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Areas of Practice

- Bankruptcy
- Business, Commercial, Real Estate, Probate & Securities Litigation
- Real Estate Law & Title Insurance
- Local Government, Zoning & Land Use Law
- Corporate & Business Law
- Wills, Trusts, Estates & Guardianship Law

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**BANKRUPTCY:
SOLUTIONS FOR YOUR DEBT**

Individuals facing financial hardships caused by the loss of employment income, health issues or any other possible life event may need to consider filing for protection under the United States Bankruptcy Code. Such protections are available to all citizens and certain non-residents of the United States.

The filing for protection under the Code may be accomplished by private individuals and corporations alike. The need for filing may arise when an individual receives notice that they are being sued for a deficiency judgment following a foreclosure, sued by credit card companies or collection agencies. Individuals

may seek protection under Chapter 7 & 13 of the Code. Loss of revenue or other events may force a business to file for Chapter 11 protection.

For individuals, a Chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in Chapter 13. The Code will allow the individual debtor to keep certain "exempt" property such as the primary residence, vehicle and personal property.

Debtors should be aware that there are several alternatives available to seek relief. Debtors who are engaged in business, including corporations, partnerships, and sole

proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under Chapter 11 of the Bankruptcy Code. Under Chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under Chapter 13 of the Bankruptcy Code.

If you have any questions concerning bankruptcy or other related matters, call Ken McIntyre at Barnes Walker or visit our website at:

www.thefinanciallawyer.com

**BUSINESS LITIGATION:
MISMANAGEMENT OF BROKERAGE ACCOUNTS—
THE ARBITRATION PROCESS**

At Barnes Walker, we have formed a business litigation department with four experienced and skilled attorneys practicing in areas such as complex business matters; real estate; corporate; employment; securities; financial broker's misconduct; probate; trust and

wills, such as undue influence; as well as collection and other related matters. As your trial attorneys, we will strive to understand your goals, budget, and risk tolerance; and will give you and your case the experience of our hard-earned expertise and judgment.

For instance, in pursuing a claim against a financial advisor for mismanaging your securities account, you are required, under most account opening agreements, to arbitrate the claim before an arbitration panel under rules promulgated by the

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MISMANAGEMENT (CONTINUED FROM PAGE 1)

“In a proceeding with a claim against a financial advisor for negligence or breach of fiduciary duty, an expert witness is often employed to run alternative market models or to otherwise determine the misfeasance on the part of a broker.”

Financial Industry Regulating Authority (FINRA). This area of practice is very specialized and complex because of the nature of the financial products, unique FINRA standards for liability and the arbitration procedural rules particular to this forum. In proceeding with a claim against a financial advisor for negligence or breach of fiduciary duty, an expert witness is often employed to run alternative market models, or to otherwise determine

the misfeasance on the part of the broker. The arbitration process allows for mediation to resolve the dispute. In the event mediation is unsuccessful, then a hearing is conducted at one of the FINRA sites located in Lake Mary, Tampa and Boca Raton. Many claims concern inappropriate annuity products; improper product selection; overreaching in handling an elderly person's account; or failure to disclose the risk

involved in a product.

If you have further questions concerning the FINRA arbitration process or claims involving you or a family or friend's situation, please feel free to contact Andre R. Perron, Esq. at Barnes Walker. Our website at: www.thefinanciallawyer.com also contains additional information concerning this area of law as well as many others in our practice area.

REAL ESTATE:

ELIMINATION OF FHA “PREPAYMENT PENALTY”

On August 26, 2014, the Federal Housing Administration (FHA) issued its final rule to eliminate post-payment interest charges on FHA-insured single family mortgages. NAR has urged FHA and Ginnie Mae to remove this prepayment penalty for years as the policy placed an unreasonable burden on consumers who already face high housing and closing costs. Conventional loans, as well as loans from the Veterans Administration's Loan Guaranty Program and

the U.S. Department of Agriculture's Rural Housing Service loan program, do not have post-payment interest charges. The policy change will prohibit mortgagees from charging borrowers interest on their home mortgages after a principal balance pay-off. The final rule will go into effect on January 21, 2015.

