

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.

*Located in the  
Arena District*

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Litigation

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Business

Real Estate

Estate Planning  
& Probate

Debtor-Creditor Law

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Restaurant  
& Hospitality

Trust Litigation  
& Tax



**Topics this issue:**

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the Editor

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WBBB Attorneys

Avoid Spoliation  
of Evidence Issues

When Is  
Estate Planning  
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A 1031 Exchange  
Twist- Tenant  
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**Dates of interest:**

Holiday Party,  
December 17, 2004,  
at Scioto Country  
Club, 6:30 p.m.

## A Letter from the Editor

Thank you for reading "Courting Success," Wiles, Boyle, Burkholder & Bringardner's first newsletter. It is our intention that "Courting Success" will provide you with practical information and updates that can assist your everyday business needs. As this is the first edition of "Courting Success," I thought it would be appropriate to introduce you to the history of the law firm, currently known as Wiles, Boyle, Burkholder & Bringardner, Co., L.P.A.

The law firm was founded in 1940 by Arthur Wiles and Thomas Doucher. Initially, the law firm of Wiles & Doucher practiced exclusively in the field of insurance defense litigation. Put in more simple terms, the attorneys at Wiles & Doucher were "trial" lawyers. As with many businesses in the Columbus community, Wiles & Doucher expanded throughout the 1950s, 60s and 70s changing office locations and the name of the law firm.

Wiles, Boyle has not only experienced growth and change relative to its attorneys and office locations but has also developed additional practice areas as well. Currently employing the services of 23 attorneys, Wiles, Boyle has developed a general, full-service law practice with expertise in corporate, real estate, construction, estate

planning, hospitality and restaurant, probate, administrative, foreclosure, debtor-creditor and tax law, while maintaining its experienced litigation practice.

As the breadth of Wiles Boyle's practice has expanded over the years, it relocated its offices to 300 Spruce Street in April of 2003. Now housed in a newly built building in the trendy Arena District, the firm has improved its facility, technology and personnel and is poised to handle the future demands of the firms' clients.

"Courting Success" will feature articles, such as practical year-end business tips, estate planning information, analysis of Court decisions and other legal topics we think will interest our clients. It is Wiles Boyle's intention that this newsletter, aptly titled "Courting Success," will provide you with practical, insightful and legal information to enhance the success of your business... today, tomorrow and in the future.

Very truly yours,  
Kerry T. Boyle

**Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law**

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## Featured WBBB Attorneys



Daniel E. Bringardner

The firm is pleased to announce the election of Dan Bringardner to partner. Dan's practice areas include real estate, estate planning, probate, business and commercial litigation, and taxation.

Dan received his B.S. in business administration from Ashland College and J.D. from Capital University. He is a member and serves on a variety of committees for the Columbus and Ohio State Bar Associations.



Bruce Burkholder

Bruce Burkholder's practice areas include real estate law, construction law, corporate law, business law, and restaurant and hospitality law.

Bruce received his B.S. from Bowling Green State University and J.D. from Capital University. He is a member of the Columbus, Ohio State and American Bar Associations. Bruce also serves as a member on the Ohio Home Builders Association and BIA.

Recently, Bruce was recognized by his peers in a *Business First* feature as one of the top corporate and business lawyers in Central Ohio.

## Avoid Spoliation of Evidence Issues

A person is under a duty to preserve evidence, which he or she knows or reasonably should know is relevant to a pending or potential lawsuit. Ohio courts recognize the tort of spoliation of evidence. Ohio courts also recognize "sanctionable spoliation," which can be raised by a motion in limine or motion for sanctions pursuant to Civil Rule 37. Possible sanctions include dismissal of the action, preclusion of evidence and testimony, and an inference that the evidence, if preserved, would have disclosed facts adverse to the party who destroyed it.

If you become aware of a pending or potential lawsuit and possess evidence that is potentially relevant to that lawsuit, preserve the evidence and contact your attorney to determine the best course of action. Often the types of evidence that should be preserved are easily identified, such as a tire in a defective product claim. However, other times the evidence might be less obvious, such as electronic evidence stored in computers or even houses.

On the other side of the coin, if you have a pending or potential lawsuit involving certain evidence, you should place the person in possession of the evidence on notice of your pending or potential claim and demand that they preserve the evidence until you can inspect it.

By Mark C. Melko

### Board of Editors

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Business

Richard S. Gerber -  
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Trust Litigation  
& Tax

Cris G. Phillips -  
Bankruptcy,  
Debtor-Creditor Law

## When Is Estate Planning Important?

Even if a married couple's combined estate is currently under the IRS unified credit amount of \$1,500,000 per person, which the IRS permits each person to give away tax free during their lifetime or at death for the years 2004-2005 (with the amount increasing to \$2,000,000 in 2006-2008), the answer is still generally yes.

Historically, estate planning has revolved around saving federal estate taxes – the thinking being that if the government allows you to give away some property tax free, then take advantage of it. If your combined estates will stay under your combined unified credit amounts (\$3 million), then tax planning is not that critical. However, if your combined assets are appreciating, then start creating separate estates and not title everything "joint & survivorship."

Additionally, the family planning part of estate planning is critical. You need to be thinking about: Should my kids be treated equally? Are the kids' life circumstances equal? Does it make a difference if one spouse is significantly younger than the other spouse? What do I do about minor children?

Do you have a lot of planning issues to address beyond just taxes? If so, then you should always consider a trust. Otherwise, if both spouses die while the kids are minors, then all of your property will go to your kids when they turn 18. Judging from my own personal perspective, I would have enjoyed having hundreds of thousands of dollars to play with at 18.

Even if you have adult children are they in a secure position where they can manage money? If a child is having financial problems, will their inheritance just get sucked into the same black hole, or would you prefer that the adult child have a second chance to build a more stable lifestyle with the inheritance once the old financial problems are part of the past? What about the adult child that may be in an unhappy marriage? Do you wish to have your hard earned money go to an ex-spouse-in-law? Tax planning is fairly easy, but in order to coordinate tax and family planning issues, it is important to go over all of those sensitive areas that are easier to think about than to talk about with anyone.

By: Mary Ten Eyck Taylor

## A 1031 Exchange Twist – Tenant in Common Exchanges (TIC's)

It is now possible for real estate investors to utilize 1031 Exchanges for property they hold with others. Under new guidelines, each of the co-owners must hold title to the property (either directly or through a disregarded entity) as a tenant in common.

As we all know, an interest held in an entity organized with others for the purpose of holding property does not qualify for a tax free exchange. The way around? Each of the members or partners instead hold the property as tenants in common, fee simple either individually or in their own

personal LLC (use of LLC to minimize personal exposure).

The TIC presents new opportunities for investors. It has been utilized by larger real estate groups to attract investors, and it allows smaller investors to join others with flexibility to transfer their interest later. Holding property as a tenant in common may offer opportunities and the flexibility to use the TIC exchange. As with any business transaction, it is always best to first consult with your business and tax advisors.

By Richard S. Gerber