

In Brief Presents Get to Know Us: Barna, Guzy & Steffen Real Estate Team

(attorneys continued from pg. 3)

Steven G. Thorson

As a Shareholder with Barna, Guzy & Steffen, Ltd., Steve Thorson practices primarily in Real Property transactions. He represents individuals and business entities in the sale, purchase, and leasing of real property (both commercial and residential) and in the development of real property. Steve has been certified since 1990 as a Board Certified Real Property Specialist by the Minnesota State Bar Association.

Kristi R. Riley

Kristi Riley joined Barna, Guzy & Steffen, Ltd. in 1995 as a law clerk. She became an attorney with the firm following her admission to the bar in 1997 and became a Shareholder in 2005. Kristi's practice now includes Real Estate Law, Industrial and Retail Leasing, Commercial Real Estate, Conveyancing, and Retail Development. Kristin was recognized as a "Rising Star" for 2006, 2007 and 2008 by *Minnesota Law and Politics* magazine.

Timothy D. Erb

As an Associate in Real Estate, Tim Erb practices in both Commercial and Residential Real Estate areas including Acquisitions, Sales, Leasing, Development and Title Law. His practice also includes providing counsel to developers and associations regarding formation and operation of common interest communities (condominiums, townhomes/planned communities, mixed-use and master associations). Tim was recognized as a "Rising Star" for 2007 and 2008 by *Minnesota Law and Politics* magazine, and is a Board Certified Real Property Specialist by the Minnesota State Bar Association.

Kristin N. Blenkush

Kristin started her employment with Barna, Guzy & Steffen, Ltd. as an Associate upon admission to the Minnesota Bar in 2006. Her primary areas of practice include Commercial Real Estate, Acquisitions and Sales of Real Property and Office, Retail and Industrial Leasing.

Angela M. Samec

As an Associate Angela is concentrating her practice on all aspects of Commercial Real Estate, including Acquisitions, Sales, Development and Leasing. Her practice also includes preparing governing documents and providing counsel regarding the formation and operation of homeowners' associations and common interest communities. Angela was recognized by *Minnesota Law and Politics* magazine in 2007 and 2008 as a "Rising Star."



Back Row Left to Right: Michael F. Hurley, Angela M. Samec, Herman L. Talle, Cindy Goedel, Thomas J. Kettleson, Douglas J. Dehn, Charles M. Seykora, Timothy D. Erb, Sandra L. Nelson, Melissa Peterson.

Seated Left to Right: Kristi R. Riley, Jeffrey S. Johnson, Kristin N. Blenkush, Steven G. Thorson

Thomas J. Kettleson

Tom is an Associate in our Real Estate department and focuses his practice on Commercial Real Estate transactions including Acquisitions and Sales, Development, Leasing, Financing, Loan Workouts, and Foreclosures. He joined the firm as a law clerk in 2005 and was hired as an attorney in 2006. Tom recently co-authored the book: *Congress and Sports Agents: A Legislative History of the Sports Agent Responsibility and Trust Act (SPARTA)*.
Authors: Edmond P. Edmunds, William H. Manz, and Thomas J. Kettleson
Publisher: William S. Hein & Co. (2008)

PARALEGAL

Sandra L. Nelson

Sandy Nelson has held a Minnesota Real Estate License and has extensive experience as a paralegal in Commercial and Residential Real Estate/Corporate law. Her career with Barna, Guzy & Steffen, Ltd. began 17 years ago when she joined the Real Estate team. Her position required knowledge of corporate law and three years later, Sandy became the combined Real Estate/Corporate Law paralegal. Sandy has 27 years of experience working in the legal field.

SECRETARIES

Bonnie Anzelc

Bonnie began working as a secretary for Steffen & Munstenteiger in 1978. In 1991 that firm was part of a merge that formed Barna, Guzy & Steffen, Ltd. as it is known today and Bonnie has been with the firm ever since. She has worked with several of the attorneys at Barna, Guzy & Steffen, Ltd. for more than 30 years. For the last 25 years, she has worked solely in the Real Estate area. She says that she "enjoys the preciseness of real estate work – even the constant deadlines."

