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Guide to Doing Business

Ohio

Prepared by Lex Mundi member firm, Calfee, Halter & Griswold LLP

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A guide to

DOING BUSINESS IN

Ohio

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TABLE OF CONTENTS

Introduction to Ohio 2
Business Entities 4
Financing Investments 16
Taxation 19
Real Estate 22
Environmental Law 33
Intellectual Property 48
Antitrust and Consumer Protection Laws 51
Labor and Employment 53
Dispute Resolution 62
Additional Information 64

INTRODUCTION

GEOGRAPHY

The State of Ohio is one of the northeast central states of the United States. It is 220 miles long and 220 miles wide at its most distant points. The state is bordered by Pennsylvania and West Virginia on the east, Indiana on the west, and Kentucky and West Virginia on the south. To the north of Ohio is Michigan and Lake Erie. The state's total area is 44,828 square miles, making it the 34th largest of the 50 states. Most of western Ohio is flat to gently rolling plains, while eastern Ohio is much hillier, as the foothills of the Appalachian Mountains begin there. The Lake Erie Plains, part of the Great Lakes Plains, extend southward from the lake into Ohio. The Allegheny Plateau is located in the east. The Central or Till Plains cover the western portion of the state. Lake Erie is Ohio's most important lake, with the Ohio shoreline lining 312 miles of the lake. The Ohio River runs along the state's southern and eastern borders.

Ohio has warm, humid summers and cold winters, with monthly average temperatures ranging from a high of 85.8 degrees to a low of 15.5 degrees Fahrenheit. Cold, dry air from Canada and warm, humid air from the Gulf of Mexico move alternately across the area, making changeability the state's chief characteristic. Ohio normally has abundant precipitation, ranging from 36 to 44 inches (based on figures from 1960-1990), well distributed throughout the year. Snow falls in the winter, but usually melts within one or two weeks.

CULTURAL AND ETHNIC BACKGROUND

The state is named after the Ohio River. Ohio is the name that the Iroquois Indians used when referring to the river and it means "large" or "beautiful river." Ohio's official nickname is "The Buckeye State," and its population is 11,536,504 (as of the 2010 Census), largely urban and predominantly white. African-Americans form the largest minority. The heaviest concentration of population is in central and northeastern Ohio, where the rural sections are densely populated in comparison with the state's other rural areas. The state has many art museums, with noted collections in Cincinnati, Cleveland and Toledo. The Buckeye State is home to two of the top ten zoos in the country and seven major league sports teams. Ohio is the birthplace of seven U.S. presidents and of the first professional baseball team. It has long been a leader in aeronautics, since Orville and Wilbur Wright of Dayton invented and flew the first practical airplane in 1903. During the 1960s, the state provided several leading figures in the U.S. space program.

The National Park Service administers three parks and three historic sites in Ohio, as well as 74 state parks. The region's rich history is recalled by numerous memorials and sites -- especially those linked to U.S. presidents born in the state. Several of Ohio's state memorials preserve earthworks constructed by Native Americans, such as the burial grounds at Mound City Group National Monument. More recent cultures are honored at the National Professional Football Hall of Fame in Canton and the Rock and Roll Hall of Fame in Cleveland.

ECONOMY

Ohio is highly industrialized, ranking third in manufacturing employment nationwide, yet it also continues to draw economic riches from the earth. Among national leaders in the production of lime, clays and salt, it is a historic center of ceramic and glass industries. Ohio's soil supports rich farms, especially where it was improved ages ago by additions of glacier-ground limestone. Although most of the state's income is derived from commerce and manufacturing, Ohio also has extensive farmland where large amounts of corn, soybeans, hay, wheat, cattle, hogs and dairy items are produced. The state is the top Swiss cheese producer in the country, ranks second in the production of eggs and fifth in overall food processing.

Railroads, canals and highways crisscrossing the state have, since the late 19th century, provided the means for transporting large amounts of raw materials for manufacturers. Lake Erie ports -- primarily Toledo and Cleveland -- handle iron and copper ore, coal, oil and finished materials (including steel and automobile parts). In spite of massive industrial decline since

the 1960s, which has made Ohio the center of the "Rust Belt," the state retains many manufacturing centers with an emphasis on heavy industry. Leading products include transportation equipment, primary and fabricated metals, and machines.

INVESTMENT CLIMATE

The state has what the Ohio Department of Development (ODOD) calls Hubs of Innovation and Opportunity, including the Northwest Ohio Solar Energy Innovation Hub, Cleveland Health and Technology Corridor Hub, Biomaterials Commercialization Hub, Youngstown Entrepreneurial Hub of Advanced Materials Commercialization and Software Development, Central Ohio Hub of Advanced Energy Manufacturing and Energy Storage, Ohio Aerospace Hub, and the Consumer Marketing Hub of Innovation. Ohio is leveraging its assets, such as its geographic location, innovation hubs, and public-private partnerships to enhance the business climate.

Creating job opportunities for Ohioans has been one of Ohio's primary goals. The Ohio Department of Development has played an instrumental role in enhancing Ohio's business climate. Through innovative programs, it is helping to provide businesses of every size with the necessary resources to grow and prosper within the state. The Small Business Development Centers (SBDCs) of Ohio program is an example of the department's role. This program provides free, professional, in-depth and confidential business consulting and training to pre-venture, start-up and existing small businesses (including international trade, technology and manufacturing) through its network of centers located throughout the state.

Site Selection magazine recently ranked Ohio number one in the country for micropolitan and metropolitan cities for capital investment. Ohio's success in business development is due largely to the partnerships government leaders have established with corporate customers. The cornerstone of this public-private partnership has been a series of jobs bill initiatives, which address specific issues vital to business success and provide meaningful financial resources for business growth, cutting red tape and enhancing the working partnership between government and the business community.

Ohio has established itself as a place where business opportunities can be financed. It is committed to providing businesses a healthy environment where ideas can become realities. Through a variety of direct loans and other financial assistance programs, the state gives long-term financing to growing businesses at favorable rates and terms. In addition to these programs, Ohio's private financial institutions give businesses a strong capital base. For four years running, Ohio has ranked first in the country in the number of major private investments

With 3,500 commercial banks, 750 savings institutions, 725 credit unions, and 1,450 insurance carriers - five in the Fortune 1000 - Ohio is a leader in the financial industry. Some of the most prominent of Ohio's more than 17,500 financial companies include Nationwide Insurance Enterprise, Progressive Corp., Key Corp., American Financial Group and Huntington Bancshares. Ohio is headquarters to 27 Fortune 500 companies. Internationally important public companies headquartered in Ohio include The Procter and Gamble Co., The Goodyear Tire and Rubber Co., Eaton Corp., Dana Corp., Parker Hannifin Corp., The Sherwin-Williams Corp., Owens-Corning Corp., RPM International, Inc., The Lubrizol Corp. and American Greetings Corp.

The State of Ohio, through the Department of Development, is making it an excellent business location. To find out more about these programs and why Ohio should be your location for business, visit Ohio's Department of Development Web site: development.ohio.gov.

BUSINESS ENTITIES

The domestic business entities listed below are required to obtain charters or otherwise register with the Office of the Secretary of State in order to operate within Ohio. General partnerships, other than LLPs, are not currently required to make any filings with the state except to the extent that they are required (under §1329 of the Ohio Revised Code (Code)) to publicly disclose the use of a fictitious name (i.e., any name that does not fully identify all of the partners). The Office of the Secretary of State maintains a Web site with useful information regarding the formation requirements for each type of entity required to register with the division.

- Corporations
- For-profit
- Limited liability companies (LLCs)
- Limited liability partnerships (LLPs)
- Limited partnerships (LPs)
- Non-profit
- Professional associations

OHIO'S CORPORATION COMMISSION & DEPARTMENT OF COMMERCE

Business Service Division (BSD) of the Secretary of State

Ohio Secretary of State, Business Services Division, 30 East Broad Street, 14th Floor, Columbus, Ohio 43266-0418
The BSD is open between 8:00 a.m. and 5:00 p.m., Monday through Friday.

