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## Keeping Your Lake Rights Intact

By Christina Green



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# Legal Bytes

Many of us can remember sitting on a dock on a crystal-clear summer night, the water as flat as glass, the inky black surface mirroring the sky, the great white Milky Way, and every so often, a falling star tracing a path across the heavens. Many of us dream of owning a lake home or a cabin on the Wisconsin River; a place to escape life's pressures and just relax. When you own waterfront, you get more than just property. You get a view, you get certain risks (like flooding and erosion) and you also get what are known as "riparian rights".

Wisconsin law recognizes that owners of lands bordering lakes and rivers – "Riparian Owners" – hold rights in the water next to their property. These riparian rights include the private use of the shoreline, the right to place a private pier and reasonable access to the water. However, the Wisconsin State Supreme Court has ruled that when conflicts occur between the private rights of riparian owners, and rights of the public to the same waters, the public's rights are primary and the riparian owner's secondary. For example, your right to access the river next to your cabin does not mean you can extend a chain across the river and charge tolls to those also using the river. Wisconsin's Public Trust Doctrine requires the State to intervene to protect public rights in the commercial or recreational use of navigable waters. The DNR, as the State agency charged with this responsibility, can do so through permitting requirements for water projects, through court action to stop nuisances in navigable waters, and through statutes authorizing local zoning ordinances that limit development along navigable waterways.

Even if the rights of the public are not involved, one's riparian rights can be encroached upon by a private person or entity, such as by a neighbor's pier, which may have been placed so that you can't maneuver your own boat into its dock. These neighborly disputes can create great conflict, and have grave and permanent implications to the economic and personal interests of neighboring property owners. Disputes between riparian owners are relatively common, and usually occur when someone's use of their riparian rights impinge on others' riparian rights.

Whether the dispute is with the DNR, or with your neighbor, riparian rights cases can be expensive to litigate and slow to be resolved, so the skill and experience of your attorney is important. Your attorney should be asked to offer solutions which can be implemented quickly, at a minimal cost, do not adversely affect property values, do not run afoul of public rights, and which do not destroy the aesthetic enjoyment of anyone's piece of paradise.

If you have questions about your riparian rights and would like to discuss the problem call or submit an internet inquiry at [www.wisclaw.com](http://www.wisclaw.com).

*Autumn is a second spring  
When every leaf is a flower.*



## ESTATE PLANNING FOR COLLEGE KIDS? WHO'D A THUNK IT!

By John Maier



If you have a child that has gone away, or is soon going away, to school, the last thing you (or they) are probably thinking about is estate planning for these young adults. After all, it is an exciting time. For many, it will be the first time to really get away from home, and experience relative independence. But what many parents, and their students, don't fully grasp until the car is returning from dropping off "the kid" at their dorm or apartment is that these young people are now truly outside their parents' legal control.

But how does that translate into a need for estate planning? Isn't that just for us "old fogies"?

The answer is truly that these college kids need to attend to their estate planning just as much as their parents - but the needs of the student are different in nature from the needs of their parents. Older folks most commonly think of Wills and Trusts in terms of their own mortality, to see to it that their property is passed in accordance with their wishes upon their passing. However, for young "indestructibles" a Will would still be part of an estate plan, but the prospect of death is less likely. Hence the more significant need for estate planning for young adults relates to other types of documents that protect against other threats -- such as a power of attorney for health care, a power of attorney for financial matters.

For example -- what if you received a call notifying you that your child has pneumonia, and has been taken to the local hospital for treatment (I did). You call the hospital, but they won't necessarily tell you anything because your child is legally an adult and has a right of privacy under the law. They also may not take direction from you on a course of treatment. That's why you and your child should discuss the need for a Durable Power of Attorney for Health Care, which would allow you, as your child's agent, to receive medical information and make decisions if your child can't do so for him or herself.

Similarly, a Durable Power of Attorney for Finances and Property gives you, as your child's agent, the authority to handle financial or legal matters if the need arises. This would include paying bills, signing tax returns, school forms, and similar documents, if your child wants or needs your assistance with these tasks.



A person can become temporarily or permanently mentally incapacitated through sickness or accident. It just doesn't happen to old folks with Alzheimer's disease. A sudden injury from a car accident can render an 18 year old unconscious, or render him or her permanently disabled. Who can speak for that person? Who has the legal authority to make end of life decisions which are binding on doctors or hospitals? The obvious answer is that if you don't speak to that yourself, via a Durable Power of Attorney, a Guardian would have to be appointed by a Court following a costly legal proceeding, which is not an easy thing to get through under emotional circumstances.

