



# Vowell Voice

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Interstate 40	
Papermill Road	
	Northshore Drive
Kingston Pike	
X	

Vowell & Associates  
Attorneys at Law  
6312 Kingston Pike, Suite 111  
Knoxville, TN 37919  
(865) 292-0000 phone  
(865) 212-4869 fax

Donald K. Vowell  
Certified Civil Trial Specialist  
[dvowell@mindspring.com](mailto:dvowell@mindspring.com)

Elizabeth K. Johnson  
[elizkjohnson@mindspring.com](mailto:elizkjohnson@mindspring.com)

## WELCOME!

Welcome to *Vowell Voice*, the newsletter of Vowell & Associates, Attorneys at Law. It is intended to help clients and friends stay informed, exercise preventive decision-making, and avoid the pitfalls that lead to time-consuming and costly litigation. If you would like to make comments, suggest a topic for future editions, or be added to our mailing list, please contact Lisa Chapman at Vowell & Associates.

## WHAT HAPPENS IN A DETAINDER ACTION?

By Elizabeth K. Johnson

A landlord or apartment complex brings a detainer action to evict a tenant who has not paid the rent. The landlord usually gets a judgment for "possession" of the apartment plus back rent and attorney fees. The tenant has ten days in which to file an appeal. After ten days, if no appeal is filed, the landlord can obtain a writ of possession, which is a court order directing the sheriff to forcibly remove the tenant and his belongings from the property. In practice, the sheriff is present to supply the force of law, but the landlord supplies the manpower to move the personal belongings. The belongings are usually placed at the nearest public road.

The tenant is allowed a "reasonable" amount of time to collect his belongings. Depending on the circumstances, the "reasonable" amount of time can be as short as 24 hours to as long as 24 days! The

Knox County officers who are responsible for executing writs of possession stay busy, with eight writs to execute every day. They are sometimes booked two weeks or more in advance. They do not evict people while it is raining, snowing, sleeting or hailing.

It is interesting to know that, in Knox County, detainer court is not held during the last two weeks of December. ❖

## OUR FAVORITE CASE



## MEIGHAN, BUHL AND OTHERS SIMILARLY SITUATED V. SPRINT

By Donald K. Vowell

More than ten years ago, the Norfolk-Southern and CSX railroad companies sold Sprint the right to use land that runs beside the railroad track in 30 counties in Tennessee, for \$1,200 per mile per year, or in some cases \$5,000 per mile. Sprint began laying fiber optic cable on this land and also put up large repeater huts, used to boost signal power.

The problem with this arrangement was that the railroads sold something they did not own and both the railroads and Sprint knew this at the time. The railroads only have a "right-of-way" across the land

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for the operation of a railroad. The land itself belongs to the estimated 8,640 Tennessee citizens who live along the railroad. Most of these landowners weren't even aware of Sprint's actions.

Danny Buhl is a landowner in Anderson County. When he discovered a Sprint crew building a repeater hut on his property in 1988, he forced them to move the repeater hut off his land. However, in spite of his protests, the Sprint crew proceeded to trench their cable line across his property.

Joe Meighan, Jr., is a business owner, the Southeast Region Wing Commander of the Civil Air Patrol, and the Chairman of the Board of the Knoxville Volunteer Rescue Squad. When he discovered a Sprint crew trenching a cable line across his Knox County farm in 1988, he forced them off his land. They returned two days later and completed laying the line.

Sprint continued just like this all the way across Tennessee, trespassing, bulldozing trees, tearing down fences, and turning livestock loose in many cases.

We filed a class action against Sprint in 1988 on behalf of Danny and Joe and all other affected Tennessee landowners to force Sprint to pay them for the illegal taking of their property.

Sprint has been successful in delaying the case for eleven years, but it has not been successful in avoiding liability. In 1992 the Tennessee Supreme Court ruled that Sprint's action was a "taking" of the landowner's property under the Constitution for which Sprint must pay. In 1996 the Tennessee Supreme Court ruled that the case should proceed as a class action. The case is certified as a statewide class action for punitive damages. However, as for compensatory

damages, the case is currently certified as a class action only for Knox and Anderson counties. The major remaining issues are 1) whether class certification for compensatory damages will be enlarged to include the rest of the affected counties and 2) how much Sprint will have to pay. ❖

### HOW DOES A TITLE PLEDGE LOAN WORK?

You have probably seen advertisements for pawnshops offering to make you a "title pledge loan". The terms of these loans are very surprising to the average person. Here is how it works. You get a loan of say \$100. In return you surrender the title to your car that is worth say \$3000. You are then charged a finance charge of 22% per month. This results in an APR (annual percentage rate) of 264%. Most people consider this to be an **extremely** high rate of interest. (The APR on most home mortgages and some credit cards is less than 10%.)

