

# SHIPMAN & WRIGHT NEWSLETTER

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ATTORNEYS AT LAW

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## Reflections

by s&w attorney gary k. shipman

The Holiday Season and the beginning of a New Year always invokes reflection about where we've been and where we're going. For the past 3 years, that reflection on my part has created an angst about the economy and the role of both banks and politics in my perceptions, be they positive or negative.

For all of my adult life, a bank was perceived to be a place where you went to get help to solve both good and bad problems. Good problems were resolved by the making of loans so that small businesses and creative thinkers could continue to stimulate the Country's economy by keeping its citizens employed. Bad problems were resolved by your "neighborhood banker" sitting down and finding constructive ways to leverage assets and income in a manner that simply made things better, not worse.

Politics was a process that inspired ordinary people to sacrifice themselves for the benefit of community and Country. A

"citizen legislature," made up of people from all walks of life, came together and engaged in vigorous, passionate and informed debate prior to crucial votes and then threw their arms around each other in furtherance of the "people's work."

In the "good old days," both banks and politics solved, not created, problems. How things have changed. For the past several years and, I believe, for the foreseeable future, both banks and politics are the problem. Banks, after reaping billions and billions of dollars in profit from their "love of loans," are now hell bent on destroying small business and the security of those hard working men and women that comprise the vast majority of America's work force. For politicians, conflict, not consensus, is the word of the day, apparently out of fear that consensus would actually result in progress (and God knows we can't have that). The end result of bank greed and political stupidity for you and me is more uncertainty. Uncertainty breeds fear, and fear can

## S&W Launches Video Blog Series

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The Shipman & Wright video blog series is a new way for us to communicate with our clients, prospective clients and fellow attorneys. We will be talking about everything from cases that our firm is handling to current topics in the local, national and global news that affect our daily lives. Through our video blog, we look forward to bringing you an informative and educational experience that is unique and interactive. We want your feedback and questions, so feel free to contact us with your comments. Please tune into our video blog at [shipmanandwright.com](http://shipmanandwright.com).

# Reflections *(continued)*

breed more fear. That's exactly what both banks and politicians want, and we can't give in to what they want. Instead, we must show courage, which, as the old proverb goes, is not the absence of fear, but the conquest of it.

So, in 2012, let's continue to hold both banks and politicians accountable. When the bank pushes you, push back. When logic tells you that political consensus, not conflict, is the path to problem solving, don't vote for, and in fact, campaign against, politicians whose conflict creates more problems. The Rev. Billy Graham put it best when he reminded us that "Courage is contagious. When a brave man takes a stand, the spines of others are stiffened." If we know that nothing can return to economic normality in this Country if we continue to let banks and politicians dictate their failed agendas to us,

then we can't voluntarily continue to let them have it their way.

It's tough out there people, that's for sure. However, I take great joy in seeing the bravery of those struggling against the mammoth personal and financial adversity created by banks, and even greater joy at a bank's failed efforts to profit from its rampant stupidity. I feel pride every time the politics of conflict loses to the successes created by political consensus. Day by day, week by week, month by month, and yes, year by year, the tide is turning. Inaction on our part will only breed more doubt and fear, and so 2012 is



especially a year that we need to stay busy and engaged. We have too much to lose by being otherwise.

Happy Holidays to each of you, and here's to a prosperous 2012!

## Bankruptcy Home Misconceptions

by *s&w attorney kyle nutt*

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A common misconception I hear about bankruptcy is that it always allows individuals or families to keep their homes and protect them from creditors. The degree to which the primary residence is protected in bankruptcy depends on the circumstances, however, and a qualified attorney should be consulted for each individual case.

Nevertheless, a brief summary of some relevant law on the issue may be helpful:

First, a debt owed by only one spouse will not result in a couple losing their home if they own it as "tenants by the entirety," which means the home is owned by both spouses as a married couple.

In a Chapter 7, or "liquidation" bankruptcy, the assets of the debtor are sold to satisfy

creditors, after which the debtor is free from any remaining balances owed and gets a "fresh start," subject to a few exceptions. Debtors are allowed to "exempt" certain amounts of property from the liquidation sale, which they are entitled to keep as part of their "fresh start."

