



# McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

LEGAL UPDATE

VOLUME 3, NUMBER 1



**EDWARD G. McCORMICK**

**PRACTICE AREAS**

*Residential Real Estate*

*Commercial Real Estate*

*Business & Corporate Law*

*Elder Law*

*Estate Planning*

*Estate Administration  
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*Municipal Law*

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## THE NEW CARBON MONOXIDE LAW

By: Edward G. McCormick, Esq.

"Nicole's Law" requires homes with fossil fuel burning equipment or enclosed parking areas to be equipped with approved carbon monoxide detectors. This law was named for Nicole Garofalo, a seven year old girl who died in January of 2005 when her home was filled with deadly amounts of carbon monoxide as a result of a furnace vent blocked by snow during a power outage.

### Residential Properties

In February of this year, the Board of Fire Prevention Regulations and the State Fire Marshall passed emergency regulations requiring every residence that has fossil fuel burning equipment or enclosed parking areas to have carbon monoxide detectors on every level. A detector must be within ten feet of each bedroom. There should also be carbon monoxide detectors in habitable portions of basements, cellars, and attics. These regulations also specify the type of detectors that are acceptable. These detectors include hardwired detectors with battery backup, plug in detectors with battery backup, low voltage system and wireless and battery operated detectors with battery monitoring. Combination carbon monoxide alarms and smoke detectors are also allowed as long as different tones exist for each type of emergency. Under this new law, local fire departments are required to inspect all residences for carbon monoxide detectors upon the transfer or sale of the property.

### Rental Properties

Landlords have certain duties under this new law as well. Landlords are required to annually inspect the carbon monoxide detectors and at the beginning of each rental period. In addition, the landlords must annually replace the batteries in the detectors.

### Motels, Hotels, Apartments and Condominiums

The Board of Fire Prevention is currently working on regulations that will apply to motels, hotels, institutional buildings and other residential buildings. Large multiple dwelling units that have no source of carbon monoxide within the individual apartments may comply with the law under alternative compliance options set forth in the regulations. These alternative compliance options provide for monitoring in those areas that present potential sources of carbon monoxide such as boilers, hot water heaters, central laundry areas and all adjacent spaces, in addition to enclosed parking areas. This carbon monoxide protection option requires hard or low voltage wiring, monitoring and certain signal transmission requirements. The deadline for compliance with this method of protection is January 1, 2007.



## HOW TO DEFER TAXES WHEN SELLING INVESTMENT PROPERTY

By: Edward G. McCormick, Esq.

Section 1031 of the IRS Code allows an investor to sell an investment property and acquire a new "like-kind" property and potentially defer all capital gains taxes. Like-kind property is any property used for productive use in trade or business or held for investment.

Any real property held for investment or real property used in a trade or business can be exchanged for any other real property held for investment or real property used in a trade or business. Like-kind exchanges can be done for a variety of property types including a house or vacant land, as long as both properties are held for investment purposes at the time of the exchange.

Even though you are selling your property to one party and buying property from another, the transaction is considered an "exchange" if the requirements of the regulations are met. The property you sell is commonly referred to as the relinquished property and the property you exchange or purchase is commonly referred to as the replacement property.

At the time of executing an Agreement to Sell the relinquished property, you must include an exchange cooperation clause establishing the intent to perform a Section 1031 tax deferred exchange. The net proceeds from the sale of the relinquished property must be held by a Qualified Intermediary to be used to acquire the replacement property. Within 45 days following the closing on the sale of the relinquished property, you must "identify" to the Qualified Intermediary a replacement property.

The closing on the replacement property must occur within 180 days (6 months) from the sale date of the relinquished property. Any interest or dividends earned on the proceeds being held by the Qualified Intermediary will be credited to you.

If you do not reinvest all the proceeds from the sale of your property, you will pay taxes on the portion not reinvested after deducting closing costs for both closings.

The paperwork for a 1031 exchange can be complicated, as the tax regulations are complex, however most of the work can be handled by an attorney who knows the rules for like-kind exchanges and your tax consultant.

We have completed several 1031 exchanges for our clients and would welcome the opportunity to discuss this program with you in greater detail.

### FIRM NEWS

This edition of the McCormick Murtagh & Marcus newsletter is dedicated to the memory of the late William P. Murtagh who passed away on January 12, 2006. Bill was a founding partner of this firm along with the late George R. McCormick.

Besides being an active Attorney in Great Barrington for 40 years, Bill served as Great Barrington's Town Moderator for 29 years and as Town Counsel for 20 years. Bill is remembered for his expertise in his profession, his great sense of humor and most importantly as a true gentleman.

In May of this year, Dana E. Marcus relocated from the Berkshires to Florida. Though Dana is no longer practicing on a daily schedule with the firm, he stays in close contact in his capacity as "Of Counsel" to the firm.

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Do you have a Declaration of Homestead to protect your home from creditors?

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Do you have a current Durable Power of Attorney and Health Care Proxy?

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Has your Corporation or Limited Liability Company filed its annual report with the Commonwealth of Massachusetts?

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**MICHAEL P. CITRIN**  
\*ADMITTED TO PRACTICE IN  
NEW YORK AND MICHIGAN

**PRACTICE AREAS**

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*Estate Administration  
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*Labor Relations*

*Employment Law*

*Residential Real Estate*

*Commercial Real Estate*

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Landlords, are you holding tenant's Last Month's Rent and Security Deposits in accordance with Massachusetts Law?

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Have you reviewed your Estate Plan recently?

