Reminiscence - Fifty Years

By: Eugene A. Di Monte

This past November 2011, I was thinking about how the law practice has changed since November, 1961, 50 years ago, when I was admitted to the law practice by the Supreme Court of Illinois.

In 1961, we used manual typewriters; electric ones were just starting to come into vogue. When we needed multiple copies of a lawsuit where multiple parties were involved, we used carbon paper to print the copies. The keys on the typewriter had to be struck so hard that they would often cut through the paper. To correct typing errors you had to erase the errors on all the copies and use white chalk to cover the erasure on as many as 12 sheets. Otherwise, you had to simply start over with fresh paper.

One option we had at that time was to use a mimeograph system. This was a very messy procedure involving inking a stencil to be used to make copies. Most of the ink ended up on our hands. Since that time we progressed to electric typewriters, memory typewriters, word processors, and the personal computers presently in use.

The first copy machine I remember using was a wet process one which required you to pass a treated sheet through a special fluid one page at a time and then hang the copy to dry. Imagine how long that took to make multiple copies. Obviously, we seldom used that machine.

In 1961, when lawyers went to court to argue points of law, they carried law books with them to argue legal precedent. Sometimes you carried as many as a dozen books. With

Van Osdol Named to Illinois Super Lawyers’ Rising Stars List

DiMonte & Lizak, LLC is proud to announce that Ryan R. Van Osdol has been named to the 2012 Illinois Super Lawyers’ Rising Stars list as one of the top attorneys in Illinois for 2012. No more than 2.5 percent of the lawyers in Illinois are selected to the list.

Mr. Van Osdol has been with DiMonte & Lizak, LLC since September 2008. He focuses his practice on business litigation, construction litigation and various other aspects of commercial litigation. Mr. Van Osdol has successfully represented a wide range of clients in trial courts, appellate courts, and in alternative dispute resolution proceedings, such as arbitration and mediation. For more information about Mr. Van Osdol, his experience and his practice areas, go to http://www.dimontelaw.com/van/osdol/ryan.html.

Super Lawyers is a rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. Attorneys cannot pay to be listed as a Super Lawyers’ Rising Star. The annual selections are made using a rigorous multi-phased process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area.

One Hundred Years of Experience

The Illinois State Bar Association bestowed on Eugene A. DiMonte & Linscott R. Hanson, partners in DiMonte & Lizak, LLC its coveted Distinguished Counselor Award in recognition of each having practiced law in Illinois for 50 years. Both Gene and Lin were admitted to practice by the Illinois Supreme Court on November 28th, 1961.

When asked about future plans, neither Mr. DiMonte nor Mr. Hanson plans to retire in the foreseeable future.

Congratulations to Eugene A. Di Monte & Linscott R. Hanson
Transfer on Death Instruments: The Good and the Bad

By: Patrick D. Owens

Effective January 1, 2012, Illinois created a new planning tool for attorneys and their clients relating to the transfer of residential real estate at death. The new transfer on death instrument (“TODI”) Act (755 ILCS 27/1 et seq.) allows an individual to name a beneficiary of their residential real estate during their lifetime that will pass to a beneficiary at the owner’s death. Here are a few brief points:

Residential Real Estate Only. A TODI may only be used to transfer residential real estate. Residential real estate means real property improved with not less than one nor more than four residential dwelling units, condos, or a single tract of agricultural real estate consisting of 40 acres or less which is improved with a single family residence.

Revocable Instrument. The TODI is revocable even if the instrument or another instrument provides otherwise.

Owner. Only a natural person may create a TODI.

Beneficiary. A beneficiary may be any person, including individuals, corporations, trusts, estates, partnerships, limited liability companies or any other legal or commercial entity.

Three Requirements of a TODI:

1. A TODI must contain the essential elements and formalities of a deed and must be executed in the presence of two witnesses and acknowledged by a notary public. The witnesses must attest in writing that the owner executed the TODI in their presence as his own free and voluntary act and at the time of execution the witnesses believed the owner to be of sound mind and memory. (similar to the requirements of the execution of a will)

2. A TODI must state that the transfer to the designated beneficiary will occur at the owner’s death; and

3. A TODI must be recorded before the owner’s death in the county where the real estate is located.

Beneficiary Must Accept. After the owner’s death, the transfer to the beneficiary will be effective upon filing a notice of death affidavit and acceptance by the beneficiary with the county recorder’s office. If this notice is not filed within two years after the owner’s death, the TODI shall be void and ineffective and the real estate will pass to the owner’s estate (subject to some exceptions).

Revocation of TODI. A revocation of a TODI must also be recorded for it to be effective. This revocation may either be another TODI that revokes the instrument or names a new beneficiary.

The Good

Overall, this new legislation gives attorneys and their clients a new and likely inexpensive alternative to a living trust or a land trust by allowing the owner to directly name a beneficiary and avoid probate. Because it is also revocable until death, it may be a better alternative to joint tenancy which creates the presumption of a gift on the creation of the joint tenancy. Holding property in joint tenancy also subjects the property to the creditors of a joint owner.

Another good provision in the new law requires the TODI to be prepared by an Illinois licensed attorney. With the many, many issues that we see with joint tenancy and payable on death accounts, this requirement should provide clients with some protection, although the owner is not prohibited from preparing his own TODI. Additionally, owners may now hold property as tenants by the entirety and provide for a beneficiary (such as the survivor’s living trust) upon the death of the surviving spouse which provides owners with the asset protection features of tenancy by the entirety along with the avoidance of a probate estate. Finally, as a practical matter, clients who hold property in an Illinois land trust can avoid having to take property out of their land trust to refinance the property (which lenders almost always require) if the property is instead held under a TODI.