This rule revises FHA's regulations that allow an FHA-approved mortgagee to charge the

mortgagor interest through the end of the month in which the mortgage is being paid. The final rule allows mortgagees to charge interest only through the date the mortgage is paid, and prohibits the charging of interest beyond that date.

If you have any further questions on this or other real estate matters, call Garret Barnes at Barnes Walker or visit our website at www.barneswalker.com.

DODD-FRANK ON SELLER-FINANCING

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”) imposes a number of new requirements on seller financing and private financing in residential real estate transactions. The final rule, effective January 10, 2014, regulates licensing, training, screening, and compensation practices of “loan originators.” A “loan originator” includes any person who offers, arranges, or negotiates the terms of a residential mortgage loan. Thus, seller-financiers that wish to offer loans to consumers secured by a dwelling must be licensed or use the services of a licensed loan originator, unless they qualify for one of two exceptions. There are no exceptions for individual lenders who are not sellers and who wish to make a loan secured by a residential mortgage. These individuals must be licensed or use the services of a licensed loan originator.

The Dodd-Frank Act provides two exceptions to the loan originator rule for

seller-financiers who extend credit to a buyer secured by a residential mortgage. Under the first exception, a seller-financier is *not* considered a loan originator if he/she: (1) is a natural person, estate, or trust; (2) provides financing for the sale of **only one property** in a 12-month period; (3) owns the property being sold; and (4) did not construct or act as the contractor for the construction of the residence on the property. Additionally, the financing must meet the following requirements: (1) the financing must have a repayment schedule that does not result in negative amortization; and (2) the financing must have a fixed or adjustable rate that resets after five or more years.

Under the second exception, a seller-financier is not considered a loan originator if he/she: (1) is a natural person, estate, or trust, *or* an entity (corporation, LLC); (2) provides financing for the sale of

three properties or less in a 12-month period; (3) owns the properties being sold; and (4) did not construct or act as the contractor for the construction of the residence. The financing must also meet the following requirements: (1) the financing must be fully amortizing; (2) the financing must have a fixed or adjustable rate that resets after five or more years; and (3) the seller must determine in *good faith* that the consumer has the ability to repay the loan.

It is important to remember that the Dodd-Frank Act only applies to residential mortgage loans secured by a dwelling. Thus, if the transaction is for vacant land, commercial property, rental property, or investment property, or if the buyer is a non-consumer (i.e. corporation, LLC), the transaction need not fall under one of the two exceptions above.

WILLS, TRUSTS & ESTATES:

TRUSTS CAN AVOID PROBATE, BUT...

Since an author published a book in the 1960’s about the evils of probate, Americans have spent an untold amount of money creating revocable trusts. Although trusts have a place in a comprehensive

estate plan, one size does not fit all. In some cases, a trust that is not tailored to the individual’s unique circumstances can actually create a need for probate and increased taxes. In other cases, a trust simply is not

needed.

Have you Transferred Your Home to a Revocable Trust to Avoid Probate? Florida’s constitution requires that a married person leave their homestead residence to their spouse

TRUSTS (CONTINUED FROM PAGE 3)

and provides other protections for minor children. A married person or the parent of a minor child who relies upon a trust to “avoid probate” may actually create a bigger problem than the one they tried to avoid. If the trust is not consistent with the protections for spouses and minor children, the Florida Constitution will trump the trust and the homestead will pass according to Florida law. Probate will be required to clear title to the home. If there is a minor child, a court-supervised guardianship will be necessary to manage the child’s interests in the home.

Is a Credit Shelter Trust Better than Probate? Since many businesses that sell trusts don’t practice law, they use a form that does not take

into account an individual’s real needs. We have seen many trusts that were prepared before the estate tax laws changed, and many that were prepared as if the individual had a large enough estate to be subject to estate tax. Today, only estates over \$5.34 million are subject to estate taxes. A married couple can pass twice that amount to their family without estate tax. Trusts that include estate tax planning often limit the rights of the surviving spouse to the trust assets, require management by a trustee, and even require annual accountings to the heirs who will inherit after the surviving spouse dies. That can be far worse than the probate process.

