

Excellence

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

WINTER 2022

1 FIRM NEWS

DBL Law, Excel Title Services Relocate Northern Kentucky Office

2 EMPLOYMENT & LABOR

DOL Issues New Guidance for Health Plans to Pay for COVID-19 Test Kits, Beginning January 15

Ohio Raises Minimum Wage

3 ECONOMIC DEVELOPMENT

Local Business Owners Discuss Success Tips During New DBL Law "Made It" Series

4 REAL ESTATE

Requiem for the Drop and Swap . . . Not Just Yet

5 FIRM NEWS

6 CRIMINAL DEFENSE

Not Guilty Verdicts for Former Kentucky Coal Company Supervisors

6 HEALTH CARE

Use of Telehealth Dramatically Increased During the Pandemic

We're On The Move: DBL Law, Excel Title Services Relocate Northern Kentucky Office

DBL Law and Excel Title Services have moved their Northern Kentucky location to Covington, occupying a prominent 34,000-square-foot space in the heart of the Central Business District. Approximately 75 attorneys, paralegals and professional staff have made the move from Crestview Hills to Covington.



The Covington location, designed by PCA Architecture, centers around an existing, historic "Beaux Arts Style" building that was first built to house a telephone company. A stair and elevator tower have been attached to the existing building, and two new floors have been added to the top of that building, both with rooftop decks overlooking the Cincinnati skyline. A new structure adjoins the historic one and includes a covered parking garage and three-story office building.

Developer Allen Haehnle enlisted Albert Fedders and the Fedders Construction team to bring this project to fruition.

"We look forward to welcoming our clients, business partners, and friends into this amazing space. Careful thought and planning went into this project to ensure that our office is inviting, hospitable, innovative and engaging," remarked Bob Hoffer, managing partner.

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DOL Issues New Guidance for Health Plans to Pay for COVID-19 Test Kits, Beginning January 15th

by Katie Tranter ktranter@dbllaw.com

The U.S. Department of Labor (DOL) issued a new set of frequently asked questions to implement President Biden's order that, starting January 15, health plans and insurance issuers must cover or reimburse costs for over-the-counter (OTC) COVID-19 tests without imposing any cost-sharing requirements, prior authorization, or other medical management requirements. Employees and dependents covered by an employer-sponsored health plan may purchase tests online or in brick and mortar retail locations. The tests may be paid for upfront by an individual's health plan or individuals may be reimbursed by submitting a claim. Employers may, but are not required to, provide coverage for OTC COVID-19 tests purchased before January 15.

Providing Coverage – Direct or Reimbursement

A health plan or insurance issuer may provide coverage either directly or through reimbursement. If a plan or issuer provides direct coverage of OTC COVID-19 tests, it may not limit coverage to tests that are only provided through preferred pharmacies or retailers. Employees and dependents may also be reimbursed by submitting a claim to their plan after purchasing an OTC COVID-19 test. However, plans and issuers are strongly encouraged to provide direct coverage for OTC COVID-19 tests by reimbursing sellers directly and without requiring participants, beneficiaries, or enrollees to provide upfront payment and seek reimbursement.

Physician's Authorization Not Required

The updated guidance requires coverage without a doctor's order or individualized clinical assessment from a health care provider. The coverage also must be provided without imposing any cost-sharing requirements such as deductibles, co-payments or co-insurance, prior authorization, or other medical management requirements.



Limit on Number of Tests

The DOL guidance states that plans and issuers may "limit" the number of OTC COVID-19 tests covered for each participant, beneficiary, or enrollee to 8 tests per 30-day period (or per calendar month). This limit only applies with respect to the coverage of OTC COVID-19 tests that are administered without a doctor's authorization; health plans and insurance issuers must continue to provide coverage for all COVID-19 tests that are administered with a provider's involvement or prescription.

At DBL Law, we continue to stay up-to-date on all COVID-19 related issues so we can assist you with all your COVID-19 business needs.

**DBL Law Clerk Alexis Switzer contributed to this article.*

OHIO RAISES MINIMUM WAGE

Effective January 1, 2022, Ohio minimum wage increased to \$9.30 for nontipped employees and \$4.65 for tipped employees. Ohio employers must post updated minimum wage posters.



Local Business Owners Discuss Success Tips During New DBL Law "Made It" Series

by Loren Wolff | lwolff@dbllaw.com

DBL Law is partnering with community organizations to launch a morning coffee series titled "Made It." The series will be held every other month at 8:45 am at the new DBL Law Covington office.

Branded as "A fresh, new way to start your day," each Made It event will feature a relaxed discussion about business ownership from the perspective of an emerging business owner and an established business owner. "There are so many remarkable stories to be told," said Loren Wolff, DBL Law Economic Development partner. "We're thrilled to invite the public into our new Covington space to network and to have an opportunity to gain insight on resources available to businesses."

The Made It series is not just a speaking event – it's an opportunity to connect with other business owners, community leaders, and service providers, so it will include plenty of networking time before and after the speakers.

