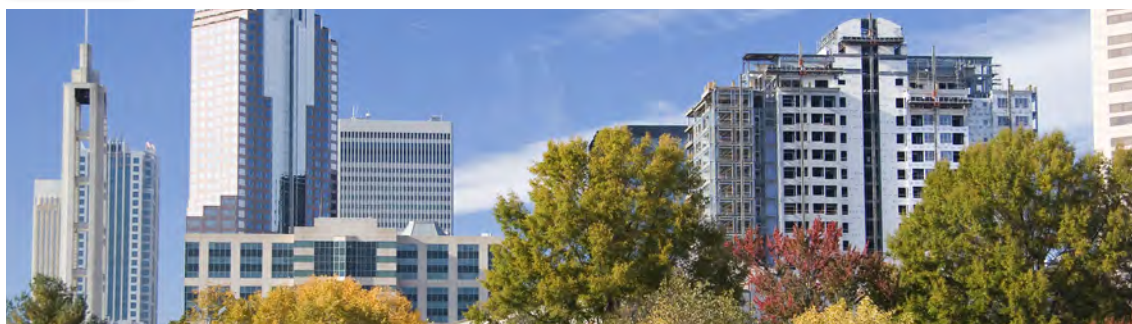


A NEWSLETTER OF CURRENT BUSINESS AND LEGAL MATTERS



Pre-Judgment Proceedings

By Joseph A. Davies



In This Issue:

- Pre-Judgment Proceedings Page 1
- Like It Or Not, Obamacare Is On The Way Page 2
- New Year brings New Laws Page 3
- Limited Liability Companies Filing Annual Reports... Page 3
- ABC's of Partnership Agreements Page 4

Most businesses and business people are all too familiar with the protracted exercise that is involved when attempting to collect on a judgment. Few, however, are as familiar with two potentially powerful methods that can be used before entry of a judgment and may alleviate the need for drawn out postjudgment execution proceedings.

Claim and Delivery

Claim and delivery allows a plaintiff to recover personal property from the defendant long before a judgment. If a defendant is wrongfully in possession of some item, the clerk may issue an order directing the sheriff to seize the property from the defendant and deliver it to the plaintiff. The plaintiff must have some valid interest in the property, such as ownership or a valid security interest, and must file a lawsuit for the recovery of the property.

Without having to wait for a judgment in that suit, however, the plaintiff can move for an order in claim and delivery. This process requires notice to the defendant and a hearing before the clerk. The notice will include an order forbidding the defendant from disposing of, damaging, or destroying the property, or from moving it out of North Carolina. At the hearing, the clerk determines whether to issue an order to the sheriff for the seizure of the property. Before the sheriff will seize the property, however, the plaintiff must post a bond at twice its value, and before the sheriff will deliver the property, the plaintiff must pay the sheriff's fees and costs. Both of these requirements can make the claim and delivery process

extremely expensive. However, if the main goal is the recovery of the property, a claim and delivery allows that to happen much more quickly than waiting for a judgment in the underlying lawsuit.

Attachment

Attachment is a procedure used to bring the defendant's property within the legal custody of the court so that it is available to satisfy a judgment which may be rendered against the plaintiff. The concept of attachment may be as old as Ancient Rome and has been known to the English legal system since at least 1482. It is used today in cases where the defendant is either a non-resident or a foreign corporation, or is trying to remove property from the state, or hiding or destroying assets to defraud its creditors. Like the claim and delivery, this process is usually started at the beginning of a lawsuit and is often decided by the clerk. Unlike the claim and delivery, it can be used in any case where the plaintiff is seeking a money judgment and applies to any property owned by the defendant (not just a particular item of personal property). The attachment process also allows a plaintiff to intercept payments owed to the defendant by other parties and have them available to satisfy an eventual judgment.

Claim and delivery and attachment can each be a powerful tool when used efficiently and effectively, but each also has strict requirements that must be met and procedures that must be followed to be successful. If you have questions, please feel free to contact us.



Like It Or Not, Obamacare Is On The Way

By Chad J. Cochran



Chief Justice John Roberts, Jr. shocked the legal world on June 28, 2012 when he issued the Supreme Court opinion which upheld the majority of the Patient Protection and Affordable Care Act (commonly known as Obamacare). The George W. Bush appointee ruled that the centerpiece of Obamacare, the individual mandate, was constitutionally valid based upon Congress' taxing authority. Obamacare is hugely controversial as the country is split on whether it will help or hurt the average American. After years of political fighting, President Barack Obama's recent reelection cemented the fate of the new legislation. Like it or not, healthcare in this country is about to undergo massive changes.

Obamacare details the fundamentals of a new healthcare system. The public is generally confused about what the 2,700-page legislation actually means for them. Since Obamacare's major components become active in 2014, businesses and individuals need to utilize 2013 as an opportunity to understand and prepare for the changes which lie shortly ahead. This article aims to highlight a few of Obamacare's most important components.

