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In Brief

Avoid the Pitfalls of **LETTERS OF INTENT**

Merle R. Ochrach, Esquire

Clients sometimes come to me with a new transaction and often say let's get a letter of intent put together to tie up the deal. Sometimes the parties can sketch out broad, general terms of the transaction and then work together to complete a more detailed *Purchase and Sale Agreement* and conclude a successful transaction. Unfortunately, more often than not letters of intent do not work out so smoothly.

THE FOLLOWING ARE COMMON PROBLEMS WITH LETTERS OF INTENT THAT SHOULD BE AVOIDED:

- Failure to address the letter to the correct owner of the property or business;
- Failure to have the prospective purchaser sign the letter. It's not effective and binding if signed by a real estate broker or business broker;
- Failure to fully and properly identify what is being purchased;
- Going into so much detail in the letter of intent that you may as well have negotiated the agreement. The costs of the negotiation became extreme and you still need a purchase agreement;
- Having a nonbinding letter of intent and the seller or buyer then backs out of the deal after you have gone through the time and expense of negotiating the letter of intent with no transaction to show for it;
- Having a letter of intent that does not cover all of the major issues of the deal, in sufficient detail, to create a formal agreement;
- Failure to include important contingencies like financing, environmental issues, contracts with key employees;
- Failure to review with your attorney until after it's signed. If terms are left out it's difficult to go back and add major terms.

These issues can lead to disappointment, cost, delay and potential loss of the transaction. The terms of letters of intent need to be carefully considered. There is no cookie cutter form that works for every deal. With proper consideration and terms we can help you effectively and efficiently achieve the goal you want. Better yet, let's skip right to the ultimate agreement.

We are tickled pink...



Mark F.
Himsworth

J. Edmund
Mullin

Steven H.
Lupin

Joseph J.
McGrory Jr.

Robert E.
Slota Jr.

...to be selected to 2013 Pennsylvania Super Lawyers

There are some battles ahead and we are ready to win. Join us in the fight against breast cancer. We have made a donation to Susan G. Komen for the Cure®.

*Not shown is
Edward Rubin.

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ATTORNEYS AT LAW

ACTS Center—Blue Bell • 375 Morris Road • Post Office Box 1479 • Lansdale, PA 19446-0773

215.661.0400 • www.HRMML.com

Rights And Responsibilities Under The FMLA

Ethan R. O'Shea, Esquire

An employee walks into her supervisor's office and advises that she has recently suffered a series of panic attacks. She confides in the supervisor that she is in fact bipolar and has been battling the condition for many years. She also indicates that her doctor has advised she may need periodic time off to cope with this condition. The supervisor wonders how to handle the situation, particularly in light of the significant project for which this employee is responsible.

The above scenario, and others like it, play out time and again in businesses of all types and sizes.

In order to address situations like these, employers must be familiar with both employee and employer rights and obligations under the *Family and Medical Leave Act (FMLA)*.

The FMLA was adopted in 1993, and its stated purpose is "to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interest in preserving family integrity." The FMLA entitles eligible employees working for covered employers to take reasonable

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Rights and Responsibilities Under the FMLA *continued from page one*

leave for medical reasons, the birth or adoption of a child, and for the care of a child, spouse or parent who has a serious health condition. While the goals are admirable and the entitlement seemingly simple, the FMLA has proven to be a challenge for employers and employees alike.

The FMLA covers all private employers engaged in commerce or industry with 50 or more employees for each working day during each of the 20 or more calendar work weeks in the current or preceding calendar year. The FMLA also applies to all federal, state and local agencies regardless of size. Many small businesses are therefore not bound by the FMLA. (This does not mean small employers do not have issues to consider under the above-described scenario. The employee requesting leave may be entitled to leave under the Americans with Disabilities Act and/or the Pennsylvania Human Relations Act.) Employees must meet certain eligibility requirements in order to be deemed eligible for FMLA leave. In order to be eligible, the employee must 1) work for a covered employer, 2) have worked for the employer for 12 months which months need not be consecutive, 3) have worked



1,250 hours over the previous 12 months, and 4) work at a location where at least 50 employees work within a 75 mile radius.

Assuming the employee is eligible and works for a covered employer, the employee is entitled up to a total of 12 weeks of unpaid leave (26 weeks for a military caregiver) during any 12 month period for: 1) the birth and care of a newborn or adopted child, or for the placement of a child into foster care with the employee; 2) the care of an immediate family member suffering from a serious health condition; and 3) the employee's own serious health condition when the employee is unable to perform an essential job function due to that condition. A "serious health condition" need not be so disabling or potentially disabling as to give rise to protections under the ADA. It is incumbent upon the employee to give the employer sufficient information so that the employer can determine that the stated reason for leave could give rise to FMLA benefits.

