TURNING A DUPLEX INTO A “TWINDOMINIUM”

Some duplex owners have considered converting their properties into two unit condominiums, known as “twindominiums”. There are several legal steps and quite a bit of paperwork that must be completed in order to accomplish the conversion.

In order to create a condominium, the owner, with the assistance of an attorney and a surveyor, must prepare and file documents with the Register of Deeds. They include:

- A condominium declaration (the legal document establishing the condominium form of ownership for the property)
- A condominium plat or survey of the property showing all improvements

In addition, every condominium must have an owner’s association, to which all unit owners must belong. The association operates and manages the condominium and oversees the property. The association for a twindominium has only the unit owners as members.

There are additional disclosure documents that must be prepared and provided to every potential purchaser before closing. Wisconsin law has strict timelines about what information must be given and when, so an attorney should get involved early in the process to be sure everything is in order.

If one of the duplex units is rented, the owner must provide the tenant with notice of the conversion at least 120 days before they need to vacate the property. In addition, the tenant has a first right to purchase the unit for a period of 60 days from the date of the notice.

There are several other issues an owner should consider before converting a duplex. If both units are sold, then the former owner has no further involvement with the property. If the duplex owner decides to live in one of the units, the prospect of next-door renters becoming permanent property owning neighbors needs to be carefully examined.
It’s very important that purchasers have a very clear understanding of how a condominium is operated. There is no longer a landlord to make any needed repairs upon demand. The owner who creates a condominium must completely understand the way it will be operated in order to explain the respective rights and obligations to the unit new owners.

The responsibilities for repairs are established in the condominium declaration. The declaration, the plat, and other disclosure materials are needed whether there are two units or two hundred units. Under condominium law, maintenance and repair of a “unit,” which is the space owned and occupied exclusively by the owner, is that unit owner’s obligation. The rest of the property is either “common element” or “limited common element.” Each unit owner owns part of the common element, which is that portion of the property jointly owned and used by both unit owners.

Where a unit ends and the common element begins determines who is responsible for maintenance, repair, replacement, if needed, and insurance. Exterior walls, the roof, a shared garage, and a common driveway are all common elements.

Limited common elements are those parts of the condominium owned by everyone, but only used by the owner of a particular unit. Examples of limited common elements would be attached balconies, patios, decks, garage spaces, or the like. Since a limited common element is still a common element, all owners share in the maintenance, repair and replacement of those portions of the condominium, even though not everyone may use them. A successful duplex conversion will probably include limited common elements for each unit, if possible, so each owner can enjoy the same amenities.

Wisconsin law requires each condominium to have an owners' association, organized to maintain repair and replace the common elements when they are damaged or worn out. The association also carries fire and casualty insurance for the entire property, other than the units, and a liability insurance policy to protect all of the owners from personal injury claims, such as a guest's slip and fall on common element areas such as porch steps. The association can be either incorporated or unincorporated and includes all owners as members.

The costs incurred by the association in performing these duties and carrying the insurance are assessed, usually monthly, to each unit owner. In a twindominium, the two owners must work together to take care of the property and share those costs. The monthly assessment is an additional expense for each unit owner in addition to taxes, mortgage payments and insurance for the unit itself.

The thing to remember is that the duties of repair, maintenance, and the like are based on the definitions of unit and common element. Those definitions are established by the duplex owner in the condominium declaration. The duplex owner, working with his or her attorney, has the opportunity to establish these definitions, thereby creating the rights and obligations under which the unit owners must live. The duplex owner decides who owns what and how the costs are to be shared.

This is very important to the owner who will continue to live in one of the units after the other is sold, since the duplex owner then becomes a unit owner, subject to the provisions of the declaration and the association rules. After the documents are recorded and a unit is sold, the former duplex owner is no longer in charge of the property.
With this as background, here are answers to frequently asked questions about twindominiums

Q: *Who will be in charge of the Association?*

A: Each unit owner must be a member of the association. Membership is automatic when a

unit is purchased. The association can be a nonstock, not for profit corporation or a not for profit unincorporated association. In either case, the attorney preparing the declaration will also prepare the needed association documents, including bylaws. The bylaws outline how the association is operated and sets the rules under which it will control the common elements and levy assessments. All association decisions are made jointly by the owners. The association may have to file income tax returns, depending on how the assessments are handled.

