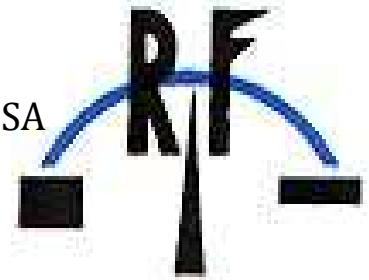


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Welcome to the Fisher's Law Office Newsletter.
Providing you with legal information you can use in your everyday life.

****CASE OF THE MONTH****

My client fell on hard times during Covid, lost his job, and was unable to pay for his automobile. As a result, the car was repossessed by the credit union that loaned him the money to buy the car. Shortly after the car was repossessed, he received a letter from the credit union which described the automobile with its VIN (vehicle identification number) as well as a written warning telling him that the amount owed was \$11,692.00 plus interest of \$1.77 a day. In the letter, they offered to allow him to "redeem" (pay off) the car. They also warned him that if he did not pay off the car in full with interest that the auto would be sold at a public auction after 9 a.m. on the "date certain" (approximately two weeks from the date on the letter). It also gave the location of where the auction for the automobile would take place.

My client was unable to buy the car at the auction and it eventually sold for \$4,050.00 leaving a balance due of \$7,350.00. There were repossession expenses of \$292 and the total amount still due after applying the proceeds from the sale was approximately \$7,642.00. Shortly thereafter, the credit union filed a lawsuit for the balance due (referred to as a deficiency in the repo world). I filed an answer to the lawsuit on behalf of the client alleging a number of defenses, including the defense of "failure to give notice of the transfer of the loan" from the car dealership to the credit union as required by Florida Statute §559.715. As a result of this, the attorney for the credit union realized that the case would be very difficult to prove in court and agreed to a very reasonable settlement in which our client was allowed to pay \$50 a month on a no interest balance of \$7,500.00. The settlement agreement included a provision that the case would be dismissed entirely if the client successfully paid off the principal amount owed for the deficiency. In the end, the client's credit is still intact and he has a path for paying off his debt for the repossessed car.

THE PROBLEM WITH THE VIRTUAL PRACTICE OF LAW

A lawyer is not allowed to coach his client during a deposition or during a trial. However, with Zoom trials and depositions, an attorney never knows if the other side is cheating or not. This year, the Florida Supreme Court sanctioned an attorney for texting his client during a Zoom deposition. The attorney was suspended from the practice of law for 90 days as punishment for coaching his client during the Zoom deposition.

This is the main reason I dislike the "virtual" practice of law: this virtual lawyer world violates the fundamental right to confront a witness.



What is a Qualified Domestic Relations Order?

Answer: Properly preparing a “Qualified Domestic Relations Order” (QDRO) is used to divide up the parties’ work-based 401K or IRA.

In 39 years of practicing law, I’ve notice that lawyers, for some reason, are afraid to prepare a QDRO. The process for preparing a QDRO is as follows:

1. Read Internal Revenue Code Section 26 USC Section 414 which explains how to divide up a 401K between parties tax free.
2. Contact the employer and ask for a form of a previously approved QDRO. This is always a good basis for the preparation of a new QDRO, because the employer is required to approve the QDRO before it is signed by a judge.
3. It is easier to prepare a QDRO that gives the “alternate spouse” a fixed sum or percentage of the 401K balance as of a certain date.
4. Once the QDRO is approved by the employer, it should be submitted to the judge on the day of the uncontested divorce hearing, so it can be signed on the same day as the final judgment.
5. Lastly, never forget to obtain a certified copy of the QDRO to mail to the employer so that the division of the 401K can occur.

WARNING: If the alternate spouse takes any money out the QDRO account, it can result in income tax liability, so I always advise clients to seek the help of a financial advisor before cashing in any amounts they receive in a divorce settlement in which a QDRO was the vehicle for dividing the parties’ retirement assets.



