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## Winter/Spring 2014

Welcome to the NEWSLETTER of Fisher's Law Office, providing you with legal information you can use in your everyday life. If you have any questions about any of the articles in this newsletter please don't hesitate to contact us.

### HERE ARE SOME OF FLORIDA'S NEW LAWS FOR 2014:

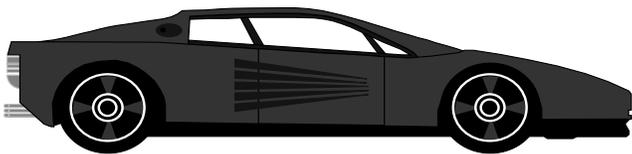
-Those voluntarily entering a mental hospital found to be mentally ill can no longer buy firearms in Florida.

-It is now illegal to put food coloring or other colors on baby chicks and rabbits at Easter.

-A Florida judge recently ruled that you have a first amendment "free speech" right under the constitution to flash your headlights to warn other drivers about a speed trap.

-Texting while driving is now illegal in Florida

-It is illegal to drive more than 10 miles per hour *under* the speed limit in the left lane of an interstate highway.

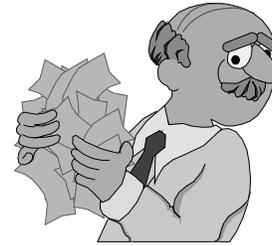


-Banks suing for foreclosure must now swear to owning and holding the promissory note it is suing to enforce including disclosing the location of the note. Also, the note must be filed with the court before a foreclosure judgment may be entered by a judge.

-Distillers can now sell up to 75,000 gallons of hard liquor they produce per year in Florida.

### 2014 IS THE YEAR TO WRITE YOUR CONGRESSMAN A LETTER

If you have never become involved in the political process or written a congressman, now might be the time. Contrary to popular



belief, our representatives do read their mail and are influenced by the wishes of their constituents.

The most effective way to have a voice in the political process is to write a short concise letter that gives your opinion on an issue being decided in Washington. Written correspondence is better than an email but even an email is better than nothing.

### 2014 is also the year you need to make sure that you have a will.

Who needs a will? Answer: Anyone who has children or owns a home should write a will. Also, anyone who has money in a bank account or who owns a brokerage account holding stocks or bonds should consider writing a will. A properly written will should say who inherits your estate when you die. You don't have to list each asset in your will. A last will and testament can cost as little as \$175.

## What assets pass to heirs outside of your probate estate?

Generally any account with a “beneficiary designation” does not pass through your estate.

For example: A life insurance policy, an IRA account, a 401K savings plan at work, or property held as “joint tenants with right of survivorship” will pass to your heirs outside of probate to the person you name on the account or list on your deed.

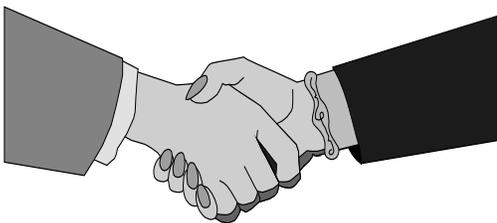
### III. Case of the Month

Our client was a wonderful woman in her late 40’s who died prematurely. Her family came to Fisher’s Law Office asking for help. Although she was divorced when she died, our client had failed to remove her ex-husband from her IRA account as a beneficiary. The family wanted to know who would inherit the account.

The answer was found in a new Florida law: Florida Statute 732.703, states that a retirement account upon death does *not* go to the former spouse but instead goes to the Secondary Beneficiary if the account holder is divorced at death.

**Result?** Because our client’s family will be able to prove that she was divorced at the time of death her mother will inherit the account.

**\*\* Practice Note \*\*** We Recommend that all



clients review their retirement account beneficiary designations upon divorce so that such issues do not come up if a premature death occurs.

## Here are latest trends in Foreclosure Law in Florida:

On September 25, 2013, the Appellate Court of the Second Judicial Circuit, which includes: Hillsborough, Pasco, and Pinellas Counties, rendered an opinion in the Focht case. The appellate court requested that the Florida Supreme Court give guidance on the issue of “Standing”.

Standing is established when a case is filed and requires that the bank hold the loan on the day suit is filed. In the Focht case, the court asked the Florida Supreme Court to revisit the issue of “standing” and say whether a bank can sue before it owns or holds a note.