Q: *What if owners cannot agree on what needs to be done by the Association?*

A: Because of the possibility of a deadlock, the Wisconsin condominium statutes provide a procedure for resolving disputes through arbitration. By accepting a deed to a unit, the owner automatically agrees to submit disagreements to arbitration, the cost for which is shared equally by the owners. The added costs of an arbitration proceeding should provide incentive for owners to settle their disagreements.

Q: *Are unit owners assessed differently if the entire roof needs to be replaced versus a leak repair in only one spot?*

A: No. The assessment procedure is the same in both cases. All owners must contribute to the cost of repairing or replacing a common element. The roof is almost always a common element. Although the leak may only affect one unit, all units must contribute to the cost of the repair since each unit owner owns a percentage interest in the common element. The declaration may provide for assessments for reserves to accumulate funds for major replacements, such as a new roof or gutters. In effect, the reserve fund assessment is a forced savings program to handle future capital expenses, such as a new roof.

Q: *Who maintains and paints the exterior?*

A: Exterior walls are common element, and the association has control of them. The association (the unit owners in a twindominium) will maintain the exterior. Usually the colors for walls, trim, gutters, and downspouts will be uniform, so the unit owners must agree on those decisions. All costs are assessed proportionately to the unit owners.

Q: *Who is responsible for repairs to exterior doors and the windows?*

A: In many declarations, the doors and windows are defined as being part of the unit, so the unit owner must take care of them, replacing them when needed. However, if a uniform appearance for the duplex is desired, the association will pick the design/color of the doors and windows.

Q: *Who repairs the garage?*

A: Typically a garage is designated a common element. All owners contribute to the cost of upkeep and repair. The parking spaces in the garage are usually limited common element. One space is assigned to each unit in the case of a two-car garage. A unit owner should be responsible for repairing any damage caused by his or her car.

Q: *Who can use the attic or the basement?*

A: The attic and basement may each be common element, allowing every owner to have access for storage, washers, dryers, and the like. They could be divided in some fashion, creating two limited common elements. Then each owner has separate space for his or her exclusive use. In either case, all owners share in any costs.

Q: *Who mows and maintains the lawn, shovels the snow, plants trees, flowers and bushes?*

A: Lawns, sidewalks and driveways are either common elements or limited common elements. As such, the association is technically responsible for maintenance, mowing, snow removal and the like. These services could be contracted out to third parties or the unit owners could divide the work between themselves. The declaration should provide for these alternatives. Provisions can be added to the declaration to allow unit owners to garden and plant flowers and bushes in certain areas. Those costs would be paid by the unit owner who does the planting. Major landscaping, such as new trees, or tree trimming, should be agreed upon by the owners. The association would have the trees planted or trimmed and assess the owners proportionately for such expenses. Unit owners must understand that they share the yard and are not entitled to plant whatever they want without first getting consent of the other owner.

Q: *How are utilities paid?*

A: As part of a duplex conversion, separate gas and electric meters should be installed, one set for each unit. Depending on the plumbing layout, separate water meters could also be installed. If there is only one water meter, the water/sewer bill would be paid by the association and assessed to the owners. This could raise complaints about excessive water usage by an owner. The cost of outside lighting would be shared in the same manner as other assessments.

Q: *How is insurance handled?*

A: The association buys the fire/casualty and liability insurance for the condominium and the premium is paid by the unit owners. Each unit owner purchases a separate condominium unit policy which insures against damage to the unit and its contents, and includes liability insurance for the individual owner. The association and the unit owners should buy their respective policies from the same insurer. This eliminates the potential dispute between two insurers as to whether the damage or the accident occurred in the unit (unit owner’s insurer

is responsible) or in the common element (association's insurer is responsible). Insuring with the same company eliminates coverage questions.

SETH DIZARD JOINS O'NEIL CANNON

Milwaukee, Wisconsin (July 19, 2007) – Seth E. Dizard, a creditor's rights attorney, has joined the Milwaukee office of O'Neil Cannon

Dizard, a graduate of Marquette University Law School, represents financial institutions, secured and unsecured corporate or individual creditors, and financially troubled corporations in both state and federal courts. He also assists business owners by guiding them through the process of informal financial work-outs and refinancing.

O'Neil Cannon is a full-service legal practice focusing on business law, estate planning, municipal law, and major complex litigation with offices in Milwaukee, Port Washington, and Sheboygan. The firm was established in 1973 and is now listed as one of the Milwaukee-area's largest law firms. Additional information can be found by calling 414-276-5000.

