

Personal Notes

Paul T. Tusch has been appointed to the Unbundled Legal Services Study Committee of the Connecticut Bar Association. The committee will evaluate whether some clients would be better served by having available to them attorneys who provide a limited scope of representation rather than a representation that encompasses all issues related to a particular matter.

David J. Coviello was recently elected to serve on the Board of Assessment Appeals of the Town of Ridgefield, Connecticut.

Michael J. Cacace will be lecturing for the Lorman Education Services in Trumbull, Connecticut on March 19, 2004. The program is entitled "Zoning and Land Use in Connecticut." In addition, Michael is President of the Stamford Center for the Arts which has just celebrated the Grand Opening of the new Palace Theater on October 25, 2003.

Judy Ellenthal and Sherwood Spelke met with a group of real estate brokers in the William Pitt Real Estate office in Darien to discuss the avoidance of problems in the real estate transaction from both the seller's and buyer's points of view. Judy and Katherine T. Blakeslee met with real estate brokers from Coldwell

Banker in Greenwich to discuss the same topic.

Jane Freeman will be the chairperson and a speaker at a Connecticut Bar Association continuing legal education program in December. The program is entitled "The Basics of Land Use Law: Planning and Zoning" and Jane will be speaking on the topic of Land Use Appeals to Superior Court.

On September 9, 2003 **Cacace Tusch & Santagata** participated in the United Way Day of Caring. Several individuals from the firm spent the day planting and gardening at the Mental Health Association in Stamford. The firm also recently participated as an exhibitor at the annual meeting of the Connecticut Association of Conservation and Inland Wetlands Commissions.

The Firm was one of the supporters of the New Canaan Historical Society's latest fundraiser on October 19, 2003. On behalf of the firm, **Katherine T. Blakeslee** attended the fundraiser, a concert given by the Ridgefield Symphony. Katherine is a New Canaan resident and an active member of the Historical Society.

Richard S. Fisher spoke at Greenwich Hospital on

September 22, 2003 on the topic "Planning for Long Term Care: The Nursing Home Crunch." Dick gave an in-depth presentation on Medicare, Medicaid, and Long-Term Care Insurance, with a view to protecting family assets. Dick was also the initial program leader for a new "Lunch and Learn" program sponsored by the Professional Advisory Committee of the Jewish Community Endowment Foundation. He led a discussion on "The Basics of Medicaid and New Developments."

Ronald E. Kowalski, II is Program Chair and will be speaking at a Connecticut Bar Association seminar on real estate tax appeals to be held in February, 2004. Other speakers include The Honorable George Levine, Presiding Judge of the Tax Session of the Superior Court, James J. Moran, MAI, CCM, Managing Director of Cushman & Wakefield of Connecticut, Inc. and Robert Hartzell, who is presently the New Canaan Assessor, who previously served as the Hartford Assessor for seventeen years.

A team of walkers from the firm participated in the Memory Walk, sponsored by the Alzheimer's Association, Connecticut Chapter, held on October 5, 2003 in Norwalk. The firm was also a contributor.

CACACE, TUSCH & SANTAGATA is a full service general practice law firm dedicated to providing its clients with quality legal work. The firm occupies the second and third floors of the office building located at 777 Summer Street, Stamford, Connecticut, and has an office at 124 West Putnam Avenue, Greenwich, Connecticut. Our attorneys' areas of practice include:

ZONING AND LAND USE PLANNING ♦ REAL ESTATE TRANSACTIONS ♦ CIVIL LITIGATION
ADMINISTRATIVE HEARINGS AND APPEALS ♦ VALUATION OF PROPERTY ♦ FAMILY LAW ♦ LANDLORD/TENANT LAW
ESTATE PLANNING AND PROBATE ♦ ELDER LAW ♦ BUSINESS AND CORPORATE LAW ♦ CRIMINAL LAW

Case by Case is intended to provide a periodic discussion of developments and issues of interest to our clients and friends. If readers have questions concerning the matters discussed herein, they should direct them to Edward F. Nemchek, the attorney responsible for the newsletter's content at: **CACACE, TUSCH & SANTAGATA** by telephone at (203) 327-2000 or by e-mail at **ENEMCHEK@LAWCTS.COM**.

N.B. The information contained in this newsletter is informational and not intended to be legal advice and may not be reproduced in any form without consent. Requests for consent should be directed to Paul T. Tusch, Esq., Cacace, Tusch & Santagata, P.O. Box 15859, 777 Summer Street, Stamford, Connecticut 06901-0859.



