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Legal Updates for Businesses

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

In an environment where the pace of change in the law has never been faster and in some respects almost overwhelming, whether from new Executive Orders, administrative regulations, interpretations, statutes, etc., the need to remain up to date is constant.

In this version of our newsletter we highlight just some of the many recent developments in a variety of areas that may impact your businesses and lives. We hope that you find these helpful. Our firm of talented and committed attorneys look forward to responding to the questions and needs of our business clients.

Please feel to reach out and allow us to assist you.

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Corporate

Corporate Transparency Act

By: Jennifer A. Golub, Esq.

In 2021, Congress enacted the Corporate Transparency Act (CTA), which required any corporation, limited liability company or other entity created by the filing of a document with a secretary of state or similar office to disclose certain information about its beneficial owners to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The CTA was intended to reduce the use of shell companies to launder money, but its broad reach could result in unprecedented reporting obligations for most domestic corporate entities.

The CTA was to take effect January 1, 2024, but it has been the subject of numerous court challenges and nationwide injunctions.In January 2025, the Texas Top Cop Shop, Inc. et al. v. Garland case reached the United States Supreme Court, which granted a stay of the nationwide injunction blocking enforcement of the CTA. At the same time, a different Texas district court issued its own nationwide injunction of the CTA reporting obligations in Smith v. United States Department of the Treasury.

On February 18, 2025, the Texas district court reconsidered its decision in Smith in light of the Texas Top Cop Shop Supreme Court decision and issued a stay of its own order, which resulted in CTA reporting obligations being back in effect.FinCEN subsequently announced that for the vast majority of reporting companies, the new deadline to file a beneficial ownership interest report (BOIR) would be March 21, 2025.

FinCEN further advised that in keeping with the Treasury Department's commitment to reducing regulatory burden on businesses, it will prioritize reporting for entities posing a significant national security risk while continuing to assess its options to further modify deadlines and reporting obligations for lower-risk entities, including U.S. small businesses.

On February 27, 2025, in an unexpected announcement, FinCEN advised that it would not issue fines, penalties or take enforcement action against any company who fails to file a BOIR by the March 21, 2025 deadline. FinCEN is reviewing the CTA and intends to issue an interim final rule that will further extend the March deadline. FinCEN is also soliciting comments on potential revisions to the BOIR reporting requirements that is expected to be issued later this year, which may narrow the Act's applicability.

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Given FinCEN's announcement that companies that fail to file by March 21, 2025 will not face any fines or penalties, its plan to extend the BOIR filing deadline and its apparent full reassessment of the CTA, at this time we recommend clients gather BOIR information now in order to be prepared to file by any new deadline set by FinCEN.

Municipal - Housing

New Jersey Municipalities and Developers Should Prepare for 2025-2035 Fourth Round Affordable Housing Obligations

By: Madison L. Hooker, Esq.

New Jersey will enter its fourth round (2025-2035) of affordable housing obligations this year as part of the State's ongoing efforts to provide housing accessibility for low- and moderate-income residents. On March 20, 2024, Governor Murphy signed into law an amendment to the Fair Housing Act (FHA) also known as P.L. 2024, c.2. The amendments to the FHA abolished the Council on Affordable Housing (COAH) and established the Affordable Housing Dispute Resolution Program (the Program), which is an alternative dispute resolution program with retired judges to resolve cases regarding the Fair Housing Act.

In addition, the amendments to the FHA directed the Department of Community Affairs (DCA) to produce non-binding estimates of each municipality's fair share obligations using three factors: (1) Equalized Nonresidential Valuation Factor; (2) Income Capacity Factor; and (3) Land Capacity Factor (total acreage that is "developable"). The DCA's report released calculations indicating a need for approximately 150,000 new affordable housing units between 2025 and 2035. This number represents a current deficit of 65,410 units and an anticipated requirement of 84,410 units over the next decade.