Web site (Includes information on searching filings, name availability, new filings, obtaining forms for various business entities [domestic, foreign, non-profit, LLCs, LPs], trusts, uniform commercial code, and mergers and consolidations.)	http://www.sos.state.oh/sos/businessservices/corp/aspx
All Requests	614-466-3910 or 877-767-3453
Fax	614-466-3899
E-mail	busserv@sos.state.oh.us

Ohio Division of Securities (division of the Ohio Department of Commerce)

Ohio Division of Securities, 77 South High Street, 22nd Floor, Columbus, Ohio 43215. The various forms promulgated by the Division of Securities may be downloaded from their Web site.

Web site	http://www.securities.state.oh.us
Receptionist	614-644-7381
Enforcement	614-466-6140
Registration	614-466-3440
Licensing	614-644-6296
Examination	614-644-7465
Records	614-644-7449

Ohio Business Entity Resources

There are a number of additional resources available to business entities in Ohio. A comprehensive list of all agencies and Web site addresses can be found at http://www.ohio.gov/contacts.stm. In particular, the following sites may be useful.

Ohio Business Gateway.	http://business.ohio.gov/
Ohio Bureau of Workers Compensation	http://www.ohiobwc.com/
Ohio Department of Jobs and Family Services	http://jfs.ohio.gov/
Ohio Department of Taxation	http://www.state.oh.us/tax/
Ohio Revised Code	http://onlinedocs.andersonpublishing.com/
First Stop Business Connection	http://www.development.ohio.gove/onestop

Document Submission for all Ohio Business Entities

Facsimile signature is acceptable on all documents, but the BSD will reject a document which requires a notary seal if it is impressed and the seal is not readable (very few documents require notarization).

Filings may be submitted on a routine basis or one of three levels of expedited service. All filings except certifications and certified copies may be expedited. The turn-around time is a follows:

Level of Expedite	Additional Fee	Turnaround Time
Routine filing (non-expedited)		3 - 4 Days
Expedite 1	$100	24-48 Hours
Expedite 2	$200	12-24 Hours
Expedite 3 (Super Expedite)	$300	4 Hours

Super Expedite is only available for **walk-in filings** submitted at the Client Service Center located at 180 East Broad Street, Suite 203, Columbus OH 43216 prior to 1:00 p.m. Filings submitted after 1:00 p.m. will be available the next business day.

Documents submitted on any other basis may either be hand delivered to the Client Service Center or mailed. Documents submitted on a non-expedited basis by the U.S. Postal Service they should be delivered to P.O. Box 788 Columbus, OH 43216. Documents submitted by the U.S. Postal Service on an Expedite 1 or Expedite 2 basis should be mailed to P.O. Box 1390, Columbus, OH 43216. The envelope should be marked EXPEDITE. Documents delivered by carriers other than the U.S. Postal Service (e.g. Federal Express, D.H.I.) should be delivered to 180 East Broad Street, 16th Floor, Columbus OH 43215.

All checks should be made payable to the Secretary of State. They should not be dated more than six months prior to the date of presentation to the BSD.

FOR-PROFIT CORPORATIONS

In Ohio, a corporation is loosely defined by §1701.01(A) of the Code as a corporation for-profit formed under the laws of the state. The defining characteristics of a corporation are (1) the ability to exist and act as a legal entity apart from the individual members; (2) perpetual duration despite changes in the individuals who compose the corporation; and (3) a name by which the corporation can sue and be sued.

Formation

The formation of a for-profit corporation under Ohio law is governed by §1701 of the Code, known as the "Ohio General Corporation Law." Any person, singly or jointly with others, without regard to residence, domicile or state of incorporation, may form a corporation in Ohio. A "person" includes a natural person, a corporation (whether non-profit or for-profit), a

partnership, a limited liability company, an unincorporated society or association, and two or more persons having a joint or common interest.

The formation of a corporation is achieved by signing and filing with the Secretary of State Articles of Incorporation (Articles) containing, at a minimum, the information described in §1701.04(A) and an Original Appointment of Statutory Agent.

After the Articles and Original Appointment of Agent have been filed with the BSD, the person(s) who acted as incorporator(s) will open shares for subscription. After the occurrence of either (i) the receipt of subscriptions for shares, if an initial stated capital is not set forth in the Articles, or (ii) the receipt of subscriptions of shares in such amount that the stated capital of such shares is at least equal to the initial stated capital set forth in the Articles, the incorporators of the company shall give at least 10 days notice by mail to the shareholders (unless such notice is waived by the shareholders) to call the first shareholder meeting. At this meeting, the shareholders adopt a Code of Regulations (Regulations), elect directors and transact any other business they choose.

Application Process

Effective July 1, 2003, the BSD, in compliance with §111.25 of the Code, requires the use of its prescribed corporate forms. Filings submitted after that date on forms not designated by the Secretary of State of Ohio will not be processed. Forms are available directly from the BSD or through the various corporate service companies. In addition, the Ohio Department of Development operates a First Stop Business Connection, which provides access to most required forms. The Department of Development can be contacted at 800-248-4040 or 614-466-4232.

If at the time of submission a photo copy of the document in included, the BSD will date and stamp it and return it to you. Upon ultimate processing, the BSD will issue a one-page, official certificate that will include the charter number and the date of incorporation/organization of the new entity. The state no longer attaches copies of the actual documents submitted for filing to the certificates. A subsequent request for a certified copy of the document must be made in order to retain a record of the document. The BSD will accept faxed or photocopied signatures on any filing submitted.

Forms To Be Filed

Articles of Incorporation must be submitted to the BSD along with the appropriate filing fee. Refer to the http://www.state.oh.us/sos for a general discussion on the requirements concerning the preparation of charter documents, naming requirements, and appointing a statutory agent for each type of corporation.

Articles of Incorporation

The Articles of Incorporation constitute the charter of the corporation. Sections 1701.04(A) of the Code state the minimum information required to be included for an Ohio for-profit corporation, which is below.

- The name of the corporation, which must end with or include "Company," "Co.," "Corporation," "Corp.," "Incorporated" or "Inc." The corporation's name may not include any words such as "Bank," "Banking" or "Trust," which could imply a relationship with any governmental agency of Ohio, another state or the United States. For a nominal fee, a corporate name may be reserved with the Secretary of State for up to 180 days.
- The location in Ohio of the corporation's principal office. It should be noted that Ohio requires the office's city, village or township, and county.
- The authorized number, par value (if any), express terms (if any) and classes (if any) of the corporate shares. Shares are not required to have a par value except in the instances of banking, safe deposit, trust or insurance corporations.
- The corporation's initial stated capital, if any. A corporation is not required to have a stated capital for a class of shares, but it must have a stated capital at least equal to par value for those classes of stock with a par value.

An incorporator may want to consider including certain additional provisions in the Articles, including:

- **Pre-emptive rights**. In Ohio, the pre-emptive right to additional issues of shares must be included in the Articles (§1701.15 of the Code) for them to exist.
- **Cumulative voting**. The right to cumulative voting for the election of directors is automatic unless the Articles of Incorporation eliminate the right (§1701.55 of the Code).
- **Super-majority voting**. Section 1701.52 of the Code provides that certain corporate transactions, ordinarily requiring a specified minimum vote of shareholders, shall require the affirmative vote of a greater or lesser proportion of outstanding shares *if* the Articles so provide. In no case, however, may the Articles provide for less than a simple majority vote. Examples of such transactions include amendments to the Articles, mergers, dissolutions and sales of substantially all of the assets. Currently, unless otherwise specified, these transactions must be authorized by a vote of 2/3 of the shareholders.
- **Non-voting shares**. If a corporation has a class of nonvoting shares, the Articles should expressly state that the holders of such shares are not entitled to notice of any shareholder meeting unless they are required by law to vote on a matter to come before such meeting. Section 1701.54 of the Code necessitates such a provision. Specifically, that section requires all shareholders entitled to notice of a meeting to execute a written action. By making it clear that holders of nonvoting shares are not entitled to notice (unless they are required by law to vote on the matter), this provision seeks to ensure that only holders of voting shares generally need to execute written actions.
- **Merger moratorium**. If a corporation desires to opt out of the provisions of the Ohio Merger Moratorium Statute, a provision to that effect must be included in the Articles. (For an explanation *see* §1704 of the Code). Such a provision may be included in the original Articles or an Amendment. Caution: §1704 imposes conditions on the ability of a corporation to amend its Articles to opt out of this statute, and in certain circumstances limits the effectiveness of such an amendment. Section 1704.05(f) should be carefully reviewed before deciding not to opt out of this statute.
- **Control share acquisitions**. If a corporation desires to opt out of the provisions of the Ohio Control Share Acquisition Statute, a provision to that effect must be included in the Articles or Code of Regulations. (For an explanation *see* §§1701.01 and 1701.831 of the Code). Such a provision may be included in the original Articles or Code of Regulations or through an Amendment to either document.
- **Redemption of shares**. Except for certain specified exceptions, including provision in the Articles or with two-thirds (2/3) of shareholder vote, a corporation may not redeem shares (§1701.35).

