

Legal Updates for Businesses

Welcome to the fall 2025 edition of our firm's Legal Updates for Businesses.

In this edition we have focused on certain aspects of real estate transactions, new requirements for protecting personal data that is collected by so many of our businesses, and on some important changes to the Delaware Corporate law that are favorable to companies and that may forecast a bit more protection for entities from the demands of certain corporate shareholders or LLC members. The breadth of the topics covered is a reminder that changes in the law occur often and in virtually all areas, making it a challenge for all business owners and managers to stay current. Our firm is committed to providing you, our clients, with current and accurate guidance to assist you in running your businesses. We appreciate working with you all and encourage you to reach out for us whenever we can be of assistance.

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Real Estate Taxation

New Jersey Overhauls "Mansion Tax" Law in Major Reform

By: Jason A. Rubin, Esq.

On June 30, 2025, Governor Murphy signed into law Bill S4666/A5804 which enacted significant changes to New Jersey's "Mansion Tax" (technically "a supplemental realty transfer fee" and now under the new law, a "graduated percent fee") relating to the sale of real property and the Controlling Interest Transfer Tax (CITT) applicable to the transfer of ownership interests in an entity (e.g. LLC) which possesses, directly or indirectly, an interest in residential and commercial properties.

Previously, the purchaser was responsible for paying 1% of the purchase price as a Supplemental Realty Transfer Fee when purchasing residential and commercial properties with a sale price of \$1 million or more, with certain exceptions. This 1% tax was paid in addition to the standard Realty Transfer Fee that was paid by the seller. Under both the prior law and the new law, the following types of properties are and continue to be exempt from the tax: Class 1 (Vacant Land), Class 3B (Farmland Qualified), Class 4B (Industrial), Class 4C (Apartments) and Class 15 (Exempt properties such as public schools and houses of worship). However, under the new law, the obligation to pay the Graduated Percent Fee is shifted to the seller. In addition, instead of a flat 1% tax, the Graduated Percent Fee and CITT is paid based on the following schedule:

Sale Price	Percent of Sale Price Paid as Graduated Percent Fee or CITT
\$1,000,000 - \$2,000,000	1.0%
\$2,000,001 - \$2,500,000	2%
\$2,501,000 - \$3,000,000	2.5%
\$3,000,001 - \$3,500,000	3%
\$3,500,000 +	3.5%

The new Graduated Percent Fee represents a drastic change and has the potential to significantly impact real estate transactions in the state of New Jersey. As an example, under the prior regime in a transaction involving the sale of a \$3,500,000 property, the purchaser would have paid a Supplemental Realty Transfer Fee in the amount of \$35,000. Under the new law, the burden is shifted (and increased) and the seller would pay a Graduated Percent Fee of \$105,000 instead. Again, the seller is required to pay the Graduated Percent Fee in addition to the standard Realty Transfer Fee, which on that same \$3,500,000 transaction is \$39,825. As a result of the new law, the seller's total tax on the transaction has now been increased from \$39,825.00 to \$144,825.



Proponents of the law say the new system is aimed at creating a more progressive tax structure with sellers transacting higher-value properties paying a larger share. However, critics believe that the new law will depress the volume of real estate transactions (particularly at the higher thresholds) by pushing sellers to raise prices to cover the extra cost. In addition, for those transactions where the parties are able to successfully negotiate a contract, a significant increase in the tax burden shouldered by the seller will likely impact the willingness of the seller to make accommodations to address the inevitable issues that arise during the life cycle of a transaction such as making repairs or offering a price reduction or credit at closing.

To mitigate the impacts of the new law on pending transactions, there are temporary protections in place. If a contract was signed before July 10, 2025, and the deed is recorded by November 15, 2025, the seller may qualify for a refund.

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Commercial Leases

Pre-Lease Due Diligence Process For Commercial Tenants

By: Jason Waldstein, Esq.

A commercial tenant should conduct thorough due diligence before executing lease agreements, as caveat emptor ("Let the Buyer Beware") still applies to commercial leases in almost all jurisdictions.

While a tenant should negotiate for warranties and representations regarding the condition of the premises at the outset of the lease, whether or not comprehensive representations can be obtained, a tenant should work with its counsel to craft a due diligence process of sufficient scope to adequately protect itself.

Due diligence is a critical process that involves the investigation and review of various aspects of the property and related agreements to identify and address potential risks or issues before finalizing a transaction.



The due diligence process typically includes examining the physical condition of the property, reviewing title and survey matters, and assessing compliance with zoning and environmental regulations.

Amongst the activities which should be considered by a commercial tenant for inclusion in the due diligence process are the following:

1. Land-Use

·Verify all required land-use permits necessary to legally operate the intended business on the premises.

2. Certificate of Occupancy

·Obtain and review current certificate of occupancy for the premises.

3. Zoning

·Review current zoning laws and regulations applicable to the premises.