Individual Mandate

Nearly one in five North Carolinians do not currently maintain health insurance. According to the Supreme Court, the federal government cannot require its citizens to purchase health insurance. However, the federal government can tax those citizens who fail to do so. Accordingly, Americans must hold health insurance starting in 2014 or pay a penalty on their individual tax returns. The tax penalty for failing to purchase medical insurance increases substantially in the coming years (e.g., 2014 – family tax of the greater of \$285 or 1% of income; 2015 – family tax of the greater of \$975 or 2% of income; 2016 – family tax of the greater of \$2,085 or 2.5% of income).

Insurer Requirements

Congress enacted new requirements on insurers to address abuses they perceived in the current medical insurance marketplace. Obamacare enacts the following new insurer requirements: (i) insurers must cover all adults with pre-existing conditions; (ii) insurers cannot cap lifetime dollar limits on medical expenditures; (iii) insurers cannot practice rescission, cancelling coverage after someone becomes sick; and (iv) insurers must cover dependent children until the age of 26.

Employer Insurance Requirements

Obamacare's new rules on businesses are commonly misunderstood. The rules' impact largely depends upon the number of full-time employees a

business maintains. Beginning in 2014, employers with 50 or more full-time employees will face large tax penalties if they fail to provide a health care plan for their employees. Large employers who fail to provide that coverage are susceptible to tax penalties of up to \$2,000 per employee. The federal government will not require companies with fewer than 50 full-time employees to offer employee medical insurance. However, Obamacare provides substantial tax incentives to businesses with fewer than 25 employees. Those small businesses can enjoy a tax credit of up to 50% of premiums paid on behalf of their employees.

Insurance Exchanges

Most Republicans and Democrats agree that increased competition in the medical insurance marketplace is good for the average American. Businesses regularly complain that their options for employee health insurance coverage are much too narrow. Obamacare aims to utilize medical insurance exchanges to increase competition. In theory, the exchanges will offer the average business or consumer the opportunity to purchase a wider variety of medical insurance from numerous companies. Obamacare offers states the opportunity to enact their own insurance exchanges. Several western states, such as Colorado, Oregon, and Washington, have elected to operate their own health insurance exchanges. Many southern states, such as Georgia, Virginia, and South Carolina, have declined to enact state-operated exchanges. As such, the federal government will operate insurance exchanges for those states. North Carolina interestingly elected a state-federal partnership via outgoing Gov. Bev Purdue. This selection means that Gov.-elect Pat McCrory will soon need to elect a state or federally run exchange.

A Mountain of Regulation is on the Way

Now that the election is over, the Obama administration will issue tens of thousands of pages of regulations in the upcoming months. We should expect the administration to deliver many specifics on the insurance exchanges. We should also expect further details concerning many of the above programs. For instance, the administration recently issued an 18-page rule defining "full-time employee". We should additionally expect new rules concerning programs which businesses might use to lower their healthcare costs. For instance, the Obama administration recently issued rules explaining how businesses may enact employee wellness programs. The coming year is going to be an interesting ride to say the least.

If you have questions about these topics, please feel free to contact us.



New Year brings New Laws

By Cody R. Loughridge

A new calendar year is often marked by resolutions and renewed energy. In North Carolina, it also signals the enactment of new laws which can affect both your personal life and your business. As we conclude 2012 and look towards 2013, we've compiled some new laws that are set to take effect in North Carolina on January 1, 2013. Please note that the following simply highlights select new laws and is not meant to be an exhaustive list.

Expansion of E-Verify (S.L. 2011-263)

If you are unfamiliar with E-Verify, it is an internet based system that empowers employers with the ability to determine the eligibility of their employees to work in the United States. The North Carolina General Assembly first began implementing mandatory E-Verify participation on October 1, 2011. At that time, only North Carolina counties, cities and universities were required to participate in E-Verify. The requirement for private businesses to utilize E-Verify has been gradual and based on the employer's number of employees. As of October 1, 2012, all employers with 500 or more employees were required to participate in E-Verify. The next step of mandatory participation takes effect on January 1, 2013, whereby all employers with 100 or more employees will be required to participate in E-Verify.

Mechanic Liens/Payment Bonds Reforms (S.L. 2012-157)

Beginning January 1, 2013, wholesale changes take effect relating to: the perfection of a Claim of Lien on Property, the parties who are necessary to lien perfection actions, the effective date for Notices of Claims of Lien on Funds, the ability to utilize the general contractor's first and last date of furnishing for the subcontractor's lien claim, penalties for false lien waivers, a new Notice of Public Subcontract on public projects, and the requirement of "Project Statement" for public projects, among others.

Child Safety in Child Care Facilities (S.L. 2012-160)

Previously in North Carolina, child care providers were required to conduct criminal history checks on its providers and employees prior to employment. While that still remains the case, this new law scheduled to take effect on January 1, 2013 includes new and different crimes which will prevent a potential individual from serving as a child care provider. Additionally, S.L. 2012-160 also precludes individuals who were determined to be responsible for a crime involving child neglect or child abuse as a juvenile from later serving as a child care provider.