INHERITED RETIRMENT FUNDS ARE NOT CREDITOR EXEMPT

Chapter 815 of the Wisconsin Statutes provides that certain personal assets are exempt from judgment creditors, and these exemptions can be claimed by individuals when they file federal bankruptcy. Likewise, the federal Bankruptcy Code [11 U.S.C. Section 522(d)] also provides an alternative set of exemptions that the individual can claim instead of using the Wisconsin set. Both sets generally provide for the right of individuals to retain their retirement funds (subject to some limitations) exempt from their creditors in bankruptcy. Section 815.18(3)(j), Stat.; 11 U.S.C. Section 522(d)(12).

There has been a recent local decision, however, denying such exempt status to an inherited IRA (whether originally-formed as an IRA, or a Rollover IRA set up when the decedent withdrew from a company-sponsored retirement plan) under the Wisconsin exemptions. In re Kirchen, Bankr. E.D. Wis. Case No. 04-29434. The bankruptcy trustee in that case successfully established that inherited retirement funds did not meet the requirement under Chapter 815 that the account be a fund for the retirement of the owning debtor, and

therefore was not exempt. He directed the IRA issuer to pay out the funds to him to distribute to Kirchen's creditors.

Common definitive language under the Wisconsin law ("on account of … age") is a similar element needed for qualifying such account under the federal exemption set, so undoubtedly a similar ruling will occur if the claim of exemption of an inherited account is presented to local bankruptcy courts under that set. By extension, inherited pension funds (including 401k's) are also at risk.

While under our Wisconsin marital property law, an inherited IRA or retirement fund would not be eligible to collection efforts of many creditors of the other spouse, it is still liable for debts incurred in support of the marriage (if all other assets have been exhausted) and for the liabilities of the recipient spouse. These positions may be overruled by higher courts, but for now, they pose a problem that might be avoided by planning steps that a prudent recipient of an inherited retirement funds can take. For more information and to discuss such planning steps, contact Russell C. Brannen, Jr.

MICROSOFT SETTLEMENT BENEFITS AVAILABLE UNTIL JUNE 30, 2007

Wisconsin businesses, governments, and individuals who bought Microsoft software between December 7, 1993, and April 30, 2003, are entitled to receive benefits from a class action settlement with Microsoft, but they must act by June 30, 2007.

Several Wisconsin plaintiffs brought lawsuits in Wisconsin courts claiming that Microsoft's marketing practices violated Wisconsin antitrust and unfair trade laws. Microsoft denied the allegations, but did agree to a settlement which could provide as much as $224,000,000 in benefits to Wisconsin consumers, businesses, and local governments.

To qualify for benefits, the individual, business, or governmental unit must have purchased for use in Wisconsin one or more of certain Microsoft programs either as a standalone purchase or already installed in a computer between December 7, 1993, and April 30, 2003. The software programs at issue are: Microsoft Office, Microsoft Excel, Windows, MS-DOS and Microsoft "Word". In addition to the initial program, each upgrade purchased is eligible as well as each license that was multiply purchased.

To get the benefits, eligible Wisconsin individuals, businesses, and governments should go to the following web site and obtain a claim form: www.microsoftwisuit.com. The form must be

completed and mailed by June 30, 2007, to “Microsoft-Wisconsin Settlement, P.O. Box 1626, Minneapolis, MN 55440-1626.”

For each Windows or MS-DOS program purchased during the applicable period, the purchaser is entitled to a $15 voucher. Each Office and Excel purchase yields a $23 voucher and each Word purchase yields a $10 voucher. Claims under $100 may be filed online and supporting documentation is not required. For larger claims including claims by volume license purchasers, the claim form includes a box which requires the claims administrator to search Microsoft’s records for eligible purchases.

It is expected that vouchers will begin issuing to the eligible purchasers by late 2007. Voucher owners may submit their vouchers for cash upon proof of purchase of any desktop, laptop or tablet computers, or for printers, scanners, monitors, and keyboards. The new purchases do not have to be for a Microsoft product but must be made in the three years after receipt of the voucher.

O’Neil Cannon, Attorney Carl K. Buesing recently attended a seminar sponsored by the Wisconsin Counties Association which outlined the Microsoft litigation. “The benefits of this settlement are potentially enormous, particularly for businesses that made significant software investments during the 1990s,” observed Buesing who also serves as Sheboygan County’s Corporation Counsel. Buesing noted that the Wisconsin Counties Association was a participant in the litigation that resulted in the settlement.

