed \$700,000 to various creditors. The bankruptcy trustee sought to take the IRA, and distribute the funds to the creditors. The wife objected, claiming her IRA was a protected retirement account. But the Supreme Court ruled that an inherited IRA is not protected in bankruptcy, because it differs from a personal IRA in ways that mean it isn't a retirement asset (and therefore not exempt from claims of creditors). When an IRA is inherited, distributions must begin and can't be delayed until retirement. The beneficiary isn't allowed to make additional con-



tributions, and can take distributions at any time, including a distribution of the entire account. Because of these differences, the court ruled an inherited IRA is not protected as a retirement account.

This ruling is important to keep in mind when naming beneficiaries of your IRAs. For example, a child or grandchild who has financial problems might not be an appropriate beneficiary of an IRA. You could leave that person off the beneficiary list for your IRA, and let them inherit other assets. Or you could name a specially designed trust as beneficiary of the IRA instead, and thereby shield the funds from creditor claims.

Keep in mind that states have additional rules that may offer IRAs greater bankruptcy protection than the federal law, so if the creditor protection of an IRA concerns you, you will have to check both Federal and State law exemptions. The main consideration for this article is that when you are doing your estate planning, the recent Supreme Court ruling must be taken into account. You can no longer assume that the protection you have from creditors will carry over to the beneficiaries who inherit the IRA from you.

For further information contact John L. Maier at 262-723-5480. John would be happy to answer your questions and assist you.

Why Is It Called A Will?

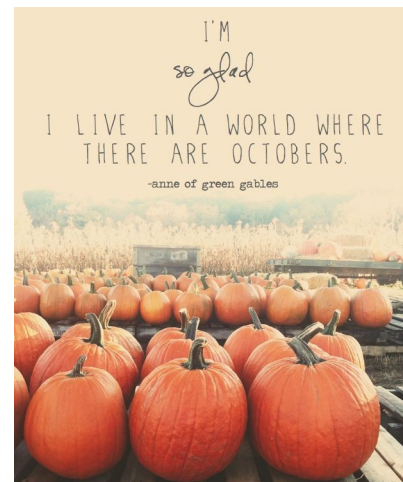
Remember the old adage "you can't take it with you"? A real truth, it seems. And if you die without a will, your assets will go somewhere, but your state will make that decision. A will is called a will for a reason. Your will is a way of expressing your desires and exercising control over what you want done with assets you have worked so hard to accumulate. Without a will, you are not only giving up your assets you are giving up "control" over those assets. For more information: call 262-723-5480 or check our website at: www.wisclaw.com

You Signed What??

We are often asked if we have time to serve additional clients. We appreciate your business, and we would also appreciate your referrals. We are a growing firm, so new clients are welcome. Please mention our name to your friends, relatives and business associates for estate planning and probate, business, condo law, municipal, corporate, land use, zoning, riparian rights, real estate, employment law and civil litigation.

Check us out at: www.wisclaw.com

Thank you for your trust in Sweet & Maier, SC





Congratulations!

Sweet & Maier, S.C. is pleased to announce John L. Maier, Jr. has again been chosen by his peers for inclusion in the 21st Edition of *The Best Lawyers In America* in the practice areas of Land Use and Zoning Law and Litigation. We are also pleased to announce that John will be included in the 2014 *Wisconsin Super Lawyers* Business Edition. Both *Best Lawyers* and *Super Lawyers* are a research—driven, peer—influenced rating service of outstanding lawyers who have attained a high degree of peer recognition and professional achievement. Attorneys are selected from more than 70 practice areas and all firm sizes, assuring a credible and relevant annual list. John is very honored to receive this recognition.

The Not So Clever Lawyer Convicted of Arson

(From page 1)

By John L. Maier

My take on the story is that it is almost certainly fictional. Why?

For several reasons:

1. Insurance policies are written so that you can not benefit by recovering money to pay claims brought on by your own intentional actions. So, our lawyer would have been barred from making a claim for “burning up” his own property.
2. Destroying your own property by fire isn’t arson, unless you are trying to defraud someone. So, if our clever lawyer told the company he smoked his own cigars, and the court had ruled that the company was required to pay, no fraud would have been committed, and no conviction for arson could have taken place!
3. But it still makes for a great story!



Disorder in the Courts

True Courtroom Testimony!

Attorney: This myasthenia gravis, does it affect your memory at all?

Witness: Yes

Attorney: And in what ways does it affect your memory?

Witness: I forget.

Attorney: You forget? Can you give us an example of something you forgot?

Attorney: The youngest son, the twenty-year-old, how old is he?

Witness: He’s twenty, much like your IQ.

Attorney: Can you describe the individual?

Witness: He was about 20, medium height, and had a beard.

Attorney: Was this a male or a female?

