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“War” Stories

By Gene Di Monte



We believe that you may enjoy hearing about some of the interesting cases we have handled as a Team effort.

This is a good example of Murphy’s law that “no good deed goes unpunished”:

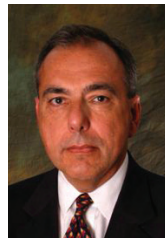
Our client, a successful businessman, who had previously sold his business which I will refer to as his “first company”, decided to purchase the business of the first company from the new owner and to go back into business. He formed a new corporation which I will call his “second company.” This company was formed at great personal expense to our client. The shares of stock of the new company were divided 60% to him and 40% to a valued and trusted former employee who was employed for a number of years in the first company. The employee was made president of the new company, put in charge of operations and handled all the financial affairs for the second company.

After a few years of what appeared to be a successful operation of the second company, our client became concerned when he learned his president had “preferred” status at some casinos in Las Vegas. After a rudimentary check of the company’s financial records, and a confrontation with the president, he admitted he had issued company checks to his credit card company to cover gambling losses and recorded the checks as being payable to company vendors. Since the payments to non-existent suppliers generated deductions that were improper, the company had to file amended tax returns resulting in hundreds of thousands

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Know Your Limits: Use New FDIC Insurance Limits To Your Advantage

By Lee T. Poteracki



The recent failure of Corus Bank reminds us of the risks that accompany large bank deposits. At DiMonte and Lizak, we often are called upon to advise our clients who are acting as trustees in administering trusts, administrators and executors administering estates, and clients who are organizing their estate plans.

For many years, we have instructed our clients as to how to title accounts to take advantage of the former \$100,000 per owner per bank FDIC deposit insurance coverage limits.

As a result of the 2008 financial crisis, the Federal Deposit Insurance Corporation (“FDIC”), an independent agency of the United States government, increased the insurance limit from \$100,000 to \$250,000. The new limit will apply until January 1, 2014, at which time the standard coverage limit will return to \$100,000 for all deposit categories except certain retirement accounts (including IRA’s), which will continue to be insured up to \$250,000 per owner.

It is important in understanding the protection afforded by the FDIC to analyze how the insurance limits are calculated. The \$250,000 limit is applied to each “owner” in each insured bank. Thus, while an owner is insured up to \$250,000 for all accounts in a single bank in the owner’s name alone, the owner will be insured an additional \$250,000 for each account that the owner owns with other co-owners or in different ownership categories as explained below:

SINGLE ACCOUNTS: A single account is a deposit owned by one person. The following account types are included in this ownership category:

1. Accounts held in one person’s name alone;
2. Accounts established for one person by an agent, nominee, guardian, custodian or conservator;
3. Accounts held in the name of a business that is a sole proprietorship for that person;
4. Accounts established for a decedent’s estate; and
5. Any account that fails to qualify for coverage under another ownership category, including those under which another person has the right to withdraw deposits from the account pursuant to a Power of Attorney or as a convenience account.

All single accounts owned by the same person at the same insured bank are added together and the total is insured up to \$250,000. An example

of how a single account group of deposits would be insured follows:

Account Title	Deposit Type	Account Balance
Mary Smith	Checking	\$5,000.00
Mary Smith	NOW	\$15,000.00
Mary Smith	Savings	\$20,000.00
Mary Smith	CD	\$200,000.00
Mary Smith Consulting (sole proprietorship)	Checking	\$25,000.00
Total Deposits		\$270,000.00
Amount Insured		\$250,000.00
Amount Uninsured		\$20,000.00

JOINT ACCOUNTS: Continuing the above example, if Mary Smith had joint accounts with any other depositors at the same insured bank, including but not limited to her spouse or children, accounts with each joint owner would be insured up to \$250,000 for each joint owner.

REVOCABLE TRUST ACCOUNTS: Mary Smith as trustee for her spouse, for children or for other beneficiaries could establish a revocable trust account, which would be insured up to \$250,000 for each beneficiary of the trust account. In April of 2004, the FDIC removed limitations as to whether contingencies in the trust would jeopardize this insurance coverage.

Therefore, accounts owned by such a revocable trust have multiple insurance limits. Of course, Mary Smith’s spouse could establish his own revocable trust and enjoy the same multiple FDIC insurance limitations.

RETIREMENT ACCOUNTS: Although self-directed retirement accounts and IRAs enjoy individual FDIC insurance limitations, they do not enjoy the same multiplying effect of the beneficiaries of revocable trusts. Therefore, each person’s self-directed KEOGH or IRA account will only be insured to a total of \$250,000, regardless of the number of beneficiaries.

IRREVOCABLE TRUST ACCOUNTS: Mary Smith could also establish an irrevocable trust, which would enjoy its own insurance limitation.

BUSINESS ENTITY ACCOUNTS: Finally, if Mary Smith incorporates her business or uses a limited liability company, partnership or other entity, each entity account would enjoy its own insurance limitation.

