



## WHAT CAN A REAL ESTATE ATTORNEY DO FOR YOU?

by Susan Ghelerter

*Every building, regardless of size, presents a different set of issues. Knowledge and experience is critical.... Perhaps the most interesting conversion is the vertical separation of a mixed use commercial/residential building.*

I have more than 26 years of experience, primarily in the field of commercial real estate, and I enjoy my practice area immensely. Each transaction is unique and gives me the opportunity to be creative. Real Estate is never boring.

I have represented a wide variety of clients, each having their own requirements. Some clients want to hold onto buildings as investment property, some want to buy and flip property and others want to convert their property to condominiums. I have assisted clients who are buying their first commercial property and others that have been in business for fifty years. I have handled all cash transactions and others requiring securitized loans and mezzanine financing in excess of a hundred million dollars.

Within my practice, I have a sub-specialty in the area of condominium conversions and vertical separations. I have converted everything from small buildings containing two units to large high rises with several hundred units. Every building, regardless of size, presents a different set of issues. Knowledge and experience is critical. I have converted industrial buildings to residential lofts, office buildings to commercial condominiums and apartment buildings to residential condominiums. Perhaps the most interesting conversion is the vertical separation of a mixed use commercial/residential building. This method maintains the first floor of retail or commercial property as non-condominium property while converting the remaining floors to residential condominiums. Often owners of commercial property do not want to be part of the

condominium rules and regulations. A vertical separation is the answer to that problem.

In a vertical separation, the owner must determine things like how to split the building's maintenance costs, what his responsibilities are if a major catastrophe occurs, how to maintain insurance, who is to pay the cost of capital and non-capital improvements, who will wash the windows and

how is the water bill to be divided.

What happens if the commercial owner refuses to pay his share of expenses or the condominium association no longer allows commercial users to access parts of the condominium that they need for ingress and egress? All of these concerns, and many others, are covered by a document between the parties entitled a Declaration of Covenants,

Conditions and Reciprocal Easements which spells out the relationship between the two owners.

My experience includes the purchase and sale of industrial, commercial, retail and vacant land properties. Often these transactions involve the inclusion of an IRS Section 1031 exchange of property (a Starker) and occasionally a reverse trade. I have negotiated numerous contracts, loan documents and commercial leases. In addition, I have formed entities and prepared operating agreements on behalf of my clients. Therefore, I can handle the real estate and the corporate portions of any transaction.

I am very happy to be part of the Golan & Christie family. Please feel free to call me at 312.696.2040 to find out more about what a real estate attorney can do for you.



SUSAN L. GHELERTER

## GOLAN & CHRISTIE WELCOMES TWO NEW ATTORNEYS

GOLAN & CHRISTIE LLP IS PLEASED TO WELCOME TWO NEW ASSOCIATES TO THE FIRM.

### MATTHEW WASSERMAN



Mr. Wasserman's practice at the firm will focus on commercial and business litigation, reorganization and bankruptcy. Mr. Wasserman has practiced in state and federal court, at both the trial and appellate levels, as well as before administrative agencies in the Chicago area.

Prior to joining Golan & Christie, Mr. Wasserman worked as a litigation associate with the firm Defrees & Fiske LLC. He also worked for Defrees & Fiske LLC as a law clerk while attending law school in the evening.

Mr. Wasserman graduated law school from Chicago-Kent College of Law in 2005 and earned a Bachelor of Science degree in Public Affairs from Indiana University in 2002.

### SAMUEL HANS



Mr. Hans' practice will focus on corporate law, taxation, and estate planning matters. He joins Golan & Christie after obtaining his Masters in Taxation from Northwestern University.

Prior to joining Golan & Christie, Mr. Hans was an associate at the Law Office of Mercer Turner where he represented privately held businesses, family farms and individuals in both tax related and general business undertakings.

He graduated law school from the New England School of Law in Boston in 2007 and completed his undergraduate work at The University of Missouri - Columbia. Mr. Hans is licensed to practice in Illinois and will be sitting for the CPA exam in the spring of 2009.



## BAD CORPORATE CHECKS CAN CARRY PERSONAL LIABILITY

Many business owners do not realize that they may have personal liability for bad company checks under the Illinois Civil Liability for Deceptive Practices Act (the "Act"). 720 ILCS 5/17-1(a). Even if a check is drawn on a corporate account, and even if signed in a corporate capacity, the signer may be personally liable for the check if it bounces.

The Act has several requirements which must be satisfied before personal liability attaches. First, a check must be submitted to the bank for payment on at least two occasions at least seven days apart, and dishonored both times. The Act states that once this condition is met, the signer is presumed to have both knowledge of the non-payment and an intent to defraud the payee on the check. The Act also requires a written demand letter be sent to the signer, via

certified and first class mail, giving the signer 30 days to pay in full the amount of the check. Once these relatively minor requirements are met, however, personal liability attaches to the signer.

