



Comments *from* Counsel

Thomas Johnson Chairs Lincoln Bicentennial Committees

Thomas S. Johnson, one of our senior partners, will assume a leadership role in a wide range of plans to celebrate the 200th Anniversary of the birth of Abraham Lincoln. The year-long, nationwide celebration will include many projects and events in Illinois, culminating in a week-long celebration from February 7 through February 14, 2009.

Mr. Johnson will chair ceremonies at the Abraham Lincoln Presidential Library and Museum on Saturday evening, February 7—the kickoff event for the birthday week celebration—at which The Order of Lincoln, the state’s highest honor, will be awarded by the Lincoln Academy of Illinois, to 30 Lincoln scholars, authors, curators, and artists from around the world, many of whom have devoted their professional lives to “preserving the memory of Abraham Lincoln, contributing to his lasting influence on the American Spirit.”

The 30 Bicentennial Laureates were selected from over 100 nominations throughout the world by a selection committee consisting of former Illinois Governors James Thompson and Jim Edgar, former Secretary of Labor Lynn Martin, the former president of the University of Chicago, Hanna Gray, and the former president of the University of Illinois, James Stukel.

Plans for the February 7 events also include a luncheon in honor of the Bicentennial Laureates at the Governor’s Mansion in Springfield and national coverage of the evening events on C-SPAN. A documentary on the 30 Bicentennial Laureates will be produced by WSIU, the public television station at Southern Illinois



University, sponsored by the Lincoln Academy and the Illinois Broadcasters Association, which will be televised on PBS and cable stations throughout Illinois.

Mr. Johnson also chairs the Illinois State Bar Association’s Lincoln Bicentennial Committee. Before he was a great President, Abraham Lincoln was *first* a great lawyer and many of the qualities which made him a great lawyer contributed to the success of his presidency. Accordingly, the Illinois State Bar Association will be sponsoring a year-long series of projects and events chaired by Mr. Johnson, entitled “Lincoln—the Prairie Lawyer” examining Lincoln’s 25-year career as a practicing lawyer in Illinois.

The State Bar Association will co-sponsor a television documentary on Lincoln’s legal career being produced by WILL, the public

television station at the University of Illinois, and the State Bar will also provide copies of Lincoln’s 50 most significant cases to public libraries throughout the state.

In addition, the bar association committee chaired by Mr. Johnson is conducting a series of scholarly discussions throughout the Lincoln Bicentennial year in partnership with the Lincoln Presidential Library which will be telecast on the Illinois Channel. Two of the lectures take place in historic court rooms in Mt. Vernon and in Ottawa, and the other two in Chicago—one in conjunction with the Illinois State Bar Association Midyear Meeting, and one in conjunction with the American Bar Association’s annual meeting in July. The topics are “Lincoln—the Prairie Lawyer”; “Lincoln—the Great Communicator”; “Lincoln—the Advocate”; and >>>

“Lincoln—and the Rule of Law.”

The Illinois State Bar Association will also sponsor various Lincoln related events directed to high school, college, and law school students—including a statewide celebration of Law Day on May 1, 2009, on “Lincoln and the Legacy of Liberty” in which Illinois lawyers will join lawyers from across America to tell the story of Lincoln’s lasting contributions to the cause of justice in high schools across the nation.

In February, the State Bar Association will begin a series of presentations directed to lawyers throughout Illinois—a four-hour presentation entitled “A Conversation with Mr. Lincoln”—in which a nationally recognized Lincoln presenter will read quotations from Lincoln’s law related speeches and writings, each of which will be followed by a discussion on modern day ethics and professional responsibility lessons to be learned from Lincoln’s comments.

Two events will highlight the Illinois State Bar Association’s celebration of the Lincoln Bicentennial. Mr. Johnson will chair ceremonies at the Illinois Supreme Court in Springfield during which a new bronze bust of Lincoln commissioned by the State Bar will be presented to the Supreme Court of Illinois as a “gift to the people of Illinois from the lawyers of Illinois in lasting tribute to the most revered lawyer in the history of our state and nation.”

The bronze bust is one and a half life size by the renowned Lincoln sculptor, John W. McClarey, and smaller bronze replicas will be presented to the United States Supreme Court and various law schools in Illinois.

On July 31st, Mr. Johnson will chair a Lincoln Bicentennial Reception at the Chicago History Museum during the Annual Meeting of the American Bar Association to welcome lawyers from across the nation to the Land of Lincoln and to showcase the Chicago History Museum’s world-famous Lincoln collection. Earlier that day, the final session of the Lincoln Lecture Series on the subject “Lincoln and the Rule of Law” will be held.

