

KDDK

ADVANTAGE

Newsletter

Spring 2015

Business Law: Corporate Records Management

Misleading Corporate Records Letters

by Shannon S. Frank



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Several clients have contacted us concerning a document or correspondence they received which appears to have been sent by a government office, "Corporate Services" or other similar name. This correspondence generally solicits a fee to keep and process the business' annual records, cites Indiana Code, requests corporate information, and gives the impression that the business needs to take action.

According to Indiana Secretary of State Connie Lawson, some recent documents received by Hoosier businesses are not from her office or any other agency of the State of Indiana. The official website of the Indiana Secretary of State instructs businesses to ignore such correspondence and if a business has already taken action and sent money, to contact the Secretary of State's office at (317) 232-6576 to make a report.

The Indiana Secretary of State does, however, send official notices from time to time, and businesses must investigate what is authentic and what is merely a third-party solicitation or scam before taking action.

Please contact Shannon Frank at sfrank@KDDK.com or (812) 423-3183 with questions concerning correspondence received by your business. ♦

Did You Know...

...that even if you provide for a transfer of a firearm or collection of firearms upon your death, your beneficiaries may be inadvertently violating the law upon taking possession? If you own guns for recreational use or as a collector, it is important to review your estate planning to confirm that it properly deals with their purchase, possession and use.

For additional information, please contact KDDK attorney Steve Lavallo at slavallo@KDDK.com or (812) 423-3183. ♦

Labor and Employment Law: FMLA

"Spouse" Includes Same-Sex Partner

by Mark A. McAnulty



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Effective March 27, 2015, employers must administer the Family and Medical Leave Act ("FMLA") to give spouses in same-sex marriages the same ability as all spouses to fully exercise their rights under the FMLA. This, pursuant to a Final Rule of the Department of Labor ("DOL"), amends the definition of "spouse" in the FMLA regulations, and shifts the focus of a legal marriage from a "state of residence" rule to a "place of celebration" rule.

In other words, employers must now look to the law of the place in which the marriage was entered, as opposed to the law of the state in which the employee resides. In the DOL's view, a "place of celebration" rule allows all legally married couples, whether traditional or same-sex, to enjoy consistent family leave rights.

With the new rule, an **eligible employee** may take:

- FMLA leave to care for their lawfully married same-sex spouse with a serious health condition; their step-child (child of the employee's same-sex spouse); or a step-parent who is a same-sex spouse of the employee's parent, regardless of whether the step-parent ever provided day-to-day care or provided financial support to the employee.
- Qualifying exigency leave due to their lawfully married same-sex spouse's covered military service.
- Military caregiver leave for their lawfully married same-sex spouse.

The new Rule still permits employers to require employees to provide reasonable documentation to confirm the marriage or family relationship. This documentation may take the form of the marriage license or court document, or a simple statement from the employee asserting that the family relationship exists.

For more information about this or any FMLA-related issue, please contact Mark McAnulty at mmcanulty@KDDK.com or (812) 423-3183. ♦

KAHN, DEES, DONOVAN & KAHN, LLP (KDDK) is an experienced full-service civil law firm located in Evansville, Ind., dedicated to effectively serving the legal needs of regional, national and international clients, including public and private businesses, manufacturers, educational institutions, healthcare providers, financial organizations, governmental units, and non-profit entities, for more than 105 years.

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Real Estate Law: Commercial Property Tax Assessments**Turmoil in Big-Box and Chain Store Property Tax Assessments**

by G. Michael Schopmeyer



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The recent property assessment battle for big-box retail stores may turn out to be short lived. In a December 2014 case of *Meijer Stores v. Marion County Assessor*, the Indiana Board of Tax Review (IBTR) ruled that big-box stores like Meijer are allowed to use vacant or abandoned big-box retail stores when using the sales comparison approach to determine the value of their property for tax purposes. In this case, including vacant or abandoned big-box retail properties as comparables

would bring the value of the Meijer store in dispute from the \$19.73 million as assessed by the Marion County Assessor down to only \$7.17 million. Applying this difference to the 2002 to 2012 assessments would mean Marion County could be liable for \$2.4 million in the form of a tax refund to Meijer alone. Naturally, this decision has reverberated throughout the business community with other big-box retailers now considering appealing their tax assessments.