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Case by Case

A PERIODIC NEWSLETTER

Winter 2003

A Line in the Sand Adverse Possession and Boundary Disputes

by Joseph T. Pihelker

You and your spouse have purchased the home of your dreams. You are on top of the world as you move in to what you hope will be the last place you will ever hang your hat. You step onto your porch to survey your scenic backyard, replete with blooming flowers, green grass, and, at the point where your yard meets your neighbor's, a rusted-out El Camino up on cinder blocks.

With your lovely view blighted by your neighbor's vehicle, you run to get your closing package which contained a map of the property. According to the map, your neighbor's car is parked on your side of the property line. As you step back onto your porch to ponder the situation further, you see your neighbor mowing the lawn. He operates his lawn mower near the property line as shown on your map, but he is clearly on your land. Since you are a reasonable person, you approach your neighbor to introduce yourself and inform him that he is on your land. Unfortunately, he is not as reasonable and he tells you what you can do with your little map because he is mowing his lawn, just as he has since he bought the property fourteen years ago. He then orders you to get off his land.

As you sulk in your house, staring at the rusty El Camino, your neighbor's words ring in your ears. You believe his reference to "fourteen years" may be significant, but you are not really sure what it means. Well, what it means is that you must act quickly. If your neighbor continues to occupy and possess your land for one more year, he could become the owner of that portion of your land under the legal doctrine of adverse possession.

Adverse possession occurs when the true owner is ousted of his possession and kept out without interruption for fifteen years by



an open, visible, and exclusive possession by a claimant, without the owner's permission, and under a claim of right. In the situation of the sulking new homeowner, if the neighbor has treated the disputed parcel as his own by maintaining and using it as he wished and excluding all others from the parcel, he may be one year away from legally owning it.

With only one year until you lose the land, you must take quick action. One way to do this is to oust your neighbor yourself and keep him off your land. Connecticut law frowns on such self-help, and besides, he is much bigger than you. Instead, Connecticut General Statutes §52-575 provides the procedure for interrupting the running of adverse possession. Under this statute you must provide written notice to the adverse possessor that you dispute his right to possess the land. This written notice must then be recorded with your town clerk. Once the notice is recorded, the adverse possession is deemed to be interrupted, and the possessor's continued use of the parcel will not lead to his acquiring an ownership right to the parcel if, within one year of recording the notice, you bring an action to quiet title to the land.

While there is little caselaw interpreting this statute's requirements for filing suit, the safest route for protecting your parcel is to follow the letter of the law by serving and recording the notice and filing the action within one year. If you are on good terms with your neighbor, and you are not bothered by his use of your property, ask the neighbor to sign an acknowledgment recognizing that he is on your land with your

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consent. This acknowledgment should contain language expressly defeating the requisite elements of an adverse possession claim. It may also be advisable to record the

WHO WILL GET YOUR IRA MONEY AND YOUR INSURANCE PROCEEDS?

The usual pattern in completing beneficiary designation forms for IRAs, other pension plans, and insurance policies is to name your spouse (if you have one) and then "my children."

But assume these facts: you are 80 years old, your wife has predeceased you, and you have two children, Susan and Michael, each with two children. Michael is involved in an auto accident and passes away. Five years later, you die. Who gets your IRA and insurance proceeds?

Susan gets it all! To avoid this situation, your beneficiary

acknowledgment with the town clerk's office.

A simple agreement now may prevent a boundary dispute in the future, not to mention a blight upon your scenic view. ☞

designations should be drawn in the same way as your Will. Our experience is that almost all beneficiary forms are prepared in the same manner as the example.

Our Estate Department can review your forms and give you advice on their revisions, if needed.

For further information please contact Richard S. Fisher at rfisher@lawcts.com

Avoiding Capital Gains Tax IRC Section 1031 Exchanges

by Edward F. Nemchek

In a typical property sale, an owner must pay taxes on any gain. Section 1031 of the Internal Revenue Code ("IRC 1031") sets forth in detail a procedure for turning a sale and purchase transaction into an exchange. These types of transactions are often referred to as "1031 Exchanges," "Like-Kind Exchanges," or "Tax-Deferred Exchanges." IRC 1031 is based on the theory that a taxpayer should not be currently taxed when he is merely continuing his investment in "like-kind" property. Thus, gain realized is taxed only to the extent that the taxpayer receives "boot" - or not-like-kind property - as part of the exchange. Properly executed 1031 Exchanges allow owners of certain types of real and personal property to sell their property and buy other like-kind property while deferring the payment of taxes on some or all of the capital gain in the property to be exchanged.

