



# HANSON BAKER

ATTORNEYS

**Real Estate • Creditor/Debtor Rights • Finance & Banking**  
**Dispute Resolution • Estate Planning • General Business • Construction**

## ADVERSE POSSESSION UPDATE

On May 5, 2011, Governor Gregoire signed a bill into law applying adverse possession lawsuits filed on or after July 1, 2012. This bill adds a new section to Washington adverse possession law allowing a court to require a party who is successful in adversely possessing another's land to reimburse the true owner for part or all of any taxes or assessments levied on the property during the period of adverse possession and which were paid by the true owner. The bill also allows for an award of all or a portion of the prevailing party's costs and attorney fees if the Court determines that such an award is equitable and just. These amendments increase the stakes in an adverse possession lawsuit where historically recovery of attorney fees and costs was not possible. The new law significantly deviates from long-held practices in Washington, and could drastically alter the analysis of all parties in adverse possession situations.

## REAL ESTATE EXCISE TAX IN RECEIVERSHIPS

The State of Washington imposes real estate excise tax on every sale of real estate. A "sale" is defined broadly in RCW 82.45.010 as "any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property ... or any estate or interest therein for a valuable consideration." Specifically exempted from the requirement that excise tax be paid on the transfer of property are transfers made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding. In a July 21, 2011 Washington State Department of Revenue Determination, the Department clarified that where the Superior Court appoints a receiver in a judicial foreclosure action and the receiver facilitates the sale of real property owned by the defendant borrower, that sale is not subject to the real estate excise tax. In so ruling, the Court stated, "The fact that the Court appointed a custodial receiver to manage the property and find a buyer does not change the fact that the ultimate sale was in the context of a judicial foreclosure and was effectuated by a court order."

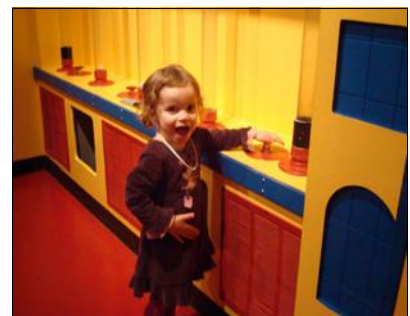
## UPCOMING EVENTS

Please join Hanson Baker for an evening at **The Children's Museum, Seattle, February 3, 2012 from 5:30 – 7:30 p.m.** Hanson Baker guests and their little ones will have exclusive use of the Museum.

**Admission is free.**

RSVP to Anne by February 1, 2012 at (425) 454-3374 or [aburt@hansonbaker.com](mailto:aburt@hansonbaker.com).

**The Children's Museum, Seattle**  
 305 Harrison Street  
 Seattle, WA 98109



Hanson Baker Ludlow Drumheller P.S.

# THE CURRENT STATE OF ESTATE TAXES

On December 17, 2010, Congress enacted the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the "Act"). This Act addressed, among other things, the federal estate tax. The Act made the following significant changes:

- 1) Increased the federal estate tax exemption to \$5,000,000 for estates of individuals dying in 2011 or 2012. This is a significant increase over the \$3,500,000 exemption from 2009.
- 2) Increased the gift tax exemption from \$1,000,000 to \$5,000,000 and unified it with the federal estate tax exemption. For deaths occurring in 2011 or 2012, the deceased person may utilize their \$5,000,000 exemption by making lifetime gifts, by passing assets on their death, or through some combination of lifetime gifting and bequests at death, the total of which can be up to \$5,000,000 while still avoiding federal estate or gift tax.
- 3) Reduced the maximum estate tax rate from 45% to 35%.
- 4) Introduced "portability." "Portability" allows the surviving spouse to utilize any unused portion of the federal estate tax exemption from the estate of the spouse who died in 2011 or 2012. In the event the surviving spouse remarries and is predeceased by his new spouse, he may only use the unused exemption of his most recent spouse.

For example, if Mary and Bob are married and Bob dies in 2012 using \$2,000,000 of his estate tax exemption, the \$3,000,000 of Bob's maximum exemption amount that is unused is available to Mary, who may now pass up to \$8,000,000 of assets federal estate tax free on her death.

However, one should use caution when analyzing the use of portability in their estate plan, because there is no certainty that the concept of portability will remain when the Act terminates and the first deceased spouse's estate must make an affirmative election by filing an estate tax return even if no return was otherwise required.

Congress decided the Act will terminate on December 31, 2012. Unless Congress takes action, beginning January 1, 2013 the estate and gift tax exemptions will all revert to \$1,000,000.

It is important to remember that although the new Act may exempt most estates from federal estate tax, Washington State also has an estate tax. Despite the increase to the federal exemption, Washington State has kept its estate tax exemption at \$2,000,000. The disparity between the federal and state estate taxes must be considered when creating an estate plan to minimize taxes owed by an estate, both on the death of the first spouse to die and on the surviving spouse's death.

Because of the uncertainties resulting from the new Act and the short-term nature of that Act, it is essential that current estate plans have flexible terms allowing beneficiaries to take advantage of whatever the tax laws may be at the time of death.

If you would like to discuss your estate plan, please contact **Andrée Chicha** ([achicha@hansonbaker.com](mailto:achicha@hansonbaker.com)) or **Rachel Merrill** ([rmerrill@hansonbaker.com](mailto:rmerrill@hansonbaker.com)).