

Harvell and Collins, P.A.,
Quarterly Report

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*It is our pleasure to send you the January Edition of our **NEWSLETTER** for the year 2009.*

*This **NEWSLETTER** will concentrate on various legal concepts and we would suggest that you keep it with your important files to refer to from time to time.*

*For those of you who have not received our **NEWSLETTER** in the past and are new clients, our **NEWSLETTER** attempts to keep you informed of any new developments in local, state, and federal law that might affect your personal life or your business. The **NEWSLETTER** will advise you on these developments and, when appropriate, make suggestions that will help you deal effectively with these changes. Also, the **NEWSLETTER** will serve as a way to communicate with you. As always, if you would like to have us address a particular matter, please feel free to call or write, and we will address that issue in a future **NEWSLETTER**.*

Happy New Year!

On behalf of our office, we wish you a Happy 2009. It is the appropriate time to thank you for the opportunity to provide legal services to each and every one of you. We look forward to helping you this year as the need arises.

Ten Legal New Year's Resolutions

1. **Do you have a Durable Power of Attorney?** Is it up to date? A Durable Power of Attorney is a legal document wherein you give someone legal authority to sign checks, handle your legal affairs, including but not limited to, banking affairs, filing tax returns,

negotiating insurance settlements, managing real property. The Durable Power of Attorney needs to be very specific. Also, you should name an alternate attorney-in-fact.

2. **Do you have a corporate book and if so, is that book up to date?** Have you had regular meetings and are those meeting minutes in the corporate book? Have bylaws been adopted and stock issued? If you have a corporation, then you need to act like a corporation. North Carolina General Statutes require you to do so.
3. **Check your Beneficiary Designations.** Life insurance, annuities, IRA, 401k...so many assets do not necessarily pass according to terms of a Last Will and Testament, but pass by contract terms or by beneficiary designation. It is very important to call your life insurance company, call the holder of your IRA, and get in writing the name on the Beneficiary Designation and put this information with your legal papers. No matter what your Last Will and Testament may state, these non-probate assets such as life insurance, IRAs and accounts marked POD (payable on death) or JTWRROS (joint tenants with right of survivorship) will pass pursuant to terms of the account, not pursuant to the terms of the Last Will and Testament.
4. **Does your family need a survey on family property?** If you own a large tract of property, etc., more than likely you as parent or grandparent know the property lines and know the history of your property. Many times children do not know the property lines and/or the history. If you have a large piece of property, have a survey done while there are still family members living who know the history of this property. It is important to have a survey certified so that it may be recorded.
5. **Keep a copy of all legal documents in one place.** It is so very important to keep a copy of your most recent Last Will and Testament, Trust, Durable Power of Attorney, Health Care Power of Attorney, Living Will, Deeds, Beneficiary Designations, cover page of stock accounts and bank statements in one location. Keep these copies up to date about every three (3) years. Attempting to alert your next of kin where to begin the process of marshalling together the assets is invaluable. So many people have older documents that they hold on to....go ahead and discard older documents...shred them! Keep the latest and greatest in your summary file so that your next of kin knows that this is where to begin. Use a strong box at home or a safety deposit box at the bank. Make sure that a child is named as a deputy and has a key. We strongly advise clients to not write on their documents. Do not make handwritten changes on your documents. This opens the door for misinterpretation and the original intention of the testator can be lost. If you want to make changes, meet with your attorney to do this properly.
6. **Has your Will been looked at in the last five (5) years?** It is important to have your Will reviewed by a competent lawyer every five (5) years and certainly more often if you have life change situations such as death, divorce, long term illness, birth of a child or birth of a grandchild.