Original Appointment of Statutory Agent

Pursuant to §1701.07(A) of the Code, every corporation must have a statutory agent. The agent may be a natural person who is a resident of Ohio, a domestic corporation or a foreign corporation licensed under Ohio laws, which is authorized by its Articles to act as such. To act as a statutory agent, a foreign corporation must have a business address in the state. To be accepted by the Secretary of State, the Original Appointment of Statutory Agent which is incorporated into the Articles, must contain the signature of both the incorporator(s) and the person appointed to serve as Statutory Agent.

Filing Fees

Section 111.16 of the Code enumerates the fee schedule for documents filed with the Secretary of State. The filing fee for the Articles for any corporation that has authorized shares is dependent on the number of authorized shares, without regard to par value. There is a minimum fee of $125 to form any corporation that has authorized capital. For $125 the corporation is entitled to a maximum of 1,500 authorized shares of any class or classes. For corporations authorizing more than 1,500 shares, the following fees apply. There is no fee for filing an appointment of agent.

Number of shares	Price per share
1 to 1,000	$.10
1,001 to 10,000	$.05
10,001 to 50,000	$.02
50,001 to 100,000	$.01
100,001 to 500,000	$.005
More than 500,000	$.0025

Managing Corporations

Management

The day-to-day operations of an Ohio corporation are managed by the board of directors. Ohio requires that each corporation have at least three directors, except that corporation with fewer than three shareholders must have a number of directors at least equal to the number of shareholders. Once elected, the directors elect officers and undertake various organizational activities, including ratification of actions taken on behalf of the corporation by its incorporator(s) in opening and accepting subscriptions. Unless the Articles or Regulations provide for a different term, each director shall hold office until the next annual meeting. No director may serve a term exceeding three years. The Articles or Regulations may provide for the classification of directors into two or three classes consisting of not less than three directors each, for classes elected by more than two shareholders, and for terms of office among the several classes that are not uniform (§1701.57 of the Code).

Unless the corporation's Articles or Regulations provide otherwise, actions can be taken by the unanimous written consent of shareholders and of directors in lieu of meetings, pursuant to the authority of §1701.54 of the Code. Officers are elected by the directors and perform duties determined by the directors. At a minimum, the officers shall consist of a president, secretary and treasurer. If desired, the directors may elect a chairman of the board, who shall be a director, one or more vice presidents, and any other such officers and assistant officers deemed necessary. In Ohio, any one person may hold any number of offices. However, a corporation needs a second officer because, per §1701.64(A), "no officer shall execute, acknowledge, or verify any instrument in more than one capacity if such instrument is required by law or by the articles, the regulations, or the bylaws to be executed, acknowledged, or verified by two or more officers."

A corporation may, but is not obligated to, indemnify any director, officer, employee or agent of the corporation who was, is, or is threatened to be, a party to any threatened, pending or completed action of any kind, other than an action by or in the right of the corporation. The indemnified party may be reimbursed for expenses, including attorneys' fees, judgments, fines, and amounts paid in settlement, actually and reasonably incurred by such party in connection with the action, if the indemnified party acted in good faith and in a manner reasonably believed to be not opposed to the best interests of the corporation. No indemnification shall be made regarding any matter with respect to which such person is adjudged to be liable for negligence or misconduct in the performance of his duty to the corporation. The determination to indemnify such person may be made (i) by a majority vote of a quorum consisting of disinterested directors; (ii) if such a quorum is unattainable, by a written opinion of independent legal counsel who has not been retained by nor performed services for the corporation or any person to be indemnified within the past five years; (iii) by the shareholders; or (iv) by the Court of Common Pleas or the court in which the action, suit or proceeding referred to was brought.

Shareholders

An annual meeting of shareholders for the election of directors and the consideration of financial statements shall be held on a date provided for in the Articles or the Regulations. The financial statements, which may be consolidated, must include the corporation's balance sheet and its statement of profit and loss, as well as an opinion signed by the president, vice president, treasurer, assistant treasurer or a public accountant certifying that the financial statements fairly present the financial position of the corporation and the results of its operations, in conformity with Generally Accepted Accounting Principles. A corporation has significant flexibility to determine the relative rights and obligations of its shares. As a statutory default, each share is entitled to one vote, preemptive rights and cumulative voting. Decisions properly put before the shareholders will be decided by majority vote, except in the cases of amendments to Articles, sale of substantially all of the corporation's assets, and merger and dissolution, each of which must be approved by at least 2/3 of the shares entitled to vote (a statutory default that may not be reduced below a majority standard). Voting of shares may be accomplished by proxy, voting trust or shareholders' agreement.

Except as provided by law, the Articles or the Regulations of the corporation, the directors may determine when, under what terms, and for what consideration the corporation will issue, dispose of, or receive subscriptions for its stock. Shares may be issued in exchange for money, property or services actually rendered to the corporation, but promissory notes, drafts or other obligations of a subscriber do not constitute payment for the shares.

Corporate Merger, Sale of Assets & Dissolution

Upon the approval of the directors and 2/3 of the shareholders (a statutory default that may be altered in the Articles, but not below a majority standard), an Ohio corporation may (i) sell substantially all of its assets; (ii) consolidate with another corporation; or (iii) merge with or into one or more domestic and/or one or more foreign corporations, provided that the laws of the foreign jurisdiction authorize the merger. In some instances, a merger need not be approved by the shareholders of both corporations. Ohio allows a corporation to dissolve upon the assent of 2/3 of the outstanding voting shares of the corporation (a statutory default that may be altered in the Articles, but not below a majority standard).

Shareholders in the context of a merger, consolidation, combination or majority share acquisition have the right to dissent from such a transaction. To do so, a dissenting shareholder must have been a record holder of shares of the corporation on the date fixed for determining which shareholders were entitled to notice of the meeting regarding the proposal. Such shares shall not have been voted in favor of the proposal. The dissenting shareholder is required to deliver to the corporation a written demand for payment of the fair cash value of his shares not later than 10 days after the day on which the vote on the proposal was taken. Shareholders of a domestic subsidiary corporation being merged into the domestic or foreign parent corporation have 20 days to send such notice to the corporation. Upon receipt of the notice, the corporation may require the shareholder to send his or her stock certificates to be endorsed with a legend to the effect that the demand for fair cash value has been made. A dissenting shareholder's failure to deliver his or her certificates terminates all rights as a dissenting shareholder, at the option of the corporation. If the corporation and dissenting shareholder are unable to reach an agreement regarding fair cash value of the shares, the dissenting shareholder or the corporation may file a complaint in the Court of Common Pleas of the county in which the principal office of the corporation is located within three months after the service of the demand by the dissenting shareholder. At a proceeding before the Court of Common Pleas, the court shall determine from the complaint and other evidence submitted whether the dissenting shareholder is entitled to be paid fair cash value of the shares and may appoint one or more persons as appraisers to determine the value. After the determination of the fair cash value of the shares, the dissenting shareholder shall be paid within 30 days after the later of the final determination of such value, the effective date of the amendment to the Articles or the consummation of the other action involved.