4. Environmental

·Determine appropriate level of environmental assessment based on lease circumstances, with lengthy leases of large spaces demanding more extensive assessment than short-term leases of modest space.

5. Physical Condition

·Conduct comprehensive physical inspection of premises and essential facilities.

6. Building Restrictions and Covenants

·Review all deed restrictions and restrictive covenants affecting the property.

7. Health and Safety

·Identify any existing code violations or enforcement actions.

The activities which should be considered by a commercial tenant should be tailored to specific the lease transaction and the local legal requirements, with particular attention to the scope of the due diligence process appropriate for the size, duration, and nature of the proposed commercial lease.

In summary, the due diligence process in commercial real estate leasing is a comprehensive process that safeguards tenants by uncovering potential risks and ensuring informed decision-making.

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Corporate

Revisions to Delaware General Corporate Law Limit Stockholder Inspection Rights

By: Jennifer A. Golub, Esq.

On March 25, 2025, an amendment to the Delaware General Corporation Law (DGCL) went into effect, impacting the rights of stockholders to inspect a corporation's books and records.

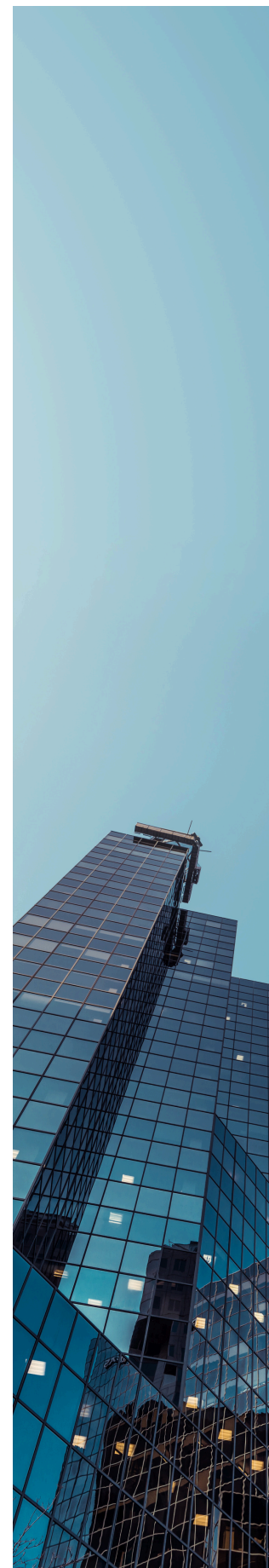
Section 220 of the DGCL is often used by minority stockholders to investigate alleged mismanagement or wrongdoing or for the purpose of valuing equity interests for a potential buy-out. Section 220 previously allowed stockholders to inspect and copy a corporation's stock ledger, list of stockholders and other "books and records", a term that was undefined in the statute. Throughout the years, Delaware courts interpreted the term to mean records that were essential and sufficient to a stockholder's purpose, which could include informal communications such as emails and text messages.

The amendment to the DGCL now specifically defines "books and records" as

- Certificate of incorporation (including agreements incorporated by reference)
- Bylaws (including agreements incorporated by reference)
- Minutes of stockholder meetings and signed consents for the preceding three year
- Communications by the corporation to stockholders for the preceding three years
- Board and committee minutes and materials provided to the Board or committee in connection with actions taken by them
- Annual financial statements for the preceding three years
- Certain agreements with current and prospective stockholders
- Director and officer independence questionnaires

Stockholders may request information outside the defined books and records in limited circumstances: (i) if the corporation does not maintain a certain category of documents, the court may order the production of their "functional equivalent" and (ii) if the demand is made in good faith for a recognized proper purpose, the records are "specifically related" to such purpose and if the stockholder has demonstrated by "clear and convincing evidence that the specific records are necessary and essential to further such purpose".

This amendment is significant in several respects. First, as it limits the information available for inspection, the amendment is expected to make it more difficult for stockholders to obtain evidence to support claims of breach of fiduciary duty and other corporate governance rules. Second, the amendment appears to be an attempt by the legislature to address the recent increase of reincorporation of companies to states such as Texas and Nevada, which have been perceived as more business-friendly than Delaware in recent years.



Finally, the amendment underscores the importance of companies observing corporate formalities and maintaining comprehensive, accurate records, as proper corporate housekeeping will be critical in limiting a stockholder's demand for information beyond the defined "books and records".

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SBA Loans

EIDL Loans May Impede or Delay Refinancings and Sales

By: Robert F. McAnally, Esq.

