



C. Nicholas Arienti

Practice Areas

Residential Real Estate

Business & Corporate Law

Estate Planning

Estate Administration,
Probate & Family Law

Elder Law

Land Use, Zoning &
Permitting

Labor Relations &
Employment Law

Litigation



With mortgage rates remaining low, is now the right time to refinance your home? Before you can make an informed decision you must determine your short and long term goals for the property, the current rate and whether a fixed or adjustable loan is the best option for you.



All Businesses Must Comply With New Identity Theft Prevention Regulation

On March 1, 2010, a regulation known as the "Standards for the Protection of Personal Information of Residents of the Commonwealth", will take effect based on an identity theft prevention law passed by the Massachusetts Legislature in 2007. This Regulation establishes standards for how businesses protect and store personal information of their employees and customers. *Any* business that collects and retains the personal information of its employees and customers are subject to the Regulation. "Personal information" is defined as including a person's name in combination with a social security number, a driver's license number or financial account number, including credit or debit card numbers.

The Regulation may have significant implications for those businesses that retain the types of personal information described above. Covered businesses are required to encrypt documents sent over the Internet or saved on laptops or flash drives, to encrypt wirelessly transmitted data, and to utilize up-to-date firewall protection that creates an electronic gatekeeper between the data and the outside world and only permits authorized users to access or transmit data. Prior to March 1, 2010, businesses are required to conduct internal and external reviews of their security measures and to complete employee training regarding the Regulations' requirements. After March 1, 2010, businesses are required to: develop a written security program; assess internal and external security risks regularly to ensure that particular safeguards are effective and are up to date; institute security policies for employees that meet certain specified standards; prevent terminated employees from gaining access to personal information; limit the amount of personal information collected; identify records containing personal information; monitor employee access to personal information; restrict physical access to records containing personal information; ensure that service providers are capable of protecting personal information, contractually bind them to do so, and have them certify that they have a compliant written information security plan, as well as other related provisions.

While the above requirements sound daunting, especially to small businesses, the final version of the Regulation recognizes that the size of a business and the amount of personal information it handles plays a role in the data security plan a business creates. The required safeguards are intended to be appropriate to the size, scope and type of business handling the information, the resources available to a particular business, the amount of data stored, and the need for security and confidentiality of both consumer and employee personal information.

If you have any questions regarding the scope and application of this new regulation to your business, please do not hesitate to contact McCormick, Murtagh & Marcus.

McCormick, Murtagh & Marcus is proud to announce that C. Nicholas Arienti has joined the firm as an associate.



Kathleen M. McCormick

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Do you have an estate plan? With proper planning you can reduce estate taxes, bypass probate, protect your assets, plan for incapacitation, and accomplish other crucial planning goals.



Potential Opportunities For Home Buyers

The American Recovery and Reinvestment Act of 2009 offers a tax credit for first-time home buyers. This Act defines a first-time home buyer as someone who has not owned a principal residence during the three-year period prior to the purchase. This tax credit is equal to 10 percent of the home's purchase price up to a maximum of \$8,000 and does not need to be repaid. To be eligible for the full tax credit you must either be a single taxpayer with an income of less than \$75,000 or a married couple with a joint income of less than \$150,000. The 2009 tax credit is available for homes purchased on or after January 1, 2009 and before December 1, 2009.

In early November, an extension of this tax credit was granted until April 30, 2010. It is worth noting that this tax credit extension not only extends the time period for first time home buyers to purchase a home but it also extends the credit to some individuals who already own a residence and increases the income eligibility requirement.

In addition to a first time home buyer, this extension allows a current homeowner to qualify for a \$6,500 credit if they have lived in their current residence for five years. The income limit for those who qualify has been increased to individuals earning up to \$125,000 and couples up to \$250,000. The cost of your home may not exceed \$800,000. For all home buyers who qualify, homes must be under contract by April 30, 2010 and close within 60 days. For purchases made in 2010, taxpayers may claim the tax credit on their 2009 income tax return. As long as the home remains the home buyer's principal residence for 36 months after the purchase date, this credit does not have to be repaid.

The extension of the home buyers credit and low interest rates may make now the perfect time to buy your first home or to upgrade your current home. If you have questions regarding real estate or the tax credit, please contact McCormick, Murtagh & Marcus.

What Is A Nonprofit?

The terms "Nonprofit" and "501(c)(3)" are used very often these days, but what do they mean? Can these terms be used interchangeably? No, a non-profit and a 501(c)(3) tax exempt organization may not necessarily be the same thing and the terms cannot be used interchangeably.

