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Moss & Barnett Advocate

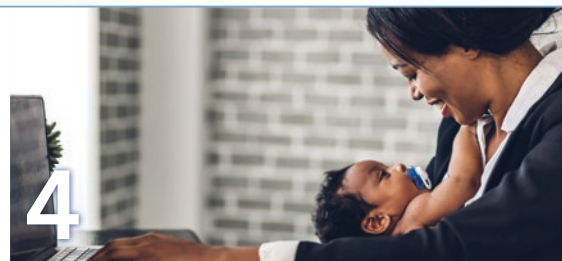
Tales from the Crypt(o): Estate Planning for Cryptocurrency

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Moss & Barnett

Tales from the Crypt(o): Estate Planning for Cryptocurrency



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Kelsey is a member of our Wealth Preservation and Estate Planning group. She represents individuals and families in estate planning and the administration of estate and trust matters.

Mainstream interest in cryptocurrency has skyrocketed over the last few years. Despite digital currencies plummeting nearly \$2 trillion in value since peaking in late 2021, the market continues to grow. As of May 2022, one in five Americans invested, traded, or used cryptocurrencies. An estimated 46.5 million more Americans are expected to invest in cryptocurrencies for the first time this year.

For those entering the cryptocurrency market, updating estate planning documents may not be top-of-mind. But incorporating this complex asset class into an estate plan is imperative to protect and eventually gift this unique investment.

Accessibility Issues

In 2021, an estimated 20% of then-existing Bitcoin, worth approximately \$140 billion, was lost or stranded in digital wallets. The same features that make cryptocurrency appealing — security, anonymity, and decentralization — increase the risk these assets will be lost without advance planning.

Cryptocurrency exchange companies do not allow owners to make pay-on-death beneficiary designations. In fact, very few companies have implemented official procedures for the collection and transfer of assets upon death. To prevent digital assets from disappearing at death, crypto investors should take the following initial steps:

- Talk to an estate planning attorney about existing crypto investments and any plans to purchase additional cryptocurrencies.

- Clearly identify the existence of any cryptocurrencies in all planning documents (e.g., wills, trusts, and powers of attorney).
- Grant fiduciaries explicit authority to access and transfer digital assets in all planning documents.
- Provide fiduciaries with detailed instructions about how to access the digital accounts.

Simply put, crypto investors must not only inform family members and fiduciaries that crypto accounts exist, but they must also explain how to access the digital accounts to those who will be handling their affairs.

Fiduciary Considerations

Most states, including Minnesota, have adopted some form of the Uniform Prudent Investor Act, which requires trustees to invest and manage assets in a reasonably prudent manner. Because the value of cryptocurrency is notoriously volatile, investments are risky. As such, it is very challenging for fiduciaries to comply with their duty to act as a prudent investor when an estate or trust contains cryptocurrencies.

The significant risk of liability involved with managing cryptocurrencies makes many fiduciaries reluctant to serve. To reduce risk and alleviate hesitation, estate planning documents should provide fiduciaries with clear authority to retain cryptocurrency and indemnify fiduciaries to the greatest extent possible for doing so.

Tax Implications

The IRS classifies cryptocurrency as *property* for federal tax purposes. Every purchase, sale, or exchange of cryptocurrency creates a potential taxable event that must be reported to the IRS. Such treatment may result in substantial income, gift, and estate tax implications for the inclusion of cryptocurrencies in an estate plan.