Cindy Goedel

Cindy's interest in law led her to study as a legal secretary when the youngest of her five children started school. She has worked as a legal secretary for 21 years, the past 7 of those years she has spent with Barna, Guzy & Steffen Ltd. She enjoys working with the Real Estate team at Barna, Guzy & Steffen, Ltd. and says that "it is a very family oriented workplace and the people are the best."

Melissa Peterson

Melissa has always been interested in the legal field and finds the Real Estate section at Barna, Guzy & Steffen, Ltd. provides continually challenging and interesting work. She has worked as a legal secretary since 2001 and has been with Barna, Guzy & Steffen, Ltd. since July of 2003. Melissa is grateful for the family oriented work ethic.

IN BRIEFSM



Recent Change to Real Estate Laws Affects Estate Planning

by: William F. Huefner and Angela M. Samec



Minnesota has recently enacted a statute that allows for transfer on death deeds ("TOD Deeds") permitting individuals to avoid probate, as well as avoid the expenses involved in creating a living trust, by providing individuals with a mechanism for the transfer of real estate upon their death.

Prior to the creation of Minnesota Statutes Section 507.71, an owner of real estate could avoid probate only (i) by owning real estate as a joint tenant with a right of survivorship, (ii) by conveying real estate to a living trust, or (iii) by conveying real estate subject to a life estate.

This new mechanism of leaving real estate to an individual's beneficiaries involves executing a TOD Deed for the individual's real estate. TOD Deeds allow an individual to continue to retain title to the real estate when the individual is alive while providing for a specific named beneficiary, whether one or more individuals or an entity, to take the individual's interest in the real estate upon the individual's death.

One key advantage over other real estate transfers is that the individual who owns the real estate may revoke or modify the TOD Deed at any time without the consent of the named beneficiaries. To be effective, the new TOD Deed naming alternate beneficiaries must be properly executed and recorded. The individual making the beneficiary designation retains the ability to add additional beneficiaries as they are born, or to remove beneficiaries as the individual sees fit. However, a TOD Deed can not be revoked by contrary provisions contained in a will.

The individual must execute the TOD Deed in the presence of a notary public and must have it

recorded in the county where the real estate is located in order for it to be operative; a TOD Deed must comply with all provisions of Minnesota law applicable to deeds of real property. Upon the individual's death, the TOD Deed serves to automatically transfer the individual's real estate to the named beneficiaries. The automatic transfer prevents the real estate from being subject to the

The automatic transfer prevents the real estate from being subject to the probate process, thereby avoiding the typical delay and expense associated with probate.

probate process, thereby avoiding the typical delay and expense associated with probate. Additionally, under current law, the use of TOD Deed avoids capital gains taxes which might be owed by the beneficiaries at time of the sale of the real estate. What this means is that the real estate passes to the named beneficiaries at the real estate's fair market value on the individual's date of death rather than the individual's original cost of the real estate as adjusted for improvements ("Original Basis"). The Original Basis is "stepped-up" to the value of the property as it exists on the date of death. On the other hand, if an individual conveyed the real estate as a gift to someone prior to the individual's death, the basis of the person who received the real estate from the individual becomes the original basis, which then creates capital gains for that person when the property is sold.

A TOD Deed can be utilized by any individual who owns an interest in real estate; it does not matter whether the individual owns the entire interest in the real estate or just a fractional interest in the real estate.

If an interest in real estate is owned as joint

tenants, a TOD Deed that is executed by all of the owners conveys an interest in the real estate effective only after the death of the last surviving owner, unless that survivor executes a new TOD Deed. If, for example, the last surviving owner did not execute the original TOD Deed, the original TOD Deed is ineffective and does not transfer any interest in the real estate.

After an individual's death, the beneficiaries must provide an affidavit of identity and survivorship along with a certified copy of the individual's death certificate to the county to be recorded, which completes the transfer. The beneficiaries obtain the individual's interest in the real estate subject to all effective conveyances, assignments, mortgages, judgments, encumbrances, liens or other claims against the real estate when the individual was alive.