At DiMonte and Lizak, when we represent individual clients, trustees, executors and administrators, we take care to manage risk by giving proper advice with respect to titling our clients’ bank account deposits to take advantage of FDIC insurance limitations. ■



Warning to Landlords: You May Be a Debt Collector Under the FDCPA

By Ryan R. VanOsdol



Beware! Illinois landlords attempting to collect past-due rent have been defined as debt collectors by a recent appellate court decision. This ruling may require landlords and their management companies to comply with the strict provisions of the Fair Debt Collection Practices Act ("FDCPA") when attempting

to collect past-due rent from their tenants. The result may require drastic changes in how landlords inform tenants they are attempting to collect past-due rent.

THIRD DISTRICT OPINION TRANSFORMS LANDLORDS INTO DEBT COLLECTORS

In *American Management Consultant, LLC, et al. v. Carter*, a tenant entered into a residential lease with a landlord, whereby she agreed to pay \$675 per month for rent with a deduction of \$112 if she paid the rent on time each month. The lease also provided that the tenant was responsible for a fee if her rent was late.

In early June 2007, the tenant received a statement from the landlord that included a discount for more than the agreed discount amount. The tenant paid the amount that was stated on the bill. On June 12th, the landlord posted a notice on the tenant's door, stating that \$201.52 was due by June 13th. The landlord contacted the tenant's property manager, who informed her that the June 2007 statement contained an error and that she still owed for June rent, plus the late charges that accrued because she did not paid the full amount on time. The tenant asserted it was the landlord's fault for providing an erroneous statement

and offered to pay the amount due minus the late fees. The landlord refused this offer, and continued posting notices regarding the past due rent on the tenant's door.

Eventually, the landlord filed a lawsuit to evict the tenant. The trial court ruled in the landlord's favor and the tenant appealed that ruling. In her appeal, the tenant argued that the landlord violated the FDCPA by failing to properly serve notice of its demands for payment.

While addressing this argument, the appellate court reviewed the purpose of the FDCPA (to eliminate abusive debt collection practices by debt collectors) and determined that efforts to collect rent may involve "abusive collection practices." Accordingly, the court held that landlords and their management companies are required to comply with the FDCPA in their efforts to collect past-due rent from tenants.

PRACTICAL EFFECT ON LANDLORDS

The above case involved a property management company. Therefore, it is currently unclear whether the ruling is applicable to all residential landlords. However, if this ruling is adopted by other courts in residential landlord/tenant relationships, it could have a drastic effect on how landlords conduct their business when collecting past-due rent from tenants. In the past, landlords commonly posted notices similar or left notes in tenants mailboxes, informing them that they owed rent for previous months. This type of informal notice is not sufficient under the FDCPA.

The FDCPA provides that debt collectors must strictly comply with numerous requirements. One of the FDCPA's provisions discusses notice requirements. This section requires that within 5 days after informing the debtor (the tenant) of your attempt to collect the debt (past

due rent), a debt collector (the landlord or his management company) must send a written notice, which states the following:

- (1) the amount of the debt;
- (2) the name of the creditor to whom the debt is owed;
- (3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;
- (4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- (5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

And these notice requirements only represent a small portion of one provision of the FDCPA! Another provision states that if debt collectors fail to comply with any of the FDCPA's requirements, they could be found liable for up to \$1,000. So, to all of the landlords out there who may be worried about violating a provision of the FDCPA, it may be wise to consult your attorneys before attempting to collect past-due rent from your tenants in order to learn not only what you can and can't do under the FDCPA, but what you are required to do. ■

New Law Presents Convenient Bank Account Management Alternative

By Adam J. Poteracki



Beginning next year, a new law, P.A. 96-123, will provide Illinoisans with an alternative to joint accounts. The act allows for the establishment of "convenience accounts." A convenience account allows another individual, the "convenience depositor," to access an account to receive or

deposit funds on behalf of the account holder without having any property right to the funds in the account or any right of survivorship in the account.

Currently, some account holders add a trusted person such as a child or parent as a joint account holder for the sole purpose

of accessing the account. Doing so can lead to unintended consequences. Generally, the owners of joint accounts own the accounts as joint tenants and the added account holder gains a property right in the entire account. This means that creditors of the added account holder could seek to be paid out of the funds in the account, even if all of the deposits into the account were made by the original account holder. Joint accounts do not provide any protection from the creditors of the added account holder.

The possible pitfalls of adding a joint account holder become more apparent at death. A joint account can frustrate the purpose of an estate plan. When the original account holder dies, the entire account would pass to the joint account holder, whether the original account holder intended it or not. This sort of

unintended gifting often leads to bitterness and fighting that results in the deterioration of family relationships.

Under a P.A. 96-123 convenience account, it would be clear that the convenience depositor would have no interest in the account assets and no survivorship rights in the account.

The account would pass with the rest of the decedent's estate.