The agenda is as follows:

- 8:45-9:15 a.m. Coffee and Networking
- 9:15-9:45 a.m. Featured Speakers
- 9:45-10:15 a.m. Continued Networking

The kick-off Made It Series event will be on March 24. Featured speakers are Shannon Glover and Ron Washington.



Lifelong Covington resident **Shannon Glover** is always looking to make her customers' experience "legendary." Inspired by her mother's passion for cooking and the chef's educational experience at Le Cordon Bleu, her business **Legendary Eatz** is a remix on classic meals fully prepared to have conveniently at home. She takes special care to ensure local, healthier

ingredients based on a customer's lifestyles and needs. She is currently working on expanding this personalization into a natural skincare brand.



After retiring from law enforcement in 2005, Covington Mayor Pro-Tem/Commissioner **Ron Washington** became a pioneer in the fight against heroin and other opioid addiction, founding **NKY Med Clinic**. The Clinic, which Ron sold in 2016, is one of the largest drug treatment centers in Kentucky. It has helped thousands of people in recovery

by reducing or eliminating their dependence on heroin and other drugs.

"Made It" partners include:

- Covington Business Council
- DBL Law
- Renaissance Covington

Registration is free, but required. Click [here](#) to register.

For additional information, contact Loren at 859.426.2108.





Requiem for the Drop and Swap . . . Not Just Yet!

by Drew Emmert aemmert@dbllaw.com

For many years, seasoned commercial real estate (CRE) investors in Ohio have structured real estate transactions as an entity purchase and sale, often referred to as a "drop-and-swap." In a drop-and-swap, the seller transfers or "drops" the real property into a newly-formed single member limited liability company, usually formed by the seller, in a conveyance that is exempt from Ohio conveyance tax. The seller then transfers 100% of the membership interests in the LLC to the Buyer in exchange for the purchase price.

Such a structure has a two-fold advantage. First, the transaction avoids the payment of a conveyance tax at the time that the deed is recorded, which tax is usually a seller obligation, and therefore a seller incentive. Secondly, and most importantly, the structure lessens the chance that the county auditor will increase the property's tax valuation for real property tax purposes, which is a significant motivator for the buyer. Since county real estate taxes are paid annually, not just once at the time of a sale, a reduced tax valuation is a huge motivator to CRE purchasers because real estate taxes are a recurring yearly obligation.

At times, a sale of commercial real estate results in a gain that may be double or even triple the original tax-assessed valuation of a property. Such gains will typically cause real estate taxes to likewise double or triple in amount since the county auditor will be notified of the increased sale price when the deed conveyance tax is collected and the deed is recorded. If the transaction can be closed as a "drop and swap," that is, without payment of a conveyance tax and no notice of the higher sale price to the county auditor, then the investor can avoid a significant increase in the property's tax valuation and a commensurate real estate tax increase that the investor must pay annually.

In a recent Ohio Court case, the Court recognized that the price paid for a "drop and swap" transfer of a 100% equity interest in the LLC owning a 264-unit apartment complex in Columbus, known as the Palmer House, should be presumed to constitute the value of the real estate owned by that entity for real estate tax purposes. The county auditor had valued the real estate at \$16 million for 2015, and counsel to the Board of Education (BOE) noticed that a lender had recently put a much larger mortgage on the property (\$25,536,000) and the BOE inferred a sale price of \$34 million dollars ($\$25,536,000 \div 0.75$) and filed a complaint seeking to increase the taxable value of the property. While the Palmer House case has raised the notoriety of "drop and swap" transactions, the legal effect is limited to recognizing that an



entity purchase of real estate can also constitute value for real property tax purposes. The limited holding in the Palmer House case is an advantage to CRE investors more for what the case doesn't do than what it does do. The case does not in any way: (i) prohibit the practice of buying real estate as an entity purchase, (ii) address the failure of the seller in the Palmer House case to pay a conveyance tax at the time of recording the deed, or (iii) mandate reporting of drop and swap or entity purchase transactions for conveyance tax and/or real property valuation purposes.

Therefore, CRE investors should definitely consider a drop and swap structure in the appropriate circumstances to: (a) maintain a lower tax valuation of the subject property, and thereby, (b) achieve significant tax savings. However, there are many traps for the unwary when structuring a drop and swap or entity purchase that increase the likelihood that the transaction will be contested by the local BOE.

CRE investors should seek commercial real estate counsel experienced in successful entity purchase transactions and in fighting property tax complaints filed by the BOE. In many circumstances, the advantages of a drop and swap may far outweigh the potential that the local BOE will file a complaint to increase the tax valuation of the subject property. Additionally, if the local BOE files a complaint to raise the tax valuation of the subject property, whether or not following an entity purchase, there are strategies to limit the BOE's efforts.

Firm & Attorney News more at dbllaw.com/news

Excel Title



Excel Title Services has expanded its regional footprint, opening an office in West Chester Township's Towne Centre Square.

Excel Title Services is a fully staffed title company built for speed, responsiveness and the highest level of professional service. With licensed title insurance agents and real estate attorneys on staff, you can rest assured that we have your best interests in mind. Our depth of experience is comprehensive in assisting owners, purchasers, lenders, developers and builders with a full range of title services.



