



# McCormick, Murtagh & Marcus

ATTORNEYS AND COUNSELORS AT LAW

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LEGAL UPDATE

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## RESIDENTIAL HOME INSPECTION

### Let the Buyer Beware



William Cullen Bryant House

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Caveat Emptor ("let the buyer beware") is an ancient rule of law that remains, in part, the rule today for many residential closings. Buying a home is a major purchase and the buyer must make it their business to know everything about the home prior to closing.

Once your offer to purchase has been accepted, a few things must happen relatively quickly as outlined in the Purchase and Sale Agreement, including the home inspection. A home buyer generally has a contingency with a duration that lasts 10-14 days to have the home inspection performed by a licensed home inspector and to raise any concerns about the condition of the property.

There can be several parts to a home inspection, including the general home inspection, as well as septic, water, radon and environmental testing. Depending on the property, the market and your experience in home buying, you may want all or none. We always recommend home inspections, regardless of the market or the buyer's experience.

A General Home Inspection will evaluate the physical condition of the structure, construction and mechanical systems; identify items that should be repaired or replaced; estimate the remaining useful life of the major systems (such as electrical, plumbing, heating, air conditioning), equipment, structure and finishes; and test for radon in the air.

Homes in the Berkshires may either be on public water or well water. If there is well water, the water should be tested for bacteria in your drinking water and the presence of radon in water, among other things.

Homes in our area can either be on public sewer or a septic system. The septic system must be tested to ensure it complies with the Massachusetts Title V regulations. This inspection is performed by a licensed septic inspector, rather than the general home inspector. Providing a passing Title V is a burden on the Seller and not the Buyer in Massachusetts.

A home buyer may elect to have a variety of environmental related tests performed, including lead paint, mold, asbestos, and UFFI. Some home inspectors will test for these items but they may also refer you to other companies.

In addition to the home inspection, a buyer should be aware of the property conditions including wetlands and zoning ordinances which may affect or prohibit the buyer from using the home the way it intends to.

Whether you are buying or selling a home, let the attorneys at McCormick, Murtagh & Marcus guide you through the process.



KATHLEEN M. MCCORMICK

**Practice Areas**

Residential Real Estate

Commercial Real Estate

Business & Corporate Law

Municipal Law

Estate Planning

Land Use, Zoning & Permitting

Labor Relations

Employment Law

Litigation

Landlord/Tenant Law



Is your business up to date with its annual filings?

All business entities must file Annual Reports with the Secretary of the Commonwealth.

Failure to file Annual Reports may result in an involuntary dissolution and expose you to individual liability.



**PLANNING FOR THE FUTURE OF THE FAMILY BUSINESS**

In an area where family businesses are the norm, the statistic on their long-term survival is frightening. Only about 30% of family owned businesses survive into the second generation, 12% are still viable into the third generation and only about 3% of all family businesses operate into the fourth generation or beyond. One major factor for the generational failure of the family business is an unfortunate lack of business succession planning.

The ownership succession planning issues that seem to be the most common areas of contention or omission in family business succession planning are:

Technical mistakes. These mistakes include outdated wills and other estate planning documents, improperly titled assets, and insurance owned incorrectly. Many family business owners have gone to their attorneys and CPAs, engaged them in a vigorous round of estate planning, executed the documents, and breathed a huge sigh of relief. Fifteen years later, they realize their circumstances have changed drastically, and yet they haven't updated their documents. Ownership succession planning documents must be constantly reviewed for relevancy in a changing business environment and the laws that effect the estate planning.

"Planning in a vacuum." The old fashioned way of doing family business succession planning was for the attorney to talk to Mom and Dad, find out their wishes for the future, and to document those wishes for the benefit of the entire family. No one talked to the children about ownership succession planning – even if the "children" were 45 years old and ran the family enterprise – to find out what they wanted or expected. No one bothered to consider what successful outcomes looked like to other stakeholders besides just Mom and Dad. For today's family companies, planning in a vacuum simply does not work and communication between all the interested parties must occur.

Leaving the business to the surviving spouse. Because of the unlimited marital deduction, estate and tax attorneys commonly suggest to leave virtually all assets to a surviving spouse either outright or in trust. Technically, this is a zero tax plan and makes perfect tax avoidance sense. However, this is rarely a healthy family business succession planning strategy. The vast majority of surviving spouses want nothing whatsoever to do with the business in the absence of their spouse. Leaving the business to the surviving spouse is tax wise but often foolish from the standpoint of the future success of the business.

Treating children fairly. When developing a family business succession planning strategy, senior generation family business members often struggle with how to fairly divide up the product of their life's work. In particular, the issue of how to treat their children (employee and non-employee alike) equitably when they have such different strengths and ambitions is particularly troublesome. Ignoring the best interest of the company to keep status quo may have an adverse effect on the viability of the business.

