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☆ ARTICLES FEATURED IN THIS ISSUE ☆ TAX ISSUES

Remember, ignorance of the law, however complex the tax law may be, is still unexcused. Learn why you may want to consult a tax professional to avoid tax penalties for non-compliance. Begin reading on **Page 1**



TO KEEP OR NOT TO KEEP

Do I keep it? Do I need to keep it? Why do I need to keep it? How long do I need to keep it? Turn to **Page 2** to find helpful suggestions to assist you when you are trying to make these decisions regarding your personal and business papers.



THE USE OF TITLE INSURANCE IN REAL ESTATE ACQUISITIONS AND FINANCINGS

Title insurance is a legal contract and as such can be very complex. Coverage can vary from property to property and can be negotiated and modified. Turn to **Page 2** to see why it may be a good idea for you to contact a real estate attorney to help with your title insurance and real estate transactions, whether large or small.



PROTECTING YOUR ASSETS

You may have a non-compete agreement as part of your employment process. Are you truly protected? Turn to **Page 3** to see if your non-compete agreement meets the definition of "reasonableness" in Ohio and is therefore enforceable. It may not be!



IN THE NEWS PAGE 4

The Report is published four times a year as a service to business owners and professionals. The information contained in *The Report* is not intended to be and should not be construed as legal advice. Readers should consult their professional advisors to discuss specific issues and applicability.
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TAX ISSUES

An email is circulating listing 43 different taxes at the Federal, State and Local levels which tax almost every activity of our daily lives.

Lawmakers, business persons, professionals and lobbying organizations continue to debate the wisdom and fairness of such cumbersome taxing systems. More disturbing is the fact that each tax is constantly evolving and, with each evolution, understanding and compliance become more difficult, if not impossible.

Twenty years ago, major Federal tax legislation was expected every two to three years. Now, we see complex and far-reaching changes at the rate of two to three per year. This year alone has seen the Tax Increase Prevention and Reconciliation Act (TIPRA) and the Pension Protection Act of 2006 (PPA).

TIPRA contains multiple provisions impacting many taxpayers. While it provided one year of relief for Alternative Minimum Taxpayers and extended certain tax benefits for individuals, it also enhanced some revenue provisions.

Signed into law on August 16, 2006, the PPA indeed addressed areas of need within pension compliance. However, it also contains many substantive provisions directed at charities, charitable donors and advisors to charities.

On June 30, 2005, Ohio dramatically changed its tax structure, particularly as relating to business. The new Commercial Activity Tax, a gross receipts tax, phases in over five years while the old Franchise and Personal Property Taxes phase out. Compliance requires knowledge of all systems during the "phase" period.

Federal and State Estate Taxes are also "moving targets." Rate adjustments and exemptions are subject to change over the next four years and may revert entirely to pre-2000 levels. Estate tax is a current political football and no one can predict the outcome.

Major pre- and post-election tax legislation will certainly be introduced. Even the most aware taxpayer may soon be

Continued next page

unable to keep up. Everyone should consider consulting a tax professional to avoid penalties for non-compliance. Ignorance of the law, however complex, is still unexcused.

If you would like to have more information regarding these tax law changes and how they may affect you or your business please contact Steve Enz at 614-228-6135 or SDE@cpmlaw.com or log on to www.cpmlaw.com to read more on this and other related topics.

TO KEEP OR NOT TO KEEP

As you begin to organize your personal and/or business papers in anticipation of filing your taxes there is no time like the present to think about all of the paper that has been piling up over the past year...or years. The length of time to keep documents and records is not set by hard and fast rules, but the following information provides some general guidelines regarding how long to keep certain documents or records.

Tax returns and documentation: Whether personal or business, the general rule is seven years. Though the IRS generally has only three years to audit you from the date you file your taxes, there are exceptions to this general rule for certain types of IRS investigations.

Personal health records: Your personal health records and your family's should be kept indefinitely in your home file records and should include the following information: complete contact information of personal physicians for yourself and each family member; medical history for yourself and each family member; and prescriptions and/or treatments prescribed for yourself and for each family member.

Medical insurance: This includes your premium statements, doctor bills, copies of prescriptions. You should keep these documents and records five years from the date of the service rendered.

Mortgage documents: These documents should be kept indefinitely.

Home repair bills and contracts: These records should be kept for ten years in case you need to prove guarantees of workmanship or if there is a legal dispute.

Warranty documents: The general guideline is to dispose of a warranty at the date of expiration.

Pay stubs: Do you still have your first pay stub from your first job... and every pay stub thereafter? The general rule is to keep the year-long worth of stubs until you reach the year-end check of December 31st that recaps the entire 12 months worth of pay, social security, taxes, etc. You should keep your year-end summary indefinitely.

Bank statements: You should keep these documents from one year to permanently. Throw away checks that have no long-term importance, but keep checks related to your taxes, business expenses, and housing and mortgage payments.

Credit card statements: You should keep these documents from 45 days to seven years. Keep the statements seven years if they document tax-related expenses.

IRA contributions: You should keep these permanently.

