



# DOUMAR MARTIN PLLC NEWSLETTER

A Periodic Publication Covering Legal Issues of Current Interest

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### **10b-5 Securities Liability/Common Law Fraud**

Our office is again addressing liability issues for securities fraud versus common law fraud. Under the first and third prongs of Rule 10b-5, and its state law equivalents, a fraudulent act in connection with the sale of securities can expose a company officer to claims of securities fraud. But common law fraud is generally limited to a material misstatement of fact, intentionally false when made, on which a counterparty justifiably relies and that results in damages. Fraud for purposes of an exception to discharge under Section 523 of the Bankruptcy Code can be narrower still.

### **Mortgage/Foreclosure Issues**

As far as we can see, foreclosures are still continuing at a rapid pace in Virginia, and potentially flawed paperwork is at best resulting in some foreclosure delays. If a borrower is in default on a mortgage, a lender can generally foreclose and the borrower cannot claim fraud for having an unaffordable mortgage. Our office represented the lender in Jorgensen v. Accredited Home Lenders, et al, in which the 4th Circuit affirmed a judgment for our client in 2008, which affirmed this principle before the current wave of foreclosures, but no case in Virginia has ruled to the contrary

that we see. TILA or FCRA issues may lead to some liability, but won't help avoid a foreclosure. Unlike in Maryland, foreclosures in Virginia can proceed without necessarily filing a court case, leading to awkward circumstances when the new owner knocks on a homeowner's door.

### **The Most Significant Unpublicized Change in the Tax Deal**

Under the new tax deal that the President just signed into law on December 17, one of the most substantial real-world changes will simplify tax law provisions requiring couples to have trust or trust-like provisions to claim their entire estate tax exemption. Aside from providing for a much higher exemption than in most past years, the new law allows the executor of a deceased spouse's estate simply **to transfer any unused exemption to the surviving spouse**. This provision will simplify wills and trusts, allowing such documents to be intelligible to lay people. In fact, existing wills and trusts should be simplified now to avoid unnecessary expenses associated with creating trusts.

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