Municipalities had a deadline of January 31, 2025, to adopt a binding resolution accepting the DCA's present and prospective need estimates or proposing modified numbers. Municipalities that proposed modified numbers also filed Planner's Reports from their Planners which included an explanation of the modifications based only on Land Capacity Factor. For example, municipalities cited some land identified as "developable" by the DCA, as "undevelopable" because, among other things, the land was already the subject of another project or land development application, or the lots identified were irregular or undersized, and therefore proposed new numbers based on a reduced Land Capacity Factor which excluded those properties. Municipalities could not propose new numbers based on the Equalized Nonresidential Valuation Factor or Income Capacity Factor because the data acquired through those factors could not be refined through local review.

Once Municipalities passed the binding resolution either accepting or modifying the DCA's numbers, they were also required to file a declaratory judgment action within 48 hours of the adoption of the resolution with the Program. The declaratory judgment actions were primarily seeking an order from the Program that, by accepting or modifying the DCA's numbers, municipalities were in constitutional compliance with their respective affordable housing obligations. Municipalities were required to file a declaratory judgment action in order to retain immunity from exclusionary zoning or "builder's remedy" litigation for the Fourth Round of affordable housing obligations (2025-2035).

Interested parties" have until February 28, 2025 to file an answer to a municipality's declaratory judgment action objecting to a municipality's calculation of its fair share obligation. The identified need for approximately 150,000 new affordable units translates into a substantial demand for construction projects across the state. Therefore, interested parties may include builders and developers who want to build affordable housing in a municipality.

The next crucial deadline for municipalities under the amended FHA to continue to retain immunity from affordable housing litigation is June 30, 2025. By this deadline, municipalities must develop Housing Elements and Fair Share Plans (HEFSPs) that outline strategies to meet their assigned affordable housing obligations. Municipalities may propose certain properties for development of affordable housing or exclude others based on Vacant Land Adjustments (lack of available vacant land), Durational Adjustments (lack of sanitary sewer or water), adjustments based on other state or agency planning considerations such as Highlands Regional Master Plan, or adjustments based on affordable housing litigation, in their HEFSPs. Once again, "interested parties" will have until August 31, 2025, to challenge the validity of a municipality's HEFSP.

Municipalities and Developers should stay updated on upcoming deadlines, changes and developments with regard to Fourth Round Affordable Housing requirements. Feel free to contact our office to discuss how Fourth Round Affordable Housing may impact your municipality or business.

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Health Care

New Jersey Adds A New Codey Law Exception

By: Daniel O. Carroll, Esq.

New Jersey recently amended its physician self-referral law, N.J.S.A. 45:9-22.5 et seq. (commonly referred to as the "Codey Law") to add a narrowly tailored exception to the restriction on physician self-referrals. The new exception expressly permits certain referrals under specific circumstances to a pharmacy that is integrated with a physician oncology practice.

In recent years, the New Jersey Board of Pharmacy has taken the position (which has been affirmed by New Jersey courts) that a specialty pharmacy, which would be owned by the physicians who own a related medical practice and to which the physicians would refer their patients for filling of oncology prescriptions, would violate the Codey Law and would not qualify for any then-existing exceptions. See In re Application of Summit Med. Group, 2020 N.J. Super. Unpub. LEXIS 899 (NJ App. Div. No A-1116-18T1); see also, In re Oncology & Hematology Specialists, P.A., 2021 N.J. Super. Unpub. LEXIS 3144 (NJ App. Div. No. A-2080-19) (affirming the Board of Pharmacy's 2019 denial of the practice's application for an in-office pharmacy).

In relevant part, the Codey Law provides that physicians may not refer a patient to a healthcare service in which the physician or the physician's immediate family has a significant beneficial interest. There are only a few exceptions to the law's restrictions and New Jersey physicians must be mindful of these constraints when structuring their practice's business operations. While well-intentioned to avoid healthcare fraud and abuse, the inflexibility of the law may hamper coordination of care for patients in New Jersey. When circumstances dictate a need to rely on an exception to the Codey Law's proscription, the most frequently used exception is the so-called "extension of practice" or "in-house" exception which permits a referral of a medical treatment or a procedure that is provided at the practitioner's medical office and for which a bill is issued directly in the name of the practitioner or the practitioner's medical office. In the recent cases noted above, the New Jersey Board of Pharmacy took the position (and New Jersey courts agreed) that the compounding and dispensing of drugs by the pharmacy did not constitute a medical treatment or procedure, and therefore, the extension of practice exception was not available to practitioners to satisfy the Codey Law.

