

CARLILE PATCHEN & MURPHY LLP

Attorneys at Law

Leadership through Understanding and Insight

WINTER 2002

WHO NEEDS ADVANCE HEALTH CARE DIRECTIVES?

"Advance directive" refers to a person's verbal and written instructions about future medical care, in the event that the person becomes too ill to speak for himself or herself. Anyone over the age of 18 should consider one or more of these documents. Advance Health Care Directives will help ensure that your wishes are followed when you are no longer able to voice your decision. Ohio law authorizes the use of living wills, health care powers of attorney, the state's Do-Not-Resuscitate Law, and an organ and tissue donation program.

Living Wills: allow you to establish, in advance, your wishes about life-sustaining medical treatments. Before a living will takes effect, a person must be (1) terminally ill and unable to voice wishes regarding health care decisions to a physician; or (2) permanently unconscious.

A living will gives physicians the authority to withhold all life-sustaining treatment and permit patients to die naturally. A living will must be signed in the presence of two witnesses or a notary public. In Ohio, persons may elect to register living wills with the county recorder. A copy should be given to your physician and family. A living will can be revoked verbally at any time by telling your physician and family that you have changed your mind, but it is advisable to draft an updated living will stating your new choices.

Health Care Powers of Attorney allow persons to designate someone (called an attorney-in-fact) to make health care and placement decisions in the event you become unconscious or incompetent. The power given to the attorney-in-fact can be very broad. Specific wishes regarding

when life-sustaining procedures should be withheld or withdrawn and under what circumstances can be addressed; if you do not specifically state such wishes, the attorney-in-fact is required to make decisions in that your based on medical and other factors. Unlike a living will, which only addresses life-sustaining procedures, a durable health care power of attorney can authorize an attorney-in-fact to have access to medical records, allow autopsies or transfer a patient to a nursing home or other health care facility if appropriate.

Ohio's Do-Not-Resuscitate Law allows a person the option of not being resuscitated in the event of a cardiac or respiratory arrest. By enrolling in this program, a person has a choice to die without heroic measures, and health care providers are given legal authority to respect those wishes. This can only be done by enrolling in this program through a medical practitioner and having acceptable forms of DNR identification, such as an enrollment card.

Organ and Tissue Donation: Anyone 18 years of age or older can indicate a desire to be an organ donor by signing a donor card or expressing their wishes to family members. A facsimile of the Organ/Tissue Donor Card is available at www.ask.hrsa.gov, or you may request one by contacting the U.S. Department of Health Services at 1-800-ASK-HRSA.

For more information regarding the preparation of documents that anticipate emergencies of this type, please contact Bryan Hogue or your CPM attorney.

REAL ESTATE VALUATIONS

Property owners should be aware that Ohio law requires county auditors to update records relating to the value of real estate every three years. The value assigned to real estate determines the amounts owed in real-estate tax. Therefore, it is important that the county auditor's records accurately reflect the value of any real estate that you may own in the State of Ohio.

Throughout 2002, county auditors have been in the process of updating the values assigned to real estate located in the State of Ohio. You should have recently received or expect to receive shortly a notice regarding the value assigned to any such real estate.

If it appears that the auditor has assigned a disproportionately high value to any parcel of real estate that you or your company owns, you may want to consider filing a Complaint contesting the assigned value with the local Board of Revision. All such Complaints must be filed by March 31, 2003. If you would like further assistance in reviewing or appealing your real estate valuation, please contact Jim Moats, Brian Newcomb or your CPM attorney.

Family and Medical Leave Act

In light of the increased call-up of military personnel and reservists in the last year, the Department of Labor has clarified that time away from work spent in active duty shall count toward the minimum hours of work required to calculate an employee's eligibility under the Family and Medical Leave Act.

BANKRUPTCY 101

This is the second in a series designed to explain common bankruptcy issues. As always, consult a bankruptcy attorney when dealing with specific situations.

Q: The commercial tenant I was about to evict has filed bankruptcy. What do I do now?

A: First, you may not try to collect rent that was payable before the tenant's bankruptcy was filed (the "petition date") or continue with the eviction action, unless you obtain relief from the bankruptcy law's "automatic stay" provision. This bankruptcy statute prohibits any action to recover the debtor's property (the tenant's interests) or to collect upon a claim (such as past due rent) that arose before the petition date. At the same time, the bankruptcy law gives you, as a landlord, important rights and protections, but you must know about and actually enforce them, because these are not automatic. As is so often the case, the rest of the answer as to what you should do or can do is, "IT DEPENDS."

