

Seminars

August 22, 2007

Discrimination, Harassment, and Retaliation Update 2007 presented by Tyler P. McLeod and Sandra L. Maass

September 20, 2007

Evictions: Commercial and Residential
Aaron Weiner will present Landlord Remedies and David C. Nelson will present a session on Reporting Real Estate Transactions to the IRS.

Watch the newsletters for more details on these seminars or call Debbie Watson at 392-1250 or email dwatson@akclaw.com.

Attorney Spotlight



David C. Nelson has been elected president of Gladiator's Athletic Association, Inc. for the 2007 – 2008 term. Gladiator's Athletic Association, Inc. is a non-profit corporation that operates youth baseball and football programs.

Abrahams Kaslow & Cassman LLP Receives Recognition from Chambers USA

Our firm received high rankings in Corporate/Mergers and Aquisitions ("M&A") and Real Estate practice areas. AK&C attorneys Howard J. Kaslow and John W. Herdzina received individual recognition in the areas of Corporate/M&A, Sandra L. Maass was recognized for Labor & Employment and Thomas J. Malicki was recognized for Real Estate. (See related article on page 2 of this newsletter.)

This is an advertisement.

The Nebraska Rules of Professional Conduct for attorneys require the following statement on newsletters of law firms:
This newsletter is published by the law firm of Abrahams Kaslow & Cassman LLP to inform our clients and friends about various legal developments and to provide news about our firm. This newsletter is not intended to provide legal advice on specific matters but rather to provide insight into legal topics and issues of current interest. Please consult with legal counsel before taking action on matters covered in this newsletter. If you would like further information or would like to be added to our mailing list, please contact Debbie Watson at 402-392-1250 or email dwatson@akclaw.com.

8712 West Dodge Road, Suite 300
Omaha, Nebraska 68114

ATTORNEYS AT LAW
CASSMAN LLP
&
KASLOW
&
ABRAHAMS





Legal Perspectives

from Abrahams Kaslow & Cassman LLP

The Deals Before The Deal: Pre-Deal Agreements in Mergers & Acquisitions

By Nicholas T. Dafney

As the U.S. stock market and economy have strengthened over the past few years, the level of merger and acquisition activity has grown at all levels of the economy. From the multi-billion dollar public company mergers that appear on the front page of the Wall Street Journal to the sale of the corner grocery store or dry cleaning business by aging baby boomers looking to cash-out of the business they have grown for forty years.

At the core of all of these mergers and acquisitions, and by far the most important of the documents in the transaction, is the Asset Purchase Agreement, Plan of Merger or other definitive agreement that sets forth the terms and conditions of the transaction. Often, however, sellers and buyers in these transactions negotiate and enter into one or more pre-deal agreements. These agreements dictate how the transaction will proceed, establish initial terms and conditions to be incorporated into the eventual definitive agreement, and set forth compensation not only for the transaction itself, but also for the professionals involved in the transaction.

Unfortunately, many of these pre-deal agreements are negotiated and entered into by buyers and sellers without the benefit of legal counsel. Because of the significant, and often times binding, effect that these pre-deal agreements can have on the final version of the definitive agreement, and the overall structure of the transaction itself, having an experienced attorney involved from the very beginning can ensure that the transaction proceeds smoothly and

efficiently, and can help buyers and sellers avoid unintended risks and costs.

Among the most common pre-deal documents are finder/broker agreements. Whether it is a seller using a finder/broker to identify a willing buyer, or a buyer using a finder/broker to identify potential acquisition targets, finder/broker agreements have become very common. Among the key provisions to be negotiated with a finder/broker are exclusivity, fee schedule, covered transactions or "triggering events" and timing considerations for when the fee is earned.

Another important pre-deal agreement is the Confidentiality Agreement between the buyer and seller. The primary purpose of the Confidentiality Agreement is to set forth the terms and conditions upon which the parties will disclose confidential information to each other. A seller will need to provide a potential buyer with sufficient information regarding its business to enable the buyer to formulate and price an offer, while at the same time minimizing business risks inherent in releasing confidential information to competitors and others.

Among the key provisions to be negotiated when drafting Confidentiality Agreements are what information is to be covered and any exceptions, permitted uses and users of the information, and the control process for access to and dissemination of the information. From the seller's perspective, one of the key provisions to include in a Confidentiality Agreement is a disclaimer of representations and warranties as to the information

provided by the seller. The agreement should make it clear that representations and warranties (if any) are made only in the definitive agreement.

Letters of intent are also a common pre-deal document negotiated by buyers and sellers in a potential merger or acquisition transaction. Letters of intent, while useful to establish some of the basic terms and conditions of the proposed transaction, have advantages and disadvantages to both buyers and sellers. For the buyer, a letter of intent is likely to impose upon the seller obligations of good faith and fair dealing.

Among the key provisions to be negotiated when drafting Letters of Intent are deposits/earnest money, financing condition alternatives, due diligence procedures and timing considerations, confidentiality obligations and pre-closing covenants. The disadvantages of letters of intent can be mitigated and the benefits can be maximized through careful drafting.

In the past year, AK&C has provided legal assistance to both buyers and sellers in merger and acquisition transactions ranging in size from multi-million dollar asset and real estate transactions involving property located in multiple states, to single asset real estate purchases between related parties. No matter what the size of the transaction, buyers and sellers contemplating a merger or acquisition are encouraged to contact AK&C as early in the process as possible to ensure that pre-deal agreements are properly negotiated and drafted to minimize liability and risk and to maximize efficiency.

Tenaska Celebrates 20th Anniversary

AK&C congratulates Tenaska on their 20th anniversary. Tenaska was founded on April 1, 2007 in Omaha, Nebraska by a handful of people who joined together with Chairman and CEO Howard Hawks to start a new company. Their goal was to build a power plant -- and if that succeeded, they hoped to build a few more.