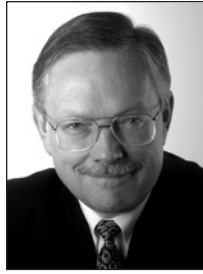
A TOD Deed should not be used in every situation where real estate is to be transferred upon an individual's death. An individual must consider all issues, including tax, estate planning and medical assistance in determining whether a TOD Deed is the right mechanism for transferring real estate. If you have questions regarding TOD Deeds, the attorneys at Barna, Guzy & Steffen, Ltd. stand ready to assist you.

William Huefner is a shareholder in our Estate & Tax Planning, Probate and Trust Administration practice area. If you have questions regarding this article or creation of a TOD Deed, you may contact him directly at 763-783-5160 or email whuefner@bgs.com.

Angela Samec is an associate in the Real Estate practice area concentrating her practice on all aspects of Commercial Real Estate, including Acquisitions, Sales, Development and Leasing. For questions regarding this article please contact Angela directly at 763-783-5119 or email asamec@bgs.com.

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“FSBO” Sales in Residential Real Estate – 2008 By Steve Thorson



With the slowdown in the residential real estate economy, we are seeing more homes being offered as **For Sale By Owner** [“FSBO”]. Most FSBO sellers are working without the assistance of a broker or agent. Some FSBO Sellers are working with FSBO Agents

who specialize in helping sellers for a reduced commission. FSBO agents can provide access to the Multiple Listing Service [“MLS”] for a flat fee or a low percentage commission of approximately 2%. But, those agents are not providing the legal services needed to complete the transaction.

After you find your own buyer, you will need a real estate lawyer. Your lawyer will guide you through the preparation of a purchase agreement. Your lawyer can also assist you with the preparations for closing and can attend the closing with you.

What are the costs? In representing FSBO sellers, we are seeing total attorney’s fees in the range of 0.75% to 1.5% of the price. On average home price of \$225,000, that is \$1,700 to \$3,375 to have an attorney assist with the sale. Our real estate lawyers charge by the hour, but, for most transactions, the total fees fall into that range.

In Minnesota, real property cannot be sold on a handshake. You must have a written purchase agreement. Before your lawyer can draft a purchase agreement, you need to reach a basic understanding with the buyer.

If you do your own sale, what do you need to do to prepare for the right buyer?

In your first meeting with a real estate lawyer, you will need to discuss:

- your motivation for selling,
- the amount of time you have to sell the property,
- your asking price,
- the lowest price you will consider, and
- the personal property and appliances that you would like to sell with the home.

In Minnesota, real property cannot be sold on a handshake. You must have a written purchase agreement. Before your lawyer can draft a purchase agreement, you need to reach a basic understanding with the buyer. The discussion that you need to have with a serious buyer boils down to a fairly short list of items. After you have hired one of our real estate lawyers, you will be given a data sheet of information that needs to be obtained. (It is only one page.)

The big item with a serious buyer is the **price**. The total price to be paid is usually the sum of: the Earnest Money (cash paid at the time the purchase agreement is signed; usually not less than 1% of the price);

- additional Cash at Closing; and,
- the buyer’s new mortgage financing.

In your first consultations with your lawyer, you will be counseled on how to handle the financing questions that might come from your buyer. If you are not comfortable in handling those questions, your lawyer can handle that for you and talk directly to the buyer.

The next major item to discuss with the buyer is the closing date. We usually counsel sellers to plan for approximately 4 to 6 weeks between the date that the purchase agreement is signed and the planned closing date. Both seller and buyer have a good deal of work to do before the closing.

The last discussion item is **personal property or appliances** being sold with the home. If appliances or other things are going with the house, are they included in the price or are they priced separately?

That’s it. When you have come to verbal agreement about those things, you have reached “the handshake stage.”

After the right buyer has come to you and you are at the handshake stage, what do you do to secure a good purchase agreement?

