

Excellence

A report on emerging legal trends from the attorneys of DBL Law

FALL 2021

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President Biden Announces Federal Vaccine Mandate

by Katie Tranter ktranter@dbllaw.com

President Joe Biden announced a new federal mandate aimed at combating the ongoing COVID-19 pandemic. On September 9, 2021.

Why it matters: The mandate is aimed at combating the ongoing COVID-19 pandemic. President Biden has directed the Department of Labor to issue a rule mandating that all businesses with 100 or more employees either require their employees to be fully vaccinated or require unvaccinated employees to receive mandatory weekly COVID-19 testing.

Context: The Department of Labor's Occupational Safety and Health Administration (OSHA) will issue an emergency temporary standard to implement this requirement and may be the enforcing agency. Fines to businesses for non-compliance will be up to \$14,000 for each violation. The plan also will include a rule requiring paid time off for employees to be vaccinated and to recover from any vaccination side effects.

What's next: The announcement raises many questions for employers that will be implementing the mandate. These questions include how the 100 employees will be counted, whether the mandate will extend to independent contractors, and whether the mandate will apply to non-profits. The mandate brings to light questions regarding vaccine compliance, conflicts between federal and state laws, and employer liability. Likewise, employers are hoping that the new rules will address the mandatory testing element of the directive. Unanswered questions with respect to testing include acceptable types of testing, how to handle remote workers, and who should pay for the testing. It is likely that these questions will remain unanswered until the federal regulations governing this mandate are issued.

DBL Law will continue to provide updates as additional information becomes available.



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Protecting Buyers and Sellers: The Importance of Title Companies

by Rebecca McDonough rmcdonough@dbllaw.com

Our region's real estate market has seen strong growth despite industry setbacks caused by the COVID-19 pandemic. Real estate professionals attribute this to low interest rates and inventory shortages. While the longevity of the current growth is unpredictable, the need for title companies is constant.

What do Title Companies do?

- Through their title agents, title companies research a property's chain of title—its ownership history, physical description, and encumbrances. Title agents search public records to discover previous owners, prior or outstanding mortgages and liens, or other encumbrances against the property, such as unpaid real estate taxes.
- In discovering encumbrances, title companies assist buyers in determining whether they will own the property outright. However, if the title exam reveals an encumbrance, the issue can typically be resolved without delaying closing.
- In rare circumstances where encumbrances cannot be resolved, buyers should abandon the purchase.

Do Title Companies Provide Other Services?

- Title companies also sell title insurance and offer escrow and closing services. Title insurance policies protect property owners by paying the cost of resolving third-party claims against the property that either (a) do not appear on the initial title exam or (b) arise after closing. Even the most thorough title exam may not discover all title encumbrances. Title companies also facilitate real estate closings and maintain escrow accounts.

Why use a Title Company?

- Title companies can relieve some of the associated stress by reassuring buyers of what they are purchasing and ensuring sellers are accurately compensated.

Whether a first-time homebuyer or a seasoned real estate investor, it is best practice to utilize a title company with an experienced and dynamic staff who can meet a client's diverse needs and exceed expectations. DBL Law's **Excel Title Services** has a team of title insurance professionals and attorneys who are ready to assist you in your next real estate transaction.





Ohio Enacts New LLC Act

by Patrick Reagan preagan@dbllaw.com

On January 8, 2021, Governor Mike DeWine signed the Ohio Revised Limited Liability Company Act, which gives those forming such entities more flexibility in how they structure the entity and introduces features previously unavailable in Ohio.

Why it matters: Many other states have updated their LLC statutes to make themselves more attractive places to do business. This restructuring of the law to promote business and asset location goes beyond LLC statutes. Many states (e.g., South Dakota) have made corresponding updates to their trust and financial services laws to encourage asset relocation.

The New Act became effective April 12, 2021, but its changes do not apply to LLCs until January 1, 2022, when the New Act will apply to all LLCs regardless of whether they were formed before or after January 1, 2022. No changes to an LLC's organizational documents are necessary before January 1 for an LLC to take advantage of the changes available in the New Act.

The New Act's provisions are default and apply only to the extent that an LLC has not adopted an operating agreement contradicting them. The New Act eliminates the distinction between member-managed and manager-managed LLCs. This means that an LLC could have a committee govern it, for example, or adopt a partnership-like structure.

Fiduciary duties may now be waived except for the implied covenant of good faith and fair dealing. This allows LLCs to structure on a non-arm's-length basis, where one member may want to provide additional flexibility to another member or management-level individual to spend time on another business and/or compete directly with the LLC.