In North Carolina, an individual can exempt up to \$35,000 in home equity; a couple filing jointly can exempt \$70,000. This means that if the home were sold in bankruptcy, the mortgage would be paid off and the debtor would be entitled to equity of up to \$35,000 (or \$70,000 for a couple filing jointly), after which creditors would be entitled to their shares. However, where the debtor has \$35,000 or less in equity in the home, there is a possibility of keeping the home. If the

debtor is not behind on the mortgage, the debtor may be able to "ride through" the bankruptcy with the home, with payments continuing on the mortgage as if the bankruptcy had never occurred. It is important to note that this will not stop the mortgage holder from later foreclosing on the home if the debtor falls behind.

On the other hand, in a Chapter 13 bankruptcy, the debtor typically enters into a payment plan to pay creditors out of their disposable income for a term of years (usually between 3 and 5) and is thereafter discharged from most debts. A Chapter 13 bankruptcy can allow a debtor facing foreclosure to avoid it by catching up on past due payments over the course of the three to five year plan, during which time the bankruptcy court will deem the mortgage "current." However, the debtor is also required to continue to make timely mortgage payments in addition to catching up on the past due amounts, a strain that some debtors may not be able to bear.

This information may be helpful if you are considering a bankruptcy option, but your particular circumstances will be critical in the ultimate decision. Numerous exceptions, twists, and turns may come into play. Anyone facing bankruptcy or foreclosure should absolutely contact an attorney to receive individual advice on their situation.

# S&W Hosts the NC Advocates for Justice Mock Trial Competition

*for the wilmington region on february 4th, 2012*

Shipman & Wright is thrilled to announce our sponsorship of The North Carolina Advocates for Justice (NCAJ) High School Mock Trial Competition for the Wilmington region, which is a statewide educational program that provides an opportunity for students to learn about the American legal system from legal professionals. The mock trials take place in courthouses throughout the state, where students take on the roles of attorneys, witnesses, bailiffs, courtroom artists, and journalists. The interactive learning process is aided by local attorneys who volunteer to work alongside teacher coaches, providing advice to teams as they prepare for trial. Local attorneys also volunteer during the actual trials to play the roles of judges and

jurors. The focus of the mock trial program is education, and it has been designed to: improve students' public speaking, writing, listening, and critical thinking skills; encourage effective communication between the educational and legal communities; and promote tolerance, professionalism, and cooperation among young people of diverse interests. As sponsors of the competition, Shipman & Wright attorneys participate in the event throughout the day. The mock trial would not be possible without the dedication of Shipman & Wright employees Brandy Lea and Chad Hudson, the Regional Site Coordinator and Regional Scoring Coordinator, respectively.

## Will and Estate Lawsuits and Challenges

*by s&w attorney william wright*



Are you involved in a dispute over a Last Will and Testament or the Estate of a family member or close friend? Well, Shipman & Wright can help you resolve the dispute. We have many years of experience and have handled numerous Will or Estate challenges.

Will challenges and Estate litigation are called Will Caveat proceedings in North Carolina. We have represented both the person who is presenting the will, who is called the Propounder, and the person challenging the will, who is called the Caveator. We know the legal issues of these cases. Will Caveats generally involve evidence of or allegations concerning a

lack of mental capacity, fraud, duress, undue influence, or the failure to execute the will with the requisite legal formalities. Lack of mental capacity typically involves an elderly or sick person who does not know one or more of the following: the extent of their property and monies; who all of their close or immediate family members are; what signing a Will would do to their property after they die; and/or that they signed a Will that would dispose of all of their property after death.

Undue influence, fraud and duress typically involve some type of illegal coercion exercised on the person who executed the Will (The Testator). The Testators are oftentimes elderly or sick and are easily susceptible to coercion. Many times previous Wills will be changed to disinherit family members and/or provide for distributions for non-family members or care givers. A lack of execution of a Will with the requisite formalities typically will involve a failure to execute a Will with the required witnesses, and/or a lost or destroyed Will. This is not an exhaustive list, and these are just a few of the issues

## PRACTICE AREA HIGHLIGHT

### Condemnation

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Condemnation is an action of the state or some governmental body to seize a citizen's private property. In return for taking their land, "just compensation" must be given to the people/companies whose property is being taken. The governmental bodies generally undervalue the "just compensation" to property owners.