However, in an effort to address the resulting barrier to care coordination for oncology practices and their patients, the New Jersey legislature amended the Codey Law on October 30, 2024 to expressly allow a physician, who has a significant beneficial interest in a specific type of pharmacy that is integrated with an oncology practice and dispenses medications exclusively to patients of that practice, to continue to refer a patient or direct an employee to do so if that practitioner discloses the significant beneficial interest to the patient. In order to use the exception, the Codey Law requires that the pharmacy be truly integrated with the oncology practice, dispense medication only to the practice's patients and satisfy the following operational requirements:

(1) have direct access to the oncology practice's patient records;

(2) communicate with each patient in person or via telemedicine to review the prescription instructions and assesses the patient for interactions with other drugs and food;

(3) synchronously consult with the oncology practice's treating physicians as appropriate; and

(4) comply with the requirements for timely delivery of medications, hours of operation, and recordkeeping that are established by rule or regulation by the New Jersey Board of Pharmacy.

When structuring practice operations, New Jersey physicians must continue to take care to ensure compliance with the broadly interpreted and applied Codey Law restrictions, but oncology practices may now rely on the law's newest exception when seeking to enhance care coordination for their patients and take comfort that this operational structure is statutorily protected.

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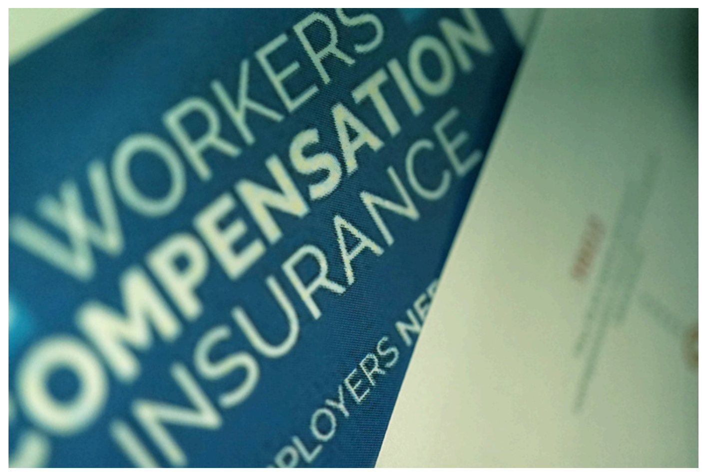
Workers Compensation

Does Your Company Have Enough Insurance to Protect Against Employee Injury?



By: Mark K. Silver, Esq.

As a result of a recent change in New Jersey law, your company may be underinsured and not know it. Last December, the New Jersey Supreme Court issued a ruling that is likely to change the type and amount of insurance coverage that a business will need to carry. By way of background, most companies are required under New Jersey law to maintain a Worker's Compensation insurance policy. Until recently, in all cases where an employee was injured during the course of their duties, Part One of a Worker's Compensation policy covered the employer for any claims involving simple negligence, and Part Two of a Worker's Compensation policy covered the employer for claims alleging intentional misconduct.

However, in Rodriguez v. Shelbourne Springs, LLC, the Supreme Court recently ruled that an insurer is no longer required to defend an employer for claims of intentional wrongdoing so long as the insurance policy contains certain exclusionary language. While one can reasonably ask: What does Part Two now cover, the more pressing issue at the moment is whether your company has additional insurance coverage in place in the event that an employee is injured and files a lawsuit alleging intentional misconduct. As a direct result of the Rodriguez decision, our firm is witnessing insurers pulling coverage from insureds in the middle of active, ongoing lawsuits and subjecting those businesses to potentially catastrophic exposure. Even if your company's current Worker's Compensation policy does not contain the necessary exclusionary language, it is a virtual certainty that your insurer will add the language in your next policy. We are recommending that you contact your insurance broker and have them review your current coverage so that they can determine if your company is adequately protected.

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Real Estate

Navigating Due Diligence In Commercial Real Estate

By: Nadine Yavru-Sakuk, Esq.