With a title pledge loan, your monthly payment is 22% of the amount borrowed. That means a payment of \$22 per month on a \$100 loan. Unfortunately, this payment does not reduce the principal. In other words, even after paying on the loan for several months or years you still owe the same amount that you borrowed. After making payments for five months, you have paid back more than you originally borrowed, but you still owe the same amount. In the unfortunate event that you miss a payment, your car will be repossessed. The pawnshop will sell the car and keep **all** of the proceeds. Even if they sold your car for \$3000.

As surprising as this may sound, this transaction is perfectly legal under Tennessee law. However, pawnshops are governed by the Federal Truth in Lending Act, which requires them to at least disclose

the amount of the finance charge to prospective customers. Many pawnshops have ignored the Truth in Lending Act.

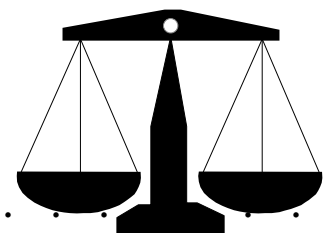
We recently resolved a case that we filed against Tennessee Title Loans on behalf of 307 clients from all parts of Tennessee. Tennessee Title Loans is by far the largest title loan company in Tennessee, and is affiliated with Title Loans of America, the largest such company in the United States. Our lawsuit alleged that Tennessee Title Loans had committed numerous truth in lending violations in its transactions with our clients. The details of the resolution are confidential.

We have another Truth in Lending case pending on behalf of 152 clients against a local pawnshop called Big Easy Auto Pawn. This company listed the APR as 0 (zero) per cent!! We don't think they will get away with it. ❖

### A WORD ABOUT THE LAW AND HOW TO CHOOSE A LAWYER

The law is an ever-present force for order that holds society together. No society can function without rules, nor does any society run smoothly all the time. There are frictions between neighbors, businessmen and their competitors, and employers and employees. It's the lawyer's job to apply the rules of society to these situations to avoid trouble where possible and to resolve conflicts fairly.

Because society is complex, the lawyer with his special training is essential to its continuing operation. Most lawyers spend their days helping with everyday problems, counseling on business or personal matters and drafting documents like





**→Don't forget!** If you have been injured in an automobile accident, the statute of limitation is one year from the date of the accident. This means that you must file suit within one year of the date of the accident, or your cause of action is forever barred.

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contracts, wills, deeds and leases. Lawyers put the rules of law to work. Some people are vaguely distrustful of lawyers and are reluctant to ask for legal advice when they need it. This is unfortunate because your lawyer can be a real friend in need – as helpful and important to you and your family as a doctor or a clergyman. He is trained to serve his clients and the community and to give you advice about complex problems.

If you are faced with a situation where you must or should obtain the advice of a lawyer, how should you choose one? Often it's helpful to seek recommendations from your friends, your banker, or your accountant. You can also ask the Knoxville Bar Association for guidance. Your problem now becomes one of selection and the best guide is your common sense. You should not hesitate to request an interview with persons on your list. Hopefully, you are entering into a long time association with the lawyer you select. You should feel

that your lawyer is someone with whom you can easily discuss any problem you may confront. You should not settle on someone you do not like. Find a lawyer you trust and consult with him when you see trouble ahead that you may not be able to handle yourself. ❖

## THE IMPORTANCE OF A WILL

Your will may be one of the most important papers you'll ever sign. It is your opportunity to direct the distribution of your property. Sometimes it's the size of the estate that demands a will, but more often, it's the kind of assets left and matters to be taken care of after death that prompt an individual to make out a will. It gives your family and business associates needed direction and information such as who will be the guardian of your children.

Failing to leave a will may cause your family needless work and trouble. And depending on the size of your estate, poor planning can result in estate tax liabilities that could have been avoided. The best way to make sure that your wishes are carried out and that each of your loved ones is protected is to leave a will stating exactly who is to get what and when. ❖

## WHAT IS THE ROTH IRA?

The new Roth IRA is just the opposite of a traditional IRA. You obtain a tax deduction when you deposit money in a regular IRA and pay income tax on what you take out. There are no tax deductions at the beginning with a Roth IRA, but withdrawals are tax-free. To convert a regular IRA to a Roth IRA, your adjusted gross income in the year of conversion must be \$100,000 or less. If you convert, you must pay income tax, but there are no early withdrawal penalties on the amount you withdraw.