Close Corporations

According to §1701.591 of the Code, shareholders can enter into an agreement among themselves to construct and operate a corporation much like a partnership. In order to qualify as a close corporation agreement, the agreement must:

- Have been assented to in writing by every person who was a shareholder of the corporation at the time of the agreement;
- Be set forth in the Articles, Regulations or other written instrument; and
- Include a statement that it is governed by §1701.591.

In a close corporation agreement, the shareholders may agree to any of the following:

- Eliminating the board of directors;
- Conferring upon one or more shareholders the right to dissolve the corporation;
- Designating officers and directors of the corporation; or
- Prohibiting or limiting the issuance or sale by the corporation of any of its shares without the affirmative vote or approval of the holders of all or a proportion of the outstanding shares.

Among the sections of the Ohio General Corporation Law that a close corporation agreement may not alter are the forms of consideration acceptable for shares, the statements required on each certificate for shares, the requirements regarding stated capital and the permitted purposes of a corporation.

Professional Corporations

Professional corporations are subject to the provisions of §1701 of the Code. The process for establishing a professional corporation is similar to that used in establishing a for-profit entity. However, professional corporations must comply with

the regulations in §1785 of the Code, which pertains to professional associations in general, as well as any other regulations placed on the specific profession. The incorporator, as well as all shareholders of a professional corporation, must be persons licensed or otherwise legally authorized to render the professional service offered by that corporation. Professional corporations are required to file a report with the BSD certifying that its shareholders meet these qualifications within 30 days of June 30th in each even-numbered year.

Foreign Corporations

Foreign corporations can qualify to do business in Ohio according to §1703.03 of the Code on a temporary (six month) or permanent basis. To obtain a license to transact business in Ohio, a foreign corporation is required to file with the Secretary of State a certificate of good standing or substance from its state of incorporation, dated not more than 90 days prior to the receipt of the application by the secretary. In addition, the foreign corporation is required to file an application stating the following items:

- Name of the corporation;
- Name of the state under which it is incorporated;
- Location and address of its principal office;
- Name of the county and municipal corporation in Ohio where the principal office (if any) is to be located;
- Appointment and consent of a statutory agent; and
- Summary of the corporate purposes to be exercised within Ohio.

Foreign corporations holding temporary licenses are not required to file any other reports or pay any other fees required by §1703.01, but are subject to all other provisions of such sections. No foreign corporation may be granted more than two temporary licenses within any period of three years. The filing fee is $125.00.

NONPROFIT CORPORATIONS

Nonprofit corporations are governed by Chapter 1702 of the Code. A nonprofit corporation is defined in § 1702.01 of the Code as a domestic or foreign corporation organized otherwise than for pecuniary gain. In Ohio, nonprofit corporations are organized and operate in ways similar to for-profit corporations. The basic difference is that the nonprofit corporation has no shareholders. Instead, the nonprofit corporation has one or more members, who are generally not entitled to receive any of the profits of the corporation. If the nonprofit corporation does not specify its members, the nonprofit corporation's board of directors also function as its members.

Formation

As with for-profit corporations, any person, singly or jointly with others, and without regard to residence, domicile or state of incorporation, may form a nonprofit corporation in Ohio. The formation is achieved by signing and filing Articles of Incorporation with the Secretary of State. The fee for filing is $125. Pursuant to § 1702.04(A) of the Code, the Articles must state the information listed below:

- **Name of the corporation**. There is no required corporate ending such as "company" or "Inc." for the name of a nonprofit corporation.
- **Location of the principal office**. Nonprofit corporations must note the county in which the office sits.
- **Purpose(s) for which the corporation is formed**. A general purpose clause is not acceptable for a nonprofit corporation -- specific objectives must be identified.

The Articles may also include any of the optional provisions described in § 1702.04(B) of the Code.

Section 1702.06 of the Code mandates that, simultaneous with the filing of the Articles, the nonprofit corporation must appoint a statutory agent. The agent must consent to the appointment. There is no fee for appointing the agent. Once the Articles have been filed with the BSD, the nonprofit corporation's members or directors may adopt a Code of Regulations and undertake any other required or desired organizational activity.

Nonprofit corporations are required to make subsequent filings of continued existence every five years, which must contain the corporation's name, location of its principal office, date of incorporation, a certification of the fact that it is still actively engaged in exercising its powers and the name and address of its statutory agent. The filing fee is $25.

Nonprofit Limited Liability Companies

Ohio also recognizes nonprofit limited liability companies. A nonprofit limited liability company is formed by filing Articles or Organization with the BSD in the same manner as a limited liability company organized for profit. The only difference is that the organizer must specify that the Articles are for a nonprofit limited liability company. The fee for filing the Articles of Organization is $125. The Articles must be accompanied by an appointment of statutory agent, including the agent's consent to the appointment.

A nonprofit limited liability company is organized under and generally governed by Chapter 1705 of the Code, and is not subject to the requirements of Chapter 1702 of the Code. A nonprofit limited liability company may, but is not required to, adopt a charitable purpose clause similar to that of a nonprofit corporation.

Foreign Nonprofit Corporations/Limited Liability Companies

Foreign nonprofit corporations must file the same certificate of good standing and application required of foreign for-profit corporations under § 1703.27 of the Code. Foreign nonprofit limited liability companies must file the same registration required of foreign for-profit limited liability companies under § 1705.54 of the Code. The filing fee for either form is $125.

Ohio Attorney General Filings

All nonprofit entities that qualify as a charitable trust under § 109.23 of the Code (a broadly defined term which includes, among others, all 501(c)(3) tax-exempt organizations) are required to file form CFR-1 with the Ohio Attorney General's office after formation, in addition to any required federal filings. The CFR-1 form needs to be filed only once. If the charitable trust has annual receipts or assets in excess of $25,000, it is also required to submit an annual report to the Ohio Attorney General's office thereafter. The annual report must include a copy of the organization's federal tax returns accompanied by a filing fee of between $0 and $200, depending on the total value of the organization's assets.

Chapter 1716 of the Code also requires nonprofit entities that solicit charitable contributions in Ohio to annually register with the Ohio Attorney General's office. The filing fee for the charitable solicitation registration is between $0 and $200, depending on the amount of contributions the organization receives.

Both the CFR-1 forms and the charitable solicitation registration forms can be obtained online at http://www.ohioattorneygeneral.gov/files/Forms/Forms-for-Nonprofits/Charity-Forms.

They may also be obtained by contacting the Ohio Attorney General's office:
Office of the Attorney General, Charitable Foundations Section
101 East Town Street
Columbus, Ohio 43215-5148
614-466-3180

PARTNERSHIPS

A partnership is an association of two or more persons to carry on as co-owners of a for-profit business. An advantage of partnerships over corporations lies in the tax treatment. Partnerships are taxed as pass-through entities by the State of Ohio. A partnership pays no federal or state income taxes -- instead, profits and losses are allocated to individual partners in accordance with the partnership agreement. Each partner includes allocated income with his other income and pays taxes on it at his respective rate. However, any partnership that has at least one investor who is either (a) an individual and not a resident of Ohio or (b) a non-individual that does not have a constitutional nexus to Ohio and does not submit a written statement to the partnership stating that it has a constitutional nexus, is subject to a withholding tax as determined by §5733.42 of the Code.

The three types of partnerships permitted under Ohio law are below with their distinguishing feature.

- General - Only general partners
- Limited - At least one general partner and at least one limited partner
- Registered limited liability (LLPs) - General partners whose liability is limited

General Partnerships

Ohio adopted the Uniform Partnership Law as §1775 of the Code. In regulating the organization and operation of general partnerships, it provides considerable freedom for partners to agree among themselves on the terms which will govern their partnership.

Organization

Unlike corporations or limited partnerships, no certificate or other document need be filed with the Secretary of State or any other governmental entity in order to establish a general partnership. This partnership may even be based on an oral agreement between partners, although a written agreement is prudent. In the event that the name of the Ohio general partnership is not the name of the partners, an Ohio general partnership must file a Fictitious Name Filing with the Secretary of State. The cost and effort of complying with this requirement are minimal.

