

A Closer Look at

THE LAW



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**E-Newsletter
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Cunningham Dalman, P.C. is a full service law firm located in Holland, as well as in Douglas, Michigan. Our attorneys possess skill and experience in a broad spectrum of areas of practice, and have proudly served the lakeshore community for over 100 years.

Are You Caring for Your Parents?

By: [P. Haans Mulder](#)
Attorney at Law

More and more people are moving into their parents' homes to take care of them, or their parents are moving in with them. In fact, the number of multigenerational households has increased 38% (to 4 million) since 1990. Is that the case with you?

Moving in or having your parents move in, can be beneficial in a lot of ways. But, if it is not done the right way, it can cause a host of legal problems. These are a few to be aware of.

1. Your parents should have their estate planning documents (wills, trusts, powers of attorney) up to date. If their health declines, you do not want to have to go to probate court to get authority to manage their financial affairs and make health care decisions. Instead, have their attorney prepare financial and health care powers of attorney. This will save significant expenses and stress (by avoiding probate court). Have their attorney also prepare a last will and testament that will determine who will handle the probate (and be their beneficiaries) or have them consider signing a trust. Having a trust and properly funding it will

avoid the cost and hassle of probate.

2. If your parents are sharing in the costs of living in your house (i.e. paying part of the utility bills, taxes, insurance, etc.) or paying to have your house remodeled to accommodate their needs, it is important to have an agreement for this arrangement. It is also important for them to keep separate bank accounts. The reason for this is Medicaid. The Medicaid rules have changed dramatically over the last two years and the consequences of your parents making a gift to you can be a substantial problem. If there is no agreement between you and your parents on the sharing of these expenses or your accounts are joint (i.e. all expenses are going in and out of one account), it may be very difficult to prove that your parents have not made a gift to you. Under the new Medicaid rules, this could disqualify your parents from receiving Medicaid if you cannot care for them any more and they need to go into a nursing home.

3. Talk to your accountant about whether you can deduct expenses that you are paying for your parents. This

might include things such as co-pays for doctor visits, dental care, insurance premiums, medical equipment and home care.

Plan ahead by contacting an attorney to help you and your parents avoid added stress during this time.

Michigan Real Estate Taxes – Changing Laws and Interpretations

By: [Vincent Duckworth](#)
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Attorneys at Law

A new state statute, Public Act 96 of 2008, immediately effective, allows a person who has occupied a residence as a principal residence and claimed a homestead exemption for that property to continue the homestead exemption on a conditional basis for up to 3 years after moving while trying to sell the house, provided the former principal residence is for sale, not occupied, rented out or otherwise used for business or commercial purposes. This new law could be a great relief to many people--but the conditional exemption must be claimed by May 1 of the given year. Thus, prompt action must be taken this year to utilize the new exemption. The form needed to claim this exemption, Department of Treasury Form 4640, is available for download at www.michigan.gov/treasury. This new statute can provide some tax

relief to those home owners who may be having difficulty selling their former principal residence.

Changing interpretations of real estate tax laws, however, will increase some tax burden for new home builders. Previously, builders of new homes could avoid paying transfer taxes on the combined value of a lot and home which was ultimately transferred to the new home buyer. Under a former interpretation of the State Real Estate Transfer Tax (SRETTA), MCL §207.521, *et seq.*, only the first taxable event in this process, the signing of the purchase agreement for the vacant lot, was viewed as the event subject to transfer tax. Transfer taxes are those tax obligations owed by the seller of property to the State and County government when transferring ownership of property. These taxes are generally collected subsequent to

the recording of a deed or other instrument signifying a change in property ownership. This prior interpretation has now been rejected by the Michigan Supreme Court in the case of *Lake Forest Partners 2, Inc. v. Dept. of Treasury*, 480 Mich 1046 (2008), which has held that the value ultimately exchanged for a deed is the total value of the lot *plus* the home constructed on the lot. Accordingly, builders may no longer limit their transfer taxes based solely on the value of the preexisting unimproved lot, if at the time the builder conveys title to such land by a recorded instrument the lot has been improved by a structure.

This new interpretation of the State Real Estate Transfer Tax (SRETTA), MCL §207.521, *et seq.* will cause builders to incur a greater tax liability upon transferring lots for newly constructed homes. In addition, because the separate Real Estate Transfer Tax Act (RETTA), MCL §207.501 *et seq.*, closely mirrors the provisions of SRETTA, builders should also expect that county governments will apply the similar combined value interpretation when assessing their transfer taxes as well.