



In this Issue

What To Expect If You're Sued



Is Your Will Enough? Spousal Rights During The Probate Process



Landlord or Tenant? Who Is Responsible For Dealing With Weather Conditions On The Ground?



Client Spotlight: Franklin Financial Group



Firm News



Attorneys On The Move

What To Expect If You're Sued

By: Ann K. Schooley



No one likes being on the receiving end of a lawsuit. And I have yet to meet anyone who isn't an attorney that can honestly say they enjoy litigation. However, if you find you are unlucky enough to be sued, knowing what to expect can make the process far more bearable. Often, clients who have not been involved in significant litigation have unrealistic expectations about what can and can't be done and how long the process takes.

Here are a few of the misconceptions I've dealt with and what to expect:

1) This isn't that urgent and I don't need to deal with it right away.

Don't think that you can ignore the lawsuit, or put it in the pile of things on your desk to deal with later. You have a fairly short time frame, usually only 30 days, to respond to the complaint or you risk having a default judgment entered against you. Once a default judgment is entered against you, it is very difficult to get it overturned, so the sooner you contact your counsel, the better.

2) This will get resolved quickly and won't require much of my time.

Like most government agencies, court systems are not known for their speediness. In Hamilton County, Ohio, expect an average of at least a year, probably closer to two years, from the time the complaint is filed until the case is tried. While many cases settle, most don't settle until at least some, if not all discovery is completed. Discovery is typically the longest, most time-consuming part of civil litigation, and requires significant involvement and cooperation from the

client. You'll be asked to gather documents, be available to meet with counsel to go over documents and prepare for depositions, and you will likely be deposed by opposing counsel. Similarly, any of your employees with relevant information will need to be made available. Expect that this process will take considerable time and energy on your part and may drag on for years.

3) This case has no merit, it should be thrown out of court.

Just because you or your attorney believes that the case against you lacks merit, neither of you are the final decision maker on that issue – the judge is. For the case to be dismissed prior to trial, you have to be able to prove to the judge that the claims against you have no merit. This is far easier to do if you have documents signed by the plaintiff that support your version of events. For example, clients often claim the agreement between the parties was something different than what the other side says it was. Without anything in writing, it's your word against theirs and it is unlikely the case will be dismissed prior to trial. Having documentation to support your version of events is critical when defending a lawsuit. Don't expect that the case will be dismissed based solely on your version of events.

"Clients have unrealistic expectations about what can and can't be done and how long the process takes."

Civil litigation is complex and has specific rules and procedures that must be followed. Failure to abide by the rules creates a serious risk that you will lose the case. There's a saying that "no one likes lawyers till they need one." However, if you are being sued, the best thing you can do for your case is call your lawyer.

Is Your Will Enough? Spousal Rights During The Probate Process

By: J. Jeffrey Albrinck



It is widely understood that approximately fifty percent (50%) of all marriages end in divorce. Not reflected in those statistics are those married couples who simply choose to live apart, choosing to maintain separate checking accounts, reporting income as married but filing separately and generally living as a single individual without any formal recognition of the separation through the Domestic Relations Courts. For many of those couples, they simply do not want to incur the cost of the divorce or formal dissolution process. To further illustrate their intent to reallocate their resources, many will execute a Will leaving their assets to someone other than the spouse. This attempt to circumvent the formalities of the divorce process, however, often results in unexpected and clearly undesirable consequences.

Probate law, under Ohio Revised Code Section 2106, provides for very specific rights of a surviving spouse. The Code does not distinguish between those spouses living together or apart. Upon opening any probate estate, the surviving spouse is afforded the right to elect to take under the Will wherein the terms of the Will

will be honored or may elect against the Will thereby providing for a distribution of the probate estate pursuant to a different set of rules. There are several variations of the rights of a surviving spouse, depending on whether the decedent had children and whether those children are also the children of the surviving spouse. The surviving spouse may be entitled to up to one-half of the net estate including the right to receive the deceased spouse's residence, as well as various levels of spousal support and personal property. These laws are firm and allow the surviving spouse to come back into the picture years after an informal separation.

When couples decide to go their separate ways, the relief of the separation or the excitement of starting a new life often results in satisfaction with the new status quo and procrastination toward formalizing the separation. Simply re-doing your Will WILL NOT guarantee that your assets will go to your newly designation beneficiaries. It is critical that you discuss with an attorney the resulting consequences of any change in marital status OR marital situation as well as any other unconventional living arrangement – the law is not always what you expect.

Landlord Or Tenant? Who Is Responsible For Dealing With Weather Conditions On The Ground?

By: Jonathan P. Saxton



It is winter weather time and in the Midwest that means rain, snow and ice. In the residential landlord-tenant context, who is responsible for dealing with weather conditions on the ground?