Individuals, governments, and businesses who have questions about their eligibility for settlement benefits are encouraged to access the website at www.microsoftwisuit.com, or are welcome to call Attorney Buesing at O’Neil, Cannon, Hollman, DeJong’s Sheboygan office at (920) 457-8400.

MARY LYNNE DONOHUE ELECTED PRESIDENT OF BOARD OF JOHN MICHAEL KOHLER ARTS CENTER

Sheboygan, Wisconsin (June 1, 2007) – Mary Lynne Donohue, a municipal, litigation, and tax attorney with the Sheboygan office of O’Neil Cannon was recently elected President of the Board of the John Michael Kohler Arts Center in Sheboygan.

The John Michael Kohler Arts Center is dedicated to nourishing diversity and building community through the arts. Mary Lynne Donahue has been a member of the Board of

Directors since 2002 and has a long history of community service including serving on the City of Sheboygan Civil Service Commission. She is also a past President of the Sheboygan Area School District Board of Education and the City of Sheboygan Fire and Police Commission.

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CHAD RICHTER TO PRESENT "THE BASICS OF FRANCHISING"

Milwaukee, Wisconsin (May 16, 2007) – On June 7, 2007, Attorney Chad J. Richter will present "The Basics of Franchising" at a franchise seminar co-hosted by the International Franchise Association (IFA), the Milwaukee Urban League, and the Urban Entrepreneur Partnership.

The seminar, to be held at Cardinal Stritch University, will focus on entrepreneurship through franchising. Other speakers will be Congresswoman Gwen Moore, Milwaukee Mayor Tom Barrett, Motivational Speaker Les Brown, local franchisees, an IFA representative, and franchisor agents.

Chad Richter is an attorney with the law firm of O'Neil Cannon Chad assists clients with a variety of corporate and business law matters such as the formation and organization of various types of business entities under operating, shareholder, and subscription agreements, including the preparation of financial and disclosure documentation. Chad has focused his practice on the structuring of business relationships under franchise, licensing, and distribution arrangements, and has worked with numerous franchise and dealership models, representing both franchisors/grantors and franchisees/dealers.

The International Franchise Association is an organization dedicated to protecting, enhancing, and promoting franchising worldwide. IFA is the official "Spokesperson for Responsible Franchising." Franchisors join for the legislative, educational and networking benefits available as an IFA member. IFA's government and public relations programs are designed to educate and influence public policy makers, and to reduce or eliminate regulations that threaten responsible franchise development. For more information, visit www.ifa.com.

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major complex litigation with offices in Milwaukee and Port Washington. The firm was established in 1973 and is now listed as one of the Milwaukee-area's largest law firms.

PROTECTING THE ENFORCEABILITY OF YOUR MARITAL PROPERTY AGREEMENT IN THE EVENT OF A DIVORCE

In Wisconsin, people who are contemplating marriage or who are already married are permitted to enter into contracts with each other regarding their financial affairs to suit their needs and values and to achieve certainty, both during the marriage and in the event of a divorce. These contracts or marital property agreements are commonly known as pre- or post-nuptial agreements.

Wisconsin divorce law is clear that, as it relates to the division of property, any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution shall be binding upon the divorce court, unless the terms of the agreement are inequitable to either party. Because the divorce court is required to presume any such agreement to be equitable as to both parties, the party challenging the agreement has the burden of producing evidence and persuading the divorce court that the agreement is unfair and unenforceable.

For an agreement to be unenforceable, it must fail to meet the requirements of procedural fairness or substantive fairness. To assess procedural fairness, the court assesses whether each party makes fair and reasonable disclosures regarding his or her financial status by disclosing assets, liabilities, and debts; and whether each party entered into the agreement voluntarily and freely. When assessing whether a party voluntarily and freely entered into the agreement, a divorce court examines whether a party had a meaningful choice. Divorce courts are instructed to consider whether each party was represented by independent counsel, whether each party had adequate time to review the agreement, whether the parties understood the terms of the agreement and their effects, and whether the parties understood their financial rights in the absence of an agreement. To assess substantive fairness, the court assesses whether the agreement was fair at the time of execution. If circumstances significantly change since execution, then substantive fairness is also assessed at the time of the divorce.