Motor Vehicles Law Revisions (S.L. 2012-78)

New motor vehicle laws set to begin on January 1, 2013 include, but are not limited to, the following: limited duration licenses shall now bear a distinguishing mark on the face of the license clearly denoting the limited duration of the license and it shall be unlawful for any person to operate a commercial motor vehicle (as defined in N.C.G.S. § 20-40.01(3d)) while using a mobile telephone or other electronic devise (though this does not prohibit the use of hands-free technology).

If you have questions about these new laws, please feel free to contact us.



Limited Liability Companies Filing Annual Reports with the North Carolina Secretary of State's Office

By James R. Vann

Each business incorporated with the North Carolina Secretary of State's office is required to file an annual report with the Secretary of State's office each year. Depending upon the type of business entity will determine when the report is actually due. Thus, it is important to keep in mind when an annual report is due. If you, as a business owner, have several incorporated businesses which differ in the type of entity (regular corporation, an s-corporation, limited liability company, etc.), your annual reports could be due at different times.

The reason it is important to timely file the annual reports is that State law mandates that each incorporated business file an annual report in order to keep the State up to date regarding the business. For example, is the business still in operation, what the mailing address is, the contact information, the registered agent information, etc.

Recently, the North Carolina Secretary of State conducted a periodic internal review of limited liability companies in North Carolina. The purpose of the periodic review was to identify limited liability companies that were late or delinquent in their filings. The result of the review was that approximately 35,000 limited liability companies were late in their filing.

When are limited liability company's annual reports due? LLC annual reports are due each year by April 15. The annual report due date is not associated to fiscal year end but is tied to the current year for which a report would be due. Upon incorporation of the limited liability company, the first annual report will be due April 15 in the year following the year of incorporation and then each April 15 thereafter.

The North Carolina Secretary of State has notified the business community that they will be mailing out notices to limited liability companies which have not filed an annual report or for which an annual report was previously rejected. The importance of these notices is that all businesses which are delinquent in their filings will have sixty (60) days from the date of the notice to correct the delinquency or provide satisfaction to the North Carolina Secretary of State that a delinquency does not exist. If the correction or proof is not resolved within the sixty (60) days, the North Carolina Secretary of State will administratively dissolve or revoke the corporate charter for the business.

Thus, if you receive such a notice, it is important to respond to the North Carolina Secretary of State. If the limited liability company is still in business, it remains important for the officers and/or owners of the business to make sure to keep the corporate charter in good standing. Otherwise, it could create opportunities for personal liability for the officers and/or owners of the business.

If you have any questions, please feel free to contact us.



ABC's of Partnership Agreements

By James A. Beck



When starting any new business venture or establishing a new business entity, having appropriate documentation is important. The importance of having such documentation is increased substantially when more than one person is involved. We often help clients by drafting their corporate bylaws or LLC operating agreements, both of which set out how the organization will operate as well as the rights and duties of the shareholders or members. However, many business partnerships are formed less formally and without the assistance of legal counsel. Even in those situations, it is imperative that the parties adopt a written agreement to govern their relationship. Not only is a written agreement vital in the event of a dispute, it provides guidance and clarity to the partners throughout the life of the partnership.

The agreement should be tailored to the particular partnership, type of business and goals of the partners, and neither partner should enter into the agreement without a complete understanding of its terms. The partners should rely on legal and tax counsel in drafting the agreement in a way that addresses their key concerns, is desirable from a tax perspective and protects their personal assets and interests.

There are certain provisions that should be included in even the most basic partnership agreement. An effective partnership agreement should, at a minimum, address the following issues and topics: ownership, voting, responsibilities and obligations of the partners, how assets and revenues will be distributed, how expenses and losses will be allocated, transfers of ownership interests, and dissolution of the partnership.

Ownership

The agreement should set forth the identity of the partners, their respective ownership percentages, type of ownership (if there is more than one level or type of ownership), and their capital contribution.

Voting

The agreement should include information concerning voting rights, procedures, and what to do in the event of a deadlock.

Responsibilities and Duties of Partners

The agreement should state whether the partners have an exclusive duty to the company and define partners' responsibilities and obligations with respect to the company.

Distribution of Assets/Revenues and Allocation of Expenses/Losses

The agreement should be clear with regard to how and when assets and revenues are distributed to partners and how expenses and losses will be allocated. This should be done with the tax implications in mind.

Transfers of Ownership Interests

The agreement should set forth any transfer restrictions, how, when and to whom ownership can be transferred, what happens to the interest upon death, disability or incapacity of a partner and how the interests will be valued in the event of a transfer.

Dissolution

The agreement should provide a process for dissolution including, but not limited to, how assets are distributed and when dissolution can or must occur.

A partnership agreement is a useful tool in running a business with another individual. It is also helpful in the planning stage in determining whether the potential partners are compatible and have a similar vision for the business. Many disputes and problems can be avoided by proper business planning and adopting a partnership agreement is a vital part of that process.