A convenience account may not be the best solution for all banking access issues - a durable power of attorney is often preferable - but it can be a valuable alternative when the situation warrants it. You should be sure to consult with your attorney before making changes to accounts as part of your estate plan. ■

Avoid Additional Complications During a Healthcare Crisis

By Chris Nudo



With all the talk in Washington about Healthcare reform, I started thinking about what practical things we could do to ensure that we are protecting ourselves and the ones we love. It seems that we all put off the need to prepare or update our will

or trust. However when a crisis occurs it is often too late to make last minute updates and you wish that you hadn't procrastinated so much.

Consider this very common scenario - *It's 8 pm and the pain in your chest is still there. You finally admit to your loved one that maybe it's time to go to the hospital. You can see their worry as they grab the car keys and hurry you out the door to the emergency room!*

Let's face it, going to the hospital can be extremely frightening and the last thing you are thinking about is do I have all the legal documents I need. On the contrary all you are thinking about is, "Why do I feel this way and what is going on?" Here is the good news; with a little bit of preparation you can make the experience better for everyone, especially: you, your family, and the hospital staff.

1. Make sure that you have a healthcare power of attorney and that it is up-to-date with

the proper HIPPA language and appointed agents. This document names the person (or persons) you would like to make medical decisions for you in the event you are unable to do so. Review this document periodically to make sure your choice(s) is still valid. Additionally, we can prepare your loved ones with your desires regarding treatments you would (or would not) want to receive in the hospital.

2. Make your decision about organ donation and properly document it. If you would like to donate your organs at the time of your passing, make that decision now and put it in writing. One organ donor can save up to 8 lives and the need far exceeds the supply. The more your loved ones know in advance, the easier it will be for them if they ever have to step in.

3. Do you have a DocuBank card? Carry your DocuBank wallet card. Our firm provides this card because we know that immediate access to your emergency information and healthcare directives is important. Make sure that your card is next to your driver's license in your wallet at all times. Having my DocuBank card permits my loved ones to instantly provide the hospital with all of my legal health care documents. It also contains all of my prescriptions, allergies and emergency phone numbers.

When you are at the hospital, filling out the paperwork and answering questions is not what's on your mind. To the contrary, you have questions and you want answers. But reality is that the ER staff will ask you many questions. One of them is whether you have a healthcare directive (they may call it an "advance directive"), we call them healthcare power of attorney. When you present your DocuBank card the hospital staff can make immediate note of the allergies and medical conditions on your card. They then use the card to obtain your directives, adding them to your chart immediately. There is no anxiety about where your documents are located and having to go back home or to the bank safety deposit box, to get it. Your card takes the stress off you and your family when the entire focus should be on your health. These small preventative steps can help you to relax a little.

We often tell our children to learn from someone else's mistake and to use it as an example of how to do things differently. Don't let the next unforeseen crisis be any more frightening than it has to be. Don't let your next trip to the hospital be the incentive you need to do or update your will or trust. Call today to make your appointment. Happy Halloween! ■

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of dollars of additional taxes and interest and possibly penalties.

Even though, when confronted, the president admitted his wrongdoing, based on a relationship going back to boyhood, our client continued the president's employment with no change in the president's very generous salary and benefits exceeding by five times what he had formerly earned as an employee. As a condition for continued employment, our client required the president to sell his 40% share of ownership for which he would be paid according to a formula after an accounting was done. The president had not paid one cent for the shares when they were initially issued! An agreement was signed between the parties subject to the right of the president to cancel if his attorney, after review, disapproved it. The president not only exercised his right to cancel the agreement but filed suit against our client and the company alleging that our client was guilty of abusing his status as a minority shareholder. On our advice, our client then added an experienced independent

business owner as a director of the company, changing the voting ratio on the board to 2 to 1. The president was thereafter terminated as an employee and officer.

The ex-president then formed a competing company, and sought to appropriate our client's customers and business.

A period of intense legal activity followed, in both the courtroom and the board room. Our corporate attorneys attended all board meetings, guiding the proceedings in keeping with their knowledge of the complex inner workings of the Illinois Business Corporation Act, while members of our litigation team pressed the issues in the courtroom. Forensic accounting and good old fashioned legal investigation to disclose the full range of facts and deeds had our staff burning the midnight oil. Effort was put forth by nearly the entire DiMonte & Lizak team, incensed by the attacks on our client and attempts to pervert the law and pirate the business. Our research and discoveries, presented in open court provided a daunting defense to the claims of the ex-president. His

defenses became weaker as his credibility before the court eroded.

Ultimately, the litigation favorably resolved in favor of our client, when the ex-president capitulated and settled the dispute. This was very expensive for both parties and has proved to be disastrous for the ex-president, for many reasons. Disclosure of the extent and nature of his conduct was inevitable under the circumstances, leading to collateral damage to him and his family members as well. A confidentiality agreement prevents disclosure of the extent and details.

Although many cases do not justify such a full team effort, this one did, and the results brought justice to our client, and a sense of pride to our firm. This was handled as a team effort between myself and my partners, Lin Hanson, Jeff McDonald, Paul Greco, and Margherita Albarello. ■

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An experienced, multi-practice law firm working as a team to provide practical counsel and quality services.



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