In Ohio, a landlord is required to keep all common areas in a safe condition. Common areas includes stairs, hallways, and driveways. But is a landlord required to clear ice and snow, or, more importantly, will a landlord be responsible if someone slips and falls on ice and snow?

The Ohio Supreme Court has held that a landlord does not have a duty to keep common areas clear of natural accumulations of ice and snow. If a landlord does clear snow or treat ice, then the situation is no longer one of "natural accumulation." The landlord may have made the conditions more dangerous. In that situation, the landlord could be held liable if the snow removal or ice treatment made the driveway, walk or other common area unsafe. The test is whether the landlord's actions were reasonable.

The tenant has the duty to keep the premises he or she rents in a

safe condition. If the unit has its own stairs, as an example, then the tenant with control over those stairs must maintain them. Just as for the landlord, the tenant would not be responsible for the natural accumulation of ice and snow, but would be responsible if he or she negligently treats the conditions.

For both landlord and tenant, if there is some condition known to them, but that would not be known to the average person walking onto the property (such as a dip or hole in the pavement or a rotting step), there is a duty to correct or warn.

What responsibility does the person walking onto ice or snow have? Ohio applies the concept of comparative negligence. If the person is negligent himself or herself, such as not watching where walking or walking too quickly over what should be seen as slippery ground, then the negligence of that person would be compared with the negligence of the tenant or landlord.

As with many issues, the responsibility for maintenance and treatment of ice and snow as between landlord and tenant can be best addressed in the contract between them, the lease agreement.

CLIENT SPOTLIGHT



Mortgage Consultants For Your Life

Operating as one of the Tri-State's largest residential mortgage lenders, Franklin Financial Group has steadily grown into a leading mortgage brokerage that pairs borrowers with mortgage lenders. Since 1999, Franklin Financial has originated and managed over \$105 million dollars in mortgages.

Licensed to originate loans in Ohio, Kentucky, and Florida, Franklin Financial specializes in residential mortgage financing on Primary Residences, Second Homes, and Investment Properties for 1-4 unit dwellings. Their origination services can be used to purchase or refinance property as well as tap into existing equity in the property.

Franklin Financial's product offering includes Home Equity Loans and Lines of credit, and Fixed and Adjustable Rate Mortgages for Conventional and Government Programs including loans through the US Department of Veterans Affairs and Department of Agriculture Rural Development.



Franklin Financial's services include originating loans for borrowers through lender partners, as well as providing mortgage consultation to customers to help them reach the decision as to which products best meet their financial needs. The experts at Franklin Financial educate their customers on the mortgage process, why lenders impose certain guidelines based on each individual loan scenario, and how customers can obtain the best programs available.

Throughout the years, Rendigs has become a trusted partner and resource of Franklin Financial. In addition to working with and counseling them on their various business needs, Rendigs has also assisted many of Franklin Financial's clients in navigating through the real estate transaction process. Rendigs is pleased to have developed a strong partnership and would like to congratulate them on their steady growth and continued success!

For more information about Franklin Financial Group and its offerings, please visit them online at franklinfinancialgroup.com or contact Kevin Ary, President, at (513) 231-4927 or by email at kary@franklinfinancialgroup.com.

Firm News



Rendigs, Fry, Kiely & Dennis, LLP is pleased to announce that Karen A. Carroll has been elected as a partner with the firm. Ms. Carroll joined Rendigs in March of 2007 and practices in the field of medical malpractice defense. She obtained her B.S. in Nursing from the College

of Mount St. Joseph (1979) and her JD from the University of Cincinnati (1987). Ms. Carroll has extensive experience representing hospitals, extended care facilities, physicians, dentists, nurses and health care providers in the defense of medical malpractice and wrongful death claims. She is admitted to practice in state and federal courts in Ohio and Kentucky.

Attorneys on the Move

Ohio Super Lawyers

W. Roger Fry, Leonard A. Weakley, Jr., Joseph W. Gelwicks, Edward R. Goldman, David W. Peck, Paul W. McCartney, Peter L. Ney, Felix J. Gora, and Karen A. Carroll were recognized as being in the top 5% of all lawyers in Ohio and were named as 2009 Ohio Super Lawyers. Ohio Super Lawyers is an annual listing of outstanding lawyers who have attained a high degree of peer recognition and professional achievement.

Ohio Rising Stars

Chad E. Willits, Vaseem S. Hadi, and Lynne M. Longtin were recognized as being in the top 2.5% of all lawyers in Ohio and were named as 2009 Ohio Rising Stars

Cincy Leading Lawyers

W. Roger Fry, Peter L. Ney, and Leonard A. Weakley, Jr. were named “2009 Leading Lawyers” by Cincy Business Magazine. The Cincinnati Business List of Leading Lawyers includes attorneys considered to be among the most prominent and powerful legal minds of the Greater Cincinnati Area. All winners were nominated by colleagues outside their firm and chosen by a panel of their peers.

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