So, as you are checking off your list of things to buy for the dorm, add your own "to do" item to that list -- working on a basic estate plan with them, that will protect your son or daughter as they leave home this Fall. They might not have substantial assets, but as you can see, planning for important medical, financial and other personal care decisions during their lifetime is something that should be covered before the need arises [when it will be too late]. Even if they have already left for school now, plan to get it done during the "Christmas break" when they will be home between semesters. Hopefully, the need for a Will or POA will not come for a long time -- but if the unexpected did happen, you have no idea how much the documents will help all of you.

## Beware Of Wills, Trusts And Other Estate Planning Documents So Old They Have Become Toxic

By John Maier

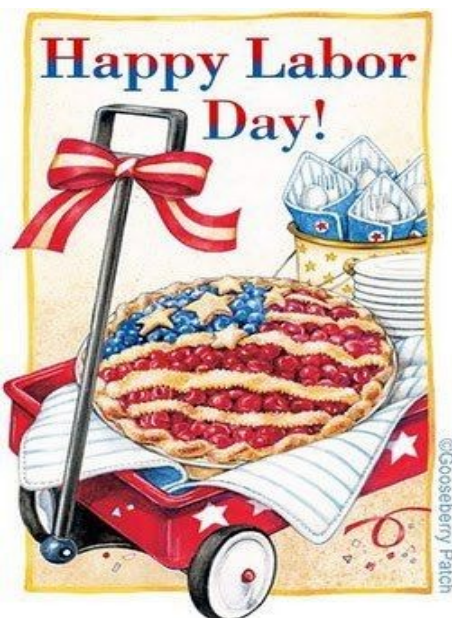
Standard wills, marital property agreements, and trust instruments that were written under tax laws in effect prior to the Obama Presidency often included formulas which, when the documents were originally drafted, acted to protect your spouse and family from confiscatory Federal Estate Taxes. But with the advent of the recent significant changes to the Internal Revenue Code, the same formulas now can actually act to disinherit the surviving spouse or have other unintended, and disastrous, consequences.

In the typical estate plan prepared pre-2010, a portion of the estate of the first spouse to die does not pass outright to the surviving spouse, but is instead transferred to a trust, called a bypass trust, a credit shelter trust, an A/B trust or other name. The trust is used to support the surviving spouse during his or her lifetime, but the surviving spouse does not control the funds. When the surviving spouse dies, the remainder held in the trust passes to the children of the marriage. The rest of the estate then was distributed primarily to the surviving spouse.

The trick with this type formula is that the will or trust agreement usually says the amount that goes to the trust is equal to the lifetime federal exemption amount (set by the Internal Revenue Code). That made sense when the exemption was \$600,000 or less. But at today's exemption amount (in excess of \$11,000,000), in most families the trust would get everything, and the surviving spouse would receive nothing outright, in which case the surviving spouse becomes dependent on distributions from the trust.

It may sound (and is) complicated, and when confronted by the reality of what the documents provide, family members frequently protest, even to the point where they refuse to abide by the terms of what the estate planning documents require them to do. The "formula" has turned against them, and the situation often gets a bit "tense" to say the least as the discussion proceeds to the question: "What do we do now?"

That's one of the many reasons why most wills and trust agreements need to be examined and rewritten or at least amended to the extent necessary. Not only might the plan be obsolete and out of date, but the interplay of the new law and old tax laws could have unintended consequences that are very negative for your loved ones.



### What is Labor Day?

Always held on the first Monday in September, Labor Day was the idea of Peter J. Maguire (although recent research has shown that it might have been his brother Matthew's idea), a labor union leader who in 1882 proposed a celebration honoring the American worker.

The date chosen was simply "convenient," according to Maguire, because it was midway between the Fourth of July and Thanksgiving.

Although the day's focus on organized labor has diminished over the years, the holiday has become a way to mark the end of the summer season—and the start of the school year.



## PLANNING FOR THE SALE OF YOUR BUSINESS: LEGAL CONSIDERATIONS

By Rob VanScoyoc



As an attorney who has assisted clients with the sale of their businesses or the purchase of new businesses, I have observed time and again that the process of selling a business can go more smoothly and can result in more money for the seller if the seller plans for the sale or otherwise considers certain legal issues in advance. I have set forth several areas of pre-sale legal planning in this article that a seller should investigate well in advance of any sale to help maximize the value received.

**Advisors:** Prior to selling your business, visit with your accountant and attorney to discuss the specifics of your business and a general timeline and the type of deal structure that you can expect.