The bankruptcy trustee (known as the debtor in possession in chapter 11 or chapter 13 cases) can choose to either *reject* or *assume* a lease that has not yet expired. If the lease expired before the petition date, this is not an option, but there may be a dispute over whether the lease was legally terminated as of the petition date.

A rejection takes the lease out of the bankruptcy case, and so the tenant should promptly vacate the premises. However, there is a catch. The trustee is under no obligation to make his/her decision to reject or assume right away. If no action is taken to assume the lease within 60 days of the petition date, the lease is deemed rejected, but the trustee can ask the judge to extend that deadline. Even after the lease's rejection, the trustee may be in no hurry to vacate the premises due to the expense of moving, or many other reasons, and you, the landlord, will have to enforce your rights to possession of the premises (eviction) as well as any damages resulting from the failure to return pos-

session of the premises after rejection.

In the meantime, the trustee is supposed to perform the tenant's obligations under the lease, but she may not! Further, you are entitled to "adequate protection" of your interest in the leased premises, but only if you ask for it. Also, you may be excused from providing lease-related services or supplies until the lease is assumed.

On the other hand, if the trustee chooses to assume the lease (for example, if the lease is a sound deal for the trustee), the trustee will have to cure any defaults that exist. Those defaults could be monetary and non-monetary (such as lack of insurance or repairs). If the trustee can cure the existing defaults and assure the court that the debtor (or an assignee) can fulfill its obligations under the lease, the trustee's request to assume (or assign) the lease is likely to be approved by the judge.

Either way, you may want to force the trustee to make this decision sooner rather than later, and you may want to enforce the trustee's performance obligations until a decision is made - all of these will require you to make a specific request to the court.

For assistance on this and other bankruptcy matters, please contact Leon Friedberg or your CPM attorney to evaluate your rights and obligations.

HOMELAND SECURITY: OPPORTUNITIES FOR SMALL BUSINESSES

Words like "bioterrorism", "decontamination", and "critical infrastructure protection" have taken on new meaning in recent times. The development of a homeland security team designed to coordinate all aspects of preparedness anticipates significant expenditures on security. In turn, this means opportunities for certain contractor and vendor groups, such as women-owned enterprises, minority-owned enterprises, small businesses (some not so small), veterans and the disabled. Our firm librarian Sherry Poston has identified useful information to help clients explore alternative avenues of generating

business in this new age of security.

A number of Procurement Technical Assistance Centers ("PTAC"s) sponsored by the Department of Defense offer additional information. The following are centers located in Ohio:

Ohio PTAC Lead Center
SBDC Program Ohio Department
of Development
77 South High Street
P.O. Box 1001
Columbus, Ohio 43216-1001
Phone: 614-466-2711
Fax: 614-466-0829

Kent PTAC Satellite
Kent Regional Business Alliance
Kent State University
College of Business Room 300B
Kent, Ohio 44242
Phone: 330-672-9448
Fax: 330-672-9338

Cincinnati PTAC TechSolve
1111 Edison Drive
Cincinnati, Ohio 45216
Phone: 513-948-2083
Fax: 513-948-2083

Cleveland PTAC Supersite
Community Improvement Corp.
of Lake County
391 West Washington Street
Painsville, Ohio 44077
Phone: 440-357-2290 Ext. 30
Fax: 440-357-2296
Central Ohio PTAC Supersite
1214 Kinneer Road
Columbus, Ohio 43212
Phone: 614-365-3200
Fax: 614-688-4045

Dayton PTAC Supersite
3155 Research Boulevard
Suite 103
Kettering, Ohio 45420
Phone: 937-258-7255
Fax: 937-252-4514

Appalachian PTAC
20 Circle Drive
The Ridge Ohio University
143 Technology and
Enterprise Building
Athens, Ohio 45701
Phone: 740-597-1868
Fax: 740-597-1399

South Point PTAC
Lawrence Economic
Development Corp.
P.O. Box 488
South Point, Ohio 45680
Phone: 740-377-4550
Fax: 740-377-2091

Toledo PTAC
Bowling Green State University
Jerome Library
Bowling Green, Ohio 43403
Phone: 419-372-9257
Fax: 419-372-7996

Youngstown PTAC
Mahoning Valley Technical
Procurement
Center-MVEDC
4319 Belmont Avenue
Youngstown, Ohio 44505
Phone: 330-759-3668
Fax: 330-759-3686

Youngstown PTAC
Mahoning Valley Technical
Procurement
Center-Eastgate
5121 Mahoning Avenue
Youngstown, Ohio 44515
Phone: 330-779-3800
Fax: 330-779-3838

Personnel Manual

Does your handbook contain:

- a policy on the use of e-mail, internet, voicemail and other office systems?
- a policy protecting the confidentiality of proprietary information?
- a policy regarding drug use?
- an acknowledgment of receipt to be signed by employees?