A commercial real estate buyer must navigate a complex and multifaceted transaction, balancing the interests and expectations of various stakeholders while effectively managing timelines. Delays can lead to missed opportunities and increased costs; however, hurrying to close a deal can be detrimental to an investment, as a property that seems safe could conceal hidden risks.

A successful transaction begins with a carefully crafted purchase and sales agreement (i.e., contract) that considers a purchaser's objectives and timing while ensuring that specific protections—such as contingencies, seller obligations, and the purchaser's right to conduct due diligence—are included to limit devastating consequences after closing.

The due diligence and timing requirements specified in a contract are essential for any commercial purchase and include, among others, the following components:

Inspections: Engagement of qualified licensed inspectors to evaluate improvements and conditions on the property. A contract should address the parties' obligations related to unacceptable findings and remedies to limit purchasers' exposure to unanticipated costs.

Title: A title search will provide critical information about the property, including its current ownership (confirming, on the most basic level, the seller's right to transfer title) and past ownership, as well as conditions of title, such as liens, judgments, encumbrances, and easements.

Liens and Judgments: A contract's express conditions for closing often require that title to the property is transferred to the purchaser free and clear of any and all liens and judgments, which the Seller must satisfy, typically from the sale proceeds, at or before closing. Accordingly, a search for liens and judgments on a property is a crucial part of due diligence. This process identifies liens (a legal claim by a creditor to secure payment of a debt owed) against the property, such as a mortgage or tax lien for unpaid taxes, and uncovers judgments rendered against the seller, secured by the property, that may cloud the title that seller must clear.

Survey: A survey conducted by a licensed surveyor offers a purchaser valuable insight into the characteristics of the property to be purchased. It confirms details such as lot size, access roads, boundary lines, surface waters, rights of way, soil conditions, and property improvements or alterations.

Environmental characteristics that could limit or negate a purchaser's development plans or intended use before closing are critical to uncover as early as possible.

Zoning: Zoning laws regulate permitted activities on the property. Inquiring with local government regarding a property's zoning and classification is critical to ensure, among other things, that the property is correctly zoned for the purchaser's intended use.

Environmental Assessments: Environmental conditions, such as contamination from hazardous substances, and a seller's non-compliance with existing environmental laws, can result in long-term liabilities for the purchaser. Due diligence should include, in some cases, engaging an environmental engineer to conduct testing, often in coordination with the legalities negotiated by a land use attorney, for such environmental review. If not addressed by the seller prior to the sale, environmental conditions and the requirements under environmental laws to remedy those conditions are also transferred to the purchaser, becoming the purchaser's responsibility and liability.

Commercial real estate transactions require meticulous due diligence tailored to each deal's circumstances, including the review of due diligence reports and materials with guidance from counsel. Rushing the process can lead to costly surprises, making it essential to thoroughly vet all aspects and reports before closing a deal.

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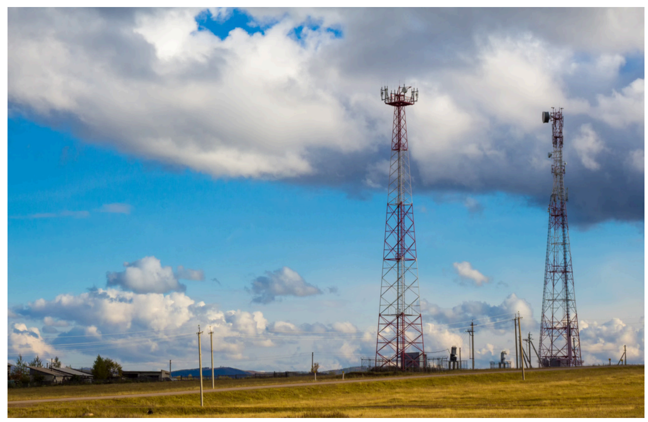
Cell Towers

Issues to Consider Before Placing Wireless Communications Facilities on Your Property

By: Joseph J. Oliver, Esq.



The proliferation of cell towers and other wireless communications facilities over the past two decades coupled with the media attention their public opposition garners could lead New Jersey property owners to believe that the market is saturated. That is far from the case. The ever-increasing demand for wireless communications services means that wireless providers and cell tower operators continue to seek locations in the State of New Jersey and nationwide to construct their wireless communications facilities.

