

MICHIGAN ADOPTS NEW TRUST CODE

Governor Jennifer Granholm recently signed into law legislation enacting the Michigan Trust Code ("MTC"), which will take effect on April 1, 2010. The MTC modernizes Michigan's laws governing trusts and estates.

The Michigan Trust Code makes three significant changes to existing law.

A Settlor of a charitable trust will have standing to enforce the trust terms. Presently, Michigan law allows only the Attorney General to enforce charitable trusts.

Second, the competency standard to create a revocable trust will be the same standard re-

quired to create a will. The MTC provides a definition for the "sound mind" requirement. The



Settlor must (i) understand he is providing for the disposition of his property, (ii) have the ability to know the nature and extent of his property, and (iii) have the ability

to understand, in a reasonable manner, the general nature and effect of his act in creating the trust.

Third, any trusts established after April 2010, will be presumed to be revocable unless it states it is irrevocable. The effect of this provision is to reserve the power to revoke or amend the trust in the Settlor without requiring an express provision in the trust instrument granting such power to the Settlor.

The MTC is based on the Uniform Trust Code ("UTC"), which 20 states have adopted. The enactment of the MTC will create uniformity with the law in other states.

RANDALL LEVINE AMONG MICHIGAN'S SUPER LAWYERS IN 2009



For the third consecutive year, Randall Levine is named by *Michigan Super Lawyers* as one of the top attorneys in Michigan for 2009.

Only five percent of the lawyers in the state are named by *Super Lawyers*. This honor reflects a high degree of peer recognition and professional achievement.

COURT'S CUSTODY ANALYSIS TRUMPS PARENTS' CUSTODY AGREEMENT

Trial Courts have an affirmative duty to ensure that the resolution of any custody dispute is in the best interests of the child. The Court's duty applies regardless of an agreement between the parents.

Michigan law requires a judge to consider 12 factors when determining the custody arrangement. Recently, the Court of Appeals ruled that trial courts must consider these factors even when the parties make their own custody arrangement. Some factors include the love, affection and other emotional ties existing between the parties involved and the child; the moral fitness of the parties involved; and the length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Talking with counsel to help you establish temporary and/or permanent custody arrangements is in your best interest as well as the interest of your children.

BUYER BEWARE: AVOIDING SUCCESSOR TAX LIABILITY

You are about to purchase the assets of an ongoing business. You believe that because you are not buying the company's stock, only the assets, you will be free of any of Seller's possible obligations. But, this is a case of buyer beware. Generally when a Purchaser buys assets, he or she does not buy the Seller's liabilities, but, a purchaser can end up paying the Seller's unpaid taxes to the Michigan Department of Treasury. When a Purchaser purchases substantially all of the assets of a company, the Department of Treasury may assess the liability of the Seller's unpaid taxes to the Purchaser of the assets.

Successor Liability exposes an unwary Purchaser to the possible assessment of significant tax liability, especially if the representatives of the selling company abscond after closing. Fortunately, there are protections available to avoid this tax liability.

- The Asset Purchase Agreement must create an escrow account into which the purchasing company should deposit a portion of the purchase price to cover estimated taxes, due and unpaid.
- The funds remain in escrow until the seller produces either a receipt from the Michigan Department of Treasury showing that the taxes due are paid, or a tax clearance from the Department.

As the Purchaser, do not be intimidated to demand an escrow for fear that it will be a deal breaker. The Seller's offer of indemnification is simply not enough. Seller's promise to pay debts will be meaningless if the Seller disappears or is insolvent. Taking small but significant steps in purchasing a business will help you be a savvy and safe Buyer. Seeking counsel at the time of the transaction is more cost efficient than attempting to salvage a potentially lost cause.

FORCING A MINOR TO SUBMIT TO A CHEMICAL TEST MAY BE UNCONSTITUTIONAL

Many people do not realize that being under age 21 and in possession of alcohol is a criminal offense- as a "minor in possession". A conviction for a criminal offense can have long-term negative consequences.

You must be 21 to legally consume alcohol in the State of Michigan. Law enforcement often seeks to enforce the law against college students whom they suspect have been consuming alcohol but are under 21. If a police officer writes a citation to an underage person, and he or she pleads guilty in order to avoid the trouble of telling his or her parents or "fighting" the charge, he or she could end up with a criminal record.

A criminal record is detrimental because employers invariably avoid hiring a person with a criminal record when there are other candidates equally qualified for the same job.

Recent court decisions curtail the police officer's authority to obtain breath samples from college students whom they suspect have been drinking. If you know a young person who is forced to submit to a breath test and is prosecuted for being a minor in possession of alcohol, we encourage you to seek counsel. Seizing blood alcohol evidence, without a search warrant, may be unconstitutional and the results inadmissible.