Alerts

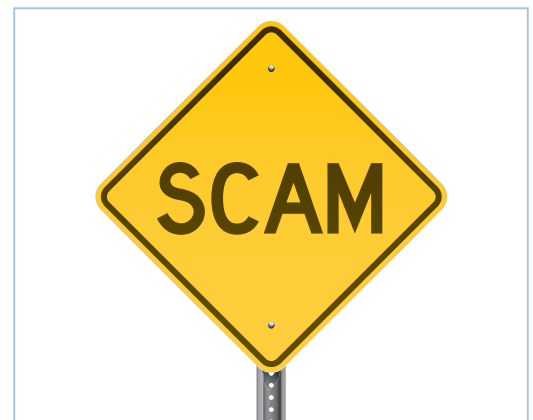
1 New Remedies to Combat “Revenge Liens”



Recent amendments to the Uniform Commercial Code (codified as Minnesota Statutes, Chapter 336) provide an immediate remedy for lien notices (financing statements) filed with the intent to harass or defraud a debtor — known as “revenge liens.” The filing system the Minnesota Secretary of State utilizes creates a public notice of liens against a debtor’s personal property upon the filing of a financing statement. Previously, there was no way to challenge a financing statement filed with ill intent other than through the civil court system. A disgruntled party could abuse the filing system to file a bogus lien against an employer, spouse or domestic partner, vendor, government official, or professional to cause embarrassment or financial disruption. Changes to the Uniform Commercial Code now empower the Minnesota Secretary of State to reject a filing based on an affidavit of wrongful filing from the debtor. The amendments provide an alternative to the court process and a more efficient response to revenge liens. If you need assistance navigating this process, please contact your attorney at Moss & Barnett.

2 New Businesses Beware of Solicitation Scams

Deceptive and misleading solicitation letters are on the rise and often target newly registered businesses. Scammers frequently pose as government entities, including the Secretary of State, or refer to laws, like the Uniform Commercial Code, to trick unsuspecting business owners into providing confidential information or paying fees for unnecessary services. Scam solicitation letters typically include legal jargon, fake deadlines by which a response is required, and a demand for fees related to compliance or reporting requirements. Do not fall victim to a solicitation scam. When in doubt, contact your attorney at Moss & Barnett to verify any requests for payment or information, even when such requests appear to be from an official source.



If you would like assistance assuring best practices in these areas, please contact your attorney at Moss & Barnett.



Updates to the Minnesota “Nursing Mothers Statute”



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Leah practices in the areas of Real Estate and Real Estate Finance. Leah represents clients through all stages of real estate and commercial finance transactions.

Employer-employee relationships have changed in recent years. Lockdowns, retirements, the “great resignation,” and calls for flexible and remote work have impacted many employees. A group particularly impacted by these changes is working parents — especially those who recently gave birth.

The Minnesota Legislature recently codified additional protections for working mothers who breastfeed. Minn. Stat. § 181.939, also referred to as the “nursing mothers statute,” was modified during the 2021 legislative session, and the new statutory language took effect January 1, 2022. Changes to the nursing mothers statute, although few, are significant. The revisions also mirror changes other states have made to promote breastfeeding and to protect nursing mothers in the workplace.

Prior language required that employers provide “reasonable unpaid break time” to employees who needed to express breast milk (colloquially, “pump”). The 2021 modifications deleted the word “unpaid” and changed “time” to “times” in recognition that nursing mothers often must pump several times within the typical eight-hour workday. Though the statute does require, if possible, that the employee’s lactation break run concurrently with other breaks (e.g., lunch), the updated language recognizes

that many mothers must pump every couple of hours, and this necessity may not always align with standard work breaks.

The second important change is that “[a]n employer shall not reduce an employee’s compensation for time used for the purpose of expressing milk.” This, along with the deletion of the word “unpaid” in reference to “break time” in the statute, indicates that breaks for the purpose of expressing milk are now compensable under Minnesota law.

Minnesota employers must provide paid break times to lactating employees for the purpose of expressing breast milk. The law requires the breaks to be “reasonable” and allows an employer to deny a break if it would unduly disrupt the employer’s operations. However, employees who demand these reasonable break times cannot face retaliation for doing so. Specifically, an “employer *shall* not retaliate against an employee for asserting rights or remedies under this subdivision.” Under the prior version of the statute, the word “may” was used in place of “shall,” perhaps suggesting that the requirement was optional. It is now clear that employers cannot retaliate against lactating employees requesting breaks provided by the nursing mothers statute.