Existence and Dissolution

One disadvantage of general partnerships is that unlike corporations, their existence does not continue indefinitely. Ohio Rev. Code §1775.30 provides a number of events that will cause the "dissolution" of a general partnership, including the resignation, death or bankruptcy of a partner. The dissolution of a general partnership generally requires the partners to liquidate the business of the general partnership. However, when the dissolution is triggered inadvertently, such as upon the death or retirement of one partner, the remaining partners may agree to forego dissolution and continue the business of the general partnership. If the remaining partners cannot reach an agreement with the withdrawn partner as to the continuation of the business, that partner or the partner's estate may obtain an accounting of that partner's interest.

Liability of Partners

A notable feature of general partnerships is that partners are jointly liable to third parties for partnership obligations. Therefore, the partnership does not afford partners limited liability in the manner that corporations shield shareholders, officers and directors from liability for corporate obligations.

Limited Partnerships

Chapter 1782.01(H) of the Code defines a limited partnership as a partnership formed by two or more people under the laws of the state, having as members one or more general partners and one or more limited partners. Ohio has substantially adopted the Revised Uniform Limited Partnership Act (RULPA). However, the state has affected a number of changes to the act to restrict transferability and withdrawal rights of limited partners.

Organization

A limited partnership must consist of at least one general partner and one limited partner. To form a limited partnership, all the general partners must execute and file a Certificate of Limited Partnership with the Secretary of State, along with a check in the amount of $125. The certificate must contain the name and principal address of the partnership, name and address of the statutory agent, name and address of each general partner, and any optional provisions desired. The name of a limited partnership must contain either "Limited Partnership," "Limited," "L.P." or "Ltd." and must be distinguishable from the name of any existing corporation or limited partnership organized or registered in Ohio.

Existence and Dissolution

After the formation of a limited partnership, general partners may generally be admitted with the consent of all limited and general partners. Limited partners may not withdraw from the partnership unless authorized by the partnership agreement.

Unlike a general partnership, the death, withdrawal or expulsion of a general partner does not result automatically in the dissolution of the partnership unless the last remaining general partner dies or withdraws. In this case, the remaining limited partners must elect to continue the partnership and appoint a new general partner within 90 days of the last remaining general partner's death or withdrawal.

Liability of Partners

The primary advantage of limited partnerships is that they are afforded limited liability in much the same manner as shareholders of a corporation. A limited partner is not liable for the obligations of the partnership beyond the amount of his capital contribution, so long as the limited partner does not participate in the control of the partnership business. Therefore, limited partners are usually passive investors, while the general partners manage and control the business of the partnership. Nonetheless, Ohio law details various powers that a limited partner may exercise without constituting participation in the control of the business of the partnership, and therefore without subjecting the partner to liability for partnership debts. These powers include serving as an agent or employee of the limited partnership, consulting with or advising the general partner on the business of the partnership, and voting on matters such as the sale or mortgage of substantially all of the partnership's assets.

Out-of-State Limited Partnerships

A limited partnership that is organized in a state other than Ohio may register to transact business in Ohio. To register, a general partner must file a certificate with the Secretary of the State of Ohio stating basic information about the partnership such as its name, address of its principal office, and name and business address of each general partner of the partnership. An out-of-state limited partnership may register to transact business in Ohio under the name under which it is registered in the state of organization, or under any other name, so long as the name is distinguishable from the name of any existing corporation or limited partnership organized or registered in Ohio, and so long as it contains either the words "Limited Partnership," "Limited," "L.P." or "Ltd." Note that under Ohio common law an attorney is deemed to represent each of the partners in addition to the entity.

Registered Limited Liability Partnerships (LLPs)

Organization

In order to become a registered partnership with limited liability in Ohio, it is necessary to file an Application for Registration with the BSD. The filing fee is $125. To satisfy the requirements of §1775.61 of the Code, the application must contain the following items.

- Name of the partnership.
- Address of the partnership's principal office, or if the partnership's principal office is not located in this state, the address of the partnership office filing for registration and the name and address of a statutory agent upon whom any process, notice or demand may be served.
- Brief statement of the business in which the partnership engages.
- Statement indicating that the partnership is applying for status as a limited liability partnership.
- Effective date of the registration, which may be on or after the date of the filing of the registration application.

The name of the partnership must contain as the last word in the name either "Registered Partnership Having Limited Liability," "Limited Liability Partnership," "P.L.L.," "PLL," "L.L.P." or "LLP." The partnership must file a biennial report in July of odd-numbered years verifying or updating the information contained in the registration application. This report must be made on a form prescribed and furnished by the Ohio Secretary of State (Form PLA), and it must be signed by a majority interest of the partners or by one or more partners authorized by the partnership to execute the application.

Liability of Partners

Partners in LLPs are not liable for partnership obligations that occur as a result of the negligence, wrongful acts, omissions or misconduct of another partner or an employee not under the supervision of the partner. However, Ohio has a partial shield statute. It is widely recognized by commentators that partners operating under partial shield statutes remain liable not only

for any negligence or malpractice committed by the partner or by someone that the partner directly supervises, but also for the partnership's contract obligations, including general debts, loans and lease obligations.

Ohio Limited Liability Companies

An Ohio limited liability company is a legal entity separate from its members. Ohio statutes governing limited liability companies are found in §1705 of the Code. Enacted in 1994, these statutes provide a flexible mechanism for organizing a company with the limited liability of a corporation and the organizational flexibility of a partnership. A limited liability company may be formed by one or more persons, without regard to residence, domicile or state of organization.

This type of company is formed after the signing and filing of its Articles of Organization with the Secretary of State. The Articles must include the following items.

- **Name of company**. The name of a limited liability company must include the words "Limited Liability Company," "LLC," "L.L.C.," "Limited," or "Ltd."
- **Duration of the company**. If the Articles or Operating Agreement do not set forth the period of duration of the company, its duration shall be perpetual.
- **Any other provisions** from the Operating Agreement that are not inconsistent with applicable law that the members elect to set out in the Articles, for the regulation of the affairs of the Company.

The fee for filing the Articles of Organization is $125, and the form incorporates an appointment of statutory agent, which must be either an individual who is a resident of Ohio, or a domestic corporation, or a foreign corporation licensed under the laws of Ohio. Additionally, the agent's consent to the appointment must be included.

Upon filing, the organization is governed in accordance with the terms of the Operating Agreement (§1705 of the Code). This agreement describes the basic ground rules for company operation and is not statutorily required; however, it is strongly recommended. Company management may be centralized or decentralized, and in the absence of the agreement, the LLC is member managed. If it is managed in accordance with §1705.16 of the Code, a member may withdraw from the company at any time by giving written notice to the other members. If the withdrawal violates the Operating Agreement, the company may offset damages for breach of agreement against the amount otherwise distributable to the withdrawing member on account of the withdrawing member's membership interest.

The Operating Agreement may provide the following information:

- Restrictions on the transfer of ownership interests in the company. Profits and losses may be divided among the members in any agreed manner. If no division is stated, profits and losses should be apportioned in proportion to the contributions made by the members.
- Situations under which the company's existence will terminate.
- Grant to all or a specified group of its members the right to vote on a per capita or other basis upon any matter.

An Ohio LLC is permitted to indemnify its members, managers, partners, officers, employees or agents in the same manner as Ohio for-profit corporations.

OTHER ASSOCIATE FORMS

Cooperatives

The Ohio Cooperative Law (§1729 of the Ohio Revised Code (Code)) was revised extensively in August 1998 and now states that a cooperative can be formed for any lawful purpose permitted to corporations by the laws of Ohio. Cooperatives are considered non-profit organizations because they are not organized to make profits for themselves, but rather for their members as patrons. A cooperative must have at least two members, except that a single-member cooperative may be formed if that member is itself an association that has two or more members.