If an employer is unclear as to whether the employee's request for leave qualifies under the FMLA (for instance if there is a question as to whether the employee suffers from a "serious medical condition"), the employer must inquire further. To this end an employer is entitled to require the employee's physician to complete a medical certification in order to determine whether the employee or the employee's spouse, parent or child suffers from a serious health condition. If the employee's leave is granted for the employee's own serious health condition, the employer can request a return to work certification before the employee reports back for duty.

An eligible employee who qualifies for FMLA leave may take up to 12 unpaid weeks of leave during any 12-month period. The employer may use a calendar year, fiscal year, a 12-month period calculated from the first date of FMLA leave or a rolling 12-month period. Under the rolling method, each time an employee takes FMLA leave, the remaining leave entitlement is the balance of the 12 weeks that has not been used during the immediately preceding 12 months. Often the employee does not need to take leave all at one time, but rather on an intermittent basis when medically necessary.

For instance, an employee suffering from cancer may need to periodically take several days off over the period of many months in order to receive treatments. Intermittent leave must be given if medically necessary. An employee who wants to take leave for the birth of a child on an intermittent basis may only do so with employer permission.

While on FMLA leave, employers are required to maintain their employee's health insurance coverage, and if the employee is required to make premium co-pays those co-pays must continue while on leave. Once the FMLA leave expires, the employee is entitled to return to work at the same or equivalent position with equivalent pay and benefits. (There is an exception for key employees, those among the highest paid 10% of employees.) However, if an employer can show that an employee who was out on FMLA leave would not be employed at the time of the employee's scheduled reinstatement, such as by reason of layoffs, position elimination, etc., the employee is not entitled to reinstatement.

The FMLA is well intended, but between its amendments and the various regulations and judicial decisions that have interpreted the FMLA, it has become very difficult to administer. It is a violation of law for any employer to interfere with an employee's FMLA rights or to discriminate or retaliate against an employee who exercises any such rights. The employment attorneys at HRMM&L are happy to answer any questions regarding FMLA rights and obligations. You can also learn more about the FMLA and its regulations at the Department of Labor's website at www.dol.gov/whd/fmla. ■

At the Montgomery Bar Association's Annual Business Meeting in January, Steve Lupin, President of the Montgomery Bar Foundation, presented the **Louis D. Stefan Law Enforcement Award** posthumously to Plymouth Township Police Officer Bradley M. Fox. Accepting on behalf of Officer Fox were his parents, Kathy and Tom Fox, his widow, Lynsay Fox, his brother Jim Fox, and Lt. Jeff O'Brien and Ofc. Gerald DeSantis of the Plymouth Township Police Department. This award is presented annually by the Montgomery Bar Foundation to an individual who promotes the rule of law and the administration of justice in the community.



Montgomery Bar Foundation President Steven H. Lupin, Esq. (second from right) presents the Louis D. Stefan Law Enforcement Award posthumously to Plymouth Township Police Officer Bradley M. Fox. From left: Lt. Jeff O'Brien and Ofc. Gerald DeSantis of the Plymouth Township Police Department, Kathy and Tom Fox, Lynsay Fox, and Jim Fox.

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It's About the Result

375 Morris Road, PO Box 1479

Lansdale, PA 19446-0773

Telephone: 215-661-0400 Fax: 215-661-0315

www.HRMML.com

Joan Wean, Editor

If you would like copies of the newsletter sent to someone you know, please contact Sandie at 215-661-0400 or email: Lawyers@HRMML.com.

Hamburg, Rubin, Mullin, Maxwell & Lupin's IN BRIEF is intended to provide information on recent legal developments. The information contained in this newsletter is not offered as legal advice or legal opinion on specific facts.

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A SLIP AND FALL CAN CAUSE ALL OF THAT?

Steven B. Barrett, Esquire



Slipping and falling. We either experience these mishaps ourselves or we know of friends and family members recounting how at either a restaurant, the workplace, or in a parking lot they injured themselves, tripping on objects, substances or otherwise on floor surfaces that were not attended to. In most of these cases, the common denominator is simply our not knowing or anticipating what caused us to slip or fall. In many of these cases, what caused us to slip or fall should have been removed, safe guarded, or told to us well before injuries can occur.

Falls can account for as much as 8 million hospital emergency room visits annually, representing the lead cause of such visits (in excess of 20%). According to the Consumer Product Safety Commission, floors and flooring materials contribute directly to more than 2 million fall injuries each year. Slip and falls also take their toll on the workforce. According to Worker's Compensation statistics from ITT-Hartford Insurance Company, falls account for 16% of all claims and 26% of all costs. The American Trucking Association reports that slips and falls are the leading cause of compensable injury in the trucking industry as well.

As we also know, falls can be quite serious for our elderly. The CDC reports that approximately 1.8 million people over the age of 65 are treated in the Emergency Room as a result of a fall. For that same age group, falls account for nearly 90% of all fractures and are the second leading cause of spinal cord and brain injury.