If you answered "no" or "I don't know" to any of these questions, it may be time to update your personnel manual. A well-written and up-to-date personnel manual can help shield companies from liability while clearly setting forth your expectations.

For assistance in reviewing your personnel needs, please contact Joëlle Khouzam, Kristine Hayes or your CPM attorney.

PEOPLE ON THE MOVE

DANIEL G. ROHLETTER recently joining the Firm, and will be representing businesses, financial institutions and individuals in real estate, loan documentation, and taxation matters. Dan is a native of Columbus, and graduated *magna cum laude* from Capital University in 1982 and Capital University Law School in 1986 (Order of the Curia). He is a member of the Columbus and Ohio State Bar Associations. He also is a Certified Public Accountant, Ohio. Dan has been a lifelong resident of Columbus, and is the father of three. He enjoys watching his son play hockey and his daughters in dance class, as well as playing golf and basketball. Welcome, Dan!

Daniel G. Rohletter

STEPHANIE D. CHAMP, who recently passed the Ohio Bar Exam, has joined the Firm. Stephanie grew up in Logan and Lancaster, and is a Double Buckeye (OSU undergraduate and Moritz College of Law). Before graduating law school, she was on a semi-finalist National Moot Court team, and also served on the board of the College's Pro Bono Research Group, which provides research to legal aid offices. She also participated in other moot-court style competitions, while making time to support the Buckeyes. Before law school, she was employed at Bank One. Stephanie will be working with our Commercial Law Practice Group. Welcome, Stephanie.

— • —

Tom Bolon, a seasoned family law attorney, has completed 54 hours of mediation training at Capital University Law School, including 14 hours of divorce mediation. The object of mediation is to facilitate agreement between parties who hit stumbling blocks while trying to resolve domestic matters.

Dave Onega recently spoke at a Columbus Bar Association meeting on "Putting Flexibility into Irrevocable Life Insurance Trusts."

— • —

Joëlle Khouzam has been appointed to the Board of Trustees of the Children's Hunger Alliance.

— • —

Mike Igoe has been elected to the Board of Trustees at Worthington Hills Country Club for a three year term.

Visit www.cpmlaw.com

CORNERSTONE TITLE OFFERS FULL RANGE OF SERVICES

CPM's *Cornerstone Title Agency, LLC* provides full title insurance and closing services through its underwriters, Chicago Title Insurance Company and Commonwealth Land Title Insurance Company. In business for over 25 years, Cornerstone provides full title services statewide and nationally for all title work, closings, escrow services, 1031 tax-free exchanges, and all general title and search services. Please contact Craig Stewart or your CPM attorney for further details.

CARLILE PATCHEN & MURPHY LLP

Attorneys at Law

Leadership through Understanding and Insight

366 East Broad Street
Columbus, Ohio 43215
Phone 614.228.6135
Fax 614.221.0216
www.cpmlaw.com

**IRS Mileage Rate Goes
Down to 36 cents
January 1, 2003**

Employers may pay more or less than 36 cents, but if the approved rate (or a lower rate) is used to reimburse employees' automobile expenses, the IRS will not require extensive documentation of actual expenses.

Deductible reimbursements are not included in employees' taxable wages. Employees who are not reimbursed may deduct expenses for the business use of their own car at the 36 cent rate.

Holiday Travel Tip: Oversize bags may now be subject to airline surcharges. According to the Wall Street Journal, fees are significant, into the hundreds of dollars, but are determined by the girth of the bag rather than the weight. Size as measured by adding length plus width plus depth should be under 63 inches to avoid fees. Call the airline in advance to check on specific luggage restrictions.

FIRM PRACTICE AREAS

BUSINESS

- Business Organization
- Contracts
- Employment
- Transportation
- Telecommunications
- Public Utility
- Government Relations
- Intellectual Property
- International
- Non-Profit Organizations
- Taxation
- Litigation

REAL ESTATE & LAND DEVELOPMENT

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

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

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