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## MICHAEL P. CITRIN, ESQ. JOINS FIRM

Michael P. Citrin has joined McCormick, Murtagh & Marcus as an Associate Attorney. A graduate of Ohio Wesleyan University and University of Detroit School of Law, Mr. Citrin has been practicing law for fifteen years and comes to the firm after spending the last eight years as a litigator in New York City. With extensive courtroom experience, and practice in both private and public sectors, Mr. Citrin will be handling litigation issues for the firm particularly in the areas of probate, real estate, labor law, contractor disputes and estate administration. Michael is currently licensed to practice in the states of New York and Michigan and is pending Massachusetts Bar admission.

Michael resides in Ashley Falls with his wife, Tracy and their daughter, Ruby.

## RESIDENTIAL CONTRACTING – HOW IMPORTANT IS A CONTRACT?

**By: Kathleen M. McCormick, Esq.**

As business is booming and the Berkshires are changing, so is the construction industry. Massachusetts has regulations requiring contracts with specific provisions to be in place when a contractor is working on residential property. This law was enacted to protect the interests of the consumer, which means a failure to abide by its requirements may be deemed a violation of Consumer Protection Laws and may cost you, as a contractor, up to three times actual damages, plus attorney's fees and costs, all as set forth in Massachusetts General Laws ("M.G.L.") Chapter 93A.

M.G.L. Chapter 142A, Regulations for Home Improvement Contractors, applies to any person who owns or operates a contracting business who undertakes residential contracting work which includes reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal or demolition, or the construction of an addition to any pre-existing owner occupied dwelling. This law requires a contractor or subcontractor who is providing contracting services in an amount in excess of one thousand dollars to have a written contract with the consumer.

The requirements to be set forth in a contract are too numerous to list here in their entirety but include in part; complete client information including social security number, contractor registration numbers; the date the work is scheduled to begin and the date the work is scheduled to be substantially completed; a detailed description of the work and materials to be used; the total amount agreed to be paid for the work; a time schedule and amount of payments, including all finance charges; a statement of any deposit required under the contract to be paid in advance of the commencement of work (limits as to the percentage of the deposits are also provided by this regulation); a statement as to all permits required; and notice to the consumer as to certain rights under the law.

In a previous article I wrote in the Spring/Summer 2005 Newsletter, I explained having a contract was essential to secure the rights and to protect contractors and subcontractors under the Mechanic's Lien Statute. Compliance with the requirements under M.G.L. Chapter 142A for residential contracting services will not only make it possible to obtain a Mechanic's Lien if you are not paid in a timely manner for labor and materials you have provided to a residential client, but it will also help insulate you and your business from a suit for a violation of the consumer protection laws.

We can assist you and your business in preparation of your residential contracting agreements, assuring that your rights are preserved and your business is shielded from liability to the full extent of the law.



**KATHLEEN M. McCORMICK**

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## **GIFTING, A STRATEGIC PLAN**

**By: Kathleen M. McCormick, Esq.**

By implementing a well thought out, strategic gifting program, you can dramatically reduce the size of your taxable estate. If you do not need a specific asset to live on, it may be beneficial to give the asset away during your lifetime. The advantage of gifting property while you are living is the gifted asset is removed from your estate reducing your exposure to State and Federal Estate Tax. Your estate is the total of all your assets, less any debts at the time of your death. In 2006, the Federal Estate Tax exemption is \$2,000,000 and the Massachusetts exemption is \$1,000,000 meaning the first \$2,000,000 of your estate is not taxed federally and the first \$1,000,000 is not taxed by the Commonwealth of Massachusetts.

Currently, the annual gift exclusion is \$12,000. If a husband and wife make a joint gift, \$24,000 can be given to an unlimited number of people every year, with no gift tax consequences. An individual can give up to \$1,000,000 in gifts, in their lifetime, before gift tax is owed. This is referred to as unified credit.

### What is a Gift?

For tax purposes, a gift is a transfer of property for less than its full value. In other words, if you aren't paid back, at least not fully, it's a gift.

### Who Can I give a Gift to?

Gift recipients can be anyone. For example, parents could conceivably give away \$24,000 to each child; grandparents could gift property to each child and grandchild. You can see the potential for large federal estate tax savings if a significant amount of property is gifted.

### What are the Advantages of Making a Gift?

Giving a gift may earn you more than gratitude. It may reduce your estate and income tax, as well as allow you to teach your family to manage wealth and future inheritances.

### What are the Disadvantages of Making a Gift?

Giving a gift during your lifetime reduces your net worth as you lose all benefits and control of the property at the time of the gift. In addition, gifted property generally carries a tax basis equal to the basis the property had when owned by the donor. The gift recipient would not receive the "step-up" (increase) tax basis he/she would receive if the property had been part of an inheritance

### Are all Gifts Subject to the Gift Tax?

The general rule is that any gift is a taxable gift, however, there are many exceptions to this rule. The following are some gifts that do not count against the annual limit and therefore do not count as part of your \$1,000,000 lifetime total.

- Charitable gifts.
- Gifts to a spouse.
- Gifts of educational expenses. To qualify for the unlimited exclusion for qualified education expenses, you must make a direct payment to the educational institution for tuition only. Books, supplies, and living expenses do not qualify.
- Gifts of medical costs. Payments made directly to a medical institution for someone's benefit.
- Adding a joint tenant to a bank or brokerage account or to a U.S. Savings Bond. This is not considered to be a gift until the new joint tenant withdraws funds.
- Gifts to a political organization for its use.