What constitutes a “reasonable” break is not defined in either the Minnesota statute or case law. The Federal Department of Labor has issued guidance and factors to determine a “Reasonable Break Time,” though actual parameters remain undefined. According to the guidance, “[t]he act of expressing breast milk alone typically takes about 15 to 20 minutes, but there are many other factors that will determine a reasonable break time.” It is possible that the specifics of what constitutes a reasonable break time for expressing breast milk will become better defined through future Minnesota court cases. Until then, many working mothers will be happy to learn that the changes to this law provide nursing mothers the right to take paid lactation breaks at work.

If your company needs assistance creating or evaluating existing employee policies for compliance with recent changes to the law, please contact your attorney at Moss & Barnett.

You Got Served (with a Subpoena), Now What?



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Justin is a member of our Litigation team. His experience includes shareholder disputes and issues related to employment, intellectual property, and property tax.

Subpoenas are an important part of the litigation process in any case. In civil cases, parties are entitled to broad discovery of relevant information under state and federal civil procedure rules. Subpoenas are an effective and useful tool to obtain documents or testimony from people or entities that are not directly involved in the lawsuit as a party.

Thus, even if you or your business is not involved in a lawsuit, you may still be served with a subpoena. This article provides a basic overview of the types of subpoenas and what steps you should take once served with a subpoena to protect yourself or your business.

What is a subpoena?

Subpoenas are written orders compelling individuals or businesses to provide testimony on a particular subject. An individual, or often, the representative of a business, is required to provide testimony on certain topics. Subpoenas can also serve as an order compelling individuals or businesses to produce specific documents for inspection. The documents sought are often identified in an exhibit or appendix attached to the subpoena.

Types of Subpoenas

Generally, there are two types of subpoenas used in civil practice: (1) subpoenas commanding production or inspection of certain documents or access to inspect premises or records; and (2) subpoenas requiring attendance and testimony at a deposition or trial.

A subpoena to produce documents can be directed at individuals and businesses. Under the Federal Rules of Civil Procedure, the

scope of documents that can be requested in a subpoena is extremely broad and may include documents, electronically stored information, and tangible things in a person's or business entity's possession, custody, or control. The subpoena may even seek access to the business' premises to inspect records.

Subpoenas for testimony are just that — subpoenas commanding an individual or representative of a business or organization to testify at a deposition or trial.

Notably, a single subpoena could make a demand for documents and testimony. It is common for a witness subpoenaed to testify at a deposition to also be asked about documents that were subpoenaed.

Responding to Subpoenas

If you or your business is served with a subpoena, do not ignore it hoping it will go away. Only the court can excuse you from responding to a subpoena (i.e., "quash" a subpoena). Instead, immediately contact your attorney to determine if there is any basis to object to the subpoena, which may include:

- **Technical grounds.** There are specific rules about information a subpoena must contain and who can issue a subpoena. Consult with your attorney to determine if you can object to the subpoena on technical grounds.
- **Improper service.** If you were not properly served with the subpoena, there may be a basis to bring a motion to quash. It is important to consult with an attorney and determine what method of service is required. Not all subpoenas are personally served. Some types of subpoenas also require that a witness or attendance fee be provided upon service.
- **Undue burden or expense.** If the subpoena seeks such extensive documents it will cause undue burden or expense, your attorney may ask the court for a protective order to narrow the scope of documents sought or to shift the costs of production to the requesting party.

We're Proud to Recognize

For over 125 years, our lawyers, paralegals, and professional staff have demonstrated dedication and tenacity in serving the needs of our clients. As we look to the future, our dedication strengthens, as does our appreciation for our clients and our community. Quality legal service is our profession, our business, and our privilege.



