

Recent Changes in the Law

Trusts/Estate Tax: On September 2, 2008, the IRS released Internal Revenue Bulletin 2008-35 (T.D. 9414), containing final regulations under Code Sections 2036 and 2039. The regulations address the portion of a trust that is included in a taxpayer's gross estate when the taxpayer retains an interest in the trust that does not end before the taxpayer's death. The regulations, which are effective July 14, 2008, apply to a variety of different kinds of retained interest trusts, including grantor retained annuity trusts (GRATs), grantor retained unitrusts (GRUTs), personal residence trusts (PRTs), qualified personal residence trusts (QPRTs), charitable remainder annuity trusts (CRATs), and charitable remainder unitrusts (CRUTs). You can view the final rules (26 CFR Part 20) at www.irs.gov/irb/2008-35_IRB/ar08.html.

Home Mortgages: The Federal Reserve has amended Truth in Lending Act Regulation Z, effective October 1, 2009. For "higher-priced mortgages," which include subprime mortgages for primary homes, lenders will be prohibited from making loans without verifying the borrower's ability to pay. The regulation also bans prepayment penalties on subprime loans if payments can change in the first four years. For all mortgages on primary loans, lenders will be banned from coercing appraisers to misrepresent the value of a home and required to give good-faith estimates of loan costs and provide payment schedules to borrowers. The regulation requires lenders to provide additional information to potential borrowers about rates and monthly payments. It also bans misleading or deceptive advertising practices. You can view the final rule at www.federalreserve.gov/newsevents/press/bcreg/20080714a.htm.

Attorney-Client Privilege: Federal Rule of Evidence 502 has been amended to make it harder to inadvertently waive the attorney-client or work-product privilege. A party is now protected from waiving a privilege if the information was inadvertently disclosed, unless the disclosing party was negligent in its production or failed to take reasonable steps in seeking its return. All other documents dealing with the same subject matter as the disclosed document are protected unless fairness requires a different result. Effective September 19, 2008, the amendments apply to pending cases to the extent it is "just and practicable." You can view a summary and the full text of the rule at www.govtrack.us/congress/bill.xpd?bill=s110-2450.

Employment Law: The Americans with Disabilities Act (ADA) Amendments Act of 2008 overturns a few key U.S. Supreme Court decisions regarding the determination of whether an impairment affects a major life activity. The Amendments also reject the Supreme Court's interpretation of the "substantially limits" standard and instruct the Equal Employment Opportunity Commission (EEOC) to revise its regulations defining that term. The resulting new definition is likely to be broader and more inclusive. The Amendments also change the test for whether an individual meets the requirement of being "regarded as" having a disability. The Amendments become effective on January 1, 2009. You can view a summary and the full text of the law at www.govtrack.us/congress/bill.xpd?bill=s110-3406.

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Child Support Payments: The Defense Finance and Accounting Service (DFAS) is moving to a new payment system that will result in a change in child support payments for the Army and Air Force from one payment per month to two. The conversion will include voluntary allotments for child support and will replace MyPay, the current payment system. For more information, go to www.dimhrs.mil. For information on a specific Oregon child support case, go to <http://dcs.state.or.us> and select the Case Information link or contact your local child support office.

Personal Injury: New Medicare reporting requirements for insurers (42 U.S.C. 1395y(b)(8)) will affect the settlement of personal injury cases. The new rules, which go into effect July 1, 2009, require liability (including self-insured), no-fault, and workers' compensation insurers to determine whether an injured party is entitled to Medicare and submit certain information to the Centers for Medicare & Medicaid Services (CMS). According to CMS guidance published August 1, 2008, insurers must report 45 pieces of data, including the injured person's Social Security number. All reporting must be submitted electronically; the penalty for failing to report is \$1,000 per day. Attorneys disagree whether CMS will enforce Medicare Secondary Payer compliance for future injury-related costs in tort cases and require Medicare set-aside arrangements. Personal injury lawyers should be sure to inquire at case intake whether the client is a Medicare, Medicaid, or Oregon Health Plan beneficiary to determine the existence of liens from these entities. More information about the rules is available on the CMS Web site at www.cms.hhs.gov/MandatoryInsRep/.

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