

# Holiday Newsletter

DECEMBER 2009



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*Happy  
Hanukkah!*

## First-Time Homebuyer Credit Extended

The 2009 First-Time Homebuyer Credit has been extended to home purchases that are subject to a binding contract before May 1, 2010 as long as the closing occurs before July 1, 2010. The Credit had been set to expire before December 1, 2009. For purposes of the credit, a first-time homebuyer is an individual who had no ownership interest in a principal residence in the United States during the prior 3-year period ending on the date of purchase of the qualifying home. The refundable credit is equal to the lesser of \$8,000 (\$4,000 for married filing separately) or 10% of the purchase price.

When originally enacted on April 9, 2008, the first-time homebuyer credit was limited to \$7,500 and was required to be repaid over a 15-year period. In reality, the original credit was an interest free loan rather than a credit.

For 2009 (including the extended period in 2010), the credit is increased to a maximum of \$8,000 (\$4,000 for married taxpayers filing separately)

and is no longer required to be repaid, although the amount of the credit is recaptured if the taxpayer disposes of the home or ceases to use it as their personal residence within 36 months from the date of purchase. To qualify for the credit, the home may not be acquired from a related person. If married persons buy the home, both husband and wife must qualify as first-time homebuyers. The credit phases out for taxpayers with modified AGI between \$75,000 and \$95,000 (\$150,000 - \$170,000 for joint filers).

Effective November 6, 2009, the phase-out income limits for the credit are raised to Modified AGI between \$125,000 and \$145,000 (\$225,000 and \$245,000 for joint filers). Several new restrictions (some in response to perceived abuse) apply to homes purchased after November 6, 2009, including:

- ◆ Purchasers must attach a properly executed settlement statement to their return.

*(Continued on page 2)*

## Livestock Care Standards Board Now Part of Ohio Constitution

On November 3, Ohio voters approved a proposal to create a Livestock Care Standards Board as part of the Ohio Constitution. The proposal was supported by most Ohio agricultural groups and was placed on the Ohio ballot with bipartisan support from the Ohio General Assembly, Ohio Governor Ted Strickland and other elected officials from both the Republican and Democratic parties.

In response to the overwhelming voter approval of the new Ohio Constitutional provision,

John Lumpe, president, Ohioans for Livestock Care Political Action Committee stated:

*"Ohioans have spoken and clearly understand that a board of experts is the appropriate entity to make decisions on behalf of animal agriculture and food production in our state. Passage of Issue 2 is a win for everyone who acknowledges the essential relationship between excellent farm animal care and a safe, affordable, locally grown food supply. Voters agree with Ohio's farm community and our diverse base of*

*supporters - decisions about food and farming should be made in Ohio, by Ohioans."*

While the new provision took effect immediately, the Ohio General Assembly still needs to pass implementing legislation to carry out the new Constitutional mandate.

You may find the text for the new Section 1 of Article XIV of the State of Ohio Constitution on Page 7 [and on our website at www.ohiocounsel.com](http://www.ohiocounsel.com).



*It is a good idea to review the designations that you currently have in place.*

# Estate Planning Checkup

It is a good idea to confirm your owner and beneficiary designations from time to time. Often, when new accounts are established, some of the prior designations are lost. Sometimes, clients do not ever finish the changes they intended to make when the documents were signed because there just was not enough time. It may still be on your To Do list but low in priority. Whatever the case is for you, it is a good time to review the designations that you have currently.

You can begin by contacting your financial planner, life insurance agent, banker or other third party in charge of ownership and beneficiary records to provide you with a current statement as to who owns the asset, how it is titled and whether there are any successor owner or beneficiary designations related to that asset or account.

While everyone's specific needs cannot be addressed in this article, the following are some general concepts to keep in mind:

1. With respect to life insurance you own outside of an irrevocable trust, you should make sure that you have a beneficiary and a successor beneficiary designated. (If you have a beneficiary designated, the life insurance will not be subject to Ohio estate tax at your death.)
2. If you have a revocable trust, the beneficiary designations with respect to such policies should generally be to your revocable trust.
3. If you have a revocable trust, you should consider transferring all assets to the trustee of the trust during your lifetime or creating payable on death (POD) and transfer on death (TOD) designations to the trustee at your death.
4. You should consider naming your spouse as the primary beneficiary of any retirement accounts.
5. You should consider naming a charity, your children or a trust as the contingent beneficiary of the retirement account (not necessarily in that order.)
6. With respect to 529 accounts set up for college expenses, you should consider naming a successor owner.