NOTICE TO HOMEOWNERS USING CONTRACTORS



A client owned a small plumbing company that did work on a home in north Florida under another contractor who was the “prime contractor” on the renovation project. The plumbing company correctly sent a “Notice to Owner” (as required by Florida Statute §Chapter 713) to the homeowner with a copy to the contractor so that everyone involved knew that his plumbing company was doing work on the job and expected to get paid. This very important document must be filed by any sub-contractor, material man, or laborer who wants to make sure they get paid for the work they do on a job. It must also be provided within 45 days of having materials delivered or beginning work.

My client also correctly filed a “Claim of Lien” within 90 days of completing the job in order to notify the homeowner of the amount that they had not been paid. In this way, the homeowner could withhold these amounts from the contractor in the final payment. It is critical to read the “Notice of Commencement” to make sure that there is no one else you must provide the Notice to Owner or Claim of Lien to – such as a bank or credit union.

My client would normally have a happy ending, except in this case, he did not get paid. He had to file a lawsuit to foreclose on the mechanic’s lien. I often recommend that sub-contractors only do business with solvent contractors or that they contract directly with homeowners and make sure that the homeowner understands how much they are charging and to make sure that they can pay when the work is completed. Then, I often recommend that the sub-contractor only sue the homeowner directly if they are “in privity” with the homeowner so that they do not get involved in the very complicated area of lien law, but instead are dealing with a simple contract and failure to pay.

TAKE A BREAK!



Studies have shown that breaking up your work day with some type of recreation increases efficiency and productivity. Many times we want to finish our work quickly, but working tirelessly can cause brain fatigue which may result in avoidable mistakes. It can be as simple as taking a walk outside or enjoying a leisurely lunch, but giving your brain a break will have a positive result on your productivity and your overall happiness and satisfaction at work.



Ralph taking a break at Fisher's Law Office



RECREATIONAL VEHICLE FRAUD

Next to complaints about contractors and ex-spouses, clients complain most about shoddy and/or incomplete work on their recreational vehicles.

If your RV breaks down, double, triple, and quadruple check the credentials of the repair shop before you trust them to work on your RV. You may want to consider having an attorney review the contract or estimate for completion dates prior to signing. Clients have reported months of delays and flat out fraud. You've been warned!

FLORIDA STATUTE OF THE MONTH

Florida Statute §742.10 provides for establishment of paternity for children born out of wedlock, and it says that if a father signs an affidavit acknowledging paternity and it is witnessed by two individuals and notarized, such acknowledgment constitutes the establishment of paternity under Florida law. I always warn men to consider getting a paternity test before signing such a document since it has lifetime repercussions.

HOA? RUN AWAY!

One of the most treacherous situations clients find themselves in is a dispute with their neighborhood Homeowner's Association (HOA). Once such a legal fight begins there is little chance for a happy ending.

Why? The HOA has unlimited legal help, paid for by the community and a long memory often driven by board members with personal grievances and a prepared actor (the HOA board) willing to back them on fining, harassing, and otherwise making miserable any poor homeowner who dares challenge the clique of rulers in the neighborhood.

My advice? Put up a for-sale sign and swear to never live in another community with with an HOA.

Fighting can often cause the loss of money and even your home, so if you get in a dispute with an HOA, tread carefully and keep your local real estate agent's number in your telephone address book!



Ralph B. Fisher, Esquire

PRICE LIST FOR 2022

- Consultation- \$175
- Deeds- \$250 and up
- Simple Will- \$250
- Probate- \$350/hr plus costs
- Living Will- \$75
- Healthcare Surrogate- \$75
- Litigation- \$350/hr plus costs

**Call me today at 813-949-2749,
I'm here ready to serve!**

Please give me a call or schedule an appointment to come into the office today! I look forward to meeting with you and assisting you with your legal needs. 813-949-2749

Ralph Fisher

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Degree in Accounting,
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Juris Doctorate Degree in Law,
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Memberships:

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- BV rated by Martindale Hubbell
- Gaucho Association www.gauchoassn.com