

CLIENT BULLETIN

**ANOTHER CASE, DIFFERENT FACTS, HOLDING A CORPORATE/COMPANY OFFICER
PERSONALLY LIABLE, AS GUARANTOR, ON A CORPORATE OBLIGATION**

A few months ago we reported on a Court decision that held a corporate officer personally liable for a corporate obligation where he had signed the contract using his corporate officer title but, because within the body of the contract there was a provision that the signer (designated in the body of the contract as “Owner”) was also guaranteeing the corporation’s obligations, he was deemed a guarantor of the corporation’s obligation.

In a recently issued decision of the Second District Court of Appeals, the Court found that the president of a limited liability company, who had signed both a lease and a guaranty of lease as “Daryl Harrison, President,” was personally liable on the lease as a personal guarantor of the lease. After pointing out that when an officer of a corporation signs his or her name with a designation of his or her corporate title, the use of such words as “president” is merely descriptive, and, therefore, the signer of the guaranty cannot deny personal liability if the language of the guaranty is clear and unambiguous, the Court held that because the language of the guaranty expressly provided that if the guarantor should leave the company a substitute guarantor must be provided within five days, that the signing with the company title did not indicate that the signing of the guaranty was on behalf of the company. The Court also pointed out that if the guaranty of the company’s lease as signed by the president was simply a guaranty on behalf of the company, it would not really have any import since the company, as the lessee under the lease, was already obligated on the lease (that is, company guaranty would be meaningless as the company was already obligated on the lease).

NEW CREDIT REPORTING RULES – EFFECTIVE JULY 1, 2010

The FTC has adopted a Rule concerning the accuracy and integrity of information furnished to a Consumer Reporting Agency (CRA), commonly known as a credit bureau. Information furnished to a CRA for the purpose of having the information included in a consumer report is subject to the new Rule.

The Rule requires any entity that furnishes information to a CRA to have written policies and procedures in place regarding the accuracy and integrity of consumer information by July 1, 2010. The Rule also adopts a mandatory requirement for investigating direct disputes about the accuracy of that information. The compliance date is, of course, subject to change.

The new Rule does not affect you if the only information you submit to a CRA is information necessary to receive a report on a consumer. If you have questions about how this Rule will affect your interaction with CRAs, we can assist you.

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TRANSFER ON DEATH (TOD) NOW CREATED BY AFFIDAVIT RATHER THAN DEED

A few years ago, Ohio created by statute a “transfer on death” deed that operated, for real property, much like a “payable on death” (POD) bank account. However, effective December 28, 2009 with Governor Strickland’s signature, S.B. 124 immediately became law, providing that “transfer on death” of real property is now created by affidavit rather than by deed. TOD deeds recorded prior to December 2009 are unaffected by the statutory change and remain valid. A TOD deed signed and notarized prior to December 28, 2009 but not recorded in the Recorder’s Office of the appropriate county (a so-called “desk drawer deed”) cannot now be recorded.

Joint Tenancy with Rights of Survivorship (“JTWROS”) is still created by deed. A JTWROS deed vests title, as joint tenants, in the grantees upon delivery and recording of the JTWROS deed, and the joint tenants remain as joint tenants, co-owning the real property, until (a) both/all of the joint tenants join in a deed conveying part or all of their joint interest in the real property or (b) one of the joint tenants dies, which operates to automatically transfer the deceased joint tenant’s interest to the surviving joint tenant(s). However, TOD creates no present ownership interest in the named TOD beneficiary, and the owner(s) of the real property who named the TOD beneficiary may, at any time, expressly revoke the TOD beneficiary designation or implicitly revoke the TOD beneficiary designation by conveying the real property to a third party. A JTWROS deed may be delivered to, and accepted by, all of the joint tenants named in the JTWROS deed (hence, one cannot validly create JTWROS status, say with a child, by doing a JTWROS deed including the child as a joint tenant but without the child’s knowledge). However, TOD beneficiary status can be created without delivery of the Affidavit to the TOD beneficiary and without the TOD beneficiary’s actual knowledge.

****NOTICE****

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.

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