Florida courts have steadfastly required a bank show proof that it owns a note *prior* to filing suit, not *afterward*. It is doubtful the Florida Supreme Court will change Florida law on standing.

### Other Foreclosure trends include:

Before a bank can accelerate and sue to foreclose in most foreclosure cases it must show that it sent a “default letter” to the homeowner more than 30 days before filing the lawsuit. (The default letter tells the homeowner that he has one last chance to catch up missed payments).

The problem with most default letters in Florida is that they are badly written and often do not describe what the default is, what must be done to cure the default, or that the homeowner has the right to raise defenses such as payment in the foreclosure proceeding.

If you receive a default letter alleging that you have defaulted under the terms of your mortgage, read it very carefully to make sure that it is clearly written. You may want to show the letter to an Attorney so he can raise a defense of an improperly written notice in your foreclosure case.

## What is the Hearsay Rule and what does it have to do with Foreclosure?

Hearsay is an out of court statement made in court to prove a truth. An example would be a letter written by a witness in a case. Most courts require the author of the letter to come to court to testify about the letter in order to introduce the letter into evidence.

Similarly, Courts require that banks have witnesses who can authenticate payment records and other hearsay documents before they are put into evidence.

The problem is that many banks are the 2<sup>nd</sup> or 3<sup>rd</sup> to own a loan and their representative in court has no knowledge of how the payments received by their predecessor banks were processed.

The lack of knowledge of the earlier bank's accounting systems has caused some Appellate courts to disallow such records from coming into evidence.

## What does that Statue of Limitations have to do with Foreclosure Law?

According to the Bible debts are forgiven after 7 years. Florida has a similar law of forgiveness and generally limits a bank to five years after a mortgage is accelerated to sue on a note or mortgage.

The five years generally runs from the day a Mortgage foreclosure suit is filed.

If a case is dismissed the bank needs to file another lawsuit within 5 years from the date the first case was filed.

With so many cases being dismissed in Florida, many mortgages become unenforceable.

**Practice note:** Most title insurance companies refuse to write title insurance on such homes, leaving the property in legal limbo: the

homeowner owes nothing on the house but he can't sell it because no one will insure title in the name of his buyer!

## Will you be affected by Obamacare?

Obamacare, commonly known as the "Affordable Care Act" takes effect on January 1<sup>st</sup> 2014. All adults in America are required to have health insurance by this date.

The Internal Revenue Service (IRS) has the right to audit every taxpayer to verify compliance. There are penalties for not having health insurance.

**Note:** Anyone currently on Medicare or in the military does not have to buy new health insurance.

However, almost everyone else has to prove to the IRS when they file their income tax return that they are insured.

Strangely, the President signed a waiver making members of Congress and their employees exempt from the new law.

Each state has a website known as an "exchange" in which insurance policies are listed and compared. People that make a low



wage can receive subsidies from the government in the form of tax credits to help pay for the insurance premium. The Enrollment period for the new law began October 1, 2013.

If you are uncertain about your status, you should contact an insurance agent or go to an exchange to find out what you need to do to come into compliance with this new law.

**Education:**

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1978

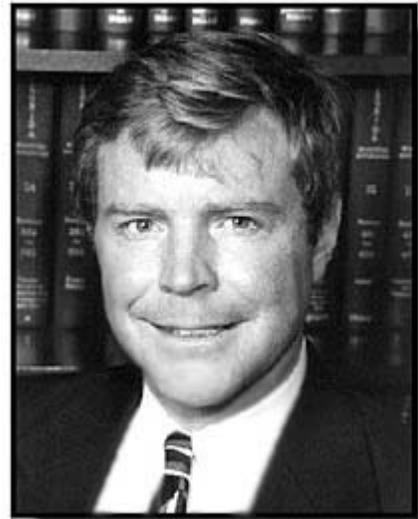
License Issued  
Certified Public Accountant

1983

Juris Doctorate Degree in Law,  
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Attorney, State of Florida

**Memberships:**

- Florida Bar Association [www.flabar.org](http://www.flabar.org)
- BV rated by Martindale Hubbell
- Gaucho Association [www.gauchoassn.com](http://www.gauchoassn.com)



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