The information about the price and financial terms, the closing date, and the personal property/appliances needs to be given to your lawyer. After you have shaken hands with the serious buyer, you need to obtain personal data from that buyer: legal names, home address, phone numbers, and e-mail addresses. With that basic information your lawyer can begin to prepare your purchase agreement.

The process of preparing the purchase agreement usually takes one business day. Sometimes the process takes longer because of information that goes into the supplemental documents that go with the purchase agreement. Typically, the draft of the purchase agreement will be given to both seller and buyer to review. Then, if everything is written to the satisfaction of both parties, there will be a short meeting at the lawyers’ office to sign multiple originals of the agreement.

By the time the purchase agreement is signed in a typical, trouble-free sale, the lawyer will be approximately 75% completed with the representation of the seller. The is a good deal of work involved in getting the purchase agreement drafted carefully.

After the purchase agreement has been signed, your lawyer will assist you in presenting your title evidence (usually an updated abstract of title) to the buyer. Your lawyer will help coordinate issues that might arise with the buyer’s inspections or survey of the property. Finally, after the buyer’s financing has been confirmed and all of the inspection contingencies have been satisfied, your lawyer will prepare your closing documents and assist you with your closing preparations.

We also find ourselves representing buyers who are purchasing from FSBO sellers. The process is almost the same as described above. If you are a buyer and have found a FSBO home, call one of our real estate lawyers for assistance.

Barna, Guzy & Steffen, Ltd., has a capable real estate practice group. There are nine lawyers in the group, five of whom are certified by the Minnesota State Bar Association as Real Property Law Specialists.

If you have questions regarding this article or the FSBO topic, please contact:

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*Large Enough to Serve You
Small Enough to Know You*

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handle your legal needs.

Housing Market: Rub Some Dirt On It By Timothy D. Erb



We’ve all heard the expression “rub some dirt on it.” Usually, this comment is heard when somebody is slightly injured and in need of some modest repair. If you are a homeowner, you are likely aware of the many recent news reports regarding the current housing market

and recent legislation, the Housing and Economic Recovery Act of 2008 (the “Act”), which was signed by President Bush in late July. This legislation is fairly expansive and has multiple provisions which are intended to improve the current housing market. Because many commentators of the housing market and financial systems differ on the effect of this legislation and whether the legislation will be beneficial, the final determination of whether this legislation will “rub some dirt on” the housing market or provide a full fledged band-aid, is yet to be determined. However, there just may be a portion of the legislation that benefits you.

Much of the housing issues revolve around the tide of foreclosures that has swept across the country. The Act provides a mechanism for a portion of homeowners in arrears with their lender to refinance into different loan packages the homeowner can afford. This portion of the Act is voluntary and no lender is required to refinance any homeowner in arrears. The Federal Housing Administration has been granted the power to guarantee up to \$300 billion of such loans which is estimated to reach approximately 400,000 homes nationwide. The replacement mortgage is intended to be a thirty (30) year fixed rate mortgage for as much as ninety percent (90%) of the value of the home, which automatically gives the homeowner ten percent (10%) equity in the home. This provision takes effect October 1, 2008 and runs through

September 2011. This provision also includes a “recapture” provision whereby the government will receive all or a portion of the equity in the home from a sale of the home in subsequent years. There are also some eligibility requirements such as eligible borrowers having spent more than thirty-one percent (31%) of their monthly incomes on their mortgages as of March 1, 2008. The loan also must not have originated later than January 1, 2008. It is my understanding that the Federal Housing Administration is now writing rules and guidelines regarding this provision so it may be a few months after the commencement date before any lenders are actually considering requests under this program but homeowners should check with their lender or servicing company if this provision may be beneficial to them.

Some first time home buyers also received a beneficial provision in the Act. A first time home buyer of a primary residence is eligible for a federal tax credit of ten percent (10%) of the purchase price, which may not exceed \$7,500.00. This is basically an interest free loan, which must be paid back over a fifteen (15) year period, or sooner if the house is sold. This provision is likely intended to create incentive for new home buyers to purchase some of the unoccupied homes that currently exist due to the foreclose tide. The first home must be purchased between April 9, 2008, and July 1, 2009.

