

Inside this issue:

Introducing Donald E. Hill	1
The Estate Tax is Back Under the 2010 Tax Relief Act	1
Mert Buckley Receives 2011 Lawyer of the Year Award	3
Emailing an Unsigned Contract...	3
Who is Protected Under Discrimination Laws?	4

**SAVE THE DATE!**

**Update on Recent Changes in Real Estate Law**

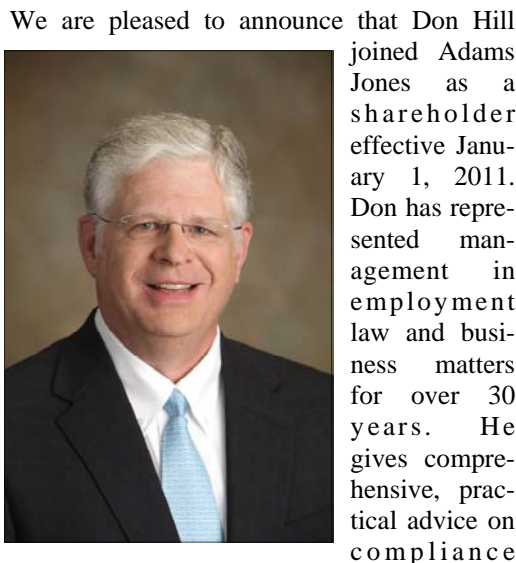
**2011 Kansas Legislation and Recent Case Law**

Adams Jones will present a complimentary breakfast and annual update for its clients and friends on Wednesday, June 22, from 7:30-9:00 am at the Courtyard by Marriott-Wichita at Old Town to summarize the recent changes to Kansas real estate law.

Attorneys from the firm will offer short presentations of the most significant changes in the law, including the current legislative session. The firm's 2011 booklet, "Recent Changes in Real Estate Law in Kansas," will be provided to all attendees.

This update should be of interest to property owners, developers, realtors, business owners, contractors and suppliers, landlords, tenants, lenders, title insurers and anyone interested in the real estate industry. Further information will be mailed soon. Seating is limited—**Mark your calendar now to attend!**

**Introducing Donald E. Hill**



We are pleased to announce that Don Hill joined Adams Jones as a shareholder effective January 1, 2011. Don has represented management in employment law and business matters for over 30 years. He gives comprehensive, practical advice on compliance with employment laws such as the Fair Labor Standards Act, federal and state discrimination laws, the Family and Medical Leave Act, and unemployment compensation. He counsels clients on the improvement of employer-employee relations, discipline and termination of employees, and on drafting and interpreting personnel policies, employee handbooks

and employment forms and agreements. He presents seminars for employers and professional organizations on employment law matters and how to avoid employee claims. Don also has extensive experience in business law, including the formation of business entities, buy-sell agreements, stock and asset sale agreements, and business contracts. Prior to joining Adams Jones, Don practiced with the Martin & Churchill law firm.

Don received his Bachelor of Arts degree, *magna cum laude*, from Greenville College, Greenville, Illinois, and his Juris Doctor, *cum laude*, from Washburn University, Topeka, Kansas. Don is a member of the Wichita Bar Association, Kansas Bar Association and the Christian Legal Society. He was recently selected for inclusion as an employment lawyer in *The Best Lawyers in America® 2011*, one of the oldest and most respected peer-review publications in the legal profession.

Don and his wife, Carol, have two children: Brian (Amy) Hill of Spring Hill, Kansas, and Brent (Nicole) Hill of Ipswich, England.

**The Estate Tax is Back Under the 2010 Tax Relief Act** *By Michael Cannady*



The long-awaited changes to the federal estate tax have finally happened. Under the recently enacted "Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010," the federal estate tax, which disappeared for 2010, springs back to life.

**Background.** In 2001, Con-

gress passed a law which gradually lowered the maximum estate tax rate and substantially raised the estate tax exemption amount over the years 2002 through 2009. The maximum tax rate fell to 45% and the estate tax exemption rose to \$3.5 million. Then in 2010, the estate tax was completely repealed, but only for decedents dying in

2010. On January 1, 2011, the estate tax was scheduled to come back with a maximum tax rate of 55% and an estate tax exemption of \$1 million.

