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Legal Updates for Businesses

Welcome to the fall 2026 edition of our firm's Legal Updates for Businesses.

Understanding and dealing with the ongoing and ever-evolving legal requirements that significantly impact businesses, while also paying attention to long-standing issues, are constants in running today's businesses. In this edition, we have discussed commercial leases in real estate, startup projects and entities, the NJDOH penalizing unauthorized health care facilities, the Corporate Transparency Act, and revised NJ use variance standards. Our firm is committed to providing you, our clients, with current and accurate guidance to assist you in the wide range of issues that constantly arise in running your businesses. We appreciate working with you all and encourage you to reach out for us whenever we can be of assistance.

Our firm has had unprecedented growth in 2026, adding 20 new attorneys this year alone. Our practice areas have breadth and depth in our fields and we are working to deepen our bench with even more professionals.

Edward W. Ahart, Esq.
Co-Chair, Corporate and Business Law and Nonprofit Organizations Practice Groups
ewa@spsk.com

Real Estate

Navigating New Jersey's Commercial Office Market

By: Joseph J. Oliver, Esq.

New Jersey's commercial leasing market for office space is a split market. According to recent broker data, overall vacancy in the Northern and Central New Jersey market fell to roughly 21% to 25% in mid-2026, its lowest level since 2022. A closer look at the data reveals the split: Class A buildings constructed or renovated in the past decade carried a 13.5% vacancy rate while older Class A stock sits above 27%. The lease has always been the primary tool for allocating risk between landlords and tenants, but in this environment, paying close attention to your lease terms is more important than ever.

The primary challenge for many landlords appears to be obsolescence rather than vacancy alone. Tenants are concentrating in premium office space, so owners of older suburban buildings must offer free rent and generous improvement allowances to compete. The need to offer these financial concessions arrives as costs such as property taxes, insurance, and utilities continue to rise and as lenders tighten restrictions on the very landlords who need to offer these concessions due to concerns about the landlord's financial health. Moreover, while landlords depend on operating expense pass-throughs to protect their net income, tenants are increasingly demanding caps, exclusions, and audit rights to mitigate their downside risk and defend against later disputes.



As for tenants, uncertainty about headcount and space needs is driving demand for flexibility, such as shorter lease terms, expansion and contraction rights, early termination options, and more permissive subleasing and assignment provisions. Tenants in older office space can negotiate these rights, while tenants in newly built and renovated buildings face landlords who are less willing to accommodate tenant requests. When flexibility is granted, the negotiation centers on who pays for that flexibility, through consent requirements, landlord recapture rights, and early termination fees.

Cost allocation is also at the heart of building out a space at lease commencement and restoring said space at lease expiration or termination. Tenants often overlook these obligations until it is too late, such as at lease expiration, when a landlord may demand removal of improvements or costly restoration. Accordingly, tenants should negotiate at signing which alterations must be removed, the size and timing of any improvement allowance, and who owns the improvements upon their construction. Settling these questions early avoids expensive surprises for tenants and gives landlords certainty about recovering the space in its desired condition.

Personal guaranties bring a landlord's credit concerns and a tenant's exposure into direct conflict. Landlords request them to offset credit risk, but for small businesses, a personal guaranty puts an owner's individual assets at risk. For that reason, tenants should seek a cap on exposure, a "burn-off" after a period of timely payment, or a "good guy" guaranty limited to rent owed until the tenant surrenders possession. These compromises provide landlords meaningful credit support while keeping a tenant's risk proportionate.

Whether you are a landlord or a tenant, early attention to these issues, with experienced counsel, can make the difference between a lease that protects your interests and one that undermines them.

For more information, contact Joseph J.Oliver at joliver@spsk.com or 973-798-4955.

Construction

Foundational Best Practices for New and Start-Up Construction Contractors

By: Shawn T. Powers, Esq.



Just like a successful build, starting a new contracting business requires a clear Critical Path Method (CPM). Too often, new contractors jump into field operations before setting up their administrative foundation.

Putting the "cart before the horse" and disrupting the proverbial CPM can lead to costly lawsuits, failed audits, unnecessary government oversight, or cash flow crisis. Before you break ground or drive the first nail, do the shiny-shoes work and check these essential boxes:

1. Form a Proper Business Entity:

Protect your personal assets. Forming the appropriate business entity will protect and insulate principals from legal liability and unnecessary financial exposure. Along with forming the entity, the business should have a clearly defined operating agreement that lays out the essential breakdown of responsibility, ownership, and powers within the company.