A Massachusetts Non Profit is a type of organization which complies with M.G.L. ch. 180. To incorporate, the organization must file Articles of Organization with the Commonwealth of Massachusetts, appoint directors, draft bylaws and comply with record keeping requirements under Massachusetts law.

Once the organization is properly filed with the Commonwealth in accordance with M.G.L. ch. 180, it is officially a Massachusetts Nonprofit Corporation. However, this organization is not tax exempt until the IRS determines the organization meets the requirements set out in the tax code. To be tax-exempt, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code and none of its earnings may inure to any private shareholder or individual. The IRS tax code describes allowable purposes of 501(c)(3) nonprofit organizations as serving religious, educational, charitable, scientific and/or literary purposes. Without this exemption, organizations cannot receive tax-deductible contributions from individuals and organizations.



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Dying In An Online World

How many online accounts do you have? How many different usernames and passwords do you have? If you embrace the new online culture of living, your answer is probably "a lot". And if you are smart about the security of your online information, you may not have shared this log-in information with anyone. Though this is an advisable practice during your lifetime, it can wreak havoc for your heirs after you die.

In the old days, when a client passed away loved ones gathered the decedent's mail, paperwork and personal effects left behind in their home. This allowed for the collection of all of their financial information, personal information and sentimental items and for these items to be distributed in accordance with their wishes or through the laws of intestacy. Today, much of this information is stored on computers and online accounts. Without log-in information, survivors may need to go to court for legal authority to gain access to the accounts if they even know the accounts exist.

In addition to financial information, items with personal meaning such as photos or email letters may not be available without the log-in information. And for the Facebook and Twitter generation, heirs will not be allowed any control over and will be denied access to your profile without the correct username and passwords for the accounts.

To make the collection of information upon your death easier for your heirs, you may want to share your passwords with a trusted relative or store the information in a safety-deposit box or home safe—just make sure someone can gain access to the box or safe if needed. If you feel uneasy with this suggestion, companies are starting to emerge who store such information and allow you to make arrangements for sending it to the appropriate people upon your death. If you would like to discuss this topic or other estate planning questions, contact McCormick, Murtagh & Marcus.



Wishing you and your family a happy and healthy holiday season.

From the staff of
McCormick, Murtagh & Marcus
Ed, Kate, Nick, LuAnn, Nora, Susan,
Darlene, Linda, Cheryl and Leana



McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

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Estate Planning In A Tough Economic Time

One of the oldest Medicaid planning techniques with respect to protecting the family home is transferring the home to children with a reserved Life Estate. Simply put, it means having the parents sign a deed which transfers the property to the children while retaining a life usage in the property. Though this is a successful planning strategy for Medicaid eligibility and to protect the family home from Medicaid and the cost of Long-Term Healthcare, it does not protect the home from your children's creditors. In tough times, the possibility of financial problems or divorce of your children must be carefully examined prior to transferring your home to your children and reserving a Life Estate. One way to protect your home from not only your creditors but your children's creditors is to use an Irrevocable Trust.

Most people associate the words "Irrevocable Trust" with relinquishment of control, inflexibility and rigidity. However an Irrevocable Income Only Trust (IIOT) will enable an individual to retain a significant degree of control over their assets during their life, while at the same time providing creditor protection as well as tax planning opportunities.

Transferring your property to an IIOT allows you to avoid probate, gives your children a step-up in basis (allows them to sell the property tax free after your death), allows use of the \$500,000.00 (\$250,000.00 if single) gain exclusion if the property is sold during your life, all while protecting your home from nursing home costs and your children's creditors. This trust does not allow you, as the Grantor, to access the principal under any circumstances but does allow you to access the income associated with this property during your lifetime. As with any transfer, the disqualification period (Medicaid ineligibility period) is five years so planning needs to be done in advance. A Life Estate can only be done with your principal residence, however an IIOT can protect vacation homes and income producing properties. The principal from these assets cannot be used for your own benefit once transferred into the trust, however the income can. Though the trust is irrevocable, it is not inflexible as the trust can buy and sell properties to accomplish your goals as long as the principal is not removed from the trust.

An IIOT is a vehicle that can be used to provide protection from your creditors, your children's creditors, the cost of Long-Term Care, while at the same time allowing you to retain a significant degree of control over your assets during your life. The IIOT may not be the right fit to reach everyone's estate planning goals but to discuss if this strategy is right for you, contact McCormick, Murtagh & Marcus.