DBL Law will be honored at the 2022 Medical Mutual Pillar Awards for Community Service on February 9. The Pillar Awards for Community Service honors businesses of all types and sizes that make outstanding contributions to Greater Cincinnati communities. Its purpose is to encourage a charitable environment, recognize creative efforts that make a difference and demonstrate the ties between the for-profit and nonprofit worlds.

NKY Chamber Honors Bob Hoffer with the 2021 Frontiersman Award



Bob Hoffer has received the Walter R. Dunlevy/Frontiersman Award. Established in 1968 by the Northern Kentucky Chamber of Commerce, the Frontiersman Award recognizes an individual who has a lifelong history of outstanding service to the Northern Kentucky community, exhibits outstanding service to his profession or industry, and exemplifies the highest standards of personal integrity and family responsibility.

Attorney Spotlight



DBL Law Partner **David Kramer** has been named the #1 lawyer in the Top 10 List of 2022 *Kentucky Super Lawyers*. Every year, Super Lawyers evaluates lawyers across the country for its annual Top 10 List. Each candidate is measured based on 12 indicators of peer recognition and professional achievement. The Top 10 List features selected Super Lawyers attorneys from over 70 practice areas with the most points earned based on those indicators. Kramer is the Chair of DBL Law's Litigation practice group.



DBL Law attorney **Patrick Reagan** has been elected to the Ohio Justice and Policy Center Board. OJPC's mission is to create fair, intelligent, redemptive criminal-justice systems through zealous client-centered advocacy, innovative policy reform, and cross-sector community education.



The Leadership Louisville Center Board of Directors has selected DBL Law attorney **Kayla Campbell** to its Ignite Louisville class. Ignite Louisville is designed for young professionals and up-and-coming leaders. Ignite Louisville teaches career-changing leadership competencies through a combination of training, intensive relationship and team building, and hands-on work with a local nonprofit.



DBL Law Litigation partner **Chris Markus** was among 10 community members highlighted in the December 16, 2021 *NKY Thrives* newsletter for making a difference in 2021. According to Danielle Amrine, CEO of Welcome House, Chris was instrumental in bringing a long-awaited shelter for vulnerable men who lack housing to Northern Kentucky. "I've never been so impressed with somebody's willingness and dedication to really just go fight with us and stand up for our mission and represent us in the best way possible," Amrine said.



Not Guilty Verdicts For Former Kentucky Coal Company Supervisors

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A jury in the U.S. District Court in Louisville, Kentucky, returned not guilty verdicts for four former Armstrong Coal supervisors who had been charged with defrauding the Mine Safety and Health Administration on respirable dust tests. The trial lasted seven days, and the jury deliberated for just two hours before returning the verdicts.

Federal prosecutors had alleged that between 2013 and 2015, the four defendants ordered subordinates to tamper with dust collection equipment at two mines to stay in compliance with federal regulations which are in place to protect miners from inhaling too much dusty air. The defendants denied the charges, and the jury agreed.

Kent Wicker and Kayla Campbell of DBL Law represented one of the individuals, a General Manager of Armstrong's underground mines.

"There was never a scrap of evidence to prove that my client was guilty," Wicker commented. "We were gratified the jury understood," Wicker remarked.

The trial was postponed due to the COVID-19 pandemic and then moved from Owensboro to Louisville. The trial received national attention from The Washington Post, ABC News and other national media outlets.



Use of Telehealth Dramatically Increased During the Pandemic

by Rebecca Sheehan rsheehan@dbllaw.com

In December 2021, the U.S. Department of Health & Human Services (HHS) issued a report examining changes in Medicare beneficiaries' use of telehealth services during the COVID-19 public health emergency. The report found that Medicare beneficiaries' use of telehealth services increased 63-fold during the pandemic—from approximately 840,000 visits in 2019 to 52.7 million visits in 2020. Telehealth visits for behavioral health services showed the largest increase. This increase occurred despite a decrease in overall healthcare utilization during the pandemic.

Disparities in telehealth were found by race, rural location, and geographic region. Specifically, Black and rural beneficiaries had lower use of telehealth services compared with White and urban beneficiaries, and telehealth use was higher in the Northeast and West compared to the Midwest and South. HHS hypothesized that the disparities may be because access to technology differs among racial groups in rural and urban areas, as cities tend to have more diverse populations and better Internet access. The research also demonstrates how telehealth helped maintain access to care when in-person care was reduced, but it was not able to replace all in-person visits, especially those needing specialist care. These findings on telehealth, especially for behavioral health services, are not surprising and are in line with other studies that found an increase in mental health-related diagnoses, substance use, and suicide ideation during the pandemic.

HHS is now evaluating whether to extend telehealth flexibilities post-pandemic. Those flexibilities include waivers of restrictions on who can receive telehealth and expanding what services can be provided via telehealth. HHS is also using the report to inform future Medicare policies and determine whether and which services should be permanently added to the Medicare telehealth services list.

Services added temporarily during the COVID-19 public health emergency will remain in place through December 31, 2023.