Retirement/Savings plan statements: Keep the quarterly statements until you receive your annual summary; keep the annual summaries until you retire or close the account.

Brokerage statements: You should keep these documents until you sell your securities.

Utility bills: If you are writing off your utility bills for tax purposes, you may need to keep them as tax records. Otherwise, the general rule is to keep bills for three months.

With records retention, when in doubt, the general rule to follow is to keep all records for ten years. Also, consider purchasing and using a paper shredder to dispose of the records and documents you no longer need. Identity theft has become a major concern, and it is better to invest the time and money into shredding your documents than to risk identity theft.

If you have any questions regarding records retention, for your business or personal records, please contact Tony Delligatti, or your CPM attorney at 614-228-6135.

THE USE OF TITLE INSURANCE IN REAL ESTATE ACQUISITIONS AND FINANCINGS

Most real estate purchases in Central Ohio, and virtually all real estate financings here and in other jurisdictions, include the issuance of title insurance, typically through a national underwriter or independent agent. There are two basic forms of title insurance policies; one that insures a property owner's interest and another, called a loan policy, which insures a mortgagee's interest. Title insurance differs from other forms of insurance in several respects. Title insurance is actually not insurance at all, but rather a policy of indemnity against losses actually incurred. Unlike most insurance policies which require periodic premiums, with title insurance there is only a one-time premium. Most insurance policies protect against future events, while title insurance is based on loss prevention and coverage against past events. Finally, coverage under a title insurance policy only lasts until the owner transfers the property (except it continues to insure heirs), or an insured loan is paid.

In Ohio, the title insurance forms and rates are considered by The Ohio Rating Bureau, and then submitted to The Department of Insurance for its consideration and approval. Title premiums are graduated. Premiums for owners title insurance is higher than a loan policy because there is more risk involved in issuing owner's coverage (i.e. an owner can own the property for 50 years while a mortgage typically has a life of 30 years or less). The filed rates also include

a simultaneous issue fee which allows the loan policy to be issued for a nominal amount when both owner's and lender's coverage are purchased at the same time. There are approximately 63 endorsements available to title insurance policies, most of them with filed rates. Some endorsements are quite expensive and can equal 25% of the policy premium. However, there are also some credits available if a property has been previously insured within the last 10 years.

Title insurance is designed to cover claims where there are defects in title such as hidden liens caused by fraud, forgery, defective deeds and clerical errors. It is designed to give certainty to a real estate transaction, eliminate much of the risk regarding defects in title, and give assurance to the parties involved. It helps promote national commerce, free exchange of real property, the financing of real property, and the sale and securitization of loans.

The title insurance policy is a legal contract. It contains the amounts of coverage, effective dates, the covered risks, and the exceptions to coverage. Title issues and the coverages required can be quite complex. Coverages can vary from property to property and can be negotiated and modified in the appropriate situation. Title policies are evolving, like all insurance, and rates and forms are frequently modified. A new basic form of title policy from the national trade organization of the title industry, The American Land Title Association, will probably soon be considered in Ohio.

A title insurance commitment is issued at the beginning of the real estate purchase or financing transaction and will list the coverages, exceptions, and requirements before the policy will be issued. Title insurance exceptions are encumbrances on the fee simple title. Some, such as taxes, utility easements and deed restrictions are standard and generally acceptable, while others, like voluntary or involuntary liens, create clouds on title which must be addressed prior to the issuance of the policy of title insurance.

Another important tool when dealing with title insurance is the Insured Protection Letter. Buyers and lenders can request, and the underwriter (the title insurance company) will issue a letter which states that if the title insurance agent misappropriates or misapplies funds, or fails to follow directions to the detriment of the insured, the underwriter will be liable. These are important protections.

Effective January 1, 2007, title agents will be generally required to carry errors and omissions coverage, offer owner's insurance in every closing, automatically provide Insured Protection Letters, and, in some instances provide certain consumer disclosures.

The process can be complex and the title insurance coverages are varied, negotiable, and important. Consultation with your attorney and a title insurance professional in any sizable real estate acquisition or financing is essential in the closing process.

You may also contact Craig Stewart at 614-228-6135 for further information or assistance.

PROTECTING YOUR ASSETS

Your key employee just walked out the door with a list of clients that would make a Leprechaun envious, and a new employer is waiting for your employee with open arms. You are raging, and wanting to know what you can do to stop him. Hopefully, as the owner of a business you have protected yourself with a non-compete, non-solicitation and non-disclosure agreement ("non-competition agreement").

Ohio has accepted a definition of "reasonableness" to determine whether non-competition agreements will be enforceable against former employees. "A non-compete clause will be found to be reasonable only where the employer can show by clear and convincing evidence that the restrictions imposed by the non-compete clause (1) are no greater than necessary for the protection of the employer's legitimate business interests, (2) do not impose undue hardship on the employee, and (3) are not injurious to the public."

Factors that a court considers in determining whether a non-competition clause is reasonable may include:

- "[t]he absence or presence of limitations as to time and space,
- whether the covenant seeks to eliminate competition which would be unfair to the employer or merely seeks to eliminate ordinary competition;
- whether the benefit to the employer is disproportional to the detriment to the employee; and,
- whether the employee's talent which the employer seeks to suppress was actually developed during the period of employment."

