

THE
JURIS DOCTOR
FAMILY WATCH

A NEWSLETTER FOCUSING
ON ESTATE PLANNING FOR
ASSET PROTECTION

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100 % OF CREDIT COUNSELING ORGANIZATIONS AUDITED LOSE TAX EXEMPT STATUS

Each year many Americans turn to credit counseling organizations (CCO) for assistance in managing their debts and anyone who files for bankruptcy must visit one.

There is a joint effort by the IRS and the Federal Trade Commission to crack down on credit counseling groups. Over the past several years the IRS has been in the process of auditing more than 63 credit counseling agencies representing half of the industry revenue. Forty-one audits have been completed and all of the completed audits have resulted in revocation, proposed revocation or termination of tax exempt status.

According to the IRS commissioner, tax exempt credit counseling has become big business dominated by bad actors. IRS is taking the unprecedented step of contacting every known tax exempt credit

counseling organization to ascertain if any additional problems exist and to assist those smaller credit counseling organizations that want to stay on the right side of the law.

The FTC along with a number of state attorneys general have brought legal action against some companies that call themselves credit counseling organizations which have deceived or defrauded consumers.

Some organizations (CCOs) arrange for their customers to pay debts through a debt management plan (DMP) whereby the customer deposits money each month with a CCO which then uses these deposits to pay debts according to a payment schedule they have worked out with the customer's creditors. Before sending money to a CCO for a DMP, customers should contact creditors and confirm they

have accepted the proposed plan. If creditors have accepted the plan, customers need to check their credit report to make sure payments are being made on time or the benefits of being in a DMP, including lower interest rates and fee waivers, can be lost.

With the increase in enforcement, some CCOs are going out of business. In this situation, customers need to stop DMP payments through automatic withdrawal, notify creditors, and start paying bills directly. Customers should order a credit report and check for late or missed payments that may have resulted. If payments have been late or missed, customers should contact the creditor, explain the situation and try to get the notation removed from his or her credit report.

When choosing a credit counseling organization a customer should --

- Ascertain (cont'd p. 2)

that the counselors are certified and trained in consumer credit, and money and debt management who work with the customer to develop a personalized plan;

- Should only sign up for a DMP after a certified

credit counselor has thoroughly reviewed his or her financial situation; Should read all documents before signing them and get the agreement in writing including a detailed price quote that includes all fees;

• Should be aware of how the counselor is being paid. Some creditors pay CCOs for debtors who enroll in a DMP. Additionally, many CCOs pay employees additional compensation if a customer signs up for certain services.

CONSUMERS WIN ONE - OBTAIN FREE ANNUAL CREDIT REPORT

A new law - the Fair Credit Reporting Act (FCRA) - requires each of the nationwide consumer reporting companies- Equifax, Experian, and TransUnion- to provide you with a free copy of your credit report once every 12 months. The Federal Trade Commission, (FTC) has prepared a brochure - Your Access to Free Credit Reports- explaining your rights and how to order a free annual credit report.

The credit report includes information on where you live, how you pay your bills, and whether you've been sued, arrested, or filed bankruptcy. Nationwide consumer reporting companies sell the info to creditors, insurers, employers and other businesses.

You can order your free report online at

annualcreditreport.com, by calling 1-877-322-8228, or by completing the Annual Credit Report Request Form (available on line) and mailing to Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

But be forewarned. If you order online you must be sure to spell the site correctly or, better yet, link to it from the FTC's website to avoid being misdirected to other websites that offer free reports but only with the purchase of other products. While you may be offered additional products or services on the authorized website you are not required to make a purchase to receive your free credit report. You can access the FTC website at www.ftc.gov/credit

INCREASED PROTECTION AGAINST CROOKED TITLE AGENTS

Ohio, reacting to the Erpenbeck massive fraud scandal of Northern Kentucky, has increased protection for purchasers of real property by enacting laws governing title agents effective in January, 2007.

Lenders generally obtain a title insurance policy that protects their interest in the property being financed but sometimes borrowers don't realize that the insurance purchased by the lender protects only the lender and does not protect the buyer/borrower. Now when a lender requests title insurance to cover residential property but the purchaser does not, the title agent shall give the borrower written notice that explains what an owner's title insurance policy insures against and what possible exposures exist for the buyer that could be insured against through the purchase of an owner's policy along with the cost for protection.

At the time of closing, the title agent shall

offer, for a fee, insurance providing closing protection to a lender, borrower and seller of property against loss of closing funds resulting from theft, misappropriation, or fraud in connection with the disbursement of funds or failure to comply with written closing instruction as agreed upon.