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**New law.** Under the new law, each person is entitled to a credit against the federal estate tax (commonly referred to as the estate tax exemption) which allows each person to pass \$5 million free of estate tax. This means that a husband and wife together can pass \$10 million on to their children (or anyone else) without paying any estate tax. If your combined estate is in excess of \$10 million, you can delay the payment of any tax until the death of the survivor with the use of the unlimited marital deduction. The new law also reinstates the step-up in basis rules that we had prior to 2010. This means that the cost basis of an asset, which is used to determine capital gain at the time an asset is sold, will now be stepped-up to the date of death value (i.e. it is as if the heirs purchased the assets of the estate on the date of the decedent's death for a purchase price equal to their fair market value on that date). This is very important for estates which hold assets which have increased in value a great deal since they were purchased.

**Gifts and Gift Taxes.** Gifts that you make during your lifetime can have an effect on the amount you can pass tax-free at the time of your death. As you make significant gifts during your lifetime, you will be using up part of your estate tax exemption amount, but only if you make gifts of more than \$13,000 per person per year.

Under the previous law, you could only use up \$1 million of your estate tax exemption before you were required to start paying gift taxes. Under the new law, the estate tax exemption and the gift tax exemption are unified. Therefore, during your lifetime you can now give away \$5

million (in addition to the \$13,000 per person per year annual exclusion gifts) without paying any gift tax. If you do this, however, keep in mind that you will have no estate tax exemption left at the time of your death, and any assets left in your estate will be subject to federal estate tax.

### **Generation-Skipping Transfer Tax (GST Tax).**

There is also a special tax on transfers you make (whether during your life, or upon your death) to generations below the generation of your children (e.g. grandchildren and great-grandchildren). The exemption from the GST Tax under the new law also increases to \$5 million and the GST tax rate drops to 35%.



**Portability.** Under the prior law, if the first spouse to die left everything to the surviving spouse, due to the unlimited marital deduction there would be no estate tax owed at the first death. However, the entire value of the combined estates would have ended up being taxed in the estate of the survivor, and only the estate tax exemption of the survivor would have been available to reduce the amount of the tax. The estate tax exemption of the first spouse to die, therefore, would have been wasted. Under the new law, the estate tax exemption will be "portable." When the first spouse dies, if he or she does not use his or her entire estate tax exemption, it can be transferred to the surviving spouse. In order to allow the surviving spouse to use the unused estate tax exemption, the personal representative of the first spouse to die must make an election on the estate tax return of the decedent. This means that if there is any chance the additional estate

tax exemption will be needed by the surviving spouse, you will need to file an estate tax return for the first spouse to die, even though such a return might not otherwise be required.

**Decedents Dying in 2010.** The new law also gives heirs of decedents dying in 2010 a choice of which estate tax rules to apply - 2010's or 2011's. This is important because although there is no estate tax in 2010, there is also no step-up in basis under the 2010 rules. Therefore, if the estate of a person dying in 2010 includes a lot of low-basis assets, the executor of the estate may want to be taxed under the 2011 rules because the step-up in basis may save more in capital gains taxes than would be saved in estate taxes under the 2010 rules. Actually, the 2011 rules will automatically apply, unless an election is made to be taxed under the 2010 rules.

**New Law is Temporary.** The most disappointing aspect of the new law is that it is, once again, only temporary. It is applicable for 2011 and 2012, and after that, if no action is taken by Congress and the President, the previous law automatically comes back into effect, bringing with it a \$1 million estate tax exemption and a maximum tax rate of 55%. With the way things seem to be going in Washington right now, it certainly seems possible that this could happen.

**Conclusion.** The estate tax relief in the new law is substantial, and provides some significant opportunities for reducing estate taxes. Even if taxes are not a concern because an estate is below the exemption level, it is still important to have a proper estate plan to ensure that the needs of intended beneficiaries are met. With all of the changes that have taken place, now is the time to review your estate plan to make sure you have taken advantage of every opportunity available to provide maximum benefits to your heirs at the time of your death.





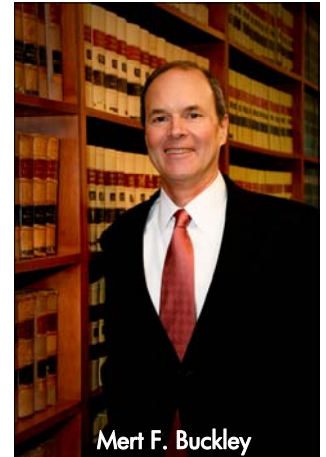
Best Lawyers, the oldest peer-review publication in the legal profession, has named **Mert F. Buckley** as the “Wichita Best Lawyers Real Estate Lawyer of the Year” for 2011.

Best Lawyers designates “Lawyers of the Year” in high-profile legal specialties in large legal communities. Only one lawyer in each specialty in each community is honored as “Lawyer of the Year.”