Witness: Unless the Circus was in town I’m going with male.

Attorney: Sir, what is your IQ?

Witness: Well, I can see pretty well, I think.

Attorney: How long have you been a French Canadian?

Deed Restrictions That Could Ruin Your Dream Home

You can picture it in your mind, and have translated it to your building and site plan. A grand Victorian, with a wraparound porch, white picket fence, and your sailboat parked out front that you take to the lake on summer weekends. You have cleared the land and planted what now is a well-manicured lawn that seems to go on for miles. In your back yard, you have a pool for the kids, but not to worry about exposing yourself to neighbors because the pool is hidden from view by a tall privacy fence. You love to garden, so you've had a huge, custom, shed built, where you keep your gardening equipment. You even researched the bright color schemes that were popular for Victorians at the turn of the (last) century. After all, this is your dream home – the one you've been waiting for your entire life.

But, not so fast. You might have to stop dreaming if you stop at your lawyer's office, and you find out that the land the home is to be built upon is subject to all sorts of deed restrictions. Your lawyer tells you that a deed restriction (also known as a restrictive covenant), is a provision in a deed that limits what can be built on a property, or how that property can be used. Deed restrictions "run with the land", meaning they apply to all future owners of the property, not just the person who owns it when the restriction is adopted. So, you are stuck with what is of record and applicable to your property.

But, you ask, do they really need to be paid attention to -- or can they be ignored? After all, don't zoning ordinances govern what you can do with your property? Your lawyer will tell you that, unfortunately, while zoning ordinances can be enforced by the local municipal authorities, private deed restrictions can indeed be enforced by the local homeowner's association, or by your neighbors, and the scope of these private deed restrictions might shock you. Changing them can involve costly legal expenses and huge amounts of time and effort, if it's even possible. So before you break ground on that dream home, you had better read them to find out what they say. Here are a few examples of what you might find:

Type and Number of Vehicles

Deed restrictions frequently limit exactly how many cars you can have parked in the driveway and in front of the house. This is usually used as a measure to keep the streets and the fronts of houses from looking cluttered. So, if you have a large family with several

children old enough to drive, you could run into problems if, for example, you have five cars, and the restrictions only allow three.

Other vehicle restrictions can also have a negative impact on your hobbies. Provisions banning vehicles like motor homes, boats and motorcycles are frequently included in deed restrictions and covenants.

Building Fences

Deed restrictions specifying exactly what types of fences are acceptable and are some of the strictest –and most widespread – of restrictions, especially in subdivisions and developed neighborhoods. Often, the type of the fence will be limited: chain link fences or very tall privacy fences may be prohibited. Fence height is also frequently controlled.

Removing Trees

You may be able to picture the perfect house on that new lot. Just knock down a tree here, another tree there, and it will look perfect. But be careful. Lots in many neighborhoods have deed restrictions designed to prevent trees from being removed. There could be a ban on any tree removal, or a certain percentage of trees on the lot might be protected. Different neighborhoods have different reasons for these restrictions.

Approving Plans

Builders, developers or homeowner's associations will often write into deed restrictions that they have the authority to approve plans for any renovations, additions or new construction on a property. Depending on how much a neighborhood tries to keep houses uniform, and how much your dream house varies from that style, you could have trouble getting those plans approved by the local architectural committee. Developers or HOAs can be very strict about those standards, down to the building materials used and the architectural style. So, that deed-restricted neighborhood full of modern houses might not be the place for your Victorian design. If you go ahead building the house without approval of the plans, you could end up paying damages, and an injunction could even require you to make changes to the house to conform with the standards you chose to ignore.



Deed Restrictions That Could Ruin Your Dream Home (cont.)

Sheds, Pools and Other Structures

Structures like sheds, extra garages, detached workshops, and even pools and pool houses are often forbidden or severely controlled through deed restrictions. If they are not forbidden outright, they could be restricted in the same ways that houses are restricted: in terms of design, size and location on the property. Even if there are no specific restrictions on how structures can be designed, deeds often contain restrictions on what percentage of the property can be built. Like the restrictions on the house, covenants for adjacent structures can be extremely finicky. There have even been cases in which HOAs have insisted that children's tree houses be disassembled. So when you're looking for land to build your house, make sure you consider any other buildings or structures that are necessary to living the dream.

Pet Restrictions

Restrictions on livestock like chickens, goats and pigs are some of the most common deed restrictions. Even outside of strict, HOA-monitored neighborhoods, these restrictions are widespread. Limiting the types of animals allowed on a property is actually one of the oldest uses of restrictive covenants. Deed restrictions often forbid certain breeds of pets, restrict the number of pets that can live on a property or prohibit residents from keeping their animals outside. So, pay close attention to deed restrictions. Pet owners could really have their hearts broken.