**Professionalism
Award | 2022**
Jana Aune Deach
Lawyer

Awarded by Hennepin County Bar Association Family Law Section



North Star Lawyer | 2021
Alex R. Schoephoerster
Lawyer

Awarded by Minnesota State Bar Association

St. Cloud Team News

Moss & Barnett's St. Cloud office location recently completed an update and renovation of their interior space. The improvements include upgraded meeting spaces to better accommodate our clients both in-person and virtually, additional work space for our growing professional team, and the creation of flexible workspace areas that allow our team and other professional service providers to collaborate with ease in serving our clients. We look forward to completing the finishing touches over the coming weeks and welcome our clients and friends to visit when in the St. Cloud area.



Moss & Barnett St. Cloud Office Interior View

Team News

Susan A. King and Caroline A. Simonson Appointed Adjunct Directors to Moss & Barnett Board of Directors

Moss & Barnett is pleased to announce that **Susan A. King** and **Caroline A. Simonson** have been appointed Adjunct Directors to the firm's Board of Directors effective May 1, 2022. Adjunct directors are shareholders who serve as non-voting members of our Board of Directors for one year. The adjunct director program is intended to train future leaders of the firm.



Susan A. King

Susan (Susie) serves as co-chair of the firm's Wealth Preservation and Estate Planning team. She focuses her practice on the areas of estate planning, probate and trust administration, and guardianship/conservatorship and has experience covering a broad range of services, from the simple estate plan to the administration of complicated estate or trust matters. She also works closely with families to address issues of capacity and planning for disability or death. Susie spends a significant amount of time representing clients in the courtroom concerning probate and trust litigation matters, both uncontested and contested.



Caroline A. Simonson

Caroline is a member of the firm's Real Estate Finance and Real Estate teams. She has significant experience representing institutional lenders in commercial real estate finance transactions and primarily represents lenders who originate loans for multifamily housing projects around the country, which loans are then sold to Freddie Mac or Fannie Mae. Caroline also has a broad range of experience in other real estate matters, including representing life insurance companies and banks in financing matters involving industrial, retail, and multifamily projects, and representing commercial tenants in negotiating and preparing lease documentation.

Susie and Caroline will each continue practicing law on a full-time basis in addition to handling their management responsibilities. They serve on the Board along with directors **John P. Boyle**, **Kevin M. Busch**, **Jana Aune Deach**, **Brian T. Grogan**, **Timothy L. Gustin**, and **James J. Vedder**.

Jessica M.S. Brigman Joins Moss & Barnett

Jessica assists entrepreneurs in structuring new businesses for growth and risk management. She structures commercial contracts such as employment agreements, non-compete and non-solicitation agreements, and master sales or service agreements for private companies and entities such as tribes and local and state government agencies. Jessica also advises clients on estate and wealth preservation planning. She facilitates efficiently passing along assets through multiple generations while ensuring institutional knowledge and values are passed on as well. She has experience helping families administer trusts and estates even when challenging family dynamics exist. Jessica received her J.D., *cum laude*, from Western Michigan University Thomas Cooley School of Law where she served as associate editor of *WMU-Cooley Law Review*, and her B.A. from Hamline University.

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Business Law

Wealth Preservation and
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There's No Place Like Home: Interest Rate Hikes and the Housing Market



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Shannon practices in the areas of Real Estate Finance and Real Estate. She focuses on representing lenders who originate and sell loans secured by multifamily projects to secondary market investors Fannie Mae and Freddie Mac.

On June 15, 2022, the Federal Reserve raised its benchmark interest rate by three-quarters of a percentage point in an attempt to combat inflation. This was the steepest interest rate hike since 1994. Subsequently, on July 27, 2022, the Fed again raised its benchmark interest rate by three-quarters of a percent, and it is unlikely the last. Policymakers anticipate additional rate increases over the remainder of the year.

The Fed's benchmark interest rate does not *directly* set interest rates for single-family home mortgages, but it does have a trickle-down effect. Mortgage lenders will reassess and recalculate their own interest rates, which will impact consumers and home affordability.

With additional rate increases on the horizon, it is important to understand where the real estate market has been and where it is likely going.