On February 5, Mr. Johnson will speak on “Rockford’s Lincoln Heritage” at the luncheon meeting of the Rockford Rotary Club at Memorial Hall. He also serves on a local committee which seeks to restore a Rockford landmark as a permanent tribute to Lincoln. ■

How the \$700 Billion Dollar Bailout May Reduce Your Tax Liability for 2008



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THE MUCH PUBLICIZED government “bailout” of Wall Street, which was enacted on October 3, 2008, is a bundle of legislation comprised of the Emergency Economic Stabilization Act, the Energy Improvement and Extension Act, and the Tax Extenders and Alternative Minimum Tax Relief Act. It is the third of these three Acts which is the subject of this article, and a boon to many of you who would otherwise be targeted by the Alternative Minimum Tax (or “AMT”).

In order to appreciate the benefit of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, a little background on the AMT may prove helpful. The AMT came into being with the Tax Reform Act of 1969 with the goal of targeting a small number of high-income taxpayers who could claim so many deductions that they would end up owing little or no income tax. However, a growing number of middle-income taxpayers are discovering that they are subject to the AMT, primarily because the AMT is not indexed to inflation. The AMT is a parallel tax system which does not permit several of the deductions permissible under the regular tax system, such as deductions for state, local and property taxes. Taxpayers who may be subject to the AMT must calculate their tax liability under both the regular federal tax system and the AMT system, taking into account certain “preferences” and “adjustments.” If their liability is found to be greater under the AMT system, it is that greater amount that they owe the federal government.

In 2006, the IRS’s National Taxpayer Advocate’s report highlighted the AMT as

the single most serious problem with the tax code. The advocate noted that the AMT punishes taxpayers for having children or living in a high-tax state, and that the complexity of the AMT leaves most taxpayers who owe AMT not realizing it until preparing their returns or being notified by the IRS. A brief issued by the Congressional Budget Office (CBO) (No. 4, April 15, 2004), concludes:

Over the coming decade, a growing number of taxpayers will become liable for the AMT. In 2010, if nothing is changed, one in five taxpayers will have AMT liability and nearly every married taxpayer with income between \$100,000 and \$500,000 will owe the alternative tax. Rather than affecting only high-income taxpayers who would otherwise pay no tax, the AMT has extended its reach to many upper-middle-income households. As an increasing number of taxpayers incur the AMT, pressures to reduce or eliminate the tax are likely to grow.

It is such pressure which has led Congress to raise the AMT “exemption amounts” in recent years, effectively reducing the amount of alternative minimum taxable income (AMTI), thereby reducing or eliminating AMT liability on the part of most middle-income households.

For 2007, the AMT exemption amounts were \$66,250 for married couples filing jointly and surviving spouses; \$44,350 for single taxpayers; and \$33,125 for those who are married and filing separately. For 2008, these amounts were scheduled to fall back to the 2000 rates of \$45,000, \$33,750, and \$22,500, respectively. This regression would have had the effect of bringing millions of additional middle-income Americans under the AMT system, resulting in higher tax bills for many of them, in addition to higher compliance expenses associated with filling out and filing the complicated AMT tax form.

However, by enacting the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Congress has increased the 2007 AMT exemption amounts to \$69,950, \$46,200, and \$34,975, respectively. This has the effect of protecting approximately 20 million taxpayers from the reach of the AMT, at least for another year.

Also of interest is another provision in the new law which provides AMT relief for taxpayers claiming personal tax credits. The

tax liability limitation rules generally provide that certain non-refundable personal credits (including the dependant care credit, the elderly and disabled credit, and the Hope Scholarship and Lifetime Learning credits) are allowed only to the extent that a taxpayer has regular income tax liability in excess of the tentative minimum tax, which has the effect of disallowing these credits against AMT. Temporary provisions had been enacted which permitted these credits to offset the entire regular and AMT liability through the end of 2007. The new law extends this temporary provision to tax years beginning in 2008.

Finally, the new law liberalizes the AMT refundable credit that was first enacted in 2006 to help taxpayers who were stung by the AMT as a result of exercising incentive stock options (ISOs), lifts the ceiling on the Federal Deposit Insurance Corporation's (FDIC) guarantee on bank deposits from \$100,000 to \$250,000 until December, 2009, limits the so-called "golden parachutes" that executives of failed institutions can receive if their firms take advantage of the Treasury bailout plan, and provides tax incentives for the use of alternative energy and plug in hybrids. ■

Illinois General Assembly Amends Mortgage Foreclosure Law



Thomas P. Sandquist
Attorney at Law

THE WEAK REAL ESTATE MARKET and a jump in the number of foreclosures being filed by lenders continues to dominate today's headlines. In an effort to arm homeowners with some extra advantages during the foreclosure process, the Illinois General Assembly has recently enacted changes to the Foreclosure Law designed to assist homeowners who are

being foreclosed on.

The law now requires that when a homeowner is served with a summons and foreclosure complaint, that they also be served with a notice (in both English and Spanish) spelling out a number of rights available to the homeowner during the foreclosure process. Additionally, when the house is sold at the end of the process, the homeowner must be given notice that (as is the case in most foreclosures under Illinois law) he or she has the right to remain in possession of the home until thirty (30) days following the confirmation of the sale by the court.