It is true that a lot of slips and falls are unavoidable, but in many instances such injuries are a result of the carelessness of those who are responsible for maintaining walkways, floor surfaces, and steps. For example, if a company knows that its parking lot will be used for business at night, companies should make sure that the parking lot has adequate lighting so that people walking to and from their cars will be able to see where they are going. And what about stores such as Target or Wal-Mart? If the store is aware of a tripping hazard in a spot where shoppers will

be located, the store should do what is needed to protect its patrons by either correcting the hazard or otherwise cordoning the hazard off so that shoppers can avoid injury.

Again, common sense is the watchword. In many instances where there is injury due to a slip and fall, simple protective measures are not taken. Yet, such lack of common sense often leads to very serious and life altering injuries.

At HRMM&L, slip and fall cases are taken

seriously. We engage investigators, engineers and other professionals involved with floor and surface design to determine the fault of those whose carelessness has caused you and your loved ones pain and loss. Business owners and their insurance companies spend significantly to disclaim responsibility. You should be represented by lawyers who have the experience and resources to level the playing field and maximize the chances of financial recovery. ■



We are pleased to announce that the firm received recognition at *The Partnership TMA's Annual Meeting* luncheon gala on May 31 at the William Penn Inn. The certificate, recognizing the firm's 20 years of participation in the association, was accepted by Ed Mullin (*4th from right in above photo*).

The Partnership TMA (Transportation Management Association) is a non-profit 501c3 organization which works with local businesses, municipalities, school districts and other non-profit organizations to help reduce traffic congestion, increase mobility and access to work and educate children and adults on the issues of land use, transportation, the environment and healthy lifestyles.

CONSUMER ALERT RE **Annual Meeting Disclosure Statement**

The Pennsylvania Department of State has posted an "Important Consumer Alert" on its website regarding what it calls a scam being run by Pennsylvania Corporate Compliance Company and by Corporate Records Service. In its Important Consumer Alert, the Department of State notes it is "alerting all Pennsylvania business entities to this deceptive solicitation to prevent Pennsylvania business entities from completing the form and sending payments to a mailing center post office address by the deadline on the form." If you have received an Annual Meeting Disclosure Statement from Pennsylvania Corporate Compliance Company or a 2013-Annual Minutes Form from Corporate Records Service, the Department of State recommends that the "documents should be disregarded by all companies which receive them."

While the solicitations mailed to unsuspecting businesses may be a scam, the need to keep the corporate records current and to document the significant corporate transactions is not. The holding of corporate meetings on a timely and continuous basis provides evidence of proper corporate operations and is necessary to preserve the validity of your corporation or operating limited liability company for both tax and liability purposes. Please contact one of the attorneys in our Business Department at 215-661-0400 so we can update the corporate minutes for your business entity. ■

HRMM&L *note*

J. Edmund Mullin was a speaker for Montgomery County Economic Development Corporation (MCEDC). The meeting was held Tuesday, May 14, 2013, at a breakfast and panel event entitled "Real Estate Road Blocks and Opportunities," and there were approximately 140 in attendance.

Ed's daughter Liz just graduated cum laude from Georgetown University, and has been given a full tuition merit scholarship to Villanova University School of Law where she will enroll in the joint JD/MBA program in August, 2013.

Merle Ochrach serves on the Montgomery County Development Corporation Board (MCDC), and she was recently re-elected to serve as Treasurer. This organization will likely have an expanded role in Montgomery County in the future with regard to guiding and facilitating economic development throughout the County.

Merle Ochrach and **Mark Himsworth** attended the NARO (National Association of Royalty Owners) Conference in State College on March 28-29, 2013, where our firm participated as a vendor.

Ethan O'Shea presented a Continuing Legal Education course, on February 29, 2013, to members of the Montgomery Bar Association. The session was entitled "Criminal Culpability for Unintended Acts and Consequences."

Jon Samel participated in a panel discussion at the May 14th forum of the Delaware Valley Family Business Center on the "Power & Perils of Integrating Non-Family Leaders & Partners into Family Businesses."

Lisa Shearman and **Jon Samel** presented on a panel at a CLE sponsored by the Montgomery Bar

Association on May 6, 2013. The presentation was called "2013 – An Estate Tax Odyssey."

Lisa Shearman spoke to The Philadelphia Legal Secretaries Association at the annual One-Day Educational Conference on Saturday, January 26, 2013, at Drexel University College of Medicine. Lisa's topic was "Wheel of Fortune vs. Family Feud – Avoid the Dispute and Prepare a Will."

Carl Weiner recently addressed the Pennsylvania House Urban Affairs Committee regarding issues facing condominium and planned community associations.

In addition, **Carl's son Scott** recently completed a two year research project involving economic factors behind health care delivery in India and was accepted to Columbia University to pursue his Ph.D. in Economics in Developing Countries.

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