A cooperative is formed upon the signing and filing of its Articles of Incorporation with the Secretary of State accompanied by an appointment of a statutory agent, which agent must be a natural person or a corporation with an address in Ohio. The Articles must include the following:

- **The name of the cooperative**. The name must include the word or abbreviation "Cooperative," "Coop," "Co-operative," "Co-op," "Association," "Assn.," "Company," "Co.," "Incorporated," "Inc.," "Corporation," or "Corp."
- **The purposes of the association**. It is sufficient to state that the association may engage in any activity within the purposes for which the association may be organized under §1729.
- **The county and municipal corporation or township of the principal place of business**.
- **The names and addresses of the incorporators**.
- **The number, names, and addresses of the initial directors**. An association's board of directors is vested with all authority in the association. The board must consist of at least five directors, except in the case of a cooperative with fewer than five members, in which case the board shall have a number of directors at least equal to the number of members.
- **Whether the cooperative is organized with or without capital stock**.

Joint Ventures

A joint venture involves an association of people with the intent to carry out a single business venture for profit. A contract, either express or implied, is essential to create a joint venture. The duration of a joint venture may either be fixed by a contract between the participants, or if no date is fixed by the contract, the agreement remains in force until its purpose is accomplished. Joint ventures are not considered separate entities in Ohio. Therefore, provided that the joint venture is not itself incorporated or otherwise organized statutorily, the endeavor will be treated and taxed as a general partnership.

Distributors and Sales Representatives

The use of distributors and sales representatives is a function of contract law rather than a statutorily-recognized organization. Typically, both distributors and sales representatives promote the sale of the products of another. The difference between the two is that distributors hold the third party's products in stock and make the sale directly, while sales representatives act as facilitators to broker an agreement between producer and customer.

Sole Proprietorship

A sole proprietorship is the simplest business entity: one person engaging in business for himself. Sole proprietorships are treated much like general partnerships, with unlimited personal liability and taxation at the individual level. If the sole proprietor is planning on transacting business under a name other than his own, he must file a fictitious name registration with the county recorder of the county in which the sole proprietor has its principal office, and each county in which the business owns real property.

FINANCING INVESTMENTS

TAX-EXEMPT FINANCING OPPORTUNITIES IN OHIO

Ohio law permits the issuance of most of the forms of obligations that are entitled to tax-exempt treatment under the federal income tax laws. Industrial revenue bonds for manufacturing facilities are typically issued in Ohio pursuant to either Chapter 165 of the Code, which authorizes the state and its municipalities and counties to issue revenue bonds for "industry, commerce, distribution or research" projects, or by port authorities, as described below. The statute may also be used to issue "solid waste" and other federally tax-exempt categories of obligations. Municipalities and counties that issue such bonds under Chapter 165 must establish a "community improvement corporation," which must also approve the issuance of any industrial revenue bonds.

Other enabling provisions for the issuance of federally tax-exempt bonds in Ohio include:

- Port authority bonds (Chapter 4582) for "transportation, economic development, housing, recreation, education, governmental operations, culture or research" projects, as well as for industry, commerce and distribution pursuant to the Ohio Constitution;
- Health care financings (Chapter 140);
- Certain water and solid-waste projects (Chapters 6121 and 6123, respectively);
- Certain air quality projects (Chapter 3706); and
- State economic development financings (Chapters 122 and 166).

Ohio has recently enacted reforms to its "prevailing wage" requirements - mandates requiring the payment of wages at the levels paid to unionized workers in the area. Projects financed under Chapters 122, 165, 166, 3706 and 4582 are no longer subject to prevailing wage requirements. However, projects financed under Chapters 6121 and 6123 are still subject to these provisions and also must comply with reporting and recordkeeping requirements documenting such compliance.

Ohio's federal "volume cap" allocation for private activity bonds of approximately $1.095 billion for the year 2011 is allocated by the State Director of Development. Under current rules, approximately $100 million of the available volume cap allocation is reserved for "small issue" (manufacturing) bonds, $120 million for multi-family housing projects and $300 million for single-family housing bonds, with the remaining allocation for the Director's "discretionary" allocation (which includes "exempt facility" bonds). There are three selection rounds, or if applicable, automatic allocation rounds (single-family housing bonds are automatically allocated to the Ohio Housing Finance Authority). In February and May, 30% respectively of the total set-aside is made available and in July, 40% is available. The Director may award bonds from his discretionary allocation at any point during the year. Any remaining volume cap unused at the end of the calendar year can be given to an issuer for use sometime in the next three years (known as a "carryforward" allocation). If volume cap is not carried forward or used during the calendar year, it expires. Bonds for which cap has been awarded must be issued within 90 days of the award (subject to one 30-day extension, if needed).

Both the interest on and any gain from the sale of bonds issued by governmental entities in Ohio are exempt from the Ohio personal income tax, the Ohio corporation franchise tax (to the extent computed on the net income basis), and from municipal and school district income taxes. Interest on bonds issued by governmental entities in Ohio are not subject to the Ohio commercial activity tax.

BENEFITS OFFERED TO ATTRACT NEW BUSINESS AND/OR FOREIGN INVESTORS

Financing

Historically, the State of Ohio has offered a variety of grant and low-interest loan programs for businesses administered by the Ohio Department of Development. In 2011, House Bill 1 was enacted to create "JobsOhio," a not-for-profit corporation to oversee the state's economic development efforts.

As of this writing, the Director of the Department of Development is completing a study of the functions of the Department to determine which functions should be transferred to JobsOhio. The General Assembly is expected to enact a second bill, "JobsOhio II," in the fall of 2011 to delineate the responsibilities of JobsOhio. Until this process is completed and implemented, the status of any economic development financing programs administered by the Department is uncertain. Please contact the firm for further information.

Tax Incentives

Enterprise Zones

A certain percentage of real property taxes can be abated for up to a 10-year period. It is a local and state tax incentive for businesses that expand or locate in designated areas of Ohio. Qualified corporations located in eligible enterprise zones can claim up to a $1,000 tax credit for each new employee meeting certain eligibility criteria. In some cases, tax credit can also be claimed for reimbursed employee day care expenses and training expenses. Local governments are currently authorized to offer enterprise zone incentives through October 15, 2012.

Community Urban Redevelopment Corporations Program

Program provides limited real property tax abatement for new improvements owned by community urban redevelopment corporations.

Community Reinvestment Area Program

Provides for up to a 100% exemption for the value of improvements to real property for up to 15 years in a designated area for industrial, commercial or residential projects.

Ohio Manufacturing Machinery Equipment Investment Grant

Provides a state grant for a manufacturer that purchases new machinery and equipment that is located in Ohio and is used in the production or assembly of a manufactured good. The grant is for new purchases of machinery and equipment in excess of a three-year average investment in machinery and equipment.

Ohio Job Creation Tax Credit

Refundable state tax credits are available through an application process and agreement with the Ohio Tax Credit Authority for certain eligible projects that create at least 25 new jobs and meet certain related criteria. The credit is equal to a percentage of tax withheld on wages which is established in the agreement. Credit may be granted for up to ten years.

Ohio Job Retention Tax Credit

This nonrefundable tax credit exists for large employers employing at least 1,000 and making at least $200 million in capital investments over a three-year period. In special circumstances, a company could invest at least $100 million if the retained positions pay, and will continue to pay, at least 400% of the federal minimum wage. The credit is equal to a percentage of tax withheld on wages which is established in an agreement with the Ohio Tax Credit Authority.

Recent legislation authorizes the Ohio Tax Credit Authority to grant a refundable job retention tax credit to businesses that invest at least $5 million at a project site in the same local jurisdiction where its principal place of business is located and retain at least 500 full-time employees and maintain an annual payroll of at least $20 million or maintain an annual payroll of $30 million, along with other existing program requirements. The Ohio Tax Credit Authority may authorize up to $25

million of refundable job retention tax credits between 2011 and 2013, and beginning in 2014, an amount of $25 million per year may be authorized in the ensuing fifteen year period.

Research and Development Tax Credits

Provides an exemption from state and county sales tax for companies that purchase machinery and equipment used in research and development and a tax credit for qualified research and development expenses in excess of the prior three-year average of qualified research expenditures. A separate credit for early stage investments in small Ohio-based companies equal to 25% of the qualified investment, which is approved by the Industrial Technology and Enterprise Board, is also available. There is also a nonrefundable credit for R&D loan payments.

