PETRIE & STOCKING S.C.

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Happy New Year!

As we reflect upon the accomplishments and memories of 2014, we look forward to a banner year for our firm in 2015.

John C. Thomure, Jr. joined the firm on October 1st. He has recently returned to the Milwaukee area from New York, and his family will be joining him after the school year. John focuses his practice on early stage company formation, general corporate law matters, commercial real estate sales and leasing, and customs and international trade. He has extensive experience representing clients in manufacturing, logistics and transportation, hospitality, software development, import and export, and commercial real estate. A more complete description of John's experience and the scope of his practice can be found on the firm's website.

With the beginning of 2015, Petrie & Stocking will celebrate our 120th year of serving clients and the legal community. This is not only a milestone of which we are proud, but an opportunity to continue providing exceptional legal service for many years to come.

Our 120th year is sure to be filled with excitement and continued success. On behalf of the attorneys and staff at Petrie & Stocking, I wish all of our clients and friends a joyous and rewarding new year!

ROGER PETTIT, President

DECEMBER 2014 ANNOUNCEMENTS

JOHN C. THOMURE joined Petrie & Stocking in October 2014.

SUMEETA A. KRISHNANEY has recently been elected co-chair of the Milwaukee Bar Association Probate bench/bar committee.

LINDSEY R. KING finished the Madison marathon on November 9th and her time qualifies her to participate in the Boston Marathon.

TRISTAN R. PETTIT is offering ***"Landlord Boot Camp: The ABC's of Residential Landlord Tenant Law"*** - Seminar for Apartment Association of Southeastern Wisconsin (AASEW) – **Saturday, February 21, 2015** from 8:30 am – 5:30 pm at the Clarion Hotel located at 5311 S. Howell Avenue in Milwaukee. See website for more details.

On **January 15, 2015**, DAVE MCCLURG will be presenting a section titled ***"Drafting Tips for Independent Contractor Agreements – How to Minimize the Risks of Misclassification Claims"*** as part the State Bar of Wisconsin's Seminar on ***"Complex Commercial Contracts."***

IS IT POSSIBLE THAT WISCONSIN IS A FAVORABLE TAX STATE?

LAURA J. PETRIE

It's not unusual for states to claim that there are terrific places to live and to visit – Wisconsin's tourism board works hard to get this message out across the country (*www.travelwisconsin.org*). But increasingly, states are trying to get out the message that there are also great places to die. Did you know that Wisconsin is one of these states – at least when it comes to state estate taxes?

In years past, most people did not have to worry about state estate taxes. For many years, federal law provided an estate tax credit which reduced the federal estate tax bill by the amount paid in state estate taxes. In 2005, however, this credit was repealed, leaving significant gaps between federal and state estate tax thresholds in many states. The 2013 law which raised the federal estate tax threshold to $5 million (adjusted annually for inflation: the 2014 threshold amount is $5.34 million, and it will increase to $5.43 million in 2015) ensured that the federal tax will remain a nonissue for the vast majority of U.S. taxpayers. However, despite the large 2013 federal estate tax threshold increase, state estate taxes remained a real threat to some family legacies – **but not for Wisconsin residents**. Wisconsin has not had any estate or inheritance tax since 2008, regardless of the size of the estate.

To put Wisconsin's favorable estate tax position in perspective, in 2015 four states will increase their estate tax exemptions as follows:

1. Tennessee's estate tax exemption will jump from $2 million to $5 million;
2. Maryland's estate tax exemption will increase from $1 million to $1.5 million;
3. New York's estate tax exemption will grow from $2.062 million to $3.125 million; and
4. Minnesota's estate tax exemption will rise from $1.2 million to $1.4 million, and will continue to rise annually in $200,000 increments until it reaches $2 million in 2018.