The Unfunded Trust. We have seen situations where someone spent a

significant amount of money to have a trust prepared, but never transferred any assets into the trust. As a result, the trust fails to achieve its primary objective – avoiding probate. Not all assets should be transferred to a revocable trust. Florida homestead is one example. Professional guidance is needed in preparing the plan, but also in implementing the plan.

At Barnes Walker, Goethe, Hoonhout & Perron, Chartered, our attorneys have prepared thousands of estate plans for our neighbors here in Manatee County. We have also helped families administer and implement those plans after the client has died. We work hard to give our clients the peace of mind that comes with good, solid planning.

If you have any further questions concerning wills, trusts, and estates, please call Jeff Goethe at Barnes Walker, and feel free to visit our website at:

www.barneswalker.com.

“In some cases, a trust that is not tailored to the individual’s unique circumstances can actually create a need for probate and increased taxes.”

ABOUT OUR FIRM

BARNES WALKER, GOETHE, HOONHOUT, & PERRON, CHARTERED, was established in 1995 at 3119 Manatee Avenue West in Bradenton, Florida, with two attorneys, Mr. Barnes and Mr. Walker and two staffers. Since that time, Barnes Walker has expanded to include ten (10) attorneys (soon to be eleven attorneys), 34 staffers, and four (4) offices (soon to be five offices). Our 10 attorneys have a combined experience of 215 years, and they practice in the areas of real estate sales and purchases, zoning & land use, homeowners and condominium associations, local government law, condemnation, wills, trusts, estate planning, probate, guardianship, elder law, business law, corporate, LLC, & partnership formation, business sales, business contracting, trademarks, contract disputes, creditor rights, employment claims, trust and will disputes, financial and securities fraud, real estate litigation, DUI cases, personal injury, and claims related to business disputes. Our law firm and affiliated title company, Barnes Walker Title, Inc., have closed over 16,000 real estate transactions since the firms’ beginnings.

IMPORTANT NOTE: The information contained in the preceding newsletter is summary in nature and is given for educational purposes only. The contents of this newsletter should not be considered as legal advice for your situation, if any, nor is it intended as specific or detailed advice, as we do not have any information specific to your situation. Further, the articles in this newsletter are not intended to be an all-inclusive discussion of their respective subjects, but a guide to the same, and there may be other matters not described in the articles of this newsletter which may impact your particular situation. Therefore, always seek legal advice regarding your own, unique situation.

BARNES WALKER'S ATTORNEYS



GARRET T. BARNES, ESQ., is a fourth generation Floridian raised in Bradenton, Florida. Garret graduated from St. Stephen's Episcopal School in Bradenton, received his Bachelor of Science degree in Business from Wake Forest University at Winston-Salem, North Carolina, in 1987, and earned his Juris Doctorate degree from Stetson University College of Law in Gulfport, Florida, in 1991. He was admitted to The Florida Bar in 1991. He is a member of The Florida Bar, its Real Property, Probate, and Trust Law Section, and the Manatee County Bar Association. Garret practices in the areas of real estate, land use, and business law. He has represented clients in all aspects of real estate sales and purchases for 22 years, since 1992, and has taught seminars on dealing with short sales, from both a buyer's and a seller's perspective. Garret can be reached at gbarnes@barneswalker.com.



STEPHANIE M. CUA, ESQ., was born in Miami, Florida. Stephanie graduated Phi Beta Kappa and *summa cum laude* from Florida International University in 2010, with a B.A. in International Relations and a Japanese Studies Certificate. She obtained her Juris Doctorate from the Florida International University College of Law in May 2013, graduating with honors, and was sworn in as a member of the Florida Bar in 2013. While in law school, Stephanie participated as an editor for the FIU Law Review and received book awards for the highest grade in her Wills & Trusts, Intellectual Property, Immigration and Human Rights Clinic, and Professional Responsibility courses. She served as a judicial intern for the Honorable Pamela A.M. Campbell at the Sixth Judicial Circuit of Florida in 2012, focusing primarily on mortgage foreclosure cases. Stephanie has also studied abroad at Kansai Gaidai University, in Osaka, Japan, as well as the Universidad de Sevilla, in Seville, Spain. Stephanie is conversant in Japanese and plays the Scottish bagpipes. Stephanie can be reached at scua@barneswalker.com.