2. Open a business bank account:

Obtain a federal Employer Identification Number (EIN) from the IRS and open dedicated business bank accounts. Never commingle personal and business funds. Set up a separate operating account and an escrow account to hold client deposits or retainage until work is completed.

3. Acquire requisite insurance and bonding:

Insurance coverage isn't optional. At a minimum, a contractor should secure:

- ·General Liability Insurance for property damage and bodily injury claims.
- ·Workers' Compensation Insurance to cover workplace injuries.
- ·Commercial Auto Insurance for vehicles, tools, and equipment.
- ·Surety Bonds if required by the state or project owners.

Obtain Licensing, Registrations, and Permits:

Strict adherence to business registration, consumer protection regulations, insurance and bonding mandates, labor and wage laws, and local municipal ordinances. Operating unlicensed or under-insured can trigger severe fines and forfeit your right to payments or potential mechanics' liens. Secure all necessary local, trade, and state contractor licenses before submitting your first bid.

Always Use Written Contracts and Change Orders:

The era of handshake deals is over. Always use clear, written contracts for every job. If a client or general contractor provides their own contract, review it carefully and do not presume the contracts are fair. Scrutinizing a contract does not convey that you are difficult to work with, but rather expresses sophistication, experience, and attention to detail. Ensure every contract includes clear terms for:

- ·Scope of work, timing, and payment schedule
- ·Indemnification clauses
- ·Attorneys' fees and dispute resolutions

Golden Rule: Don't get me started on written change orders! Never perform extra work without an executed, written change order detailing the revised scope, cost, and timeline. Verbal promises rarely hold up in court and too often contractors get burned by failing to memorialize the change order.

Second set of eyes:

Assume someone always knows something you don't. Build a network of trusted counselors, whether it be legal, accounting, architects, consultants, or other industry mentors, such as non-competing contractors. Bounce ideas off professionals who have already navigated the challenges you face. Pick brains, ask questions, chances are someone has done it before (or knows someone who has).

Conclusion:

Take off the work boots and put on the managerial shiny-shoes. Set aside regular dedicated time for high-level business tasks. Strong administrative habits build strong lasting contracting companies.

For more information, contact Shawn T. Powers at spowers@spsk.com or 973-540-7315.

Healthcare

New Jersey Department of Health Resumes Penalties for Unauthorized Health Care Facility Ownership Transfers

By: Christina Principe, Esq.



The New Jersey Department of Health ("NJDOH" or the "Department") has announced that it will resume assessing civil monetary penalties against licensed health care facilities that undergo a change of ownership without obtaining the Department's prior approval. In a September 3, 2026 guidance memorandum, NJDOH advised that it will issue penalty letters for unauthorized ownership transfers discovered after September 30, 2026.

Under N.J.A.C. 8:33-1.2(i), certain transfers of ownership involving licensed health care facilities require prior NJDOH approval. A transfer of ownership is not limited to an outright sale of a facility and may include certain changes in the ownership interests of the entity operating the facility. The applicable requirements vary depending on the type of facility and the nature of the transaction. Importantly, a transfer of ownership may require NJDOH approval even if the transaction does not require a Certificate of Need.

Pursuant to N.J.A.C. 8:43E-3.4(a)(5), NJDOH may assess a civil monetary penalty of $500 per day for an unauthorized transfer of ownership, accruing from the date of the transfer through the date the Department discovers the violation. The resumption of penalty letters creates potential financial exposure for facilities that complete a transaction before obtaining the required approval, particularly where the unauthorized transfer is not discovered until months after closing.

Health care facility owners, operators and prospective purchasers should evaluate NJDOH approval requirements early in the transaction process and account for the Department's review timeline when planning a closing. Submission of a transfer of ownership application alone does not satisfy the prior approval requirement. Parties should therefore avoid closing transactions requiring NJDOH approval until the necessary authorization has been obtained.

NJDOH's announcement underscores the importance of regulatory compliance in health care transactions. Parties contemplating a change of ownership should consult with health care regulatory counsel to determine the applicable approval requirements and minimize potential regulatory and financial exposure.

For more information regarding NJDOH's approval requirements for changes in ownership or other health care regulatory matters, please contact Christina Principe, Esq., at cp@spsk.com or 973-540-7350.