Shipman & Wright has handled a variety of condemnation cases ranging in property value from \$10,000 to \$10 million and customarily works with a host of other professionals (appraisers, engineers, arborists, land planners, developers) to maximize the value of our client's case. Shipman & Wright has significant experience in this unique area of law, which has resulted in great results for our clients, whether by settlement or trial. Shipman & Wright recently received a jury verdict that was three-and-a-half times the amount the governmental body thought was "just compensation."

If you are facing condemnation, we can help you get the compensation you deserve in an effective and timely manner.

View a full list of our practice areas at:  
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that can be present in the context of a Will or Estate challenge.

If you or a family member or friend is facing these issues, or is being accused of being involved with these issues, please do not hesitate to contact Shipman & Wright for a free consultation to discuss your case. Shipman & Wright will take your matter very seriously. We will work hard to get you the best result at the lowest possible fee. Depending on the case, we will consider hourly, contingency fee, or reduced rate fee arrangements. If you think you have a case, please do not wait to contact an attorney as the mere passage of time can be a bar to your claims or defenses.

## From the Eyes of an S&W Legal Assistant

*s&w legal assistant bridget kelly*

Being a team member at Shipman & Wright comes with a great sense of pride. Considering that I have only been with the firm for about 7 months, it's great to feel like I am already part of the family. I have learned the real importance of day-to-day interaction with co-workers and clients and communication within the office. Here at Shipman & Wright, there is a very strong sense of communication, leadership and teamwork.

There are several factors that help open the lines of communication at our office, one being our weekly staff meetings. This is a great opportunity for the Shipman & Wright team to join forces and discuss the cases we currently have in our pipeline. These staff meetings help us all get on the same page and better serve our clients as their legal team.

The leadership and teamwork at Shipman & Wright is truly what makes this firm top notch. The attorneys and paralegals work together on each case to achieve the most favorable outcome for the client. Each member of the Shipman & Wright team is ready to jump in and lend a hand, even if they are not the primary attorney or paralegal on the case. It is that sense of teamwork that makes me proud to be a part of this talented group.

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## S&W Sponsors Indo Jax 2012 Home of Hope Surf Charity in India

*s&w paralegal brandon gay gears up for the trip*

Shipman & Wright is proud to sponsor the Indo Jax 2012 Home of Hope Surf Charity in India this year. Brandon Gay, a paralegal at Shipman & Wright, will be a part of this year's trip. Indo Jax is a Wilmington based surf charity that focuses on special needs and underprivileged children while still offering public lessons and camps. Indo Jax surfing instructors travel to India each year to give young, deprived girls at orphanages an experience they rarely have in their lives: an escape from their circumstances and a time devoted to nothing but fun, a new sport, and the healing effect of the ocean.

This will be Indo Jax's third trip to India, and the number of girls participating has grown each year. In fact, participation from orphanages will double this year. The program will draw girls from two orphanages in two different locations over two weeks. The charity's growing popularity among the orphans has allowed Indo Jax to increase its staff to eight instructors and up to five volunteers on this trip, which is more than twice the number on past trips. Paul Wilkes, Director of Homes of Hope, has helped coordinate and fund this excursion.

The girls from these orphanages often have horrific stories, and this program is a great empowerment event for them. They have come to look forward to it each year. Indo Jax Surf Charities, a 501c3, needs at least \$20,000 to fund this trip. If you are interested in becoming a sponsor and want to learn more, please visit the Indo Jax website online at [www.indojaxsurfschool.com/homeofhope2011.php](http://www.indojaxsurfschool.com/homeofhope2011.php)

Check back for more updates from Brandon as he prepares for the trip!

*Photograph courtesy of Matt Born, Star News*



*Photograph courtesy of Matt Born, Star News*