7. **Guardianship of Minor Children.** If you have a minor child, it is your responsibility to have a Will that names a guardian for your minor child. You want to have a legal document that names a legal guardian for your child, someone who will take care of, love and nurture your child. This needs to be reviewed because life circumstances with the named guardian may change also.
8. **Registration on Bank Accounts and CDs.** Go to your bank and ask to see registration information on your accounts and CDs. If you have an account or CD marked payable on death (POD) to an individual, then that is how the account will be paid, not pursuant to terms of your Last Will and Testament. It may be your intention to distribute equally to your children; however, you have taken one child to the bank to have them made a signatory on the account. The account is then changed to POD (payable on death) or marked JTWROS (joint tenants with right of survivorship). Make sure that you understand the affect of changes on your bank accounts. The bank needs to have on record a copy of your recorded Durable Power of Attorney.
9. **Statute of Limitation Issues.** When did you learn about the leak in your roof? How long ago was your house built? Have you been involved in an automobile accident and the settlement is not finalized? Do you have leaky windows or is your HVAC not working? Is there permissive use of your property? Is someone using property to dump certain debris? Are you allowing your property to be used in a certain way? Keep in mind that the law is very time driven and if you have a legal issue, it is better to confront it now, not later. Do not continue to put off dealing with these issues.
10. **Check registrations to title to real property.** Is it tenants by entirety? Is it tenants in common? Is it joint tenants with right of survivorship? Is it joint tenants? Tenants by the Entirety is when the joint owners are husband and wife. The property automatically goes to the surviving spouse. Is the intention for the surviving spouse to receive the property? Maybe the property should be held as tenants in common for estate planning purposes, so that high value property is not in the name of one spouse only, but held 50/50 in each name. Tenants in common have no right of survivorship. If one owner dies, that owner's interest will pass pursuant to the terms of the Last Will and Testament, not necessarily to the survivor. Joint tenancy is similar to tenants by the entirety, but the co-owners are not married. Joint tenancy includes right of survivorship, provided it is set out in the deed. Upon the death of a joint tenant, title remains in the surviving joint tenant without further action. You cannot leave joint tenancy property to someone else in your will. It is very important to make sure that titles to real property are as you intend them to be.

“The Right Advice at the Right Time”
Visit us at www.harvellandcollins.com

If you have not done so already, we encourage you to visit our website. The website serves as yet another way to render superior service to our clients. There is a wealth of

information disclosed on the website, including important links to useful government agencies that will assist our clients in obtaining valuable information.

“About the Firm” presents the history and purpose of the law firm. “Staff Profile” introduces our lawyers and legal assistants. Contact information is provided for all employees. The website provides an extensive list of services offered by Harvell and Collins, P.A.

We are now archiving our Quarterly Newsletters and our weekly radio program on the website so that our clients may easily access this information once again by visiting our website at www.harvellandcollins.com.

Please visit us at www.harvellandcollins.com. We look forward to comments from our clients regarding our website.

PROTECTING YOUR ASSETS FROM THE “LITIGATION EXPLOSION”

In the old days, it was said “he who has the gold makes the rules”. Today the saying goes, “he who has the gold pays the plaintiff”.

It has been estimated that 50,000 lawsuits are filed in this country every day of the week. This has come to be known as the “litigation explosion”.

A primary goal of a sound financial plan is to protect your personal and business assets from potential lawsuits and claims.

We at Harvell and Collins, P.A., strive to inform our clients of the latest methods available to protect assets. If you separate your business liability from you personal assets and your high-risk assets from your safe assets, the incentive to sue you will be removed. The following is a list of important measures that may be taken to protect your assets from the “litigation explosion”:

- X Never operate a business as a sole proprietorship. Operate your business as a corporation, limited liability company or limited partnership.**
- X Never accumulate excess cash or other assets in your business. Your business operating as a corporation, limited liability company, or limited partnership should always be “zeroed out” at the end of the fiscal year.**
- X Rental property should always be held in a corporation, limited liability company, or limited partnership.**
- X All real property and/or equipment used for business purposes should always be held in a separate corporation, limited liability company or limited partnership.**

- X Any high value real estate, such as an ocean front home, should be held in a corporation, limited liability company or limited partnership.
- X High-risk drivers, such as young or elderly drivers, should consider placing their vehicle in a corporation, limited liability company or limited partnership.
- X Periodically review your business liability, homeowners and automobile insurance with your insurance agent.

Please contact our office for a comprehensive review of your asset protection plan.

“Let’s Talk Legal”
Radio Station: WTKF - 107.1 FM

As many of you know, Harvell and Collins, P.A., presents a talk radio program each and every Tuesday at 7:30 a.m. The purpose of the live radio program is to present to the listening audience legal information and allow the listeners to call in and ask questions. We have thus far discussed the following topics:

- Estate Planning
- Elder Law and Medicaid Planning
- Litigation in all Courts
- Estate Administration
- Real Estate Transactions
- Corporate and Business Transactions
- Family Law and Domestic Relations

If you have suggestions for a topic to be discussed, or if you have a question, give us a call. Or, call in during the show at 1-800-818-2255. Please join us on Tuesday mornings, bright and early on the talk station at WTKF - 107.1 FM.

We are now archiving our weekly radio program on the website so that our clients may listen once again to the program by visiting our website at www.harvellandcollins.com.

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Postscript

This writing is intended to generally familiarize you with various legal issues. The scope of this document is necessarily limited, and consultation with your attorney or tax advisor should always precede taking any action.