You can make contributions of \$2,000 per year to the Roth IRA, minus any contributions to other IRAs, even if you are a participant in a qualified plan such as a 401k and even if you are over 70½. To make a full contribution, you can't have income over \$150,000 if married and filing jointly or \$95,000 for single filers. The advantages of the Roth IRA are

- You do not pay income tax on the withdrawals from your Roth IRA no matter how large it may grow or how much you may withdraw.
- Many retired people have income just below the level that would cause their Social Security benefits to be taxed. A Roth IRA may make it easier for them to supplement their income while staying below that level.
- With a regular IRA, once you reach 70 ½, you must begin making annual withdrawals in certain minimum amounts. But with a Roth IRA, you can choose when and how much to withdraw.
- You can withdraw original contributions to a Roth IRA at any time without tax or penalty, including any amount that was converted from a regular IRA. Withdrawals of earnings, however, are restricted.

The disadvantage of the Roth IRA is

- Presumably, you will be in a higher tax bracket at the time you make the contribution to your Roth IRA than you would be when you make your withdrawals. ❖

## WHEN IS A CORPORATION NOT A CORPORATION?

A corporation and its stockholders are separate and distinct entities. There are situations, however, where a corporation's shareholders can be held personally responsible for the corporation's activities.

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Generally this happens when the privilege of transacting business as a corporation has been abused resulting in injury to another person. There are many factors a court will look at when asked to disregard the corporate entity and find the shareholders responsible for corporate debts. The most common are

- undercapitalization
- failure to observe formalities, such as failing to hold the annual meeting of shareholders
- nonpayment of dividends
- siphoning of corporate funds by dominant stockholders
- non-functioning of other officers and directors, and
- the absence of corporate records, such as copies of its charter, bylaws, resolutions, and minutes of all shareholders' meetings.

The failure to distinguish between corporate and personal property, the use of corporate funds to pay personal expenses without proper accounting, and the failure to maintain complete corporate and financial records are looked upon with extreme disfavor.

Consequently, any of these items coupled with an element of injustice, fraud or fundamental unfairness have been regarded fairly uniformly to constitute a basis for individual, rather than corporate, liability. ❖

### WHAT DOES IT MEAN TO BE CERTIFIED AS A CIVIL TRIAL SPECIALIST?

To be certified as a civil trial specialist in Tennessee a lawyer must undergo an exhaustive screening of his credentials including documentation of his experience, judicial and peer references and an exam, and must meet all other requirements of the

National Board of Trial Advocacy (NBTA). The lawyer must also report all disciplinary matters brought before any official body, whether public or confidential, for scrutiny by the Standards Committee of the NBTA. Possessing the NBTA certificate means that attorney has been held to a higher standard of professional and personal conduct. There are currently only 22 certified civil trial specialists in Knoxville. ❖

### Legal Terms

*Class action suit:* A lawsuit in which one or more parties file a complaint on behalf of themselves and all other people who are "similarly situated" (suffering from the same problem). Often used when a large number of people have comparable claims.

*Codicil:* A supplement to a will.

*Comparative negligence:* Also called comparative fault. A system that allows a party to recover some portion of the damages caused by another party's negligence even if the original person was also partially negligent and responsible for causing the injury. Tennessee uses a comparative fault system.

*Compensatory damages:* Damages designed to compensate you for what has been taken from you.

*General partner:* One of two kinds of partners in a limited partnership. A general partner has the right to participate in the management of the partnership and has unlimited personal liability for its debts.

*Limited liability company:* A business structure that is a hybrid of a partnership and a corporation. Its owners are shielded from personal liability and all profits and losses can pass directly to the owners without taxation of the entity itself.

*Piercing the corporate veil:* A legal concept through which a corporation's shareholders, who generally are shielded from liability for the corporation's activities, can be held responsible for certain actions.

*Punitive damages:* Damages designed to punish a wrongdoer for acting illegally.

*Totten Trust:* A bank account in your name for which you name a beneficiary. Upon the death of the named holder of the account the money transfers automatically to the beneficiary.

Merry Christmas  
&  
Happy New Year



Vowell & Associates  
Attorneys at Law  
6312 Kingston Pike, Suite 111  
Knoxville, TN 37919

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