Ohio Historic Preservation Tax Credit

Program provides a tax credit for the rehabilitation expenses to owners of historically significant buildings. Funding is provided through competitive rounds based on economic benefit and regional distributive balance. The tax credit subsidy is 25% of qualified rehabilitation expenditures (QRE) not to exceed the QRE estimates in the application, with an application cap of $5 million. QREs are hard construction costs that meet the requirements of the US Secretary of Interior's Standards for Rehabilitation of Historic Properties.

TAXATION

STATE TAXATION

Personal Income Tax

Ohio imposes a personal income tax on resident individuals, trusts and estates at progressive rates. Non-residents are taxable on Ohio sourced income. For 2011, the maximum rate is 5.925% on taxable income over $201,800, as indexed for inflation.

Ohio taxable income is based on federal adjusted gross income, with certain adjustments (e.g., excluding interest on federal obligations and adding back most interest on non-Ohio government bonds). Income taxed by other jurisdictions is subject to a credit.

Individuals who invest in pass-through entities such as S corporations, partnerships or LLCs must report Ohio sourced income on their personal income tax returns. A pass-through entity must either withhold 5% for out-of-state individual owners, or file on a composite basis and pay tax on their behalf. Taxes so withheld can be claimed as a refundable credit on the applicable Ohio tax return.

Most municipalities and a few school districts in Ohio impose income taxes, at rates of up to 3.0%. Average municipal rate is 1.5%. No local income taxes are imposed by designated "townships." Municipal taxes are based on earned income and business income, but not passive income such as interest or dividends. School district taxes are based on the Ohio state income tax return computation of income.

Commercial Activity Tax (CAT)

A business privilege tax, the Commercial Activity Tax, (CAT) is imposed at a flat rate of .26% on gross receipts (not net income) in excess of $1 million. No tax is owed where gross receipts are below $150,000. If gross receipts are greater than $150,000 but less than $1 million, only an annual filing fee of $150 is owed.

CAT applies to all taxable Ohio gross receipts attributable to a "taxpayer." Combination of entities is mandatory where there is more than 50% common business ownership. Combined groups must share the $150,000 floor and $1 million base. Federal tax attribution rules do not apply in determining ownership. Vertical attribution must be used. In a combination, only members with nexus in Ohio need to be included.

Where combination is not mandatory, an optional "consolidation" is available. The effect of such an election is to eliminate Inter-company gross receipts, but to require all related domestic companies to be included in the grouping whether or not such entities have Ohio nexus (Offshore entities can be included optionally). This election is available where there is common ownership of at least 50%. Once made, the election is binding for two years.

The CAT applies to any business activity regardless of form and, therefore, includes corporations, partnerships, limited liability companies, disregarded entities, sole proprietorships, joint ventures, trusts, clubs and associations. CAT does not apply to (1) non-profit organizations (but does apply to a subsidiary, including a disregarded entity, if it's incorporated as a for-profit); (2) financial institutions including insurance companies, banks, dealers in intangibles, savings & loans and most financial services companies; and (3) some public utilities that pay the public utility excise tax.

Taxable gross receipts include (1) sales, exchanges or dispositions of property in Ohio (including goods or property shipped in from an out-of-state vendor and used in the state); (2) services rendered (other than in an employee capacity); (3) rentals, leases or other permissible uses of a taxpayer's property or capital to the extent the foregoing is used by taxpayer in the state (includes real estate or equipment leased in Ohio, software or patents).

Excluded from taxable gross receipts are (1) interest income except on credit sales; (2) dividends and distributions from corporations; (3) damages from litigation or life insurance proceeds; and (4) activities that are out-of-state or revenue from goods shipped out-of-state.

A new bright-line nexus test has been adopted, the constitutionality of which has yet to be tested. Nexus exists if any of the following applies: (1) property of at least $50,000 in Ohio; (2) payroll of at least $50,000 in Ohio (including hiring independent contractors); (3) annual taxable receipts of at least $500,000 in Ohio; (4) at least 25% of total property, payroll, or receipts in the Ohio; or (5) Ohio domicile (commercial or legal).

Registration for CAT, including designating all companies in a combination or electing consolidation, must be made when gross receipts reach $150,000. Where estimated Ohio gross receipts exceed $1 million, quarterly filings are required. Quarterly filings must be made within 40 days of end of quarter.

Corporation Franchise Tax

The CAT replaced the corporation franchise tax for all corporations other than certain specified corporations, such as financial institutions, insurance companies and their affiliates.

The Franchise tax is assessed at the higher of two alternate computations:

- The corporate income tax rates are 8.5% on income in excess of $50,000 and 5.1% on income below $50,000. The income tax base is premised on federal taxable income with some adjustments such as for depreciation.

- Ohio net worth tax is assessed at 4 mills (.004). Minimum tax is either $50 or $1,000, depending on the corporation's gross receipts and employment. The net worth calculation is capped at $150,000.

Financial institutions do not pay on a net income basis, but pay on a net worth base at 13 mills. The $150,000 cap discussed above does not apply.

Corporations with multi-state operations apply statutorily prescribed apportionment formulas based on a standard three factor formula of in-state sales, property and payroll with sales being triple weighted. This apportionment formula is used for both income and net worth in calculating the Ohio franchise tax.

Sales and Use Taxes

Retail sales of most goods and many services are subject to a state sales and use tax of 5.5%. As this tax also is a county source of revenue, the state rate may be increased by up to another 2.25% by the various counties. Combined sales taxes, therefore, are as high as 7.75% in some counties of the state, but the average is closer to 6.75%.

The companion use tax is imposed on the same base and rate as the sales tax. It is a tax on use, storage or consumption in Ohio of goods and services on which the sales tax was not collected (e.g., because the seller was not located in Ohio). It is assessed at the sales tax rate of the county where the property is being used (location of consumer).

Food and some beverages sold at retail for off-site consumption are not subject to sales tax, nor are goods and services that are to be resold. Other exemptions apply to goods and certain services used in manufacturing, agriculture, commercial fishing, aircraft repair or to goods sold by charitable organizations. Recent changes expanded the sales tax base to include services such as personal care services, leasing of tangible personal property, storage, towing, delivery charges and landscaping.

The state participates in the Streamlined Sales Tax Project (SSTP) which is a multi-state agreement involving more than forty states aimed at developing uniform standards and facilitating sales and use tax collections among the participating states.

One of the primary goals of the program is to help states collect use tax on items that previously bypassed vendor tax collections, such as catalogue and Internet sales delivered to out-of-state destinations.

Under the SSTP, sales are sourced as follows: (1) over-the-counter transactions in which the purchaser receives the product are sourced to the location of the seller, even if delivered to the customer at another location; (2) remote sales (e.g. mail order, telephone, or internet) by Ohio vendors to Ohio consumers are sourced to the place where the order was received; (3) sales by out of state vendors to Ohio consumers are sourced to the Ohio consumer's place of receipt; and (4) sales by Ohio vendors to out-of-state consumers are interstate commerce transactions and thus are not taxable by Ohio. Services, to the extent they are taxable, are sourced to the location at which the customer first makes use of the service (e.g., where the consumer takes possession of repaired property, where a business uses data processing services, etc.). Most leases of tangible personal property are sourced to the location where the property is primarily used at the time of entering into the lease, subject to some exceptions.

Property Taxes

Real property situated within the state is subject to annual taxation. Charitable organizations generally are exempt from property taxes, but Ohio's definition of "charitable" is not identical to the Federal definition..

Real estate taxes are imposed at rates determined by local tax levies on the assessed value of the property. The taxable value of real property is generally equal to 35% of the appraised fair market value, except for lands devoted exclusively to agricultural use. State rate rollbacks on rates for which the state reimburses local governments typically apply. Rate reductions are available for forest lands.

Business incentives include enterprise zones which may provide for up to a 75% exemption for property tax reductions in a ten year period.

Except for property used by certain public utilities, tangible personal property (e.g. machinery, equipment, inventories) is no longer subject to property taxation.

Except for a tax on certain dealers in intangibles, intangible property is not currently subject to tax in Ohio.

Estate/Trust Income Tax

In general, if a trust has Ohio situs[1], its net income is subject to income taxation in Ohio when a Federal Form 1041 is filed and beneficiaries reside in the state. Trust income tax rates are tied into individual income tax rates.

