

# EQBL LEGAL REPORT

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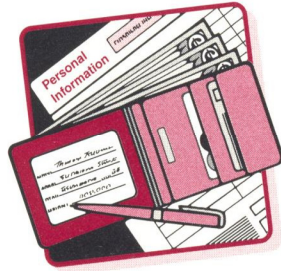
## Legislation brings multitude of privacy policies

by MEGAN G. HEEG

New financial privacy laws are changing how banks, insurance companies and other financial institutions do business with their customers. These customers saw the first of these changes when they received privacy policies or, perhaps, opt-out notices from their financial institutions. What are these notices and what are they designed to accomplish?

These notices are being mailed to consumers pursuant to the Gramm-Leach-Bliley Act ("GLBA"), a federal law that requires financial institutions - including accountants, investment advisory services, tax preparation services and insurance companies - to develop privacy policies to protect the confidentiality of consumers' personal information.

Personal information subject to protection includes any information provided by the consumer or resulting from a transaction with the consumer. Thus, information provided in a mortgage application, an application for insurance, a credit card transaction or the purchase of stocks or bonds would be included. So too would be information about the sale of stocks or bonds, insurance claims and a consumer's payment history.



Under GLBA, financial institutions must protect the confidentiality of this information, and, generally, may not disclose this information to non-affiliated third parties unless:

- the disclosure is necessary to complete the consumer's transaction;
- the consumer consents;
- the third party is performing services for the financial institution (including marketing the financial institution's own products or services), the consumer is advised of the disclosure, and the third party agrees to maintain the confidentiality of the information; or
- the financial institution provides the consumer with a "clear and conspicuous" privacy notice (disclosing, among other things, the institution's policies with respect to disclosing this information and that the information may be disclosed to others), and the consumer was given a reasonable time to direct that the information not be disclosed (called the "opt out" right).

Moreover, under GLBA, financial institutions must provide each customer with a privacy notice when the customer rela-

PRIVACY POLICIES continued on page 2

### Inside

Spot Zoning .....	2
Practice Spotlight: ..... Estate Planning	3
Support Payments.....	4
In Print & At the Podium .....	4
Deals & Decisions .....	4

## Gradual estate tax repeal presents significant planning opportunities

by GARY R. GEHLBACH

On May 27, Congress approved a massive tax reduction package, including the eventual elimination of the federal estate tax. While the details are yet to be drafted, the pending legislation provides significant relief for the wealthiest two percent of decedent's estates.

In the estate tax arena, no changes are planned for this year. However, beginning in 2002, the estate tax applicable exclusion (the amount that escapes estate tax) gradually will be increased from the present \$675,000 to \$3.5 million in 2009. In 2002 the amount of the exclusion will be \$1 million, in 2004 it will be \$1.5 million and in 2006 it will be \$2 million.

REPEAL continued on page 2

## Misunderstood “spot zoning” not necessarily illegal

by Rolfe EHRMANN

One of the most misunderstood terms in municipal law is “spot zoning.” Many public officials and private citizens assume a municipality will be doing something wrong and possibly illegal if a rezoning affects only a small area. Zoning of a small area, however, can in many circumstances be lawful and appropriate.

For unlawful spot zoning to be created, two requisites must coexist. First, a zoning change must affect only a small area. Second, the change must be out of harmony with the community’s comprehensive plan.

To ensure that rezoning of a small area not be construed as illegal spot zon-

ing, a municipality should through its zoning process carefully review the following items:

The existing uses and zoning of nearby property;  
the extent to which property values are diminished by the particular zoning restriction;  
the extent to which the diminution of affected property values nonetheless promotes the health, safety, morals or general welfare of the public;  
the relative gains to the public compared to the hardship imposed upon the property owner;  
the suitability of the subject property for the zoned purposes;

- the length of time the property has been vacant as zoned, considered in the context of land development in the vicinity;
- the community need for the proposed land use; and
- the care with which the community has undertaken to plan its land use development.

By carefully considering each of these items and creating a record showing this was done, a municipality can be more confident that a court will subsequently support the municipal decision, even if the zoning affects only a small area.



## Privacy policies . . .

Continued from page 1

relationship is established, describing the company’s privacy policies and informing the customer of the categories of customer information it collects and discloses and the categories of affiliated and non-affiliated persons who receive the information. Thereafter, the financial institution must provide annual privacy notices during the continuation of the customer relationship.

Congress delegated the implementation of GLBA to numerous federal and state agencies, including the Illinois Department of Insurance. Most of these agencies established a July 1, 2001, compliance date. Because of the variety of federal

and state agencies involved, consumers may have different notice and opt-out rights, and financial institutions providing different services or conducting business in more than one state may have to comply with different sets of rules.

While consumers have already begun to see the effects of GLBA, it will be some time before financial institutions and consumers understand the extent of their rights and duties under GLBA. In the meantime, a consumer who receives a privacy or opt-out notice and does not want his or her personal information disclosed to others should carefully read the notice received and, if necessary, exercise any opt-out right provided.