What Property Qualifies for a 1031 Exchange?

Anyone who owns property that qualifies as investment property or business use property can exchange into other like-kind property, with few exceptions. The like kind provision for real property is quite broad and includes land, rental, and business property, any of which can be exchanged for the other. For example, unimproved land may be exchanged for an office building.

The like kind provision for personal property is more restrictive.

RESULT: If the plan works, Investor changes a sale to an exchange and postpones the gain.

In order for the exchange to qualify as a non-taxable event, the owner, or Exchangor, must strictly adhere to the rules. One of the key elements of a 1031 Exchange is that the Exchangor cannot have either actual or constructive receipt of the sale proceeds. The rule requires that the Exchangor use a "safe harbor" (such as an escrow agreement) to hold the sale proceeds while the Exchange is in progress. This is accomplished by the use of a "Qualified Intermediary" prior to the close of the sale of the Exchangor's property ("the Relinquished Property.") Once the sale of such property occurs, the net proceeds from the sale are paid directly to the designated Qualified Intermediary.

Time Restrictions

Under the regulations, two time limitation periods have been imposed on 1031 Exchanges. One time limitation requires Replacement Property to be identified with the Qualified Intermediary within 45 days of the closing of the Relinquished Property. The penalty is severe for violating the permitted maximum number of Replacement Properties you identify in the same exchange, no matter how many Relinquished Properties you transfer. For example, if at the end of the identification period, you have identified more properties as Replacement Properties than permitted, you will be treated as if no Replacement Property had been identified.

When identifying Replacement Property, only one of the following rules must be satisfied:

- 1) Three-Property Rule :** Up to three properties of any value may be identified. The Exchangor can purchase one, two, or all three properties without regard to fair market value of the properties.
- 2) Two Hundred Percent Rule :** Any number of properties can be identified provided the aggregate fair market value of all properties identified does not exceed 200% of the sale price of the Relinquished Property.
- 3) Ninety Five Percent Rule:** If both of the above rules are exceeded in the number and value of the properties

REAL ESTATE TAX ALERT

The following Fairfield County municipalities will be conducting a general revaluation on the October 1, 2003 Grand List:

Danbury	Monroe	Norwalk	Stamford	Westport
Darien	New Canaan	Sherman	Weston	

If you own property in these municipalities, you should be receiving notice regarding your new assessment soon. The new assessment will be in effect for the next four years. By statute, appeals of assessment must be filed with the local Board of Assessment Appeals by February 20, 2004. Also, there may be opportunities to address the reasonableness of the new assessment informally with the revaluation company or assessor prior to that date. If you have any questions regarding the revaluation process, contact Attorney Ronald E. Kowalski II, at rkowalski@lawcts.com.

identified, it will be considered valid if, at the end of the exchange, the Exchangor has succeeded in acquiring properties worth an aggregate of at least 95% of the fair market value of all of the properties originally identified.

For example: you may identify \$1,000,000 in Replacement Property and identify only \$950,000 in Replacement Property.

The value of the Replacement Property to be acquired must be equal to, or greater than, the adjusted sales price of the Relinquished Property. All proceeds from the Relinquished Property must be invested in the Replacement Property.

The other time limitation requires that the transaction must be completed by the earlier of either 180 days from the date of the closing of the Relinquished Property or the due date (including extensions) of the Exchangor's tax return for the taxable year in which the transfer of the Relinquished Property occurs. To successfully qualify for Section 1031 treatment, the exchange must satisfy both the 45-day and 180-day tests.

Get Advice

Before you enter into any exchange of your real estate, you must compute the basis of the Replacement Property you are acquiring and determine if it fits in with your financial and tax plans. You need to consider whether the capital gains tax savings justifies the additional fees and expenses involved in a 1031 Exchange. It is extremely important that you consult with a professional tax advisor when deciding whether to take advantage of a 1031 Exchange. Although the benefits of a 1031 Exchange can be significant, improper planning or execution of the exchange can be fatal to the exchange and result in loss of tax-free treatment under Section 1031.

This article is meant to give the reader a brief introduction to Section 1031 Exchanges. There are many intricacies involved in 1031 Exchanges and several unique types of real estate transactions in which property owners can receive 1031 treatment, such as Reverse Exchanges and Exchanges involving installment sales notes. ☞