JEFFREY S. GOETHE, ESQ., was raised in Bradenton and graduated from Manatee High School in 1982. After earning a Bachelor of Arts degree in History at Maryville College, Jeff attended the University of Tennessee College of Law, graduating in May, 1990. While in law school, Jeff enlisted in the United States Army Reserves and served for over six years. He then returned to Bradenton and was admitted to The Florida Bar in 1990. Jeff is a member of the American Bar Association, its Real Property, Probate and Trust Law Section, and that Section's Homestead Law Subcommittee; The Florida Bar, its Real Property, Probate, and Trust Law Section; the Manatee County Bar Association; and the American Inns of Court. Jeff has served as an adjunct faculty member at Manatee Community College, teaching real estate courses in the Paralegal Studies Program. He has also worked with Attorneys' Title Insurance Fund, Inc., as an instructor in its Real Estate Paralegals Certification Program and has prepared course materials for The Fund's real estate seminars. Since 1990, Jeff has practiced in the areas of wills, trusts, estate planning, probate, and real estate for over 24 years. Jeff can be reached at jgoethe@barneswalker.com.



ROBERT A. HOONHOUT, ESQ., was born in Montclair, New Jersey, and attended Lafayette College in Easton, Pennsylvania, where he received his Bachelor of Arts degree in Government and Law in 1975. Bob next attended Seton Hall University School of Law in Newark, New Jersey, where he received the American Jurisprudence award in Real Property Law before being awarded his Juris Doctorate degree with Honors in 1978. Bob was admitted to the New Jersey Bar in December, 1978. He then opened his own office in his hometown of Montclair and practiced in the areas of real estate law, land use and development, and local government law. He also began work for the Township of Montclair in 1983 as Assistant Township Attorney and was appointed Township Attorney in 1992. He relocated to the Sarasota/Manatee County area in 2002 and was admitted to The Florida Bar that same year. He is a member of the American Bar Association, The Florida Bar and its Real Property, Probate, and Trust Law Section, the New Jersey Bar, and the Manatee County Bar Association. Bob has over 35 years of experience practicing real estate and local government law in New Jersey, and has practiced in Florida for over 12 years, since 2002, in the areas of real property law, land use planning, and business law. Bob can be reached at bhoonhout@barneswalker.com.



JOY LEGGETT-MURPHY, ESQ., received her J.D. from the University Of Mississippi School Of Law, in 1995. She was born and raised in Mississippi and received her B.A. in Psychology in 1992 from Mississippi State University. She relocated to Florida in 1995 and was admitted to practice in Florida in 1997. After law school, Ms. Leggett-Murphy was hired as a contracts administrator/negotiator for GTE Communication Corporation. After leaving GTE Communications Corporation, Ms. Leggett-Murphy worked as an independent contractor for local business and law firms. During her time as a contractor, Ms. Leggett-Murphy participated as part of the due diligence team for a large national company's asset purchase from another national company. She has over her career maintained a real estate transactional practice as well as a litigation practice. Ms. Leggett-Murphy concentrates her current legal practice in the areas of general civil litigation, focusing on foreclosure

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defense, real estate litigation including commercial and residential contract disputes, condominium and HOA disputes, and commercial and residential evictions. She is a Florida Supreme Court Certified Circuit Civil mediator and a Certified Supreme Court Appellate Mediator. She has received a specialty certificate in residential mortgage foreclosure mediation. She is an approved mediator for the Florida Department of Financial Services. Ms. Leggett-Murphy is a Certified Title Agent for Attorney's Title Fund. Ms. Leggett-Murphy is a member of the Manatee County Bar Association and the Manatee County Chapter of Florida Association of Women Lawyers. She also maintains a real estate agent license in the State of Florida. She is an active member of her community, volunteering in the both her children's schools and with her church. Joy can be reached at jmurphy@barneswalker.com.