## Repeal . . .

Continued from page 1

That’s the good news. The bad news is that the tax relief package promises to resurrect carryover basis. This means that taxpayers inheriting property will be subject to capital gain when the inherited property is sold, subject to an exemption. Congress attempted to implement carryover basis in 1976, but determining a decedent’s income tax bases in assets purchased long ago proved too difficult, and the law was repealed retroactively in 1980. President Bush and our federal legislators apparently are banking on this process being easier by 2010 than it was in 1980. Time will be the judge.

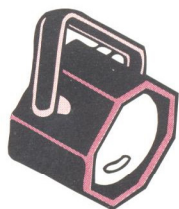
The State of Illinois, with its fiscal woes already causing it to fund education and public aid at among the lowest levels in the

nation, will lose considerable estate tax revenues. The Illinois estate tax is derivative of the federal estate tax, and as a result of the elimination of the federal tax, Illinois will no longer collect any estate tax.

Beginning next year for some families, and starting in 2006 for most families, the new legislation presents significant planning opportunities. Most estate plans involving families with some means have focused almost entirely on minimizing or eliminating estate tax. As the new law is phased in, individuals will have unique opportunities to restructure their estate plans to address the best interests of their spouses or significant others, children, grandchildren and other potential beneficiaries.

Follow this publication for details of the tax bill, which will become known throughout the summer.





## Practice spotlight: Estate planning



One of the major services offered by EGBL is assistance with estate planning needs. Messrs. Gehlbach and Badger devote much of their practices to this area and have counseled thousands of clients on estate planning issues.

Estate planning at EGBL may be described in several broad categories, including personal estate planning; family estate planning; gift, estate and generation-skipping transfer tax planning; and planning for charitable endeavors.

Personal estate planning often involves living trusts, most of which are revocable and amendable by the client. Living trusts generally provide some asset protection for a client while he or she is living and frequently become the major estate planning document for the disposition of a client's estate when he or she dies.

Wills are still essential for most estate plans, although with the appropriate use of living trusts, a person's will often becomes secondary. The client's trust and will need to be coordinated with other forms of disposing of one's assets upon his or her death, such as joint tenancies, payable on death bank accounts, transfer on death brokerage accounts and beneficiary designations.

Family estate planning also involves wills and trusts. In addition, most families with young children create contingent children's trusts to provide financial management for their children in the event the children inherit any significant assets while minors. Careful thought goes into selecting the appropriate age or ages of distribution, as well as the terms and conditions of the trust, the trustee and related matters.

Over the years, Messrs. Badger and Gehlbach have assisted many grandparents in establishing trusts for their grandchildren to fund the grandchildren's education and other anticipated expenses. They also frequently craft spendthrift trusts for adults who may not be particularly suited to managing significant finances. Further, many clients are structuring their estate plans on a multi-generational basis, oftentimes with appropriate incentives for their later generations to benefit from the trusts.

Many of EGBL's clients are families engaged in farming, so the Firm frequently structures estate plans to maximize the possibility that the farm will remain in the family and that the farming heirs will have a reasonable opportunity to continue farming. Providing for non-farming heirs becomes a challenge for which the Firm has developed creative approaches, including family limited partnerships and selective use of the power of

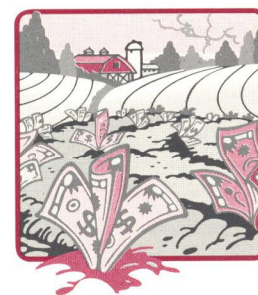
appointment.

Although less than two percent of decedent's estates in the United States pays any estate tax, a considerable portion of the estate planning services offered by EGBL involves gift, estate and generation-skipping transfer tax planning. Without proper planning, many more estates would be subject to estate tax. EGBL therefore educates its clients so that they understand their taxes and the importance of planning to avoid or at least minimize them.

The distinction between carryover income tax basis and step-up income tax basis in estate planning is becoming more and more important, and will become even more so if the Bush administration's plan to eventually eliminate estate tax is fully implemented. Unless and until that happens, however, it is vital for many families to plan to maximize their use of the applicable estate tax exclusion (which is currently \$675,000 per person) so that, at a minimum, both the husband and the wife are able to utilize their full exclusions. Without proper planning, most married couples are limited to one applicable exclusion. With the unlimited marital deduction, the Firm is able to design virtually all estate plans so that even if estate tax will eventually be payable, no estate tax will be due until after both spouses have died.

Farm families especially need to understand and plan to effectively utilize special use valuation of qualifying farmland and the relatively new deduction for qualified family-owned business interests. These provisions, together with the applicable estate tax exclusion, can enable a farming couple to leave \$4.16 million in farm assets to their children without any estate tax consequences.

The Firm also is frequently involved with charitable planning, including the formation of numerous charitable and related foundations. EGBL has also assisted clients in structuring gifts to colleges and universities in exchange for gift annuities, providing a lifetime income for clients. It has been the Firm's privilege to have structured a considerable number of charitable remainder trusts for clients, both for people while they are living and as part of estate plans to take effect upon a person's death.