Fixed damages: The New Act allows LLCs to set forth specific penalties and consequences in the operating agreement that will apply if a member breaches the operating agreement or upon the occurrence of a certain event, which include:

- reducing or eliminating a defaulting member's interest in the LLC.
- forcing a sale of a defaulting member's interest in the LLC
- fixing a value of the defaulting member's interest in the LLC by formula or appraisal and forcing a redemption or sale of that member's interest in the LLC.

LLCs may compartmentalize capital, assets, and liabilities by assigning capital and assets to different segments of an LLC. They may also cut off claims of creditors following the LLC's dissolution if they meet certain requirements, which include notice to creditors and public notice on the LLC's or Ohio Secretary of State's website.



The Importance of Quorums to Condominium Associations

by Justin Knappick jknappick@dbllaw.com
by Katherine Simone ksimone@dbllaw.com

What is a quorum, and why is it important?

- Unless the bylaws provide otherwise, a quorum is deemed present for any meeting of an association if persons entitled to cast ten percent (10%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.
- Unless the bylaws specify a larger percentage, a quorum is deemed present for any meeting of the executive board if persons who are entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.

What if there are not enough members present to form a quorum?

- The important decisions cannot be made for the association.
- The meeting must be rescheduled. While the resched-

uled meeting typically requires a lower quorum, the failure to form a quorum at the initial meeting may deter members from coming to the rescheduled meeting, making it even more difficult to reach quorum.

Fortunately, there are several ways to make meeting quorum easier.

- Utilizing proxies, a member can be "present" at a meeting without physically attending the meeting. By electing a proxy, a member assigns, in writing, his or her vote to another person who will be present at the meeting in his or her place. Proxies can be critical to achieving a quorum.
- Setting any appropriate quorum percentages. Larger associations should require a smaller quorum percentage because of the difficulties involved in ensuring the attendance of larger groups. Given that a quorum exists at a meeting where persons entitled to cast 10% of the votes are present, achieving quorum should be more manageable.



SBA Streamlines PPP Loan Forgiveness

by Patrick Reagan preagan@dbllaw.com

As the COVID-19 pandemic forced a temporary, and in some cases permanent re-wiring of the U.S. economy, Congress passed the **CARES Act**, which delivered much-needed relief for business owners feeling the jolt of lockdowns, mask mandates, and lost revenue. One of the Act's most effective provisions was the Paycheck Protection Program ("PPP"), which provided over \$798 billion in the form of loans to keep workers on payroll. If businesses meet certain requirements, they can apply to have the SBA forgive their loans.

The Small Business Administration ("SBA") and lenders have originated 11.7 million loans for 8.5 million small businesses. In 2021 alone, the SBA has approved over 6.5 million loans totaling \$275 billion, with the average loan amount being \$42,000.

To facilitate speedy and efficient loan forgiveness, the SBA has launched a new online portal for loans totaling \$150,000

or less to allow businesses to apply for forgiveness directly to the SBA. Approximately 6.5 million new small businesses will qualify for direct forgiveness, and the SBA began accepting applications on August 4, 2021. Businesses have to opt into the program, and over 600 banks have partnered with the SBA – meaning that 2.17 million small businesses already qualify to use the portal. This represents 1 in 3 PPP loans of less than \$150,000 that have not yet applied for forgiveness.



Firm & Attorney News

DBL Law Headquarters Opening Soon

DBL Law has taken the final steps toward completion of its \$11.3 million refurbishment of the historic Monarch Building. The office will serve as DBL Law's headquarters. The firm expects to move into the new headquarters this Fall.

The firm was founded more than 60 years ago by Judge Bill Dunn and Judge Jim Dressman Jr. in a basement office at the corner of 4th and Garrard streets in Covington. Today, it is Northern Kentucky's largest law firm and also has offices in Cincinnati and Louisville.

The renovated building includes:

- The addition of two floors, both of which will feature balconies facing the Ohio River.
- An unobstructed view of the iconic Roebling Suspension Bridge into downtown Cincinnati.
- Construction of a new building just to the west of the existing building.
- An atrium-like area with an abundance of natural light.
- Approximately 30 on-premises parking spots.



DBL Law has been supported in the project by:

- The Catalytic Development Funding Corp. of Northern Kentucky
- The City of Covington
- Covington Independent Schools
- Fedders Construction
- Allen Haehnle, Developer
- Kenton County Fiscal Court
- PCA Architecture
- Republic Bank



Firm & Attorney News more at dbllaw.com/news



DBL Law has been recognized by the Kentucky Chamber as a Gold *COVID Stops Here* workplace for achieving a 90% vaccination rate. The Kentucky Chamber of Commerce developed the *COVID Stops Here* campaign to celebrate workplaces that are leading the fight to stop COVID-19 and to encourage more organizations to join their ranks.