In addition to personal liability for the face amount on the check, a signer may be required to pay punitive damages to the payee in the amount of treble (3Xs) the bounced check (treble damages may be no less than \$100 but are capped at \$1,500) and to reimburse the payee for his attorney's fees and costs incurred in obtaining payment on the check. A \$100 bounced check could turn into a multi-thousand dollar personal obligation! Please let us know if you would like assistance either in collecting on a bounced check or in defending against such a claim.



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## PERSONAL LIABILITY FOR MISTAKES UNDER THE FAIR LABOR STANDARDS ACT

An employer's mistake regarding minimum wage or overtime payment, the two issues governed by the Fair Labor Standards Act (FLSA), can mean big fines for the company as well as for managers, executives, and human resource professionals. In a recent case, a court ordered a company, **and its CEO**, to pay more than \$500,000 to employees whose pay was improperly deducted for breaks during their shifts. The reason was, in order for breaks to be unpaid, employees must be completely relieved of all work responsibilities. These employees weren't allowed to leave the building and were required to periodically call the main office to check in. The CEO knew this and still signed off on their time sheets which deducted the "break" time.

Individual executives can also be held personally liable for failing to pay overtime. If an employee is misclassified as "exempt" from overtime pay, when they are really eligible for overtime pay, a court may hold individual bosses responsible. **It is important to note that an employee who is paid a salary may still be entitled to overtime pay.** In fact, all employees are entitled to overtime pay (in other words are "non-exempt") **unless** they receive a salary **and** have job duties that meet a specific exemption. Any employee who does not fall into one of these specific exemptions is entitled to be paid overtime for all time



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-Laura Balson

worked beyond 40 hours per week, at a rate of one and a half times his regular rate of pay. Misclassification of employees is one of the hottest new areas for employment litigation. If you have not analyzed each category of employee with these exemptions in mind, the company may have significant liability under the FLSA, and owners may be held personally liable for unpaid wages.

## NEW AMENDMENTS TO THE AMERICANS WITH DISABILITIES ACT GO INTO EFFECT ON JANUARY 1, 2009

The Americans with Disabilities Act of 1990 (ADA), prohibits discrimination on the basis of a person's abilities and requires employers to engage in an interactive process with disabled employees who may need a reasonable accommodation at the workplace.

On September 11, 2008, Congress unanimously passed the ADA Amendments Act which will make significant changes to the ADA. It is important for employers everywhere to understand these changes before the law takes effect on January 1, 2009.

First, the Amendments Act states that in order to determine whether a person's impairment qualifies as a disability, an inquiry must be made without regard to any "mitigating measures" that the person takes to correct their impairment. For example, a person with a seizure disorder who is able to control his condition with the help of medication, may still be considered disabled, if he would meet the test for disability without medication.



"The Americans with Disabilities Act of 1990 (ADA), prohibits discrimination on the basis of a person's abilities."

-Margaret Gisch

Second, the new Amendments provide that where a person brings a claim based on being "regarded as" disabled and some prohibited action was taken against him as a result, it will not be a defense to say that the actual or perceived impairment does not qualify as a disability.

## WITH ELECTION DAY APPROACHING, MAKE SURE YOU UNDERSTAND MANDATORY VOTING LEAVE FOR EMPLOYEES

Illinois law permits employees to take up to 2 hours of paid time off of work on election day in order to vote. This paid time off is separate from any vacation or personal time the employee may have. In order to be entitled to the paid election leave, the employee must be scheduled to work on election day, with working hours that leave less than two hours after the opening or before the closing of the polls. For example, in Illinois, since the polling places are open from 6:00am to 7:00pm, an employee who is scheduled to work from 7:00am to 5:30pm would not have two hours either before or after work to vote, and thus would be entitled to the leave. Several other states, such as California, Minnesota, and New York, also have similar laws, which employers should consult before election day on November 4.

### TO LEARN MORE...

If you would like additional information, please contact:

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OUR FOCUS IS YOU

Putting our clients first is not just a slogan for Golan & Christie. Everything we do stems from your needs, goals and objectives.

From the moment we first meet, we are driven by one thing: your ultimate success. And we go the extra mile to achieve it.

We devote as much time as necessary to get to know you. Only then can we make a thorough assessment of your situation and develop solutions that are the most appropriate for you. As our team goes to work for you, we continue to invest time in listening to, observing and advising you.

In the end, we measure our success by your success.

Prior editions of Golan & Christie's newsletters are available at <http://www.golanchristie.com/news.html>

OUR PRACTICE

Our practice covers many aspects of law and business, with an emphasis on the areas listed below:

- Business Law & Governance
- Commercial & Corporate Litigation
- Commercial Real Estate
- Employment Law
- Estate Planning & Taxation
- Finance
- Reorganization & Bankruptcy

- EMPLOYMENT LAW ALERT
- CORPORATE CHECKS
- PERSONAL LIABILITY FOR NEW ATTORNEYS
- GOLAN & CHRISTIE WELCOMES TWO NEW ATTORNEYS
- WHAT CAN A REAL ESTATE ATTORNEY DO FOR YOU?

INSIDE THIS ISSUE:

newsletter

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