The “moral of the story” here is that restrictive covenants that are privately enforced are common. The idea behind them is to establish a set of rules for all the properties in a community beyond what is already dictated by local zoning ordinances. So, if you live in an area subject to restrictions, you need to be familiar with them, because your neighbors or your local homeowner's association can enforce them against you.

Rather than just going ahead and building despite the restriction, in a “pinch” you could try to get the restriction invalidated by court order. Under some circumstances, a judge will declare the restriction unenforceable because it is too vague, or it has been waived, is impractical, can't be enforced, or is just plain “illegal” [such as some restrictions found in old deeds which prohibit sales to people of a certain ethnicity].

If you have a question, consult your attorney, who can give you some good, practical, advice on what your rights are.



Samhain

Halloween or Samhain (pronounced Sah-ween) had its beginnings in an ancient, pre-Christian Celtic festival of the dead that marked the beginning of winter. The Celtic peoples were once found all over Europe. They divided the year into four major holidays. According to their calendar, the year/winter began on a day corresponding to November 1st on our calendar. Samhain was the biggest and most significant holiday of the Celtic year. The Celts believed that at the time of Samhain, more so than any other time of the year, the ghosts of the dead were able to mingle with the living, because at Samhain the souls of those who had died during the year traveled into the otherworld. People gathered to sacrifice animals, fruits, and vegetables. They also lit bonfires in honor of the dead, to aid them on their journey, and to keep them away from the living. On that day all manner of beings were abroad: ghosts, fairies, and demons--all part of the dark and dread.

Samhain became the Halloween we are familiar with when Christian missionaries attempted to change the religious practices of the Celtic people. Early in the first millennium A.D. the Celts practiced an elaborate religion through their priestly caste, the Druids, who were priests, poets, scientists and scholars all at once. As religious leaders, ritual specialists, and bearers of learning, the Druids were not unlike the very missionaries and monks who were to Christianize their people and brand them evil devil worshippers.

As a result of their efforts to wipe out "pagan" holidays, such as Samhain, the Christians succeeded in effecting major transformations in it. In 601 A.D. Pope Gregory the First issued a famous edict to his missionaries; rather than try to obliterate native peoples' customs and beliefs, the pope instructed his missionaries to use them: if a group of people worshipped a tree, he advised them to consecrate it to Christ and allow its continued worship.

Church missionaries identified their holy days with those observed by the Celts, and Druids were considered evil worshippers of demonic gods and spirits. The Christian feast of All Saints was assigned to November 1st. This feast day was meant to substitute for Samhain, to draw the devotion of the Celtic peoples, and, to replace it forever. That did not happen, but the traditional Celtic deities diminished in status, becoming fairies or leprechauns of more recent traditions. The old beliefs associated with Samhain never died out entirely. The powerful symbolism of the traveling dead was too strong. The church tried again to supplant it with a Christian feast day in the 9th century. This time it established November 2nd as All Souls Day -a day when the living prayed for the souls of the dead. But, once again, the practice of retaining traditional customs while attempting to redefine them had a sustaining effect: the

traditional beliefs and customs lived on, in new guises. All Saints Day, otherwise known as All Hallows (hallowed means sanctified or holy), continued the ancient Celtic traditions. On the evening prior to the day was the time of the most intense activity, both human and supernatural. People continued to celebrate All Hallows Eve as a time of the wandering dead, but the supernatural beings were now thought to be evil.

All Hallows Eve became Hallow Evening, which became Hallowe'en--an ancient Celtic, pre-Christian New Year's Day in contemporary dress. All present Halloween traditions can be traced to the ancient Celtic day of the dead. Halloween is a holiday of many mysterious customs, but each one has a history. The wearing of costumes, for instance, and roaming from door to door demanding treats can be traced to the Celtic period and the first few centuries of the Christian era, when it was thought that the souls of the dead were out and around, along with fairies, witches, and demons. Offerings of food and drink, which is called "mumming", developed into trick-or-treating. To this day, witches, ghosts, and skeleton figures of the dead are among the favorite disguises. Halloween also retains some features that harkens back to the original harvest holiday of Samhain, such as the customs of bobbing for apples and carving vegetables, as well as the fruits, nuts, and spices cider is associated with today. Today Halloween is becoming once again an adult holiday. Men and women in every disguise imaginable are taking to the streets of American cities and parading past grinningly carved, candlelit jack o'lanterns

Top Costumes for Halloween 2014

According to extremehalloween.com here are the top costumes for 2014:

For girls: Monster High characters, Vampiria, Dorothy, Tinker Bell, Wonder Woman and Huntress



For Boys: Zombies, Iron Man, Minion, Darth Vader, Power Ranger, Transformer Bumble Bee.

Babies: Pea in a Pod, Monsters, Inc., Minnie Mouse, and Huggable Hippo