A major concern for lawmakers in states which still have estate and inheritance tax laws in place is that wealthy retirees will vote with their feet, depriving those states of much-needed annual income tax revenue. Fourteen individual U.S. states, along with Washington, D.C., have state estate tax thresholds that are lower than the current federal amount, with their maximum estate tax rates ranging from 12% to 19%. New Jersey's estate tax threshold is just $675,000, which could affect heirs of relatively modest estates. Seven states have an inheritance tax, with maximum rates ranging from 9.5% to 18%. Unlike an estate tax, which is levied on an estate before it's distributed, an inheritance tax is typically paid by the beneficiaries.

To recap: Wisconsin currently has no state estate or inheritance tax, regardless of the size of the estate. This means that most Wisconsin residents can focus their attention on the non-tax aspects of planning for their loved ones. If you already have an estate plan in place, we recommend that it is regularly reviewed and updated to reflect changes in your personal family situation.

REJECTING A RENTAL APPLICANT:

The Dos and Don'ts

Let's face it, most landlords would prefer to never have to reject a rental applicant. In a perfect world, every application from a potential tenant would pass muster – great credit, no prior evictions, solid job history, etc. Unfortunately, that is not usually the case.

TRISTAN R. PETTIT

Depending upon how stringent a landlord's screening criteria is, a high percent of applicants may be rejected. While rejecting a rental applicant is not fun, it goes with the job of being a landlord, and it needs to be done. Due diligence at this stage in the process will protect the conscientious landlord from potential problems later.

In most areas of Wisconsin, a landlord is not required to provide a reason for denying a rental applicant. While this may not seem "fair", it is legal.

Caveat: Dane County differs in that landlords are required to provide a rejected applicant with a written explanation for denying them rental. Therefore, owners and managers of rental property in Dane County should become familiar with the Dane County ordinances, as well as the City of Madison ordinances (if applicable).

Outside of Dane County, there are several ways to deny a rental applicant. Property owners handle this situation differently depending on the specific facts of the situation. Some landlords choose to tell the applicant why they were denied while others refuse to do so. Both ways are legally acceptable (again, with the exception of Dane County).

Property owners may require the applicant to submit a written request asking for the reason for their denial. The landlord will provide a written explanation only upon receiving a written request to do so. Oftentimes the applicant will not take the time to make the written request and thus the property owner has avoided the need to provide the explanation.

ADVERSE ACTION NOTICE

There is one specific context in which all landlords **MUST** provide an applicant with a written document – not a written explanation for why they were denied – but a written document referred to as an "adverse action letter."

If a property owner rejects a rental applicant because of something obtained from the applicant's credit report, the federal Fair Credit Reporting Act requires that the landlord send the applicant an "adverse action notice". This notice advises the applicant that they have been denied rental in part due to information obtained from their credit report.

An adverse action notice must include the following information:

1. The name, address, and telephone number of the credit reporting agency that supplied the credit report.
2. A statement that the credit reporting agency which supplied the report did not influence the landlord's decision to reject the application.
3. Notice to the rejected applicant of his/her right to dispute the correctness or completeness of the information from the credit reporting agency, and the applicant's right to obtain a free copy of their credit report from the agency within 60 days, if requested.

An adverse action notice does not actually require a landlord to state the reason that a rental applicant was denied, but it does tell the rejected applicant that the decision to deny their application was, at least in part, based upon something learned from the applicant's credit report.

INDEPENDENT POLICIES

There are three reasons which landlords should consider when determining whether to establish a policy of providing rejected rental applicants with a reason for denial:

1. Informing an applicant of the reason for denial could help them become a more attractive candidate in the future. If I was being rejected for housing I would like to know why so I could see if the reason is something that could be remedied. This is NOT a legal reason for providing the applicant with an explanation but rather a personal one – a variation on the concept of treating others as you would like to be treated.
2. In providing a rental applicant with the truthful (and legally valid) explanation as to why they were denied, they will be less inclined to (incorrectly) assume that I denied them based on discriminatory factors.
3. Are you well-versed in fair housing law and confident that the basis for your decision to deny a rental applicant is not in violation of federal or state fair housing laws, and that your decision can be legally supported.

