

## Estate Planning In Troubled Times

During the current economic turmoil it is vitally important to review your estate plan. Even in these times there is positive news to report that can be used to plan for you and your family:

Effective January 1, 2009, the **individual exclusion from the federal estate tax increased for persons dying in 2009 to \$3,500,000.** (The \$1,000,000 lifetime gift tax exclusion is unchanged.)

**The gift tax annual exclusion increased from \$12,000 to \$13,000 per donee per year** for outright gifts.

Dramatically declining asset values have created opportunities to gift assets at very low values. The volatility of publicly-traded securities also translates into opportunities to employ greater valuation discounts for privately-owned securities.

The IRS applicable rates used to establish minimum interest rates for loans, together with interest rates used to value annuity interests in grantor retained annuity trusts (GRATs) and other techniques based upon treasury rates, are at historically low levels.

The combination of depressed asset values and low interest rates makes this a truly unique time to use

strategies like GRATs, sales to defective grantor trusts, and qualified personal residence trusts (QPRTs). Using these tools provides a great opportunity to transfer large amounts of wealth sheltered by the gift tax exclusion, or at no gift tax cost if you have exhausted your gift tax exclusion. GRATs and similar techniques that have "gone bust" due to the decline in the value of the assets in the GRAT can be salvaged by using newly-created GRATs or by substituting assets in the GRATs.

Time is of the essence regarding these strategies. Congress likely will act soon to amend the estate and gift tax laws, because the estate tax currently is set to expire for one year in 2010. A bill already has been introduced in Congress to eliminate use of the "Zeroed out GRAT" discounts for passive investment assets and the use of Crummey Powers. Other provisions might curtail use of multi-generation "dynasty trusts." **Now is the time to review your planning and consider gifting** to lock in dramatically low values and rates.

*by Delrose A. Koch*



### Clingen Callow & McLean, LLC

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## FIRM HIGHLIGHTS

**Ross I. Molho** won a five-day jury trial in Will County for a firm client that was sued by a former employee for retaliatory discharge and whistle-blowing, defeating a well-known Chicago plaintiff's lawyer who has won employment cases in the U.S. Supreme Court. Having rejected an \$87,000 settlement demand and after just one hour of deliberation, Ross received a not guilty verdict and universal praise from the jurors.

**Colleen M. Healy**, with assistance from **Deven S. Kane**, corporate paralegal **Jean Erhardt**, and real estate paralegal **Virginia Wilkinson**, coordinated a bank's documentation of a multi-million dollar new construction loan to a local business despite the downturn in the real estate market.

**Steven A. Marderosian** obtained a \$150,000 consent judgment in Cook County just before jury selection, settling his client's claims against the mother of their minor daughter for malicious prosecution, abuse of process, defamation, and parental alienation. Enforcement was stayed pending the mother's future compliance with visitation obligations.

# Small Business Copyrights: You Must Protect Them!

Entrepreneurs and small businesses run the greatest risk of losing copyright protections on their work product because they often fail to protect them. Particularly in the current market, many businesses feel that the cost of an attorney to draft proper documentation (e.g., agreements for licensing, joint works, works made for hire) does not represent a return on investment. This thinking is penny wise but pound foolish; not protecting your intellectual property makes sense only if you believe it has no value.

Copyright protection applies to any originally authored work that is set forth in a tangible medium (including paper, electronic files, Web pages) with content not already in the public domain. While copyright protection attaches automatically upon completion of a work, as a matter of good practice this is not enough. Every small business should register their copyrights for three reasons.

First, registration alone may convince an infringer to cease and desist upon notice. Second, registration ensures standing to sue for infringement. Third, registration enables a small business to recover statutory damages up to \$150,000 per work plus legal costs and attorney fees, which is particularly important because actual damages and lost profits are always hard to prove.