A marital property agreement that is fair at its execution is not unfair at divorce just because the application of the agreement at divorce results in a property division which is not equal

between the parties or which a court might not currently order under the property division statute. If, however, there are significantly changed circumstances after the execution of an agreement, a divorce court must evaluate those circumstances and expectations from the perspectives of the parties at the time they entered into their agreement, not at the time of the divorce. Marital property agreements can (and should) be drafted in such a way as to address some of these contingencies.

While it is true that marital property agreements are binding contracts regarded with favor in Wisconsin, it is clear that, the parties to the agreement must keep in mind and adhere to the standards used to determine the enforceability of these agreements upon divorce, both when negotiating and drafting an agreement and during the marriage. To do otherwise is to risk an unpleasant surprise when a divorce court determines that the agreement is inequitable and, therefore, unenforceable at the time of divorce.

JIM DEJONG TO DELIVER PRESENTATION ON LEADERSHIP

On May 18, 2007, Attorney Jim DeJong will deliver a presentation on “Leading Those who do not Want to be Lead” at the CSI Management Coaching Clinic to be held from 11:30 – 4:30 at North Hills Country Club in Menomonee Falls.

The clinic will focus on the development of leadership skills, both for current and future business leaders. Other presenters include Terry Mather of CSI Consulting and Don Menefee of Silent Partner.

Jim DeJong is president and managing shareholder of O’Neil Cannon He works with business clients in a wide variety of industries and service sectors, providing them with creative counsel and strategic help. Jim’s corporate, LLC, and partnership practice is diverse and he is experienced in successfully guiding his clients through complex matters including forming and financing entities, as well as negotiating and preparing contracts and related documents. He also represents buyers or sellers of businesses, and provides counsel to clients on operational and governance matters.

O’Neil Cannon is a full-service legal practice focusing on business law, estate planning, and major complex litigation with offices currently in Milwaukee and Port Washington. On June 1, 2007, the firm will add an office in Sheboygan by joining forces with Hopp Neumann Humke LLP, one of Sheboygan’s oldest and largest law firms. OCHD was established in 1973 and is now listed as one of the Milwaukee-area’s largest law firms.

O'NEIL, CANNON, HOLLMAN DEJONG S.C. EXPANDS TO SHEBOYGAN

Milwaukee, Wisconsin (April 12, 2007) – The Milwaukee law firm of O'Neil Cannon announced today that, effective June 1, 2007, the law firm of Hopp Neumann Humke LLP will become the Sheboygan office of OCHD.

A full service firm, Hopp Neumann Humke is one of Sheboygan's oldest and largest law firms. The firm's practice includes corporate, estate planning and probate, employment, real estate, litigation, and family law. The firm is perhaps best known for its extensive municipal law practice, and is currently under contract with the County of Sheboygan to provide all civil legal services for the County government. They also have similar relationships with several cities, villages, towns, sanitary districts, and other local units of government in Sheboygan and surrounding communities.

O'Neil Cannon currently has offices in downtown Milwaukee and Port Washington. "We are pleased to be able to expand our practice by joining forces with HNH," stated Jim DeJong, President of O'Neil Cannon "The Hopp Neumann Humke attorneys will bring valuable experience and extensive community ties to OCHD which will allow the combined firm to better service our clients in Sheboygan and the surrounding communities. We also look forward to the opportunity to expand our practice areas by adding municipal law expertise." O'Neil, Cannon, Hollman, DeJong's current practice areas include corporate, real estate and construction, employment law, tax and estate planning, and litigation. OCHD represented Mitsubishi Heavy Industries America, Inc. against the Southeast Wisconsin Professional Baseball Park District in the landmark litigation arising out of the construction of Miller Park.

O'Neil Cannon is a full-service legal practice focusing on meeting the needs of businesses and their owners. The firm was established in 1973 and is now listed as one of the Milwaukee-area's largest law firms.

ATTORNEY KARLA MASCHMEIER AUTHORS CHAPTER ON BENEFITS ISSUES

Milwaukee, Wis. (March, 2007) – Employee Benefits and ERISA Attorney Karla Maschmeier recently contributed a chapter to the book *Human Resources 2007: Answers to the Top 25*

HR Questions.

The book, a successor to several prior editions published by Thompson Publishing Group, provides HR decision makers with information and guidance on HR and benefits issues they can use on a day to day basis. It is scheduled to be published this summer.

Karla assists employers, third-party benefit plan administrators, and other retirement plan service providers in all aspects of employee benefits and executive compensation issues. She is an active writer and speaker on various employee benefits and ERISA topics.

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