*Russell Cunningham is an Ohio State Bar Association Board Certified Specialist in Estate Planning, Trust and Probate Law.*



## *First-Time Homebuyer (Continued from page 1)*

- ◆ No credit is available if the home price is over \$800,000.
- ◆ The purchaser must be at least 18 years of age at time of purchase.
- ◆ A dependent is not eligible for the credit.
- ◆ "Math error authority" gives the IRS broader power to deny the credit without having to first audit the return.

The most recent change also provides for a credit of up to \$6,500 (\$3,250 for married filing separately) for long-time homeowners

who buy a replacement principal residence. The long-time homeowners must have lived in the same principal residence for any five-consecutive year period during the eight-year period that ended on the date the replacement home is purchased.

The Homebuyer credit has raised specific questions, many of which are addressed in bulletins and in question-and-answer format on the IRS website at [www.irs.gov](http://www.irs.gov).

# New Laws for Residential Real Estate Disclosures Designed to Help Consumers Understand Their Mortgage Terms

By Frank Fullin

The U.S. Department of Housing and Urban Development (“HUD”) is changing the way residential real estate loans get done with a new law becoming effective January 1, 2010. The law attempts to make certain disclosures more understandable and comparable than the existing notices. Specifically, the law pertains to the Good Faith Estimate (GFE) disclosure and the HUD Settlement Statement, both of which are already given, but the new rules which will make them more intuitive and complete with information that is important to the borrowers. As before, all loans must disclose loan terms in the same way so that a consumer can make an apples-to-apples comparison between lenders’ quotes prior to closing and thereby avoid surprises at closing and can shop for the best deal.

The new GFE and HUD will summarize all of the essential terms of the loan including term, interest

rate and type of interest (fixed or adjustable) payment estimates, pre-payment penalties and cost estimates. The new rules will require lenders to give the rates and terms quoted to an approved borrower with zero tolerance for change increases on the loan origination fees, processing fees, transfer taxes, underwriting charges, as well as points and loan discount fees. The new rules do allow a not more than 10% increase in certain other fees such as appraisal fees, title insurance fees and title company closing fees. If a borrower selects his own company or service providers which are not on the lender’s approved list of providers, then there are no equivalent caps on the estimated fees given to the borrowers.

Another benefit is that since so much information will now be included on these forms, a borrower can quickly summarize and have in a couple of documents all of the pertinent information of their loan without having to weed

through stacks of paperwork to get all of the terms. The forms also provide a place for the borrowers to use as a worksheet which they can fill out and have serve as a checklist for all of the terms they might want to know, but otherwise forget to ask for to help them understand their terms. There is a direct comparison on the HUD statement which they will be presented with at closing which restates the terms disclosed on the GFE and those actually charged so that the borrower can see what, if any, has changed without having to bring their own pre-closing disclosure to compare them.



## Tax Updates - Did you know ?

- ◆ Up to \$2,400 of unemployment compensation benefits received in 2009 are excluded from gross income.
- ◆ For purchases after February 17, 2009, sales or excise tax paid on the purchase of new automobile, light truck or motorcycle with gross weight not over 8,500 lbs. may be added to the taxpayer’s basic standard deduction. Limitations apply.
- ◆ For 2009 and 2010, computer technology and computer equipment used by the student or their family are included as qualified higher education expenses in Qualified Tuition Programs.
- ◆ Section 1202 allows a 50% exclusion of gain from certain small business stock acquired at original issue and held at least 5 years. The exclusion is increased to 75% for sale of qualifying stock acquired after February 17, 2009 and before January 1, 2011.
- ◆ Residential Energy Credits: In 2009 and 2010, a taxpayer may claim a credit of 30% of the cost (subject to overall credit limit of \$1,500) for installing the following qualifying products on an existing home: energy-efficient exterior windows, doors and skylights; energy-efficient heating and air conditioning systems; insulation; water heaters (natural gas, propane or oil); roofs (metal and asphalt); and biomass stoves.

# County Fair Time



Rhonda made a prize-winning strawberry pie with Carolyn's recipe!



