

“He Sai d, She Sai d”

Law Offices of Burton A. Brown

Volume I, Issue 2

Special points of interest:

- Calling all adults: you need a will and estate plan!
- Changes to the Family and Medical Leave Act
- Case updates
- Additional services offered by the firm
- Send us your comments and questions; call or email info@babrownlaw.com

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Now is the Best Time to Prepare Your Will and Estate Plan

Contrary to what you might think, everyone should have a will and estate plan in place. You've worked hard to earn your money or build up your business, and a properly drafted will and estate plan can ensure that your business and family plans are secure even when you are not around to take care of them.

Not everyone has taken the time to think about getting started, though. Here's a brief overview:

Basically, estate plans describe your plans for your care and treatment should you become disabled, and for the disposition of your assets at the time of your death. An estate plan is made up of several documents, including your will, power of attorney (general

and medical), a medical authorization and waiver, and a revocable living trust.

To start, you need to know who



you want managing your finances if you become unable to handle them. Next, who do you want making your medical decisions? Who do you want making your end of life decisions? Who will inherit your assets, how, and when? Who should administer

your estate at your death?

An estate plan can also help you provide for your children without incurring unnecessary taxes. Business owners wishing to transfer control to their children also want to make sure the transfer occurs the way they want it to, with proper planning. Note, that for 2009, the estate tax exemption is increasing to \$3.5 million, but is set to expire in 2010 (reverting back to zero).

In addition to estate and business planning, there are a number of scenarios that encourage special planning, such as special needs children, blended families, and disabled individuals. Call us to arrange for a consultation should you have any questions.

Be Ready for Changes to the Family and Medical Leave Act

In February, the Department of Labor proposed its first changes to the Family and Medical Leave Act since 1993. After a public comment period, the changes will likely be finalized before the end of this year.

While the changes are not yet final, employers and employees who are subject to the FMLA

should be aware of the proposals.

For instance, the DOL has extended the notice period from 2 to 5 days in which employers must notify employees of a decision to grant or deny FMLA leave. If an employee claims that notice was given late, then he or she is required to show harm as a result.

The DOL has also agreed that

when employees calls in sick, they have not automatically triggered FMLA rights. Other changes include attendance incentive plans to deny bonuses for missing work due to FMLA leave, and new rules about requesting authentication from the treating physician. Be on the lookout for final rules, and make sure your policies comply.

“He Said, She Said”

New Housing Bill Offers Incentive to First-Time Homeowners



This year, President Bush signed into law the Housing and Economic Recovery Act of 2008, meant to assist homeowners with avoiding foreclosure, boost home buying, and help mortgage giants Fannie Mae and Freddie Mac (before the government took control of them).

One of the bill’s incentives for first-time homebuyers comes in the form of a tax credit for up to 10% of the home’s purchase price—up to \$7,500 for single individuals and married couples

filing jointly, and \$3,750 for married individuals filing separately.

Sounds like an attractive deal—and the credit has gotten a lot of attention in the media.

But tread carefully: the credit, unlike the economic-stimulus credits issued by the government earlier this year, is essentially a 0% interest loan from the government. This is because taxpayers who choose to take the credit have to repay the credit within 15 years, in equal amounts. If you sell your home within the 15 year

period, you will probably have to immediately repay any remaining amount. There are also income thresholds that apply.

Finally, the credit does not last forever: it only applies to homes purchased from April 9, 2008 through July 1, 2009. There are complicated rules about who may take the credit, when they may claim it, and other requirements. If you have questions about this complex credit, you should contact your accountant or tax representative.

“The lesson: paying the general contractor and hoping the sub gets its share is not enough; owners must set aside sufficient funds to make sure that subcontractors get paid.”

New Rules on Pre-Recorded Sales Messages

If your marketing plan uses pre-recorded sales messages that are sent to potential customers, look out: the FTC has just changed the rules on how such messages operate.

Starting on Dec. 1st, any pre-recorded sales message promoting goods or services must require an “opt-out” selection so that consumers can easily choose not to receive future messages from the

seller. Beginning on Sept. 1, 2009, pre-recorded sales messages can only be sent to consumers who have agreed in writing with the seller to receive them.

Pre-recorded calls that are “informational” calls, not attempting to sell something, are not affected; and pre-recorded calls made on behalf of non-profit charitable institutions must contain the opt-out, but are exempt

from the written agreement requirement.

The FTC has allowed consumers to receive such messages by any means allowed under federal law regarding electronic signatures, so a traditional signature may not be required.

For more information, see the FTC’s link at www.ftc.gov/opa/2008/08/tsr.shtm.

Case Update: Mechanics Lien Allowed for Subcontractor



The Illinois Appellate Court recently ruled in favor of a subcontractor that wasn’t paid for its services from the general, even though the general was fully paid by the owner.

The subcontractor, Excel Electric Inc., was hired by the general contractor, Stonitsch Construction Inc., to provide electrical services for a renovation job on a univer-

sity residence hall. When the job was complete, Stonitsch sent the owner a final application for payment, which listed all fees due, including those of Excel (over \$130,000).

The owner wired the money to the bank. The bank, however, used the funds to satisfy a debt owed by Stonitsch. Excel received no payment and filed its mechanics

lien claim.

The court held that the owner was liable for funds due to Excel, because the owner had notice of Excel’s claim via the final application for payment. The lesson: paying the general contractor and hoping the sub gets its share is not enough; owners must set aside sufficient funds to make sure that subcontractors get paid.

