



CHIP'S

CLIPS

Winter 2008

59 Atlantic Avenue, PO Box 456
Boothbay Harbor, Maine
207-633-6300 fax 207-633-6387

www.GriffinLawOffices.com

Attorney: Carl R. Griffin III

Paralegals: Anne Mosher, Mary Sproul, Sandy Paxson, Kati Hunt

Assistants: Sarah Giles, Kevin Bowler

To Divide or Not Divide

By Anne Mosher

Maine law allows only one division of your property in any 5-year period, and this “division” can be by sale, lease, development, and even the construction of a building. You do not even need to record a document to violate this law. For instance, simply leasing out a barn is considered a division and thus, subject to the 5-year rule.

There are some exceptions, which include court-ordered divisions, transfers to abutting land owners, and certain gifts to relatives, among others.

If you want to divide your land into 3 or more lots within a 5-year span, you must develop a subdivision survey plan. Before a municipality approves any subdivision, it must consider certain criteria, including pollution, ground water availabilities and burdens, erosion, traffic, sewage and solid waste disposal, and impact, among others.

Developing a Subdivision Plan can be costly and should not be undertaken without first enlisting a licensed land surveyor and a real estate attorney.

INSIDE THIS ISSUE

- 1 Subdivisions: To Divide or Not to Divide
- 1 Warranty vs. Quitclaim
- 2 Choosing the Right Business Name
- 3 Transferring Real Estate to the Next Generation
- 3 Bella's Spot
- 4 Too Busy to Make a Will?
- 4 Medicaid Rule Changes Affecting Caregiver

Warranty Deed vs. Quitclaim Deed

By Chip Griffin

From the buyer's perspective, it is preferable to receive a warranty deed than a quitclaim deed, for the simple reason that the seller is then guaranteeing title flaws that could exist before the seller owned the property.

A quitclaim deed **with** covenant warrants any title problems arising out of the seller's ownership of the property, but not title problems prior to ownership.

A quitclaim deed **without** covenant (sometimes called a release deed) does not warrant anything, but only conveys whatever ownership a seller has in the property.

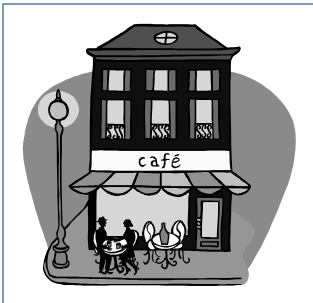
“Does it matter if the seller wants to give me a Quitclaim Deed instead of a Warranty Deed?”

Please see *Warranty vs Quitclaim* on page 3

Choosing the Right Name for your new Business

By Mary Sproul

“When selecting a name, try to make the name short, easy to remember, descriptive of the business, and capable of drawing attention.”



You may have to register or receive approval from the local or state government where your business is formed, depending on your type of business.

As you organize your new company, here are some things to think about as you choose a name for your business:

- ✓ Think about choosing a name that will immediately inform potential customers of the purpose of your business. Studies show that businesses with names that identify the services or products offered are more successful than non-descriptively named businesses.
- ✓ Think about how the name will sound when spoken and make sure that it is easy to understand, pronounce, and remember.
- ✓ Visualize how your name will appear on your signs, in ads, and on your business cards.
- ✓ Choose a unique name to distinguish your company from others and one that won't easily be imitated by competitors.
- ✓ Make a list of different ideas and get reactions from family and friends, live with your ideas for a while, and give them a chance to work.
- ✓ Check the internet to see if the name is available for a website.
- ✓ Don't choose a name that is long or not easily understood.
- ✓ Don't select a trendy name, since trends and fads pass quickly; and you don't want your business to appear outdated.
- ✓ Check the State of Maine Bureau of Corporations to see if the name is already in use.

Once you have a name for your business, consider registering the business as a corporation or a limited liability company. For more information and advice, and to consider the up-front and ongoing costs involved, contact both your accountant and your lawyer.

Warranty vs. Quitclaim (from Page 1)

By Chip Griffin

Either way, a buyer gets the same title, regardless of whether they receive a warranty, quitclaim with covenant, or quitclaim without covenant; rather, the differences dictate how much extra liability the seller may have as a result of his or her deed.

Buyers are generally protected through title insurance more than deed warranties. Sellers are far more exposed when giving warranty deeds. With the increased presence of title insurance in Maine, like many other states, it is likely that quitclaim deeds will become more common than warranty deeds.