If you have been approached by a wireless provider or cell tower operator regarding the construction of wireless communication facilities on your property or to place antennas on an existing structure on your property, or if you are considering acquiring a property with existing wireless communications facilities, there are several issues you should consider before agreeing to do so. These considerations should be carefully weighed against the obvious benefit of monetizing a portion of your property that may appear to have no other practical use.

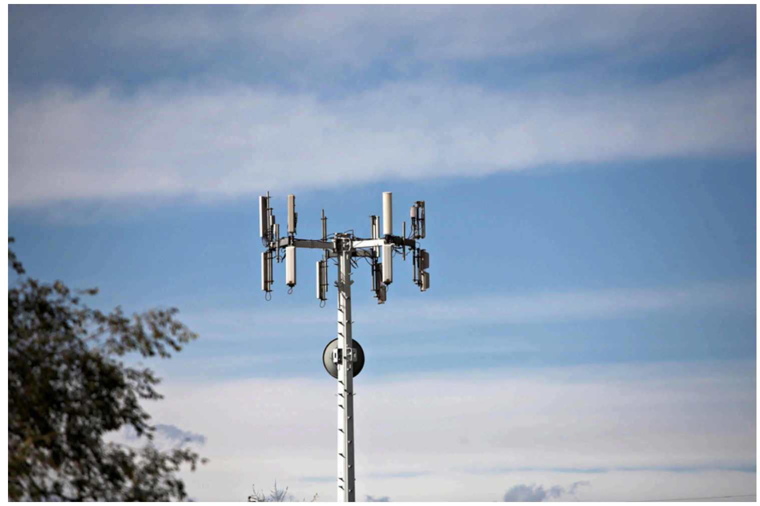
First and foremost is the impact on the future development potential of your property.

Considering the ground area required to construct wireless communications facilities is generally only 2,500 to 5,000 square feet (approximately one-tenth of an acre on the high side) and a rooftop site only requires approximately 50 to 150 square feet, property owners could be led to believe that there will be minimal impact on the remaining portions of the property. In reality, the devil is in the details because any agreement with a wireless provider or cell tower operator will include both access rights for licensees and sublicensees to traverse your property to reach the wireless communications facilities site and rights for the wireless provider or cell tower operator to tie into public utilities on your property.

Accordingly, the initial site selection and determination of access areas is critical to limiting the impact on your property. Moreover, many, if not all, wireless communications facilities agreements also include non-compete clauses that restrict you from selling your property or leasing other portions of your property to competitors of the wireless provider or cell tower operator.

A related issue to consider is the long-term commitment associated with placing wireless communications facilities on your property.

A typical cell tower or wireless communications facilities lease will be for a term of 25 years or more, will include unilateral extension rights that benefit the wireless provider or cell tower operator, and will be terminable by a property owner only in limited circumstances such as a default in payment, which is unlikely considering the credit worthiness of the typical wireless provider or cell tower operator. Even more restrictive than a long-term lease is the granting of a perpetual easement, which wireless provider or cell tower operator are increasingly seeking because it gives them rights to your property in perpetuity. Considering the issues surrounding the future development of your property discussed above, once access and utility rights have been established via a long-term lease or perpetual easement, it can be difficult if not impossible for property owners to undo them. For that reason, it is important that a property owner understand and properly negotiate the terms of its lease or easement.



Finally, property owners should consider whether there is likely to be public opposition to the construction of a cell tower and other wireless communications facility on their property.

As has been reported in the media frequently, the plan to construct a cell tower or other wireless communications facility on your property can lead to very public opposition because such facilities are generally not aesthetically pleasing and can be intrusive on the community. Accordingly, property owners should be prepared to face opposition and answer questions from their neighbors, who may legitimately oppose such facilities (or may have wished that the wireless provider or cell tower operator had selected their property instead).

If you are considering permitting the construction of wireless communication facilities on your property, you should discuss the above issues and more with an attorney before agreeing to anything with a wireless provider or cell tower operator.

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