MacKenzie Shuey

Whitney Williams

**BECE LLP**  
**Supports**  
**4-H and FFA**  
**at Junior**  
**Livestock**  
**Sales.**

Every year BECE supports the 4-H and FFA Junior Livestock sales at Ohio county fairs. This year, BECE attended auctions and supported youth in Champaign and Clark counties.

Thank you to all of you who wrote and told us of your livestock projects and sale dates. Although we love fair season, we just can't make it to all the county fairs. Maybe we will be in your county next year!

Clark County Sellers:

- Jillian Adams
- Grant Kaffenbarger
- Megan Reisinger
- Hallie Roberts
- MacKenzie Shuey
- John Taylor

Champaign County Sellers:

- Sam Rozmus
- JP Rozmus
- Savannah Cahoon
- Whitney Williams

Grant Kaffenbarger



## Recent Arbitration Highlights

The attorneys at BECE encourage the use of arbitration and mediation for dispute resolution and the inclusion of arbitration clauses in contractual agreements as an alternative to time-consuming and expensive litigation. Further, industry arbitration systems such as the National Grain and Feed Association ("NGFA") Arbitration System also have the advantage of arbitrators who have experience in the subject matter involved in a particular dispute.

Recently, BECE represented Western Milling LLC ("Western Milling") in two related arbitration cases involving disputes with Phoenix Bio Industries LLC ("PBI"), an ethanol producer. The first case involved the

sale of corn to PBI and damages arising from PBI's refusal to pay for the corn based on alleged quality issues. The panel of three industry arbitrators found that Western Milling had complied with the parties' agreements and ordered PBI to pay Western Milling a total of \$3,738,619.67 plus finance charges at the rate of 18% per annum and attorney fees.

In the second case, Western Milling sought damages as a result of PBI's failure to supply wet distillers grain ("WDG") under separate contracts between the parties. Western Milling, in reliance on the WDG supply contracts with PBI, had entered into contracts to sell WDG to its dairy

farmer customers in California. The separate panel of three industry arbitrators ordered PBI to pay damages of \$3,150,718.92 plus interest to Western Milling on the claims in this case.

Copies of the written arbitration decisions in NGFA Arbitration Case Nos. 2189 and 2202 are available upon request from BECE and also are available on the NGFA's website at: [www.ngfa.org](http://www.ngfa.org).

Contact David Barrett at BECE (614-210-1840) if you would like more information about how best to incorporate arbitration provisions into contracts or for more information about arbitration or mediation.

## Speaking Engagements

◆ **David Barrett** will address the Michigan Agri-Business Association at their Winter conference on January 11, 2010. He will be discussing grain contract issues. Contracts from the producers perspective were presented at the National Grain and Feed Association Country Elevator and Feed Industry Conference on Dec. 8, 2009. Country elevators that approach this topic from the producer perspective have a chance to improve relations with producers, enhance profitability and also reduce disputes.

◆ **Russell Cunningham** will be speaking at an Ohio State University Extension event on March 17, 2010, in Granville, Ohio. He is giving a presentation on Trusts.

◆ As part of their Finance Education Series at Grace Brethren Church of Columbus, **Russell** is also speaking about *Fundamental Estate Planning Concepts*, on Saturday, March 13, 2010. You may register at : [www.gracebrethren.org](http://www.gracebrethren.org).



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The information provided in this newsletter is for educational purposes only and should not be used as a substitute for professional advice, as there are often many exceptions to the general rules. Before applying any of this information to a specific legal problem, readers are urged to seek advice from an attorney.

# 2009 American Ag Law Update



Jeff Easterday and Troy Callicoa attended the annual American Agricultural Law Association (AALA) conference in September. Some of the hot topics covered this year include:

1. Developments in the area of food law: Congress is debating additional protective strategies in light of the recent Nestle cookie dough scare and meat recalls. It appears an emphasis will be placed on identifying the origins of a product on the label.
2. Discussions on the new farm bill and how its implementation will affect producers.
3. Presentations on the new wind energy movement in the Midwest and the controversial wind turbines with views from both sides of the issues. There was a detailed presentation regarding the numerous legal factors to consider before constructing a wind turbine "farm".
4. A presentation was given on how the issue of climate change and the efforts to prevent it could eventually impact America's farmers.
5. Estate planning needs for farmers in light of the recent economic downturn, new strategies for farmers to consider for the protection of retirement funds from the volatility of the stock market.
6. Implementation plans for the EPA's new Animal Waste Rules.
7. Discussions regarding the new animal rights issue sweeping the country, specifically, how the passing of Issue 2 in California and the new animal welfare laws in Michigan will impact similar efforts throughout the country.
8. A summary of bio-security issues on America's farms and efforts to protect the country's fragile food supply.