Additionally, title agents are now required to have errors and omission insurance, post a surety bond and undergo an annual audit of escrows.

Comment: mortgages are now always sold so that the original lender is seldom the lien holder at time of closing. Purchase proceeds are always sent to the lienholder which is usually an unrecognizable entity located afar. These companies will frequently not provide a cancellation once they are paid. Consequently, there is then a cost to correct the situation. Insurance should remedy this problem.

SURROGATE CONTRACT: WHERE IS THE LOGIC?

Danielle Bimber, Douglas Bimber, James Flynn and Jennifer Rice all signed a surrogacy contract which designated the Bimbers as surrogates, Rice as egg donor and Flynn as biological father. It was anticipated that Flynn and his fiancé would raise the children as father and mother and neither Rice nor the Bimbers would seek any parental role. Three eggs, harvested from Rice were fertilized with Flynn's sperm and implanted into Danielle Bimber who bore triplets in Pennsylvania. During the pregnancy, Flynn paid the Bimbers \$24,000. After the birth Flynn made plans to bring the children to Ohio but was thwarted when the Bimbers decided to keep the triplets and the money. This is where things started to get pretty strange.

Flynn first sued the Bimbers in Pennsylvania to recover the children and establish his right to custody. An Erie County court declared the contract void but then named Danielle Bimber the mother and Flynn the legal father because the contract designated him as the father. The court refused to join Rice in the action but then ruled she could not be named the children's mother because she was not a party to the action. The court decided Flynn's fiancée, Ellen Donich, could not be named the children's mother because she was not genetically related to them nor married to Flynn! How Bimber was named the children's mother despite being neither generically related to the triplets nor married to Flynn was not explained.

Then, Rice sued in Summit County, Ohio to establish she was the legal mother of the children and the Bimbers were not the children's parents. Summit County found that Flynn and Rice were the parents under Ohio law but it lacked jurisdiction over custody

issues because the Pennsylvania court had continuing exclusive jurisdiction over custody. An appeal from that decision resulted in the Summit County trial court being told they did not need to give full faith and credit to the Pennsylvania action because of the court's failure to include Rice in the action.

The next action takes us back to Pennsylvania where the Erie County court awarded primary custody to the Bimbers and ordered Flynn to pay child support. So, now there is a married woman who is sharing custody with a third party who is ordered to pay support to the married woman and her husband.

In Ohio, a child born during marriage is strongly presumed to be the child of the husband but in Pennsylvania, the presumption is irrefutable where the mother, child and husband live together and the husband assumes parental responsibility.

Back in Ohio, Flynn, apparently tired of it all, now sues to recover the money paid to the Bimbers which is heard by a different Summit County court. The second court declares the contract void as against public policy and refuses to enforce it.

Flynn appealed and finally things turned a little more favorable. The court of appeals found the Bimbers breached the contract by failing to surrender the children. Since the contract provided that if the Bimbers breached the contract they would be liable for the money paid plus attorney fees, the Bimbers were liable for those amounts.

But stay tuned. The case involves totally new and unprecedented legal questions, for which reason the Ohio Supreme Court has agreed to hear it. It could go to the U.S. Supreme Court.

AVOID ANOTHER IRS SCAM

Immediately before tax returns were due for 2006, the IRS discovered a new tax scam involving the Free File Alliance service available through the official IRS website. However, since a number of persons file for the automatic extension until October, the news is still relevant. The scammers inaccurately say they are part of the Free File Alliance, a partnership between 19 tax software companies and

the IRS. If you qualify, you can prepare your taxes using tax preparation programs for free. The only way to access the Free File program is through the IRS web site and then click 2007 free file. However, the scammers say they are part of the alliance, accept tax info from taxpayers, change bank account numbers to their own, and then file the return through a legitimate Free File partner.

**AN DANIEL H. MCKINNEY AGAIN NAMED CINCINNATI SUPER LAWYER BY
LAW AND POLITICS AND THE CINCINNATI MAGAZINE**

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Linda S. Bolin practices Medicaid, long term care, probate, health, and elder law. She has served as vice-chair of the elder law committee of the Cincinnati Bar Association, vice president of the Chase Women's Law Caucus, president of the Dallas Metro Counseling Association and trustee of the Cincinnati Arts Consortium, The Sarah Center, and the Terrace Guild. Previously, she was a city planner and director of planning for the City of Cincinnati Health Department.

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