Business

The Corporate Transparency Act Reporting Requirements Update

By: Elaine M. Cohen, Esq.



In 2021 the Corporate Transparency Act was enacted with the goal to combat financial crime, prevent money laundering and other tax fraud. In the law's original format, a reporting company was defined to include both domestic and foreign companies. The reporting company was required to complete an online form, called a beneficial ownership information report (a "BOI"), and report specific personal information and details relating to the owners of the company. This could be accomplished directly by the owner after obtaining a unique financial crimes enforcement network ("FINCEN") identification number. The original rules placed a burden on small and medium sized companies to disclose information about the persons who exercise substantial control or had ownership of 25% or more in the entity, unless the business fell within 1 of 23 enumerated exceptions (for example banks and other large companies that reported under other laws). The stated intent of the reporting law was to combat illicit activities, corruption and financing of terrorists.

After the enactment, huge opposition arose from many business owners and professional service providers including accountants and attorneys to the new reporting requirement. The objections related mainly to privacy concern as well as the cost to many small businesses. Also, third parties (like accountants and attorneys) could be engaged to complete the filing for the company; however, the rules contained future obligations on the reporting party, to update certain changes in beneficial ownership and address changes. An additional issue was that the professionals may not have the detailed information needed to file or update the report when ownership changed. Many lawsuits were filed to challenge the constitutionality of the new reporting law.

On August 11, 2026 FINCEN issued its final rule that now permanently exempts all United States formed businesses and U.S. Persons. In other words, the CTA only requires information to be reported by entities that are formed under the laws of a foreign country and have registered to conduct business in the United States. Therefore, domestic companies no longer are required to complete the filing based on the final rule and definition change. An additional limitation of the final rule states that the foreign entity is not required to provide information about beneficial owners who are U.S. persons. For US companies, the obligation to file has been removed and the CTA is effectively dead.

One caveat is that individual states followed suit as to the original requirement and enacted state reporting requirements relating to beneficial ownership. The rule change at the federal level does not mean the state laws are invalid. So local reporting requirements may still exist.

For more information contact Elain M. Cohen at ecohen@spsk.com or 973-888-9308

Land Use

Revised New Jersey Use Variance Standards

By: Michael K. Mullen, Esq.

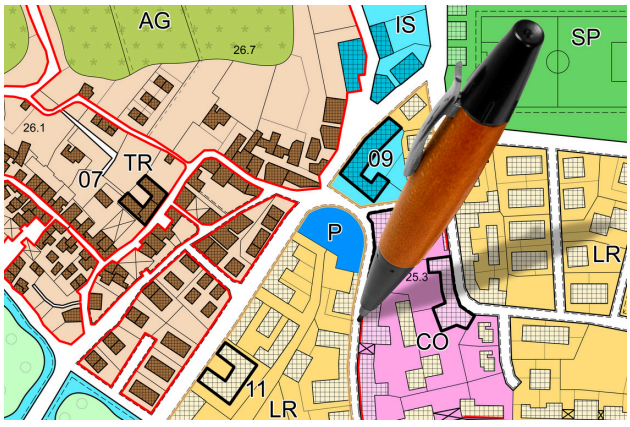
While the world is seemingly preoccupied with land use and development issues pertaining to data centers, there was a significant land use and development decision on July 13, 2026 when the New Jersey Supreme Court released its unanimous decision in Monarch Communities, LLC v. Township of Montville. This particular decision is viewed by some commentators and land use experts as a significant win for municipalities.

In the Monarch case, the Court considered the issue of use variance applications and whether the Legislature's 1997 amendment to N.J.S.A. 40:55D-70 (a provision of the Municipal Land Use Law ("MLUL")) requires a change to the four step analysis the Court previously had adopted under the MLUL in Sica the Board of Adjustment of Wall and its progeny. That analysis was designed as a general guide to Municipal Boards when balancing the "positive and negative criteria" with the "inherently beneficial uses" in use variance applications,

The Monarch case involved a proposal by a developer to construct a 165-unit senior living facility in Montville Township. While senior housing is recognized as an inherently beneficial use under State law, the local zoning board denied the application as it found that it conflicted with the township's zoning plan and therefore could have significant negative impacts on that plan.

