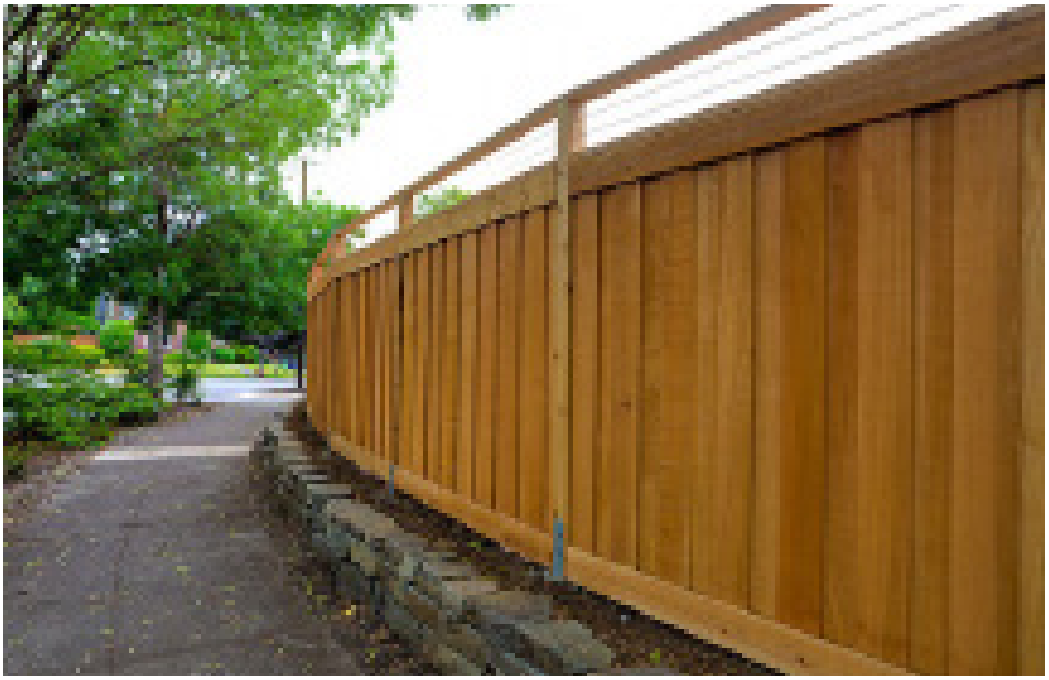
Fall 2019

Legal NEWSLETTER

This Issue



IN SPITE OF THE LAW

By Attorney Daniel F. Schmeeckle

The law, to borrow a quote from Winston Churchill, "is a riddle, wrapped in a mystery, inside an enigma; but perhaps there is a key." That "key" is often found in the Wisconsin Statutes. Hence, when faced with the proverbial question of whether "fences make good neighbors," it made sense to scour the Wisconsin Statutes for an answer. Such a timely question has an answer and it is: not necessarily. In the words of the legislature:

"Any fence, hedge or other structure in the nature of a fence unnecessarily exceeding 6 feet in height, maliciously erected or maintained for the purpose of annoying the owners or occupants of adjoining property, shall be deemed a private nuisance. However, nothing

(continued on back page)

PROTECT YOUR RIGHTS AFTER A HIT-AND-RUN

By Attorney Bradley A. Yanke

When people envision an auto wreck, their minds usually go to an image of two crashed vehicles on the side of the road. However, in a hit-and-run, if the other driver is never identified, the accident victim obviously cannot identify a driver or insurance company to pursue. Therefore, in order to obtain compensation for injuries sustained in a hit-and-run, the accident victim must use his or her Uninsured Motorist (UM) coverage.

Under Wisconsin law, one of the definitions of an *"uninsured motor vehicle"* is *"an unidentified motor vehicle involved in a hit-and-run accident with another person."* Since Wisconsin law requires every automobile insurance policy sold in the state to contain UM coverage, every Wisconsin automobile insurance policy has some level of protection for a hit-and-run.

Complications come from policy language that imposes additional duties on the accident victim in order to utilize the UM coverage for a hit-and-run. While every insurance company and policy is different, many policies require the person making a claim for a hit-and-run to notify the police and the insurance company in a timely matter. Some insurers only require the person "promptly notify," while others have even more stringent requirements of 30 days or even 72 hours. As always, you would want to read and follow your policy's duties and deadlines to avoid the argument that you breached the policy and are not entitled to UM coverage.

If not already complicated enough, if you are injured in an accident in which the unidentified vehicle did not physically make contact with your vehicle (a/k/a "phantom motor vehicle"), a set of even more stringent requirements await you. For example, a driver comes over the centerline forcing you to swerve, your vehicle overturns and you are injured. In this type of scenario, Wisconsin law requires that: (1) the facts be corroborated by "competent evidence" provided by someone other than the insured or the person making the claim; (2) within 72 hours of the accident, a report of the accident is made to the police, peace or judicial officer, or the DOT (or equivalent in another state); and (3) within 30 days after the accident, a statement under oath is filed with the insurer setting forth the claim and facts in support of the statement.

Depending on your viewpoint, these obligations permit the insurance company the opportunity to investigate difficult claims timely, serve as a way for insurance companies to deny meritorious claims, or a little bit of both. Regardless, they are but one example of why it is so important to seek representation immediately after an accident. Even without these potential procedural pitfalls, an accident victim is likely to face a fight with the insurance company over liability for the accident and what compensation is owed. You do not want to be barred from even making a claim because of failure to comply with any policy and statutory requirements. ◊

NAMING A TRUST AS THE BENEFICIARY OF A TAX-QUALIFIED RETIREMENT ACCOUNT

By Attorney Katherine A. Young

"In this world nothing can be said to be certain, except death and taxes." The sentiment behind this quote attributed to Benjamin Franklin remains as relevant today as it did then, particularly in the context of modern retirement planning and tax-qualified retirement accounts. According to the Social Security Administration, tax-qualified retirement accounts are the predominant retirement plan among workers in the early 21st century. Common examples of tax-qualified retirement accounts include Individual Retirement Accounts (IRAs), 401(k) Plans, 403(b) Plans, etc. The prevalence and value of these accounts have risen dramatically in the past 20 years.