As mentioned previously, if a landlord is unsure if a reason for denial is legally justifiable, then they need to be cautious. They certainly do not want to end up providing the applicant with evidence that would hurt the landlord in a fair housing claim. Landlords who find themselves in such situations should seek legal advice before a decision is made denying the rental applicant.

KEEP CLEAR RECORDS

Keeping clear and accurate records regarding the rejection of rental applicants is good practice, whether or not a landlord has decided to provide an applicant with an explanation as to why they were denied. All landlords and property managers should memorialize the reason that they rejected the applicant in writing for their own records.

For example, a landlord utilizing written screening criteria can record the reason for denial on a copy of the criteria by simply circling the specific criteria that the applicant failed to meet. Any supporting documentation should also be attached, such as a copy of the applicant's credit report, CCAP printout showing a prior eviction, or notes from conversations with the applicant's current or past landlord. Finally, it should be noted when the decision was made to deny the applicant, and when this was communicated to the applicant. Paperwork should be retained for at least three years, as this is the statute of limitations for the majority of most fair housing claims.

Rejecting a rental applicant can be an uncomfortable, and even anxious, situation for a landlord who is not educated about written screening criteria and when an applicant can be legally denied housing. To successfully avoid legal trouble from rejected applicants, and to ensure the use of practical and efficient processes, property owners should consult with an experienced landlord-tenant attorney.

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WISCONSIN'S COMMUNITY PROPERTY LAWS PROVIDE A BENEFIT FOR SPOUSES WHEN FORMING A LIMITED LIABILITY COMPANY

JOHN C. THOMURE, JR.

Most small businesses choose to organize as a limited liability company (LLC). Depending upon the choices made by the LLC and how many members there are, the LLC will be classified by the IRS as a partnership, corporation or reportable as part of the business owner's individual tax return (described as a "disregarded entity"). An LLC with two or more members is classified as a partnership for federal income tax purposes unless the LLC elects to be treated like a corporation. A single member LLC is treated as a disregarded entity (in other words, disregarded as separate from the owner for income tax purposes only) unless the LLC chooses to treated like a corporation. What this means is that multi-member LLC's have to file a federal partnership (or corporate) tax return. This is so even if the members are married and living in a non-community property state. The owner of a single member LLC reports the activity from the LLC on Schedule C (or E in the case of real estate investment) of his or her Form 1040 tax return.

To avoid the hassle of having to file a partnership tax return, spouses who live in the 41 non-community property states in the U.S. who want to own and operate a business together often decide to have just one of them own the LLC. This approach works because single member LLC's are not treated as a partnership for income tax purposes and so the LLC does not have to file a partnership tax return. Instead, the spouses add a Schedule C form to their Form 1040 federal income tax return to report the income (loss), deductions and credits related to the single member LLC. Likewise, real estate investments held in a single member LLC add a Schedule E to the tax return to report activity related to the LLC. Accordingly, many spouses choose not to jointly own their LLC in favor of one spouse owning the LLC.

Wisconsin's community property law removes the *Hobson's* choice for spouses described above. In Wisconsin (and other community property states), spouses who own an LLC can elect to have the LLC be classified as a "disregarded entity" resulting in the LLC being classified as a single member LLC and not as a partnership. This means the reportable activity of the LLC can be reported on the couple's Form 1040 tax return on Schedule C (or Schedule E for investment real estate) and avoid having to file a partnership tax return. To qualify for such treatment, the spouse owned LLC must show that it is a "qualified entity" as defined by the IRS. Accordingly, a Wisconsin business entity is a "qualified entity" if it is entirely owned by a husband wife as community property under Wisconsin state laws, one or both spouses are considered the owner(s) for federal tax purposes and the business is not treated as a corporation under the IRS Code.

Once the LLC is classified for federal income tax purposes, it should keep that classification from year to year to avoid the IRS from ruling that a conversion of the LLC occurred, which would likely result in unintended negative consequences for the LLC and members.