J. KENNETH "KEN" MCINTYRE, ESQ., was born and raised in Ontario, Canada. Mr. McIntyre attended Carleton University and graduated with a Bachelors of Arts degree in Psychology in 1993. He then spent the next ten years with the Ontario Provincial Police serving the community in various positions and assigned to numerous investigative units. He continued his studies at Southwest University where he earned a Masters degree in Criminal Justice Administration in 2000. Mr. McIntyre attended the Thomas M. Cooley Law School on two academic scholarships including the Lester B. Pearson Scholarship awarded to Canadian students. While at Cooley, he concentrated his studies on international law and had the opportunity to attend Monash University in Melbourne, Australia and the University of Canterbury in Christchurch, New Zealand. While overseas, he focused his studies on international trade, antitrust and international litigation issues. Upon graduating from the Thomas M. Cooley Law School in 2005, Mr. McIntyre relocated to Florida and became a member of the Florida Bar. He accepted a position with the Office of the State Attorney for the 6th Judicial Circuit and worked as a prosecutor in the misdemeanor, juvenile and felony divisions. During this time, he prosecuted in excess of 47 jury and non-jury trials as a lead prosecutor. Following his service as a prosecutor, he accepted a position in the private sector practicing in the areas of wills & trusts, estate planning, bankruptcy and civil litigation. His clients ranged from private individuals to small and medium-sized corporations. Since his admission to practice law in 2006, Mr. McIntyre's experience includes eight (8) years of practice in State and Federal courts in Florida. He is a member in good standing of the Florida Bar, the Federal Court for the Middle District of Florida and the Eleventh Federal Circuit Court of Appeals. He practices in bankruptcy, consumer rights, personal injury, DUI and general litigation at Barnes Walker. Ken can be reached at kmcintyre@barneswalker.com.



ELIZABETH "BETSY" C. PENNEWILL, ESQ., was born and raised in Fort Wayne, Indiana and moved to Florida in 1990 after graduating from Miami University in Oxford, Ohio. Her first career began as a commercial lender in Tampa where she spent five years working for Bank of America. In Tampa, she met her husband, Chris Pennewill, a fifth generation native of Pensacola, Florida. Betsy and Chris have two children, Christopher and Siddie. Betsy received her law degree magna cum laude from Stetson University College of Law in 1998. During law school, she was a member of Stetson Law Review and interned with The Honorable Alexander Paskay, Chief Bankruptcy Judge for the Middle District of Florida. She was admitted to the Florida Bar in 1998, and began her practice with a large law firm in Tampa with a focus on real estate transactions and corporate lending matters. Prior to moving to Bradenton in 2003, Betsy served as a Law Clerk for The Honorable

Mark A. Pizzo, United States Magistrate Judge for the Middle District of Florida from 2000-2003. Betsy is a member of The Florida Bar and its Real Property, Probate and Trust Law Section; the Manatee County Bar Association; and the Estate Planning Council of Manatee County. Her community involvement includes being a member of the Junior League of Manatee County (President 2006-2007) and volunteering with PACE Center For Girls, The Boys and Girls Club of Manatee County, South Florida Museum, and Saint Stephen's Episcopal School. Betsy practices with the firm's estate planning group with a focus on estate and trust planning and probate and trust administration. She also practices in the areas of business entity formation and real estate transactions. Betsy can be reached at bpennwill@barneswalker.com.



ANDRE R. PERRON, ESQ., is recognized by the State of Florida Bar Association as a specialist in business litigation having met the standards of certification. The certification is limited to trial lawyers who have demonstrated exceptional skill, experience and knowledge in business litigation. Less than five percent (5%) of the Florida Bars 50,000 members have obtained certification. Mr. Perron's experience includes twenty (20) years of practice in State and Federal courts in Florida, as well as arbitration and mediation. Mr. Perron is a member in good standing of the Florida Bar, the Federal Court for the Northern, Southern and Middle Districts of Florida and the Fifth and the Eleventh Federal Circuit Court of Appeals. Mr. Perron is also a member of the New Hampshire Bar, the Massachusetts Bar and the Federal Court for the District of New Hampshire.