McCormick, Murtagh & Marcus has been representing family businesses in Southern Berkshire for four generations. Let us assist you and your family plan for the future.



MICHAEL P. CITRIN

### Practice Areas

Litigation

Estate Planning

Estate Administration &  
Probate Law

Employment Law

Residential Real Estate



An Estate of Homestead is a type of protection for a person's residence that allows homeowners in Massachusetts to protect their property up to five hundred thousand dollars (\$500,000) of the value of their primary residence, per family.

For answers to your questions on the Homestead Act visit <http://www.sec.state.ma.us/rod/rodhom/homidx.htm>



## REVERSE MORTGAGES – AN OPTION FOR RETIREMENT PLANNING

If you are planning for your retirement or are currently retired and need to supplement your income, you may wish to consider a reverse mortgage.

A reverse mortgage is a loan that enables you to convert a portion of your home equity into funds without having to sell your home or make a monthly mortgage payment. To qualify for a reverse mortgage, you must be 62 years old or older and your home must be your primary residence. There are no income, employment or credit qualifications.

You are not required to repay reverse mortgages during your lifetime, as long as your home remains your primary residence. The loan may be repaid at any time either in whole or in part without penalty. The outstanding loan balance, accrued interest, and fees become due when you sell your home, no longer occupy your home, or die.

In order to receive a reverse mortgage, you must own your home free and clear of any debts or liens. If you have a traditional mortgage, reverse mortgage proceeds will need to be used to pay it off.

Recently, the Department of Housing and Urban Development, through its Home Equity Conversion Mortgage Program ("HECM"), approved a \$417,000.00 limit for federally insured reverse mortgages. The loan amount is calculated using the age of the homeowner or homeowners, the interest rate and the value of the home. The older you are, the greater the amount of funds that can be borrowed. Using recent interest rates, a 65-year-old could borrow up to 26% of a home's value; a 75-year-old could borrow up to 39%; and an 85-year-old could borrow up to 56%.

A borrower may choose one of several loan options: a lump sum; a monthly payment for as long as you live in the home; monthly payments for a fixed period; a line of credit; or a combination of the above.

If the value of your home drops during the time you have the loan, you will not be forced to sell your home. If you have a reverse mortgage through HECM, it is federally insured. Accordingly, if your loan exceeds the value of your home, you (or your heirs) will owe no more than the value of the property.

A reverse mortgage is one way to supplement your retirement income, pay off an existing traditional mortgage and avoid future monthly payments. If you choose a monthly payment or a line of credit option and do not deplete the full loan amount, the amount of your loan will increase with time, allowing you to borrow more, because your equity in your home will increase the older you become.

If you are considering a reverse mortgage, it is important to have a thorough understanding of the closing costs, as well as the manner in which interest and fees accrue during the term of the mortgage. Let the attorneys at McCormick, Murtagh & Marcus advise you whether a reverse mortgage is right for you.



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For more information on the services provided by McCormick, Murtagh & Marcus or to view past newsletters, visit our website: [www.mccormicklegal.com](http://www.mccormicklegal.com)

**LEGAL UPDATE**

**Mandatory Treble Damages Under the Massachusetts Wage Act**

Effective July 13, 2008, employers who violate the Massachusetts wage and hour laws are required to pay mandatory treble damage awards -- three times the actual financial loss to the employee. In the past, an employer that violated the wage and hours laws could be subject to paying damages in a lawsuit, but not necessarily treble damages, if the employer acted in good faith with the intent to comply with the law. This amendment to the statute makes treble damage awards mandatory if an employer is found to have violated the law. As a result, it is anticipated that lawsuits for wage and hour violations will increase. The type of claims by employees that could result in treble damage awards include, failing to pay or timely pay wages, failing to pay or miscalculating bonuses and commissions, misclassifying an employee as exempt from overtime wages, failing to pay or improperly calculating overtime wages, failing to pay minimum wages, improper vacation time policies, and misclassifying an employee as an independent contractor, amongst others. It is important, more now than ever, to review your employment policies and practices to insure they comply with the wage and hour laws.

**LLC Act has been Amended**

The Limited Liability Company Act (M.G.L. c. 156C) has been amended. In accordance with s. 70 of the Act, failure to file annual reports with the Secretary of State for two consecutive years may result in an involuntary dissolution of the LLC.



**Wishing you and your family a wonderful holiday season and a healthy and peaceful New Year**

**From the staff of McCormick, Murtagh & Marcus  
Ed, Kate, Michael, LuAnn, Nora, Susan,  
Darlene, Linda, Cheryl and Leana**