The major holding of the Monarch decision is that a use variance application can meet a recognized public need and yet still fail if the site conflicts with the municipality's planning framework. Some commentators have been quick to point out that for developers, investors, lenders and land-use counsel, the decision moves to the forefront of any deal the evaluation of whether a particular application is entitled to use variance approval under the laws of the particular municipality involved. The ruling preserves the preferential treatment afforded to inherently beneficially uses but also complicates the outcome of use variance applications. The Court's decision places increased emphasis on how a proposed development fits within municipality's pre-existing planning objectives. Developers should certainly expect planning boards to examine more closely whether a project is consistent with the municipality's zoning plan and zoning ordinance, even in the case when the proposed use is unquestionably beneficial to the public.

In Monarch the Supreme Court held that because the existing standard for weighing inherently beneficial uses vs. potential negative impacts on a municipal zoning plan did not entirely align with N.J.S.A. 40:55D70's language following the 1997 Amendment, the fourth step of that standard set in the Sica case was revised to incorporate the statutory language regarding the second negative criterion. While inherently beneficial uses continue to receive special consideration, applicants can no longer solely rely on a project's public value to justify a variance. Instead, applicants must also provide evidence demonstrating that the proposal will not substantially undermine local planning objectives.



Zoning boards must now first determine whether an applicant has demonstrated that a proposed variance "will not substantially impair the intent and the purpose of the zoning plan and zoning ordinance." Except as to inherently beneficial uses which remain exempt from the heightened proof standard established in Medici v. BPR Co. for conventional use variances, if a showing that there is no substantial impact on the municipality's zoning plan is not made, the variance must be denied before any balancing of public benefits and detriments occurs.

The Monarch decision from our State Supreme Court underscores the value to municipalities of maintaining comprehensive and up-to-date master plans and developing detailed findings when acting on variance applications. It also underscores the need on the part of the applicants to develop high-quality initial planning analysis and testimony before the board at the subsequent hearing(s) on the particular application.

For more information contact Michael K. Mullen at mkm@spsk.com or 973-540-7307

SCHENCK, PRICE, SMITH & KING, LLP CORPORATE AND BUSINESS LAW PRACTICE GROUP

Edward W. Ahart, *Co-Chair* | 973-540-7310 | ewa@spsk.com
Michael J. Marotte, *Co-Chair* | 973-631-7848 | mjm@spsk.com
Farah N. Ansari | 973-540-7344 | fna@spsk.com
Daniel O. Carroll | 973-631-7842 | doc@spsk.com
John M. Clyne | 973-798-4961 | jclyne@spsk.com
Deborah A. Cmielewski | 973-540-7327 | dac@spsk.com
Elaine M. Cohen | 973-540-7334 | ecohen@spsk.com
James A. Dempsey | 973-540-8898 | jad@spsk.com
Timothy I. Duffy | 973-798-4946 | tid@spsk.com
Douglas R. Eisenberg | 973-540-7302 | dre@spsk.com
Jeremy M. Garlock | 973-540-7358 | jmg@spsk.com
Jennifer A. Golub | 973-539-5203 | jgolub@spsk.com
Ira J. Hammer | 973-631-7859 | ijh@psk.com
Heidi K. Hoffman-Shalloo | 973-540-8234 | hkh@spsk.com
Joseph Maddaloni, Jr. | 973-540-7330 | jmj@spsk.com
Robert F. McAnanly, Jr. | 973-540-7312 | rfm@spsk.com
Heidi S. Minuskin | 973-798-4949 | hsm@spsk.com
Sean Monaghan | 973-631-7856 | sm@spsk.com
Elizabeth Y. Moon | 973-540-8227 | emoon@spsk.com
Michael K. Mullen | 973-540-7307 | mkm@spsk.com
Joseph J. Oliver | 973-798-4955 | joliver@spsk.com
Priya Persaud | 973-540-7301 | ppersaud@spsk.com
Shawn T. Powers | 973-540-7315 | spowers@spsk.com
Christina Principe | 973-540-7350 | cp@spsk.com
Jason A. Rubin | 973-540-7306 | jar@spsk.com
Daniel M. Santarsiero | 973-540-7317 | dsantarsiero@spsk.com
Noah Shier | 973-540-8222 | nshier@spsk.com
Mark K. Silver | 973-798-4950 | mks@spsk.com
Edward J. Trawinski | 201-225-2707 | ejt@spsk.com
John E. Ursin | 973-540-7335 | jeu@spsk.com
Jason J. Waldstein | 973-540-7319 | jjw@spsk.com
Ryan J. Windels | 973-540-7326 | rwindels@spsk.com

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