While the *Meijer* ruling has retailers excited about potential tax refund windfalls and counties worried about refund-related budget shortfalls, this issue may quickly become moot. In February, the Indiana Senate Tax and Fiscal Policy Committee voted 12-0 to approve SB 436 which would essentially overrule the IBTR's decision by requiring big-box stores and other chain stores to be valued solely by the cost approach to determine the market value-in-use of the property. This bill would affect properties assessed on or after the March 1, 2015, assessment date and include cases currently going through administrative appeal or judicial proceedings. Considering the impact changing property tax assessments may have on the amount of taxes a business owes, it is important to ensure the proper assessment methods are used. We will continue to track this important issue and provide updates as necessary.

For more information about this or any related area of law, please contact Mike Schopmeyer at mschopmeyer@KDDK.com or (812) 423-3183. ♦

ASSESSED VALUATION APPROACHES

- 1. Cost Approach:** Attempts to determine cost to build an identical structure, then adjusts for factors such as depreciation.
- 2. Income Capitalization Approach:** Divides the net income of a property by the investor's rate of return. Mostly used for income-producing properties such as apartment or office buildings.
- 3. Sales Comparison Approach:** Uses comparable sales of the property in question.

KDDK News

Carrie Mount Roelle, an experienced labor and employment law attorney and litigator, has been named a KDDK Partner. Carrie defends employers – particularly in manufacturing and education – before state and federal courts and various administrative agencies in matters involving allegations of discrimination, harassment, interference, and retaliation. She also counsels employers on the wide array of employment issues they face daily. ♦

Jake Fulcher has been named a Rising Star in Employment and Labor Law by *Indiana Super Lawyers® Magazine*. Jake represents employers in all aspects of labor and employment law. Jake is a KDDK Partner who devotes much of his practice to daily client counseling, developing best practices and providing management and supervisor training on a variety of labor and employment-related issues. He also reviews and drafts employment contracts, consulting agreements, handbooks, non-compete/trade-secret agreements, and severance packages. ♦

Josh Gessling has been named a Rising Star in Employment and Labor Law by *Indiana Super Lawyers® Magazine*. Josh is a labor and employment attorney who assists businesses in a broad range of labor and employment law matters, and provides litigation and trial services for the firm's clients. He utilizes his background in employment, labor and international law to assist clients with workforce management and operational issues in the U.S. and abroad. He is licensed to practice law in Indiana and Florida. ♦

Brian Williams, a KDDK Co-Managing Partner, recently accepted the Indiana Outstanding Trail Project of the Year award from the Greenways Foundation for the Rotary Pigeon Creek Canoe/Kayak Launch in Evansville. The project, led by the Rotary Club of Evansville under Brian's leadership, provides safe access to more than six miles of recreational waterway. ♦

Kent (KAB) Brasseale is now licensed by the State of Illinois Supreme Court to practice law in Illinois. He has been licensed in Indiana for more than 20 years. A KDDK Partner who practices mineral, oil and gas, environmental, real estate, business, economic development, and intellectual property law, KAB is an experienced attorney with the skills and knowledge to efficiently and effectively represent clients in the construction, education, health care, and mineral, oil and gas industries. ♦

Aaron C. Trump has been certified by the U.S. Department of Veterans Affairs (VA) as an accredited attorney for the preparation, presentation and prosecution of claims for veterans' benefits. Aaron joined KDDK as an associate attorney in 2014 after earning his Juris Doctor from Washington University School of Law, St. Louis. A native of Mt. Vernon, Ind., Aaron was a six-year member of the Indiana Army National Guard, achieving the rank of Staff Sergeant and serving as a Field Artillery Section Chief. ♦

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