Since that time it has grown from six employees to more than 600 employees and has offices, projects and customers in most states, three foreign countries and three continents. Originally Tenaska's business was developing power plants, but in the past 20 years they have diversified with great success into a number of energy segments and markets, including natural gas, power and biofuels marketing, and asset and fund management.

Tenaska has come a long way in the past 20 years, but they remain true to their original concept of being a privately-held company with a reputation for fair deals and exceptional customer service.

AK&C looks forward to continuing to provide legal services to Tenaska for the next 20 years.

AK&C Receives Recognition In Chambers USA

Since 1969, Chambers and Partners has published world-famous guides to the legal profession. The key to their success in the legal directories arena has been the in-depth, unbiased research conducted by their team of highly qualified and experienced researchers.

In conducting its research, Chambers speaks to a vast range of lawyers and their clients (i.e. commercial users of legal services). In-depth interviews with clients and attorneys are done over the telephone, each one lasting about half an hour.

For the current U.S. directory, over 14,000 of these interviews were conducted covering the whole of the USA. They were carried out by a team of over 40 full-time researchers over a period of six months.

The qualities on which rankings are assessed include technical legal ability, professional conduct, client service, commercial astuteness, diligence, commitment, and other qualities most valued by the client.

We are honored to have received such high ranking from Chambers and will continue to strive to provide quality service that our clients deserve.

Military Leave Act

(Continued from page 3)

Conversely, a collective bargaining agreement must not diminish any family military leave right entitlements. Lastly, nothing in the Act affects or diminishes the contract rights or seniority rights of any other employee of any employer covered under the Act.

We strongly suggest you immediately implement a Nebraska Family Military Leave Act policy. Violations of the Act are subject to a civil action in state district court to enforce leave rights. If you have any further questions, please contact one of our employment attorneys who can assist you in drafting the necessary policy and forms.

AK&C's employment law group offers a full range of service.

Defense of Discrimination and Retaliation Claims before the EEOC, NEOC and all state and federal courts

Wage & Hour Audits

Human Resource Development:

Employee Handbooks

Employee Counseling, Discipline & Termination

Family Medical Leave Act Compliance

Americans with Disabilities Act Compliance

Wage Payment Act Compliance

Drug Testing Policies

COBRA Compliance & Notices

Human Resource Legal Audits

Draft & Enforce Employment Contracts:

Offer Letters

Separation Agreements

Confidentiality & Non-competes

Assignment of Invention Agreements

Retention Agreements

OSHA Compliance & Citation Defense

Defense of Workers' Compensation Claims

Executive Compensation

Please contact our employment law attorneys directly for more information:

Harvey B. Cooper

Sandra L. Maass

Tyler P. McLeod

Laurie E. Hellbusch

Employment Update

New Minimum Wage Law Effective July 24, 2007

President Bush signed legislation raising the current federal minimum wage from \$5.15 an hour to \$5.85 an hour effective July 24, 2007. The wage rate will increase to \$6.55 an hour effective July 24, 2008, and \$7.25 an hour effective July 24, 2009.

The new law does not increase the minimum wage paid to customarily tipped employees who remain entitled to \$2.13 per hour. Employers of tipped employees,

however, must ensure such employees receive sufficient tips to make up the difference between \$2.13 and the new federal minimum wage.

Employers are required to prominently display in the workplace minimum wage and other wage and hour requirements. The U.S. Department of Labor's Wage and Hour Division is expected to issue a new minimum wage poster that employers may display to comply



with Wage and Hour posting requirements.

Now is a good time for employers to review their policies regarding payment of wages as the change in minimum wage laws is sure to focus attention on minimum wage, overtime and other wage and hour rules and regulations.

Nebraska Family Military Leave Act

The Nebraska Unicameral enacted the Nebraska Family Military Leave Act effective April 4, 2007. The Act requires covered employers to provide up to 30 days of time off for a spouse or parent of a person called to military service during the time certain federal or state deployment orders are in effect.

Employees and independent contractors are eligible for family military leave if the worker has been employed by the same employer for at least twelve months and has been employed for at least one thousand two hundred fifty (1,250) hours of service during the twelve-month period immediately preceding the commencement of the leave.

An "eligible" employee entitled to leave is an employee or independent contractor who is a spouse or parent of a person called to military service lasting 179 days or longer with the State or United States pursuant to orders of the Governor or President of the United States. Any employer that employs between 15 and 50 employees must provide up to 15 days of unpaid family military leave to an employee during the time federal or state deployment orders are in effect. Employers employing more than 50 employees are required to provide up to 30 days of

unpaid family military leave during such time. The Act does not require the employee to provide a specific reason for taking the leave.

The employee must give at least 14 days advance notice of the intended date upon which the family military leave will commence if leave will consist of five or more consecutive work days. Employees taking family military leave for less than five consecutive days must give the employer advance notice as soon as practicable. Where able, the employee must consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave.

The Act also provides restoration benefits. Any employee who exercises the right to family military leave, upon expiration of the leave, is entitled to be restored by the employer to the position held by the employee when the leave commenced, or to a position with equivalent seniority status, employee benefits, pay, and other terms and conditions of employment. Restoration rights do not apply if the employer can prove the employee

was not restored because of conditions unrelated to the employee's exercise of rights under the Act.

During the family military leave, the employer must make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

Employees taking family military leave shall not lose any employee benefit accrued before the date on which the leave commenced. Employers must not interfere with, restrain, or deny the exercise of or attempt to exercise any right provided under the Act.

An employer cannot discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee who exercises any right under the Act. An employer shall not take any similar action against an employee for opposing any practice made unlawful by the Act. The Act does not affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to the employees under the Act.

(continued on page 2.)