



DECEMBER 2009

SWANSON MIDGLEY DIRECTIONS

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COMING SOON ESTATE TAX LAW CHANGES

On December 3, 2009, the US House of Representatives passed H.R. 4154 which would permanently extend the current \$3.5 million estate tax exemption and the 45% estate tax rate. The Senate is currently considering a similar bill.

Swanson Midgley will continue to monitor the situation in Washington. Stay tuned for updates.

ARE YOUR ASSETS PROTECTED FROM CLAIMS OF CREDITORS?

What assets can I protect? How much can I protect? When can I protect it? All very good questions.

Both Kansas and Missouri law provide residents with some form of asset protection. In a bankruptcy situation, federal and state law applies. In a non-bankruptcy situation, such as a judgment execution, state law applies.

Some assets that may be protected under state law, typically in a non-bankruptcy situation, include:

- Home (Kansas has an unlimited exemption, but Missouri only protects up to \$15,000);
- Retirement assets (generally unlimited in Kansas and Missouri);
- Life insurance (generally exempt in Kansas; some restrictions in Missouri);

•Household furnishings (Kansas protects items that are “reasonably necessary”; Missouri items not to exceed \$3,000);

•Motor vehicle (Kansas up to \$20,000; Missouri up to \$3,000); and

•529 Plans for education expenses (Kansas generally unlimited if contributed prior to one year; Missouri does not have a law protecting these plans).

There are other methods of providing asset protection above and beyond the state law exemptions, including:

- The use of trusts (typically irrevocable trusts such as a domestic asset protection trust);
- Type of ownership (tenancy by the entirety); and
- Creating business entities

such as partnerships, limited liability companies and corporations.

When dealing with asset protection issues, one must always keep in mind the issues regarding fraudulent conveyances which would eliminate some or all of the exemptions listed above.

The area of asset protection is complicated and deals with state and federal law. If you have questions or want to consider asset protection for your family, please contact your Swanson Midgley attorney or estate planning attorney, Kelly Dean Brende.



ATTORNEY ALLISON TANNER JOINS SWANSON MIDGLEY

We welcome L. Allison Tanner. Ms. Tanner’s passion is providing the highest quality legal services with an emphasis on client service. She enjoys working with clients in the commercial real estate arena and derives great satisfaction from helping clients complete commercial leasing and development transactions.

She also enjoys working with clients on lease and loan workouts and modifications and

foreclosures. In the commercial real estate industry, Ms. Tanner represents landlords, tenants, lenders, borrowers and developers.

Ms. Tanner received her Bachelor of Arts in English at Oklahoma Baptist University, her Masters in Education at the University of Memphis and her Juris Doctor at the University of Missouri-Kansas City School of Law.



IS YOUR COMPANY ONE CLICK AWAY FROM THE UKRAINE?

Businesses place and respond to orders via e-mail or through the web multiple times a day. Rarely does a purchasing or sales department consider the location or nationality of the buyer or seller. The location of performance, delivery, shipping or the parties can impact which law applies to the contract. The U.S. is a signatory to the United Nations Convention on Contracts for the International Sale of Goods ("CISG"), a treaty applying to all international commercial sales (written and oral) between

businesses located in the 71 countries having ratified the CISG, unless the contract's choice of law provision specifically provides for non-CISG terms. This can be tricky. For example, contract "boiler plate" language which states, "Missouri law shall apply to any dispute", actually incorporates the CISG into the agreement because the CISG is a part of Missouri law. Because the U.S. ratified the CISG, it has the force of federal law which overrides all state-based UCC

law. Increasingly, Swanson Midgley encounters international contract disputes where the parties fail to plan as to which law will apply in a dispute, or mistakenly believe the state-based UCC law will apply. As a member of MERITAS, a group of affiliated law firms worldwide, Swanson Midgley is well equipped to handle your international contract issues. Contact your Swanson Midgley attorney or litigation attorney, James F. Freeman III, for more information.



SCAMS RELATED TO ANNUAL BUSINESS FILINGS

Scams. They affect everything from your e-mail to corporate reports. In recent years, the prevalence of sneaky solicitors trying to make a fast buck has made it increasingly difficult for business consumers to stay on track with their annual business filings.

Of note are the solicitations purportedly from the Secretary of State and sent under the guise of annual business renewals. Some solicitors have perfected their computer forms to such an extent that they look as official as the government forms they emulate. These solicitors send out their official-looking forms, requesting form completion and unnecessary, exorbitant fees for the filing of these bogus documents. Unwary consumers follow the solicitor's instructions, not realizing that they may have paid too much for a service they

could have done themselves, or even worse, paid for something that will not be properly filed, thereby exposing the business to possible dissolution.

Annual business entity filers should review the following steps before submitting annual business reports:

1. Know when your filings are due and calendar them for future reference.
2. If you receive something, feel free to check with your Secretary of State's office, either via telephone or website: Do you have a filing due? If so, is the form(s) available on the website? Is the mailing address correct?
3. Be aware that documents received from solicitors may look as official as those that come from your state agency. Check with the Secretary of

State to verify form accuracy. (Also, you can read through the document received. Those coming from solicitors may contain language disclaiming any connection with an agency or government entity.)

4. Do not fall prey to solicitor scare tactics stating that your company's very existence is threatened.
5. Finally, if you are in receipt of one of these solicitation letters, you should take the time to forward the solicitation to your state's Attorney General, or such other agency as your state may request.

Questions? Contact your Swanson Midgley attorney or corporate attorney, Randal Carlson, for more information on this issue.

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FMLA LEAVE FOR H1N1 ABSENCES

With the H1N1 virus, business owners should be prepared for more absences this flu season. The Family and Medical Leave Act ("FMLA") employers, generally those with 50 or more employees, need to be especially cautious surrounding leave requests for influenza-like symptoms. FMLA leave may be available for those absences related to the employee or family member if the degree of the illness constitutes a serious health condition. According to the FMLA rules, a serious

health condition must involve inpatient care at a medical facility or continual treatment by a health care provider. For example, if your employee visits a healthcare provider and is prescribed medication or is hospitalized, then he/she may qualify for FMLA. Small employers who fall outside the scope of FMLA still need to review their leave policies to ensure they will provide flexibility for accommodating flu-related absences. Last month, the Equal Employment

Opportunity Commission ("EEOC") updated its guidance for employers titled "Pandemic Preparedness in the Workplace and the Americans with Disabilities Act," which answers several common questions relating to H1N1 and compliance with the American Disabilities Act ("ADA"). A copy of the guidance can be downloaded from our website. Contact your Swanson Midgley attorney or human resource attorney, JJ Danker, for more information.