**Type of Entity:** The type of entity, whether it is a corporation, sole proprietorship, limited liability Company, or partnership and the applicable tax-election, whether it be subchapter C, subchapter S or other pass-through classification, will have a great impact on the overall deal structure. You should meet with your advisors to understand the implications of these issues.

**Deal Process:** In the typical sale transaction, the following documents and steps are often utilized: (1) The potential buyer often enters into a Nondisclosure Agreement pursuant to which the buyer agrees to keep the information confidential (2) The buyer and seller often enter into a non-binding Letter of Intent pursuant to which the basic deal terms are agreed to and which restricts the seller from talking to other potential buyers during the continuing sale process; (3) The parties negotiate a purchase and sale agreement, such as an Asset Purchase Agreement, or a Stock Purchase Agreement, which is the critical document containing the terms of the actual transaction; and (4) Ancillary documents such as a Non-Compete Agreement, Promissory Note, Security Agreement, Escrow Agreement and Consulting Agreement may be utilized as well. Review the process with your attorney.

**Deal Structure:** Typically, a business is sold either through the sale of the stock in the company or through the sale of its assets. Often, the buyer prefers an asset purchase transaction to attempt to isolate and leave the unwanted liabilities with the seller and to receive a step-up in the basis of the assets purchased.

**Review Documents:** Meet with your attorney and review sample documents that would govern a potential transaction. For example, in an asset purchase agreement, the seller will be expected to make certain representations to the buyer relating to the business such as litigation, taxes, compliance with law, financial statements and ownership of assets.

**Taxes:** Discuss with your attorney and accountant the tax consequences of the transaction so that you can maximize what you receive.

**Company Cleanup:** To attract and keep potential buyers interested, review your corporate records and minute book to make sure that they are complete and accurate. Are there personal assets that have become intertwined with the business? You don't necessarily want those to go with by accident!

**Contracts:** Inventory all of your material relationships and contracts. As part of the due diligence process that the buyer will require, the buyer will expect lists and copies of these documents.

**Estate Planning:** Is your estate planning in order and what are the implications of the transaction on your estate planning?

**Business Valuation:** What are your expectations regarding how much you should receive in a sale? Discuss with your accountant and attorney the value of seeking a rough or more specific business valuation.

**Approval Process:** What approvals are necessary to sell your business? In the case of a typical corporation, the applicable state statutes along with the Articles of Incorporation and Bylaws set forth the framework for approval. Have you entered into agreements or loans or mortgages that are implicated by a sale, restrict a sale or require a third party to approve the sale? Speak with your attorney regarding the approval process necessary to complete the sale transaction.

**Conclusion:** As with most things, a little planning can help a seller maximize the value received and otherwise make easier what is often a difficult experience. If selling your business is a possibility or a goal, then planning ahead is a wise investment.

*For help concerning the sale or purchase of a business, contact Sweet & Maier, SC, in Elkhorn, WI. We are licensed in Wisconsin and Illinois, or for more information, please visit [www.wisclaw.com](http://www.wisclaw.com)*



## John L. Maier, Jr. Selected as a Best Lawyer in America

Elkhorn law firm Sweet & Maier S.C. is pleased to announce that John L. Maier, Jr. has been selected for inclusion in the 2019 edition of *The Best Lawyers in America*.

*Best Lawyers* is the oldest, and most respected, peer-review publication in the legal profession. It compiles lists of outstanding attorneys by conducting exhaustive and rigorous peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. Being named one of the *Best Lawyers* is considered a singular honor and has been described by *The American Lawyer* as "the most respected referral list of attorneys in practice."

John has practiced law in Walworth County for over 40 years, and, (although he is beginning to cut back) continues to provide service to clients of Sweet & Maier, S.C., on North Church Street in Elkhorn. The practice concentrates in real estate, land use and zoning, environmental, business, estate planning and probate law.

Upon hearing the news, John commented: "I look forward every day to helping my clients sort through and solve their problems. Helping them achieve their dreams is reward enough. Knowing you are respected by your peers is a bonus, though, and much appreciated."

When faced with a legal challenge, you can be confident that the attorneys at Sweet & Maier, S.C. have the experience to provide legal services throughout Wisconsin and Northern Illinois. The attorneys at Sweet & Maier, S.C. have spent many years successfully resolving legal matters for individuals and businesses, and the firm prides itself on large law firm expertise with small town personal service. We are located at 114 N. Church Street, P.O. Box 318, Elkhorn, WI 53121. The Firm maintains a Website at [www.wisclaw.com](http://www.wisclaw.com).



## Yes, We Are Accepting New Clients

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, real estate, probate, business and community association law.

Respectfully ,  
Christina Green  
President