A Snapshot of the Single-Family Home Real Estate Market

Prior to June 15, 2022

Anyone attempting to purchase a single-family home over the past year encountered a seller's market. In most instances, within just days of listing a home, the seller would secure multiple showings and offers. Buyers attempted to stand out by waiving inspections or agreeing to cover an appraisal gap. Over the course of the year, mortgage interest rates started to climb, but the demand for single-family homes did not subside.

After June 15, 2022


The Fed then increased the benchmark interest rate. In response, mortgage lenders started increasing interest rates for home mortgages. It is too soon to know how this will impact potential homebuyers. Some buyers may feel motivated to purchase a home now, before interest rates increase again. Other buyers, including first-time buyers, may be forced out of the market without the purchasing power the lower interest rates previously provided. Available inventory of single-family homes is another factor to consider. The increased interest rates may quell demand for homes, and potential sellers who locked in lower interest rates may now be unwilling to sell.

What does the Increase in Interest Rates Mean for Multifamily Apartments?

There are numerous reasons consumers decide to rent an apartment instead of purchasing a single-family home. Historically, those reasons included convenience and affordability. With an increase in the interest rates, affordability likely will play a large role in why consumers decide to rent instead of buy. With the increase in interest rates, consumers will need to purchase homes of lower value to contend with the new rates. As such, it is likely that consumers will hold off on purchasing single-family homes and continue to rent until the market becomes more favorable to buyers.

Conclusion

It will take time for the full impact of the Fed's historic interest rate hike and any subsequent rate increases to unfold. But it is likely the single-family market will cool slightly as consumers engage in a cost-benefit analysis and opt to rent instead of buying a home. Moss & Barnett's Real Estate Finance group will continue to monitor these real estate market trends and advise clients accordingly.



"Tales from the Crypt(o):" Continued from Page 2

Common income and estate tax reduction strategies, including lifetime gifting and charitable giving, become more complicated and potentially less effective with cryptocurrency because its value is difficult to predict at any given time.

To comply with reporting and payment obligations or leverage potential tax benefits of cryptocurrency, investors and their fiduciaries should either obtain an appraisal or track and maintain detailed records of the date, basis, and value of each transaction involving cryptocurrency.

Conclusion

Crypto investors need to take steps to protect and transition their crypto investments as they would any other financial assets. Whether you have an extensive crypto portfolio or are considering investing in the cryptocurrency market for the first time, Moss & Barnett's estate planning attorneys can help you plan for your future by protecting both your traditional and digital assets.

"You Got Served" Continued from Page 5

- **Seeks privileged information.** The subpoena may seek documents or testimony that is privileged and cannot be used in litigation. An attorney will help you decide if you need to assert a privilege. Note that you may still be required to produce or provide testimony related to non-privileged information.
- **No time to comply.** Subpoenas include deadlines for compliance. But the Federal Rules of Civil Procedure require a subpoena to provide a reasonable time for compliance. If the subpoena includes an impossible deadline, your attorney can ask the court to quash the subpoena or grant you additional time to comply.
- **Exceeds geographic limits.** The Federal Rules of Civil Procedure imposes geographic limits on a subpoena commanding a person to appear for a deposition or trial. If you are commanded to appear somewhere outside of the geographic limits, your attorney can object on your behalf.

Conclusion

If you or your business is served with a subpoena, please immediately contact your Moss & Barnett attorney to discuss options and a potential response.

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We Advise.  You Decide.

Moss & Barnett Congratulates Our Lawyers Listed in 2022 *Super Lawyers* and *Rising Stars**

With special congratulations to **Susan Rhode**, listed on the Top 10, Top 50 Women, and Top 100 Minnesota *Super Lawyers* lists for 2022; **Jana Aune Deach**, listed on the Top 50 Women and Top 100 Minnesota *Super Lawyers* lists for 2022; and **Jim Vedder**, listed on the Top 100 Minnesota *Super Lawyers* list for 2022.



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