One significant change which imposes an additional duty directly on lenders is the new requirement that lenders provide, under certain circumstances, the homeowner with

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a "Payoff Demand Statement" giving the homeowner a statement as to the balance due on the loan.

The law now provides that the homeowner, or their authorized agent, can make a written demand on the bank requesting a Payoff Demand Statement. The homeowner's demand shall include their name, the mortgaged property address, and the mortgage account or loan number. The demand needs to be served on the bank or the bank's authorized agent. Then, within ten (10) business days after receipt of the demand, the bank or its authorized agent must prepare and deliver an accurate statement of the total outstanding balance of the bank's obligation that would be required to satisfy the obligation in full as of the date that the statement is prepared.

The Payoff Demand Statement to be supplied by the bank must include at least the following:

1. The information necessary to calculate the payoff amount on a per diem basis for the lesser of a period of thirty (30) days or until the date scheduled for the judicial sale;
2. The estimated charges (stated as such) that the bank reasonably believes may be incurred within thirty (30) days from the

date of preparation of the Payoff Demand Statement; and

3. The loan number for the obligation to be paid, the address of the bank, the telephone number of the bank, and, if a banking organization or corporation, the name of the department, if applicable, and its telephone number and facsimile phone number.

A bank or its agent who willfully fails to prepare an accurate Payoff Demand Statement within ten (10) business days after receipt of the written demand is liable to the borrower for actual damages sustained for failure to deliver the statement. If no damages are sustained, then the liability is set at \$500.00. "Willfully" means the failure to comply with this Section without just cause or excuse or mitigating circumstances.

The Payoff Demand Statement must be delivered by depositing the statement into the U.S. Mail with postage prepaid, addressed to the person whose name and address are provided in the payoff demand. Delivery can also be accomplished by facsimile or electronically if the payoff demand specifically requests and authorizes that the documents be transmitted in electronic form. The first Payoff Demand Statement provided by the mortgagee is to be provided at no cost to the mortgagor.

Banks and other lenders need to immediately institute procedures to comply with the requirement of sending a Payoff Demand Statement. The response time of ten business days is relatively short, and lenders need to be ready to respond when these requests inevitably start coming in. Failing to do so could unnecessarily expose the lender to liability.

Another amendment to the Illinois Mortgage Foreclosure Law provides, for the first time, that a homeowner may be awarded attorney's fees if they successfully defend a foreclosure action. If a homeowner prevails in a motion to dismiss, or with an affirmative defense or counterclaim in the foreclosure action, the court may award >>>

that homeowner its attorney's fees incurred in defending the foreclosure. This represents a significant departure from existing law. Although the statute also points out that a homeowner who merely reinstates or redeems the loan is not entitled to an award of their attorney's fees.

All lenders should be aware of these changes in the law. Foreclosure is typically not a pleasant experience for either party. The homeowner faces the devastating prospect of losing their home. The lender faces a long and expensive process which, in the vast majority of cases, results in the

lender losing money, and quite often a significant amount. Being familiar with the requirements imposed under Illinois law will only make this unpleasant process a little more palatable for all concerned. ■

People *at* WilliamsMcCarthy LLP



Carol A. Hartline was elected as a partner in the firm effective January 1, 2009. Ms. Hartline graduated, *magna cum laude*, from Northern Illinois University College of Law and received her

undergraduate degree from the University of Illinois. Carol concentrates her practice in several areas of litigation including, workers' compensation defense, employment law, and insurance defense. She is currently serving on the Board for the American Red Cross and is President of the Winnebago County Bar Association's Workers' Compensation section. Ms. Hartline is also a graduate of the Rockford Chamber of Commerce leadership program.



Joel M. Huotari was welcomed to the firm on September 1, 2008, after completing a two-year judicial clerkship with Federal Magistrate Judge P. Michael Mahoney of the United States District Court

for the Northern District of Illinois. Mr. Huotari is an honors graduate of the Northern Illinois University College of Law and graduated with, *high honors*, from Elmhurst College. He studied abroad at Oxford University. Joel will concentrate his practice in insurance coverage law, employment law, municipal law, and environmental law. Mr. Huotari serves on the Board of Directors for Shelter Care Ministries in Rockford and is participating in the Rockford Chamber of Commerce Leadership Program.



Laura D. Mruk joins WilliamsMcCarthy LLP as our newest associate. She concentrates her practice in commercial law, employment law, and municipal law. Ms. Mruk graduated, *magna cum laude*, from the

Northern Illinois University College of Law where she was lead articles editor for the *Northern Illinois University Law Review*. She graduated with, *high honors*, from Cedarville University. Laura is active in the community and serves as a Standard of Accountability Review volunteer for the United Way Rock River Valley, serves on the Board of Directors for the Rockford Dance Company, and is a participating member in the Rockford Chamber of Commerce Leadership Program.



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