The Bad (or Not So Good)

One of my biggest fears is that the TODI may not be coordinated with a client’s estate plan. If a client has a living trust that provides for a certain disposition of assets, and their home, which may be one of their largest assets, is left to a beneficiary in a TODI, this may have unintended consequences. The TODI beneficiary may have unintentionally received more assets than the client intended.

More importantly, if the client’s estate is subject to estate taxes, the client’s trust may direct estate taxes to be paid from only trust assets, in which case the TODI beneficiary will receive the real estate without any liability for estate taxes, even though the real estate is included in the client’s estate for estate tax calculations. In that case, the trust beneficiaries may be on the hook for estate taxes on an asset that passes to the TODI beneficiary.

Additionally, what if the beneficiaries don’t know about the deed or don’t know that they need to record a notice of death affidavit? If a beneficiary has not recorded a notice of death affidavit two years after the owner’s death, the TODI is void and that beneficiary may have lost his rights to the property. Further, the new legislation gives attorneys and their clients a new and likely inexpensive alternative to a living trust or a land trust.

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“Careful analysis by your trusted attorney and coordination with your existing estate plan should not be overlooked.”

TODI may also be subject to challenge in a probate estate. There may also be new title insurance issues to deal with. Finally, and somewhat beyond the scope of this article, the incapacity of the owner under a TODI likely creates problems.

Although the TODI legislation creates new opportunities for planning, careful analysis by your trusted attorney and coordination with your existing estate plan should not be overlooked.
Timing is Everything When It Comes to Battling Your Creditors
By: Julia Jensen Smolka

When you cannot pay your bills, eventually you may be sued. Once you are sued, and a judgment is entered against you, a creditor can use the court system to seize your property and collect on the judgment. The creditor and creditor’s attorney have many legal tools in his or her arsenal to collect money to satisfy the judgment. In this newsletter, we have written about them before - wage garnishments, citations to discover assets and real estate levies to name a few. It’s usually after a judgment or series of judgments have already been entered, that a client will walk through the door at DiMonte & Lizak and seek assistance. However, timing is everything, and in some cases, if you wait too long, it may be too late to take advantage of all of the state and federal statutory protections afforded to debtors.

Illinois offers several protections for individuals when a creditor is seeking to collect on a judgment. Each state is different in the amount of their exemption allowances. In Illinois, each debtor is given a $15,000 homestead exemption, and a $2,400 auto exemption, and a $4,000 wildcard exemption which can be used to protect any personal property, including funds in a bank account. However, these exemptions need to be exercised in court prior to a turnover order being entered by a judge.

“Exemptions need to be exercised in court prior to a turnover order being entered by a judge.”

The law in Illinois is clear; once a turnover order is entered, the debtor is divested of his interest in the property. This is true even if the debtor still is in possession of the property. So a debtor who has a used vehicle worth $2,200, has an exemption of the first $2,400 in equity of a vehicle. If he properly asserts his exemption prior to a turnover order being entered, the creditor would not be able to take and sell the vehicle to satisfy the money judgment. However, if the debtor fails to appear, or appears and does not properly exercise his exemption rights and an order is entered, the debtor loses his interest in the car. It will be sold to pay down the judgment against him.

In many instances, it is only after this turnover order is entered that the debtor decides to file a bankruptcy. While the bankruptcy would discharge the remainder of the obligation to that creditor, it cannot be used to save the automobile.

This is also true with a residential foreclosure. Many clients seek to use bankruptcy as a tool to save their home. Bankruptcy can be a very effective tool to save a home. Again, timing is everything.

Once a property is sold at a foreclosure auction, the owner has lost his interest in the property, even if he files a bankruptcy before the sale is confirmed in the foreclosure court. When it comes to debt relief, the sooner you realize you are in trouble, the sooner you should come in to discuss your options with your DiMonte & Lizak attorney.

“Once a turnover order is entered, the debtor is divested of his interest in the property.”

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the copy machines now in use we are able to make copies of the relevant page of a book or better yet print the pages from electronic copies of the books to take to court, eliminating the need to make copies or carry the books to court.

Back then we used large cumbersome adding machines that enabled us to add, subtract and do other mathematical calculations. Then along came the small battery powered hand-held calculators and of course the modern computers which we now have at our desks to do the same. With the use of their computers, many lawyers draft their own documents and pleadings at their desk or use their computer to organize their thoughts and to transfer the same to their assistants to produce a finished product. Some of the courts require electronic filings as distinguished from filing paper pleadings and documents in the court clerk’s office. In 1961 and until recently you were required to go to the court clerk’s office to file papers.

We receive much less mail through the U.S. Postal Service than we used to. Most important documents come by private carrier services such Federal Express or UPS, etc. or by e-mail. The use of e-mail has become very common.

Starting with the fax machines and now e-mail, there is much more stress placed upon us. I remember an occasion after the use of fax machines became popular when a commercial contractor client faxed voluminous contracts to me and then called a few minutes later asking me what I thought of the document. When I responded jokingly that if he would pay his statements from us as fast as he was now requesting us to do his work that we would respond quicker. He then said that he would then fax his check to us. Today, a scanned copy of a check can be deposited to our bank account electronically. Unfortunately, that client has since passed away and I can not joke with him about this latest change.

Another significant change for us is how legal research is done and how we keep abreast of changes in the law. Back then you had to pull books off the shelves and read them. Now you are able to get the same information over the Internet, making it easier for lawyers to work away from their library. We are also able to dictate directly into a computer with a special program that tells the printer to produce the document.

These reflections obviously apply to other types of businesses besides law offices. It was interesting to reflect on how we now get our work done is so different from 50 years ago.
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