Economic Injury Disaster Loans ("EIDL Loans") have long been offered by the U.S. Small Business Administration ("SBA") to small businesses suffering substantial economic injury from disasters, such as a hurricane, flood or wildfire. They are intended to help affected small businesses survive until normal operations resume and can be used for working capital and normal expenses, such as, health care benefits, rent, utilities and fixed debt payments. The term can be up to 30 years and there is no prepayment penalty or fees. Unlike Paycheck Protection Program ("PPP") loans which may qualify for forgiveness, these loans must be repaid. Collateral is required on loans of \$50,000.00 or more and generally consists of a blanket security interest in all assets of the borrower.

During the COVID-19 crisis, the EIDL Loan program was expanded to help small businesses recover from the adverse economic effects of the COVID-19 pandemic. This expansion consisted of loans similar to traditional EIDL Loans and also EIDL Advance Funds, which were more akin to grants that did not need to be repaid. The COVID-19 EIDL Loans were also for a term of 30 years. As with traditional EIDL Loans, there is no penalty for prepayment but the loans do need to be repaid. Collateral was required for loans greater than \$25,000 and generally consisted of a blanket security interest in all assets of the borrower. That blanket security interest is perfected by filing a Uniform Commercial Code ("UCC") financing statement with the Secretary of State or other office designated in the UCC adopted by your state.



Unfortunately, many EIDL Loan borrowers are unaware that they granted the SBA a blanket lien on their business assets. The UCC financing statement filed by the SBA is often discovered only when searches of government records are conducted. Often that occurs shortly before closing on a new loan or a sale of the small business. While obtaining a payoff letter for a sale remains fairly straightforward, the discovery of the SBA's blanket lien late in a refinance transaction may cause significant unwanted delays.

Until recently, the SBA routinely facilitated refinances by subordinating its lien to the lien of a new lender, especially if that lender was providing a new SBA guaranteed loan. Earlier this year, the SBA began requiring partial "paydowns" of EIDL Loans, in order to subordinate most EIDL Loans to the lien of a refinancing lender. The wait time for SBA approval of requested subordinations (even with a required paydown) has been substantial. The SBA is aware of the delays related to subordination requests and has indicated that it is working on reducing the approval period.

Nonetheless, the delays related to SBA subordination approval remain a significant concern. Any small business owner contemplating the refinance of debt or the sale of its business, should review its paperwork to determine if it previously obtained either a traditional EIDL Loan, a COVID-19 EIDL Loan, or both. A timely refinance or sale may require significant advance communication with the SBA. Our office regularly handles all types of SBA financing and can help you with any issues related to traditional or COVID-19 EIDL Loans.

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Privacy Rules

Data Privacy Proposed Rules Add Compliance Requirements to Data Collectors

By: Ryan J. Windels, Esq.



Earlier this year, the New Jersey Division of Consumer Affairs (“NJDCA”) proposed rules pertaining to the Data Privacy Act, which was signed into law by Governor Phil Murphy in 2024. Notably, the proposed rules, which NJDCA expects to go into effect next year, expand upon the statutory definition of “personal data” and the ways collectors of such data store and maintain it which, when enacted, will create additional compliance risks.

As defined in the Data Privacy Act, “personal data” is “any information that is linked or reasonably linked to an identified or identifiable person.” The proposed rules state that “personal data” is “reasonably linkable if it can identify a person or a device linked to a person when aggregated with other data, including but not limited to”: (1) full name; (2) mother’s maiden name; (3) telephone number, (4) IP address or other unique device identifiers; (5) place of birth; (6) date of birth; (7) geographical detail; (8) employment information;

(9) username, email address, or any other account holder identifying information; (10) mailing address; and (11) race, ethnicity, sex, sexual orientation, or gender identity or expression.

The proposed rules place several constraints on organizations that collect “personal data,” including, among others, requiring collectors of “personal data” to document its efforts to determine the minimum personal data necessary for the specific purpose, create and maintain a database listing the types of data stored (including where such data is stored and who has access to it), storing data in a way that allows for the identification of consumers for no longer than is necessary, deleting personal data that is no longer necessary, and, on at least a yearly basis, assessing whether biometric identifiers, photographs, and/or audio or video recordings in possession are still necessary for the specific processing purpose.

The proposed rules also put in place the guidelines for which consumers may retrieve or alter their “personal data” collected by companies. In addition to creating a universal opt-out mechanism, the proposed rules lay out the processes by which consumers may opt out of their data being used and/or sold for targeted advertising purposes, request a copy of the “personal data” that a company has collected, and correct inaccuracies and/or delete “personal data” from such records. The proposed rules also put in place additional protections on “personal data” collected of persons under eighteen.

Loyalty programs that certain companies may offer are also impacted by the proposed rules. Aside from providing notice and allowing consumers to opt out at any time, loyalty programs must be reasonably related to the value of a consumer's personal data, and if a company is unable to calculate a good-faith estimate of the value, the proposed rules stat they should not offer a loyalty program.

Finally, the proposed rules outline the duty of care placed on collectors of such data, which includes what considerations should be taken when determining appropriate data security safeguards and how they should be designed.

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