If you would like further information on any of these subjects, please contact Jeff or Troy at 614-210-1840.



## Tax Updates / Did you know?

- ◆ Additional first-year depreciation extended: The 50% additional first-year depreciation for purchases of new MACRS property with recovery period of 20 years or less is extended for one year for property acquired by the taxpayer and placed in service in 2009.
- ◆ New farm equipment placed in service during 2009 will have a 5-year MACRS recovery (depreciation) period. Used equipment will continue to have a 7-year recovery period.
- ◆ Section 179 expensing limit extended: The maximum Section 179 deduction remains \$250,000 for 2009. The deduction is phased out if the cost of qualifying property placed in service during the tax year exceeds \$800,000.
- ◆ For 2009, the domestic production activities deduction is limited to the lesser of 6% of qualified production activity income, 6% of the entity's taxable income, or 50% of W-2 wages paid. The 6% rate increases to 9% for tax years beginning after 2009.
- ◆ The S corporation built-in gains recognition period is shortened to 7 years (from 10 years) for gains recognized in tax years beginning in 2009 and 2010.
- ◆ Health insurance COBRA premium assistance: Certain employees terminated between 9/01/08 and 12/31/09, may qualify for a 65% subsidy of their health insurance costs for up to 9 months.
- ◆ IRS standard mileage rates for 2009: \$0.55 per mile for business use, \$0.14 per mile for Charity, and \$0.24 for Medical.

**HAPPY NEW YEAR**

# Livestock Amendment to Ohio Constitution

## ARTICLE XIV

### Section 1.

(A) There is hereby created the Ohio Livestock Care Standards Board for the purpose of establishing standards governing the care and well-being of livestock and poultry in this state. In carrying out its purpose, the Board shall endeavor to maintain food safety, encourage locally grown and raised food, and protect Ohio farms and families. The Board shall be comprised of the following thirteen members:

- (1) The director of the state department that regulates agriculture who shall be the chairperson of the Board;
- (2) Ten members appointed by the Governor with the advice and consent of the Senate. The ten members appointed by the Governor shall be residents of this state and shall include the following:
  - (a) One member representing family farms;
  - (b) One member who is knowledgeable about food safety in this state;
  - (c) Two members representing statewide organizations that represent farmers;
  - (d) One member who is a veterinarian who is licensed in this state;
  - (e) The State Veterinarian in the state department that regulates agriculture;
  - (f) The dean of the agriculture department of a college or university located in this state;
  - (g) Two members of the public representing Ohio consumers;
  - (h) One member representing a county humane society that is organized under state law.

(3) One member appointed by the Speaker of the House of Representatives who shall be a family farmer;

(4) One member appointed by the President of the Senate who shall be a family farmer.

Not more than seven members appointed to the Board at any given time shall be of the same political party.

(B) The Board shall have authority to establish standards governing the care and well-being of livestock and poultry in this state, subject to the authority of the General Assembly. In establishing those standards, the Board shall consider factors that include, but are not limited to, agricultural best management practices for such care and well-being, biosecurity, disease prevention, animal morbidity and mortality data, food safety practices, and the protection of local, affordable food supplies for consumers.

(C) The state department that regulates agriculture shall have the authority to administer and enforce the standards established by the Board.

(D) The General Assembly may enact laws that it deems necessary to carry out the purposes of this section, to facilitate the execution of the duties of the Board and the state department that regulates agriculture under this section, and to set the terms of office of the Board members and conditions for the Board members' service on the Board.

(E) If any part of this section is held invalid, the remainder of this section shall not be affected by that holding and shall continue in full force and effect.

**IRS CIRCULAR 230 DISCLOSURE:** In accordance with IRS regulations, please be advised that to the extent this communication, including any attachments, contains any federal tax advice, such advice is neither intended nor written to be used (and cannot be used) for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code, nor for promoting, marketing or recommending to another person any transaction, arrangement or matter addressed herein.

happy  
hanukkah



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**Attorneys at Law**

*BECE wishes you a Blessed Holiday Season!*

Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

See us on the web at:

<http://www.ohiocounsel.com>