Court Cuts Subcontractors a Break on Home Repair Jobs

In our last issue, we warned you to “get it in writing” if you want to enforce your mechanic’s lien for home remodeling or repair work over \$1,000. This was because of the requirements of the Home Repair and Remodeling Act, designed to shield homeowners from unscrupulous contractors.

Since then, the Illinois Supreme Court decided to give subcontractors (but not generals) a break.

The high court decided that these statutory requirements no longer apply to subcontractors. The

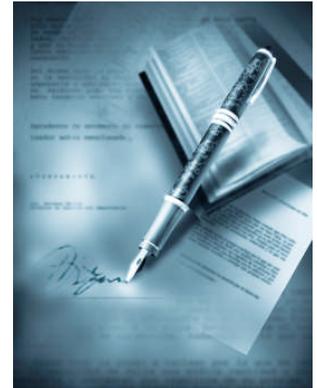
court reasoned that subcontractors work for general contractors, who are the ones responsible for keeping homeowners informed and safe.

The court added that making an exception for subcontractors would ease the burden on homeowners, who would no longer have to coordinate with all the contractors in their home—just the general.

The court overruled lower court rulings which held that contractors in these circumstances could

not collect their fees. In such one case, an electrician had tried to collect on its mechanic’s lien for \$14,000 based on an oral contract, but had not provided an initial written estimate. The lower court had ruled against him because the statute required a written estimate.

The Act’s requirements still apply to general contractors—you must have a written contract, and you must provide a consumer rights pamphlet. Feel free to contact us for a copy of the court’s opinion.



Over-Texting Employee Had Rights in Personal Text Messages

Many companies provide their employees with pagers that have text-message capabilities. A recent federal court ruling involving personal texts showed that companies must take precautions in these situations.

The case involved a California police sergeant who agreed to his employer’s policy that his pager was limited to city business. After the city noticed many employees

were exceeding their monthly character allotment, it developed an informal policy that employees could “pay as you go” for any characters exceeding the monthly limit.

The sergeant exceeded the limit several times, and after not paying, the city received and reviewed his text message transcripts from the wireless carrier. The messages were personal and often sexually

explicit. The sergeant then sued, claiming his privacy expectations had been violated.

The court agreed and held that the employees had reasonably believed their messages were private.

Any organization utilizing pagers or other devices to employees should implement a policy regarding their use, and put it in writing.

“The court overruled lower court rulings which held that contractors in these circumstances could not collect their fees.”

Firm Holds New Seminar; Welcome to New Clients!

On August 7, 2008, the Law Offices of Burton A. Brown conducted a seminar for HACIA members at the Metra Boardroom offices downtown on the subject of Change Orders. There was good turnout from current and new members, and we were happy to help with your many detailed questions regarding this challenging subject.

The seminar outlined how change orders arise and what to do to make sure they are properly carried out. Judging from the attendees’ comments, change orders arise frequently and can be tricky if not properly dealt with.

Also, on April 3, 2008 we held a previous seminar on Business Formation and Structuring, which is available at our website,

www.babrownlaw.com.

In other news, The Law Offices of Burton A. Brown is pleased to welcome H&P Contractor, Inc. and its principal, Mr. Humberto Pinto, as our newest clients. We are also pleased to welcome new clients Vixen Construction, Inc., Quality Saw & Seal, Inc., and their principal, Ms. Rita Fox.

Glad to have you with us!





The Law Offices of Burton A. Brown

Law Offices of Burton A.
Brown

205 West Wacker Drive
Suite 922
Chicago, Illinois 60606

Phone: 312.236.5582

Fax: 312.236.3503

E-mail: info@babrownlaw.com

Newsletter Editors: Babak Bakhtiari,
Maria Hernandez

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www.babrownlaw.com

A full service law firm that gets results, efficiently.

The Law Offices of Burton A. Brown is a full service law firm with attorneys practicing in both Illinois State and Federal courts. We provide a broad range of services to meet the needs of large corporations, small businesses, and individuals across a multitude of industry groups. We provide integrated services along the following broad practice areas:

- **Business and Real Estate Transactions;**
- **Litigation and Dispute Resolution;**
- **Construction Law;**
- **Estate Planning and Wealth Management;**
- **Guardianships and Probate;**
- **Tax Deed Litigation; and**
- **Elder Law**

To contact us, please call (312) 236-5582, or e-mail info@babrownlaw.com.

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Business in the Digital Age: Cyber-Threats and E-Discovery



In this digital age, cyber-criminals are becoming more sophisticated in their attacks against data networks. According to a new report by IT security firm Sophos, criminals are using “malware” (malicious software) on an innocent organizations’ websites, which makes them vulnerable when the sites are browsed. The report also notes that wireless networks and wireless devices are also giving hackers entry points into networks.

A security breach can lead to problems, especially fines and damages for violating privacy laws. You can guard against the risks by using firewalls and other

technology tools to protect against cyber attacks, as well as by minimizing use of unfamiliar sites. To access the Sophos report, see www.sophos.com.

Nearly as distracting as a cyber-threat is litigation. If you find yourself the unlucky participant in a lawsuit, you might be facing e-discovery. Planning ahead can make the road less bumpy.

The discovery phase of a lawsuit involves the parties exchanging information. Frequently this is done using electronic records, which can often involve thousands of documents. Sorting through this many documents in time-consuming, but what is

worse is having to explain to the court that you accidentally hit the “delete” button. Court fines and sanctions are the last thing a litigant should have to deal with.

Organizations should have a retention plan and procedures in place, including those intended to address e-discovery. Such policies should (1) preserve business records during their useful life; (2) provide an explanation as to why certain documents were destroyed; and (3) limit the potential search areas of discovery requests. Using these policies can make discovery more streamlined and less expensive.