# Employers that stall child support face penalties

by MEGAN G. HEEG

While employers need not know "new math" to understand their obligations under the Illinois Income Withholding for Support Act, they would do well to read the Act in the plain English in which it is written.

The Act requires employers served with an income withholding notice to deduct and pay over the withheld income to the specified payee within certain time limits. The Act also imposes a penalty of \$100 per day if the amount is not turned over within seven business days after the date the amount would have been paid or credited to the employee.

In a recent Rock Island case, the employer, Autozone, Inc., received a withholding order and began to withhold \$220 from the

employee's weekly wages. For unknown reasons, Autozone failed to turn over the withheld funds for six weeks and therefore was out of compliance for 72 days.

Fed up with late child support payments, the employee's ex-wife brought an action against Autozone to recover the statutory penalty allowed under the Act. Although Autozone was out of compliance for only 72 days, the ex-wife won \$20,700.

Why was Autozone ordered to pay \$20,700? New math? No, just old-fashioned plain English, said the appellate court. The Act specifically provides that a \$100 penalty will be assessed for each day "the withheld amount" is not timely paid. According to the court, this unambiguously means that a new

penalty of \$100 per day is assessed for each withheld amount not timely forwarded to the payee. Therefore, when the deduction from the first paycheck was mailed 69 days late, the penalty for that withheld amount was \$6,900; when the deduction from the second paycheck was mailed 55 days late, the penalty for that withheld amount was \$5,500; and so on. Because the sum of the days late for all pay periods totaled 207 days, Autozone was ordered to pay \$20,700.

A harsh result for the employer? Not according to the appellate court. The result, however, should cause employers faced with withholding orders to carefully determine their deadline for turning over income withheld under the Act.



## In Print and At the Podium

**Mr. Gehlbach** recently was re-appointed to the Real Estate Section Council of the Illinois State Bar Association, a position he has held almost continuously for 17 years. He also was re-appointed newsletter editor of the ISBA's *Real Property* newsletter . . . **Mr. Ehrmann** is a member of the TechnoLawyer Community, a national group of attorneys studying the uses of computer technology to improve the judicial system. He will appear at the Center for State Courts in Baltimore to discuss evidentiary presentation and other matters . . . **Mrs. Heeg** authored an article in the February-March 2001 issue of the LAUTUM News, a publication of the Illinois Association of Mutual Insurance Companies. The article outlined the responsibilities of farm mutual insurance companies in light of a new federal privacy law . . . **Mr. Lee's** most recent commentary for the web site of The Freedom Forum First Amendment Center ([www.freedomforum.org/first/default.asp](http://www.freedomforum.org/first/default.asp)) criti-

cized an Idaho Supreme Court ruling that a newspaper that published information in a public court file could be sued for invasion of privacy. The web site recently was reorganized to include a home page indexing more than 60 of **Mr. Lee's** commentaries . . . **Mr. Brozovich** in June was named Lion of the Year by the Dixon Sunrise Lions Club . . . **Mr. Badger** recently was selected as a Melvin Jones Fellow by the Dixon Noon Lions Club . . . **Mrs. Heeg**, a member of the Board of Directors of Forrester Mutual Insurance Company, joined with other farm mutual company representatives who traveled to Washington, D.C., in May to brief Illinois legislators on issues affecting the state property/casualty insurance industry . . . **Mr. Lee** was elected to the Dixon school board and was re-elected President of the board of directors of the Open Sesame Child Care Center.



## Deals and Decisions

**Mr. Ehrmann** was re-appointed City Attorney for the City of Amboy. He also was also re-appointed Village Attorney for the Village of Franklin Grove and Township Attorney for the Township of Lee Center . . . **Mr. Gehlbach** structured a number of tax-deferred and multiple-party real estate transactions this spring. . . . In light of the changes being brought about by the Economic Growth and Tax Relief Reconciliation Act of 2001, **Messrs. Gehlbach** and **Badger** are counseling clients on how to revise their estate plans to adapt to the significant transfer tax changes . . . **Mrs. Heeg** has been advising clients of their responsibilities under the new Graham-Leach-Bliley Act, which requires many companies to adopt privacy policies and to

inform their customers of the policies . . . **Mr. Ehrmann** successfully obtained rulings in two cases involving constitutional issues, including a decision that a person under a mental disability was not fit for trial . . . **Mrs. Heeg** recently obtained - over the state's objection - a real estate property tax exemption for a charitable corporation . . . **Mr. Ehrmann** obtained a judgment requiring a divorced husband to pay his former wife support directly from his pension for the rest of his life . . . **Mrs. Heeg** successfully resisted the efforts of a worker's compensation insurer to obtain reimbursement of benefits paid to the injured worker. Instead of obtaining reimbursement, the insurer was ordered to pay additional disability benefits.