Beyond registration, CC&M helps its clients resolve the issue of "authorship," which can be difficult to determine because more than one entity often contributes to a work and each may transfer its rights to third parties. Moreover, joint authors need to plan early and express in writing their intentions to create a joint work.

CC&M clients who are employers might assume that they own the rights to anything their employee creates. This is often incorrect. Works made for hire, where the principal becomes the initial owner of the final work, are only those specified by statute that are prepared either by an employee within the scope of employment or by a third party commissioned in writing. The bottom line is that maintaining rights in an original creative work is worth the front-end costs.

*by Steven A. Marderosian*

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## Creditors:

# Have you maintained your liens?

While many creditors obtain collateral to secure payment obligations, their failure to perfect and maintain their security interests properly will prevent them from obtaining the priority protections provided by Article 9 of the Uniform Commercial Code. Such failures often render these creditors wholly unsecured and thus preclude any appreciable recovery of the debt.

In general, priority between perfected security interests under Article 9 is determined by the “First-to-File-or-Perfect” rule. The most common method of perfection is filing a financing statement with the appropriate public office. Liens in certain collateral like stock, however, may be perfected by a pledge of the stock certificate without filing a financing statement.

When financing the purchase of goods, Article 9 provides an exception to the foregoing general rule for “purchase money security interests.” Creditors will have priority over even those conflicting security interests that were perfected earlier if the creditor perfects its lien either: 1) within 20 days after the debtor receives possession of non-inventory collateral; or 2) before the debtor obtains

possession of inventory collateral while also giving notice to the holder of a conflicting security interest within five years before the debtor receives possession of the inventory collateral.

Creditors that have perfected security interests still should keep track of their debtor’s business condition and exercise due diligence over their liens. If possible, creditors should negotiate waivers with their debtors’ landlords acknowledging their liens and granting permission for the creditors to enter the premises and take possession of the collateral upon default. Creditors also should file timely continuation statements to ensure that their original financing statements do not expire. If possible, allowing junior liens on the same collateral should be contingent on the execution of a subordination agreement acknowledging seniority of the creditor’s lien.

If you have any questions regarding securing your debt or protecting your lien call Ken Clingen at (630) 871-2608 or Deven S. Kane at (630) 871-2603.

*by Deven S. Kane*

## MORE FIRM HIGHLIGHTS

**Deven S. Kane**, with assistance from corporate paralegal **Jean Erhardt**, coordinated a local bank’s documentation of a multi-million dollar loan to fund operations and also pay off existing lines of credit for a local business with multi-state operations.

**Steven A. Marderosian** and **Eric J. Ryan** obtained a \$14,000 settlement for their lender and title insurance clients in a \$165,000 suit to quiet title and partition real estate. Investigation revealed that the borrower’s quit claim deed to the plaintiff might have involved fraud.

**Deven S. Kane**, with assistance from real estate paralegal **Virginia Wilkinson** and corporate paralegal **Jean Erhardt**, closed a firm client’s purchase of a local retail business and associated real estate.

**Colleen M. Healy** facilitated a succession planning round table discussion with 120 women business owners on family business issues, sales to key employees, and exit strategies.

*This publication is intended for general information purposes only and does not constitute legal advice. Readers should not act upon information presented in this publication without individual professional counseling. Readers may consult with the attorneys at Clingen Callow & McLean, LLC to determine how laws, suggestions and illustrations contained in this publication apply to specific situations.*

## Estate Planning In Troubled Times



**Delrose Koch**, of counsel at CC&M, concentrates her practice in the areas of tax and estate planning.

## WHAT'S INSIDE? *Articles & Contributors*

### Small Business Copyrights: You Must Protect Them!

**Steven A. Marderosian**, a partner at CC&M, concentrates his practice in commercial litigation, corporate law and employment law.



### Creditors: Have you maintained your liens?



**Deven S. Kane**, an associate at CC&M, concentrates his practice in corporate, banking and securities transactional work. Mr. Kane's practice involves the representation of corporations, limited liability companies and their owners.