Ten DBL Law attorneys have been selected by their peers for inclusion in the 2022 Edition of The Best Lawyers In America®. Six additional DBL Law attorneys have also been included in the 2022 Best Lawyers Ones to Watch in America. DBL Law attorneys recognized in the 2022 Edition of The Best Lawyers in America are:

Gerald Benzinger, Health Care Law,
Jim Dressman, Banking & Finance Law and Commercial Litigation,
Drew Emmert, Corporate Law and Real Estate Law,
Mark Guilfoyle, Administrative/Regulatory Law,
Ellie Houston, Litigation-Health Care and Medical Malpractice Law-Defendants,
Matt Klein, Health Care Law,
David Kramer, Litigation-Health Care and Health Care Law,
Andrew Pellino, Medical Malpractice Law-Defendants,
Jeff Schlosser, Banking & Finance Law, Business Organizations, and Construction Law, and
Kent Wicker, Criminal Defense: White Collar and Litigation – Antitrust.

DBL Law attorneys listed as 2022 Best Lawyers: Ones to Watch are:

Tony Bickel, Mergers and Acquisitions Law,
Bill Brammell, Civil Rights Law, Criminal Defense: White-Collar, and Commercial Litigation,
Danyel Rickman, Administrative/Regulatory Law, Land Use and Zoning Law,
Katherine Simone, Corporate Law and Real Estate Law,
Katie Tranter, Labor and Employment Law, and
Ryan Whitaker, Corporate Law, Litigation and Controversy-Tax, and Trusts and Estates.

DBL Law Welcomes New Attorneys



DBL Law is pleased to announce that **Andrew Top** has joined the firm as a Senior Title Attorney. Andrew will be working to expand the firm's affiliated title company, Excel Title Services, to the West Chester, Liberty Township and Mason, Ohio areas. Excel Title Services offers a full complement of title services, including title searches, title insurance, closings, and escrow in Ohio, Kentucky, and Indiana.



DBL Law continues to grow with the addition of attorney **Loren Wolff**. Loren has joined DBL Law as a partner and will be based in the Crestview Hills office until the firm's headquarters moves to Covington this Fall.

Attorney Spotlight



DBL Law attorney **Mike Enzweiler** has been selected to Leadership Northern Kentucky's 2022 Class. Leadership Northern Kentucky joins together a select group of leaders, with a variety of career accomplishments and volunteer activities, to gain insight into complex issues facing the state.



DBL Law attorney **Joey Kramer** has joined the Mentoring Plus Board. Mentoring Plus follows a proven methodology to help teens overcome the obstacles they face and turn them into opportunities through life coaching, spiritual guidance and family support.



Kentucky Adopts New Legislation For Estate Creditors

by Patrick Hughes

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by Rebecca McDonough

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Recently enacted House Bill 435 returns the timeframe and conditions in which creditors must present claims against a decedent's estate under KRS 396.011 to those in place prior to 2020 and similarly repeals the notice requirements enacted in 2020, as provided in KRS 396.012. Excepting government creditors, this new legislation impacts all persons, businesses, and lenders with claims arising against a debtor prior to the death of the debtor.

Under the version of KRS 396.011 enacted in 2020:

- Creditors who received notice of the death by mail or other delivery had only sixty (60) days to present any claims against the decedent's estate.
- Creditors who received notice of the death through a general publication by the probate court had six (6) months to present their claims.
- In no event could a creditor bring any claims eight (8) months after the decedent's death.

KRS 396.011, revised in 2021, provides only two timeframes in which creditors may present claims:

- If a personal representative is appointed, creditors now have six (6) months after the appointment to present claims against the decedent's estate.
- In cases where a personal representative is not appointed, creditors have two (2) years from the date of the decedent's death in which to present claims against the estate.

Of greatest significance and uncertainty is the repeal of the notice requirements enacted in 2020 and provided in KRS 396.012. Pursuant to KRS 396.012, the probate court was required to publish notice and personal representatives were required to provide mail or other delivery notice to creditors. House Bill 435 does not incorporate new notice requirements.

The impact of House Bill 435:

- Returning to the longer time period in which claims may be brought against an estate is a clear win for creditors.
- Creditors will need to be aware of whether or not a personal representative is appointed. Failure could cause a creditor to miss the six-month or two-year deadlines and relinquishing its claim against the decedent's estate.
- Absent affirmative notice obligations on the probate court or personal representatives, it appears that creditors will need to take a more active role in monitoring their debtors.
- Ultimately, the long-term impacts of House Bill 435 are uncertain.