The above list is not inclusive but merely points out that it is imperative for a company to maintain good records and documentation on employees, such as the employee's access to confidential information, the employee's training from the company, the employee's relationships with customers, and the employee's job duties. All of these things will assist the company in obtaining relief against an employee for breaching his non-competition agreement with the company.

Every company, whether large or small, should ensure that key employees with access to confidential information and customer relationships execute an enforceable, reasonable non-competition agreement. If the employee has done so, the company has a much better chance of prevailing in any action brought against the employee in a court of law. Nonetheless, even if the employee has not executed a non-competition agreement, employers may still have a remedy against the employee under federal or state laws. For more information regarding litigating and drafting non-competition agreements, please contact CP&M attorneys Tony Delligatti or Joëlle Khouzam at (614)228-6135.

IN THE NEWS

Following three days of bench trial in the Pickaway County Court of Common Pleas, the Court found in favor of our client and against the Scioto Township Trustees and the trustees individually. Specifically, the Court found that the Trustees violated their obligations under statute and their own zoning resolutions, and violated our clients' Due Process rights, when the Trustees demanded monetary payments in exchange for favorable rezoning decisions.

Ritchey Hollenbaugh and Chris Dusseau did an outstanding job presenting our case, and systematically dismantling the Trustees' asserted defenses. The case was so well prepared and presented that the Court concluded "... this Court would have to be blind to every piece of evidence presented in this case to agree [with the Trustees]. This Court has never experienced a clearer case where township officials blatantly overstepped their authority in denying a rezoning application."



Ritchey Hollenbaugh



Chris Dusseau

Congratulations to Ritchey and Chris, and a special thanks to *Chris Rhinehart* and *Becky Swoager* for their invaluable assistance!

Carlile Patchen & Murphy's Commercial Law and Business Law Practice Groups hosted a breakfast meeting for lenders, credit analysts, and appraisers from the Central Ohio business community on March 8, 2007, at the Columbus Athletic Club. *Robin Lorms*, MAI, CRE, from Integra Realty Resources, presented "2006 Year-Ed Review of the Central Ohio Real Estate Market" to over 80 guests. During his presentation, Mr. Lorms covered topics such as the direction of downtown condominium space development, office/industrial space projections, and apartment/restaurant and retail development proposals in and around the Colum-

bus area. If you would like to be included in our next program please feel free to call your CPM attorney and ask to be added to our email list for future programs.

Bobby Castor, CPM's very own law clerk, and his fellow OSU Moot Court team members won the ABA Regional Moot Court competition in Las Vegas at the beginning of March, 2007. Bobby and his team finished first out of 36 teams and are one of only twenty teams to move on to the ABA National Competition which will be held in Chicago at the end of March. A total of 176 teams competed in five regional events to qualify for the National Competition. Bobby argued in both the semi-final and final round to help his team win the overall portion of the regional competition. His team also took home the 2nd Best Brief Award, again out of 36 other schools. Congratulations to Bobby and his fellow team members!



Bobby Castor

Carlile Patchen & Murphy LLP celebrated its 40th Anniversary with a dinner party at the Columbus Country Club on March 9, 2007. The dinner was attended by attorneys, staff, friends and family and included a special slide program highlighting the history of the firm. In addition, since you can't have a room full of attorneys and not expect one or two of them to put in their 2-cents, Bryan Hogue, Jim Moats, David Jackson, Joe Patchen, Bob Barnett and Dennis Concilla were allowed a few minutes as part of the program. They each rose to the occasion with some great stories and took the opportunity to thank Richard Patchen, the firm's founding father, for having the foresight to start his own firm 40 years ago. They each pointed out, in varying degrees, that it was Mr. Patchen's love of the law and personal integrity that attracted them to the firm and his continued leadership and ethics that re-affirms, on a daily basis, that they made the right choice. A portrait of Mr. Patchen was unveiled at the end of the program by the firm's Managing Partner, Bob Barnett, to commemorate the firm's 40th anniversary. The portrait now hangs in the entrance hall to the lobby. Be sure to stop by and take a look!

PRACTICE TEAMS

BUSINESS

- Business Organization
- Contracts
- Employment
- Public Utilities
- Government Relations
- Intellectual Property
- International
- Non-Profit Organizations
- Taxation
- Litigation
- Public and Municipal Law

REAL ESTATE & LAND DEVELOPMENT

- Affordable Housing
- Construction Law
- Leasing
- Title Insurance
- Purchase and Sales
- Taxation
- Litigation
- Zoning

PERSONAL

- Estate Planning
- Probate Administration
- Family Law
- Taxation
- Litigation

FINANCE

- Public Finance:
 - Bond Counsel Services
 - Underwriter Representation
- Securities
- Banking
- Broker Dealer
- Taxation
- Litigation

CREDITORS

- Loan Documentation
- Work-Outs
- Commercial Collections
- Bankruptcies & Foreclosures
- Retail Collections
- Bankruptcy Claims
- Taxation
- Litigation