Transferring Real Estate to the Next Generation

By Chip Griffin

Each Estate Plan is unique. It is important to think through your objectives or goals, not only to plan for the rest of your life, but also to plan the distribution of your assets when you die. The next step is to review the options available for transferring your assets to the next generation. Here are some choices when considering your real estate planning:

- ✓ **Qualified Personal Residence Trust (QPRT)** - transfer your residence to this trust, retain the right to live there for a fixed number of years, and at the expiration of this term, the remainder would go to your children.
- ✓ **Percentage Interest Gifts** - Consider gifting a certain value of your real estate each year, the amount of which would depend on your estate planning objectives.
- ✓ **Family Limited Liability Company** - transfer your real estate to a limited liability company comprised of yourself and your children, and possibly your grandchildren and/or in-laws, and consider gifting your membership interests over time, but maintaining control as the manager of the LLC. The percentage of retained ownership and management rights would be impacted by your estate planning objectives.
- ✓ **Outright Gift with Note and Mortgage** - gift your real estate to your children, but take back a Promissory Note and Mortgage, increments of which you can forgive annually.
- ✓ **Trusts** - establish a trust with yourself as the beneficiary and gradually change the percentage ownership to your children as beneficiaries.
- ✓ **Outright gift** - a simple technique.
- ✓ **Gift with retained Life Estate** - transfer your property but retain the right to live in the house for the remainder of your life.

All of these have advantages and disadvantages, which differ from one estate plan to the next. To review the options as they relate to your own estate plan, it is important to enlist the aid of a real estate and estate planning attorney.

Here are some options to consider when developing your real estate plan.



Ask to borrow our copy of:
Passing It On.
A book on managing family-owned summer cottages



Bella's Spot

Bella's been researching Dog Law in other towns. Did you know that:

- ❖ In Columbus, Georgia, it is against the law for dogs to howl after 9 P.M.
- ❖ Berea, Kentucky law requires dogs on the streets after dark to display a red taillight.
- ❖ Florida law does not allow dogs to ride in a school bus.
- ❖ A law in Zion, Illinois prohibits owners from teaching their dogs to smoke cigars.
- ❖ In Fox Point, Wisconsin, dogs cannot travel in groups larger than two.
- ❖ **My favorite law:** The Belvedere, California, the City Council passed a law that reads, "No dog shall be in a public place without its master on a leash"!

Too Busy to Make a Will?

By Kati Hunt

It is a natural tendency to avoid anything to do with sickness and death. Advance planning keeps you in control and helps prevent unnecessary complications and family conflict after you die, no matter how much money and property you own.

More than just signing a simple will, there are several things to consider when preparing an estate plan, including:

- evaluating your primary and secondary goals in the event that one or more of your beneficiaries predecease you;
- considering estate tax reduction techniques in the event you have a taxable estate;
- drafting trusts for the protection of family members with creditor problems or who are disabled; and
- how assets are titled: for example, jointly owned bank accounts or jointly owned real estate; life insurance or individual retirement plans with beneficiary designations, which should be coordinated with your estate plan to make sure the assets go according to your wishes.

Simply put, estate planning is different for each individual, and depends on these and many other considerations.

Medicaid Rule Changes Affecting Care Agreements

By Sandy Paxson

Effective April 1, 2007, MaineCare made substantial changes to the rule relating to the provision of personal care services provided by family members.

Under prior rules, so long as a written contract existed between the elder and the family member providing the services, and so long as the services are compensated at fair market value and are verifiable and documented, payment for such services was not considered a gift.

Under the new rule, in addition to the requirements above, there must now be a signed statement that the services are recommended by the elder's doctor as necessary to prevent the transfer of the elder to a nursing home or assisted living facility, and DHHS must verify the written contract.

It is not clear whether pre-approval of the contract is required. *Any person who is now paying a family member or may pay a family member in the future for help to stay at home should consult with an elder law attorney immediately to understand how those payments may be treated if and when MaineCare is needed.*

Even clients with existing written contracts to pay for personal care services should seek advice about what additional measures are required to ensure that ongoing payments will not be treated as gifts that may make the person ineligible for MaineCare in the future.

Griffin Law Offices & Schooner Title, Co.

59 Atlantic Avenue
PO Box 456
Boothbay Harbor, ME 04538