For many, a trust often serves as the cornerstone of their estate plan. Trusts offer many advantages including the ability to avoid probate while still (i) managing assets for the benefit of young beneficiaries, (ii) protecting inherited assets from a beneficiary's creditors or ex-spouse, or (iii) preserving a beneficiary's eligibility for important public benefits. Given these advantages, it is often desirable to name a trust as the beneficiary of a tax-qualified retirement account. However, it is important to understand that these accounts remain subject to a complex set of income tax regulations that can often pose a trap for the unwary.

The major attraction of a tax-qualified retirement account is the ability to accumulate funds inside the account on a tax-deferred basis (or tax-free, in the case of a "Roth" account). However, IRS regulations dictate when this tax-sheltered accumulation must end. At a certain point, the account owner and/or beneficiary must begin to withdraw required minimum distributions (RMDs) from the account and pay income tax on the funds that are withdrawn. Often, one of the preferred income tax planning strategies with respect to RMDs is to withdraw them over the longest period of time possible. This offers the advantage of delaying the income tax associated with the withdrawals and allows the funds to grow within the account on a tax-deferred basis as long as possible. This income tax deferral can have a significant investment and long-term savings impact on the account in question.

Under current law, when an account owner dies and has named an individual directly as the beneficiary of his or her tax-qualified retirement account, the beneficiary can often establish an inherited account that allows him or her to withdraw RMDs over the course of his or her remaining life expectancy. At this time, this is the longest distribution period permitted under IRS regulation. A spousal beneficiary will also have the option of rolling the account over directly into his or her name.

(continued on back page)

(continued from front page)
herein contained shall limit the right of a municipality to forbid the erection of a fence less than 6 feet in height."

Spite fences were not always held in such low esteem in this great State. In the case of *Metzger v. Hochrein* the Court described Metzger's property as "surrounded by made lawns and yards, making an attractive and valuable home." Standing accused of erecting a spite fence, Hochrein set "rough" tamarack posts, from eight to sixteen feet high along the border between the properties. Making things worse, the Court described that between these posts was a "tight board fence of rough, old, unsightly, and partly decayed lumber from an old ice house." The Wisconsin Supreme Court dismissed the case. In language that seems whimsical today, the Court endorsed the right to annoy one's neighbor.

However, the unbridled ability to irritate neighbors did not last long. In 1903, an early version of the spite fence statute was passed in reaction to the Supreme Court's decision in *Metzger v. Hochrein*. Now, some modern examples help us understand the mash-up of words contained in the spite fence statute. For an example from Utah, would a "Redneck Stonehenge" consisting of three old cars upright in the ground erected after a neighborly dispute constitute a spite fence? The answer in a word – yes! Closer to home, a Wisconsin appeals court, case *Apple Hills Farms v. Price,* found that an "exposed thirty-two feet long, twelve feet high bare concrete wall" near a property was a spite fence. The facts of the Apple Hills Farms case provide a textbook definition of spite. Price, the erector of the wall, told the contractor building the wall that he wanted the wall "ugly" to devalue his neighbor's property. Price's spite bit him back in the end when the court ordered that he pay his neighbor $150,000.

Upon reflection, the law may not be able to answer the question of whether fences make good neighbors, but at times, fences certainly make spiteful neighbors. To close, Robert Frost's poem "Mending Wall" fittingly contains the following contemplative prose: "Before I built a wall I'd ask to know what I was walling in or walling out, and to whom I was like to give offense." ◊

(continued from prior page)
However, when a trust is named as beneficiary, the trust document itself plays a crucial role in determining how quickly RMDs must be withdrawn from the account. Under current law, if a trust meets specific requirements and is considered a "see-through trust," the life expectancy of the oldest trust beneficiary may be used as the measuring life for determining how quickly RMDs must be withdrawn from the account. If such requirements are not met, the funds must be completely withdrawn from the account over either the remaining life expectancy of the account holder or within a five year period, depending upon the age of the account owner at the time of his or her death. This often accelerates the timeline for withdrawing the funds from the account, as well as the associated income tax.

Accordingly, see-through trusts currently play a crucial role in estate planning for tax-qualified retirement accounts. However, the House of Representatives has recently passed the "Setting Every Community Up for Retirement Enhancement (SECURE) Act" which could significantly change the income tax treatment of tax-qualified retirement accounts following the death of the account owner. If approved by the Senate, this legislation would require most non-spousal beneficiaries to withdraw funds from an inherited tax-qualified retirement account within a 10 year period. This shortened time frame for distributing such accounts may have significant income tax consequences for beneficiaries. As currently proposed, there are exceptions that would permit a longer distribution period for spousal beneficiaries, as well as disabled or minor beneficiaries. If the SECURE Act becomes law, individuals who have named a trust as the beneficiary of their tax-qualified retirement account, or who plan to do so in the future, should have their estate plan reviewed or prepared by an experienced attorney to consider the impact of this important legislative change.

It remains easy to run afoul in the average trust document. Accordingly, if you plan on naming a trust as the beneficiary of a tax-qualified retirement account, you should speak with your attorney to make sure your trust qualifies as a see-through trust. ◊

1257 Main Street | P.O. Box 228 | Stevens Point, WI 54481-0228
715-344-0890 | andlaw.com |