Best Lawyers compiles its lists of outstanding attorneys by conducting peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. The current, 17th edition of *The Best Lawyers in America (2011)* is based on more than 3.1 million detailed evaluations of lawyers by other lawyers.

According to Best Lawyers, the lawyers being honored as “Lawyers of the Year” have received particularly high survey ratings by earning a high level of respect among their peers for their abilities, professionalism, and integrity.

Steven Naifeh, President of Best Lawyers, says, “We continue to believe – as we have believed for more than 25 years – that recognition by one’s peers is the most meaningful form of praise in the legal profession. We would like to congratulate **Mert F. Buckley** on being selected as the ‘Wichita Best Lawyers Real Estate Lawyer of the Year’ for 2011.”



## Emailing an Unsigned Contract as an Attached Document Did Not Amount to a “Signature” of the Contract.

Most people know that a real estate contract must be in writing and signed in order to be enforceable. The legal term is that it must be “signed by the party to be charged.” An email, under the right circumstances, can be binding as a signature, but not in the following case.

Tanya Coltrane, the owner of real estate, emailed to Sigg an unsigned “offer to purchase” the Coltranes’ real estate. The document also said Coltranes had “the right to reject any and all bids.” Sigg signed the document and deposited 10% of the purchase price into Coltranes’ bank account. The Coltranes later sold the property to someone else, returning Sigg’s deposit to her. Sigg then sued for specific performance, taking the position that the Coltranes signed the document electronically by emailing it to Sigg. Both the trial court and the Court of Appeals ruled for Coltranes, finding they never signed the contract.

Kansas law provides that “no action shall

be brought...upon any contract for the sale of lands...unless the agreement...shall be in writing and signed by the party to be charged therewith....” Here, Coltranes had not signed any documents in the traditional sense. Sigg argued the email transmission constituted an electronic signature under the Uniform Electronic Transactions Act (K.S.A. 16-1601 *et seq.*).

The Electronic Transactions Act defines an electronic signature as “an electronic sound, symbol or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” But there was no such sound, symbol or process in this case. The Court of Appeals said that simply sending the offer to purchase as an attachment by email to the daughter of Sigg’s real estate agent did not constitute a signature under the Act.

The Court also noted the Electronic Transactions Act only applies to transactions

where the parties agree to conduct the transaction by electronic means. Whether they “agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties conduct.” The Court said there was “absolutely nothing” to indicate the parties agreed to conduct the transaction by electronic means. *Sigg v. Coltrane*, \_\_\_ Kan. App. 2d \_\_\_, \_\_\_ P. 3d \_\_\_, 2010 WL 5095831.

**Our Comments:** The seller only emailed an unsigned contract to a prospective buyer. The buyer signed it, emailed it back, and then claimed a contract had been made. This seems like quite a stretch, to claim a contract had been formed. The Court is saying here that just emailing an unsigned contract does not amount to signing the contract as long as there is nothing in the email message, surrounding circumstances or parties’ conduct to indicate that the person sending the unsigned contract has “signed” it by transmitting the email.

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## Who Is Protected Under Discrimination Laws? *By Don Hill*

Employers want to avoid unlawful discrimination claims. A helpful step in avoiding claims is knowing who is protected under federal and state discrimination laws. Protected persons include: (1) ***race*** – persons of all races; (2) ***color*** – the color of a person’s skin within a particular race; (3) ***religion*** – employers have the duty to reasonably accommodate the religious beliefs and practices of employees unless this creates an undue hardship; (4) ***sex*** – both males and females are protected; (5) ***age*** – persons age 40 and above are protected, and there is no upper age limit after which persons are no longer protected; (6) ***national origin*** – this is the country or area from which a worker’s ancestors came; (7) ***disability*** – persons with physical or mental impairments which substantially limit them from performing the essential duties of a job must be reasonably accommodated to allow them to perform job duties unless this creates an undue hardship; (8) ***genetic information*** – an employer may not use genetic information to make an employment decision; (9) ***veterans*** – veterans are protected; (10) ***pregnancy*** – employers must grant reasonable leaves of absence and generally reinstate employees returning from leave; and (11) ***bankruptcy, garnishment and child support orders*** – employees may not be disciplined or terminated for these reasons.



You can see that everyone is in some protected group, and many persons are in more than one group. An employer may not unlawfully discriminate based on these protected groups in all employment decisions, including recruitment, hiring, job assignments, evaluations, promotions, demotions, leaves of absence, compensation, discipline and termination. If you employ persons in cities other than Wichita or in other states, we can assist you in determining who is protected in those areas. If you have questions about the discrimination laws or avoiding claims, we would be glad to advise you.