Mr. Perron has settled and/or tried Federal and State Court cases involving violation of civil rights, broker/customer and broker/company disputes, contract disputes, creditor actions and trust and probate disputes. These cases included non-competition litigation, multi-million dollar trust beneficiary disputes, will contests, claims against broker dealers for churning and mismanage

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ment, disputes involving family limited partnerships, collection claims and other complex business torts and contract claims. Mr. Perron has the experience and judgment to evaluate your situation, retain exceptional experts based on their past performance, advise you as to the local judge and jury makeup and give you the information you need to make the best decision in prosecuting your claim or defense. Mr. Perron has further tried and settled matters before the Financial Industry Regulatory Authority and American Arbitration Association arbitration panels. Mr. Perron received his undergraduate degree from Tulane University of New Orleans, Louisiana in 1982, his Juris Doctorate degree from the University of Quinipiac Law in 1985, and a Masters of Law in American Banking Law Studies (LLM) from Boston University School of Law in 1989. Mr. Perron has served as an adjunct law professor at Stetson School of Law in Banking Law Studies (1991). He formerly served as Co-Chairman of the Twelfth Judicial Circuit Grievance Committee which regulates the practice of law in Manatee County, Florida. Mr. Perron has lectured on a variety of topics ranging from Banking to Ethics and Professionalism. In 1989, Mr. Perron relocated to Bradenton, Florida, from New Hampshire with his wife Nancy, and joined the law firm of Blalock, Landers, Walters & Vogler, P.A. (n/k/a Blalock & Walters), while at Blalock Landers, Mr. Perron concentrated in complex business and trust and estate litigation. In 1996, Mr. Perron opened his own law firm, Ozark, Perron & Nelson, P.A., specializing in complex business litigation and related matters. Mr. Perron has served as Director of Manatee Junior Achievement and as Director for the Florida West Coast Symphony. Mr. Perron currently is an adjunct professor of law for banking and finance at the Thomas M. Cooley Law School in Riverview, Florida. Andre can be reached at aperron@barneswalker.com.



LAWRENCE W. THOMAS, ESQ., is a third generation Manatee County native. Attending local schools, he received his Bachelor of Science degree in Business from Florida State University in June of 1978, and earned his Doctor of Jurisprudence from Cumberland School of Law in Birmingham, Alabama in May of 1985. Larry was admitted to the Florida Bar in 1985. He is married with grown children. Community and professional commitments include being past Secretary and Director of the Manatee County Bar Association, past member of the Bradenton Kiwanis Club, founding member of the Teen Court of Manatee County and an ordained Elder and member of First Presbyterian Church of Bradenton. Larry is a member of the Florida Bar, its Real Property, Probate and Trust Law, and Elder Law sections, and the Manatee County Bar Association. He is also admitted to practice before the United States District Court of Appeal, Middle District of Florida. Practice areas

include estate planning, wills, trusts and probate administration, guardianship and elder law. Larry can be reached at lthomas@barneswalker.com.



ADRON H. WALKER, ESQ., is a fourth generation Floridian, born and raised in Arcadia, Florida. Adron received a Bachelor of Science degree in Accounting *magna cum laude* in May, 1977, from Stetson University in Deland, Florida, and earned his Juris Doctorate degree from Stetson University College of Law in Gulfport, Florida, in May, 1980. He was admitted to The Florida Bar in 1980. Adron served as a Captain in the U.S. Army JAG (legal) Corps for over four years prior to moving to Bradenton. He is a member of The Florida Bar, its Real Property, Probate, and Trust Law Section, and the Manatee County Bar Association. Adron practices in the areas of real estate and business law. He has represented clients in all aspects of real estate sales and purchases for over 19 years, since 1995, and has advised clients on business formations, operations, and sales for

over 34 years, since 1980. Adron can be reached at awalker@barneswalker.com.

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