The Act also places some additional restrictions on reverse mortgages. Reverse mortgages are often used by homeowners in the later years of life to tap into home equity while still residing in their home. The Act sets new limits on origination fees and stops lenders from requiring borrowers to purchase an annuity or similar product to become eligible for a reverse mortgage.

In addition to the provisions cited above, the Act also includes other provisions which are intended to help stabilize the housing market such as an increase

in loan limits for government sponsored mortgage companies and funding for neighborhoods to fix up foreclosed properties causing blight. However, the most controversial provision is likely the changes in the Act which directly affect the financial viability of Fannie Mae and Freddie Mac. These entities are hybrid entities which are in some part private and some part governmental and seek to make loans for homes more available in the market place by guaranteeing the loan. However, until the recent legislation many commentators would have suggested that determining the exact nature of these entities was unknown as there was an implicit suggestion that the federal government would assist these entities in the event of financial trouble. With the changes in the Act which provide that the Treasury Department has temporary power to lend emergency money to these entities or buy the stock of these entities, it is likely that the pendulum has swung to seeing these entities as having a major public component. However, additional oversight will occur in conjunction with the extension of credit to these entities.

In summary, there are numerous additional provisions of the Act which cannot not be detailed in this article. It is clear that the Act is intended to benefit the housing market in general and specific homeowners in particular. However, the true effect of the Act on the housing market will not be readily apparent for some time as owners, lenders, neighborhood groups and prospective buyers determine which portions of the Act will benefit them and actually put the legislation to use.

Timothy D. Erb is an associate in our Real Estate practice area. He has recently become a Board Certified Real Property Specialist by the Minnesota State Bar Association. If you have questions regarding this article, or other real estate related issues, please contact Tim at 763-783-5126 or email at terb@bgs.com.

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ATTORNEYS

Jeffrey S. Johnson

Jeffrey Johnson is a Shareholder, the President of the firm and the Chair of the Board of Directors. He is a Board Certified Real Property Specialist as certified by the Minnesota State Bar Association and he has focused his practice on Real Estate for more than 25 years. Jeff has extensive experiences in representing Commercial Construction Companies, Commercial Developers, Shopping Center Managers and Property Management companies. He started with the firm in 1977 as a law clerk and has served as its President for 18 years.

Michael F. Hurley

Michael Hurley is a Shareholder in the firm and the Practice Group Manager of the Real Estate section. He is also a Board Certified Real Property Specialist with the Minnesota State Bar Association and has

practiced Real Estate Law since 1980. Michael specializes in assisting clients with Commercial Real Estate, Commercial Banking, Commercial Leasing Mortgages, Commercial Development and Foreclosures, as well as Conveyancing.

Herman L. Talle

Herm Talle’s long career as a Real Estate attorney with Barna, Guzy & Steffen, Ltd. began in 1991 with a merger of firms. His original intentions at the start of that merger were to transfer his clients and begin his retirement. Nevertheless, 17 years later Herm remains an integral part of Barna, Guzy & Steffen, Ltd. as a mentor to our associates and through his marketing and client relations efforts. “My clients have loved the good lawyers here.” says Herm. Having recently celebrated his 77th birthday Herm is considering retirement, but still has a large client base and enjoys coming to a place every day where everyone is so nice to him.

Charles M. Seykora

Chuck Seykora is a Shareholder and a member of the Board of Directors. Chuck focuses his practice on Commercial Real Estate including Leasing and Sale/Purchase, Financing, Construction, Documents, Title, Foreclosure and Residential transactions. Since 1989, Chuck has also been active with Judicare of Anoka County, a non-profit corporation providing free legal representation in non-criminal matters to low income residents of Anoka County. He currently serves on Judicare’s Board of Directors.

Douglas J. Dehn

Doug Dehn has practiced in Real Estate and Business Organization law along with Estate Planning and Probate law for 32 years. He joined Barna, Guzy & Steffen, Ltd. in 2005 and has since become a Shareholder with the firm. Doug is also a Board Certified Real Property Specialist by the Minnesota State Bar Association. *(continued on pg. 4)*