Ohio currently levies an estate tax on the estates of Ohio decedents. The exemption is $338,333, and the maximum tax rate is 7% on estates over $500,000. The estate tax is scheduled to be repealed effective for decedents dying after 2012.

[1] A complex nine-part trust residency test exists. A critical factor is whether any beneficiaries are Ohio residents.

REAL ESTATE

METHODS OF HOLDING TITLE

Generally, individuals; certain unincorporated religious, educational or other charitable organizations; labor unions; real estate investment trusts, business trusts; trustees of a trust; domestic corporations; foreign corporations licensed to do business in the state; domestic partnerships; domestic registered partnerships having limited liability; domestic limited partnerships or domestic limited liability companies; or foreign partnerships, limited partnerships or limited liability companies licensed to do business in the state can hold title to real property in Ohio.

Individual Ownership

Generally, individuals can own real property in Ohio. However, contracts and deeds by individuals younger than eighteen years of age or who are legally incompetent are voidable. Under §5301.254 of the Code, any individual who is not a citizen of and is not domiciled in the United States and who acquires, either in his or her own name or in the name of another, (1) an interest in real property located in the state that is in excess of three acres or that has a market value greater than $100,000, or (2) any interest in and to minerals and any mining or other rights appurtenant thereto or in connection therewith that has a market value in excess of $50,000, must file information with the Ohio Secretary of State on a form prescribed by the Secretary of State, within thirty days of acquiring such interest, together with a filing fee, including the following: name, address, and telephone number; country of citizenship; location and amount of acreage of real property; and intended use of real property. The filing must be updated to reflect any change in such information.

Corporate Ownership

A domestic or foreign business entity when organized in the state or when licensed to do business in the state can own property in Ohio. The filing requirements vary depending upon the type of business entity. In addition, under §5301.254 of the Code, a business entity (1) that is created or organized under the laws of any state or a foreign nation or that has its principal place of business in a foreign nation, and (2) in which either an individual who is not a citizen of, and is not domiciled in, the United Stated acquires at least 10 percent of the shares of stock or other interests or in which any number of such individuals acquire at least 40 percent of the shares of stock or other interests, which acquires, either in its own name or in the name of another, (a) an interest in real property located in the state that is in excess of three acres or that has a market value greater than $100,000 or (b) any interest in and to minerals and any mining or other rights appurtenant thereto or in connection therewith that has a market value in excess of $50,000, must file information with the Ohio Secretary of State on a form prescribed by the Secretary of State, within thirty days of acquiring such interest, together with a filing fee, including the following: name, addresses of principal place of business and principal Ohio office; name, address, telephone number and country of citizenship of each nonresident alien; certain information regarding the organization of the entity; the location and amount of acreage of the real property; and intended use of the real property. The filing must be updated to reflect any changes in such information. The primary advantage of a corporation is that the shareholders are generally not personally liable for obligations of the corporation. However, federal and state tax treatment of corporations may be disadvantageous in certain situations.

Partnership Ownership

Domestic and foreign partnerships can own property in the state when duly organized in Ohio or licensed to do business in the state. The filing requirements vary depending on the type of partnership. Limited partnerships generally provide the advantage of limited liability for limited partners. General partners of limited partnerships and partners of general partnerships have personal liability for obligations of the partnership. Federal and state tax treatment of partnerships may be advantageous in certain circumstances.

Limited Liability Companies

A limited liability company can own property in the state if it is duly formed in accordance with state law or, if formed in another state, if registered with the Ohio Secretary of State. Limited liability companies provide limited liability to all members.

Dower

Ohio recognizes an individual's inchoate dower interest in the real property of their spouse. Upon the death of one's spouse, that dower interest becomes consummate. The dower rights in Ohio are the same for a husband as for a wife.

Under §2103.02 of the Code, a spouse who has not relinquished or been barred from it has a life estate in one-third of the real property which the consort owned at any time during the marriage. The dower interest terminates upon the granting of an absolute divorce by a court of competent jurisdiction or upon the death of the consort except as to property conveyed or encumbered during the marriage without proper release of dower rights. In lieu of a dower right which terminates upon death, a surviving spouse is entitled to the distributive share provided for under §2105.06 of the Code.

A spouse who is not a mortgagor is generally required to release his or her dower rights in connection with the granting of a mortgage by the other spouse.

Concurrent Ownership

Tenancy in Common

A tenancy in common can be created by deed, devise or can be inferred to exist by a court. Each cotenant has a separate and distinct title to the same property, with a specified share in the entire estate. However, when a deed is silent as to each cotenant's share of the interest, the interests of all cotenants are presumed to be equal. Possession by one cotenant is equivalent to possession by all cotenants, and any benefit inures to all cotenants. Each cotenant must defend and protect the common property for the benefit of all cotenants. There is no right of survivorship. Upon receiving the share of the deceased cotenant, the successor becomes a tenant in common with the surviving tenants in common. A tenancy in common may be dissolved by a voluntary partitioning, judicial partitioning or conveyance.

Joint Tenancy

A joint tenancy under common law must be created by explicitly evidencing the parties' intent. The joint tenants must receive their interests at the same time and by the same document, have equal interests in the estate, and have equal and coextensive rights of possession. The joint tenants also have a right of survivorship. However, Ohio courts have held that without an express intent of holding jointly with rights of survivorship, a tenancy in common rather than a joint tenancy is created.

Chapter 5302.17 of the Code provides for a statutory survivorship deed. This statute supersedes common law joint tenancies and tenancies by the entireties in Ohio. The survivorship tenancy is similar to a joint tenancy, but unlike a common law joint tenancy, a conveyance by one survivorship tenant to another does not terminate the right of survivorship; upon the death of the conveying survivorship tenant the interest of his or her grantee terminates and title vests in the remaining original survivorship tenants. This vesting in the surviving joint tenant is customarily confirmed by the filing of a notice affidavit accompanied by a copy of the death certificate.

Tenancies by the Entireties

A tenancy by the entireties is a joint tenancy in which the joint tenants are spouses. The creditor of one spouse cannot foreclose on the other spouse's interest to satisfy a debt. A tenancy by the entireties may no longer be created in Ohio. However, under §5302.21(A) of the Code, a tenancy by the entireties created prior to April 4, 1985 continues to be valid.

OHIO PURCHASE AND SALE TRANSACTIONS

Statute of Frauds

The Statute of Frauds is codified in §1335.01, et seq. of the Code and under Chapter 1335.04, contracts for the sale or transfer of an interest in real property must be in writing in order to be enforceable.

Purchase Agreements

A purchase agreement is typically drafted by the purchaser. Purchase agreements usually provide for an inspection or due diligence period during which the purchaser is given the opportunity to inspect the property, review documents and information regarding the property and obtain financing and any necessary governmental approvals. The purchase and sale transaction is typically completed in escrow through an escrow agent, usually the title insurance company that is providing the purchaser's title insurance policy.

In residential sales, the seller is required to complete and provide to the purchaser a disclosure form mandated by the Secretary of State and §5302.30 of the Code. There are several exemptions to the disclosure requirement. Failure to deliver the statement when required gives purchaser certain rescission rights. Under federal regulations, sellers of residential real estate are also required to make certain disclosures regarding the presence or possible presence of lead-based paint at the property.

A purchase agreement typically includes the following: representations and warranties regarding the property (in commercial transactions); provisions for obtaining a title insurance policy in favor of the purchaser at the closing; contingencies for inspection of the property and improvements; a contingency for the review of a land survey and title report permitting the purchaser to object to title defects and giving the seller the obligation and/or the opportunity to remove or correct any title defects; a financing contingency; a contingency for obtaining an environmental site assessment and verification of compliance with applicable environmental laws; a contingency for verification of compliance with building and zoning regulations; and procedures for closing the transaction in escrow through an escrow agent. A purchase agreement also typically places the risk of the occurrence of a casualty loss or taking by eminent domain prior to closing on the seller by permitting the purchaser to elect either to terminate the agreement or to close and receive any insurance proceeds or taking awards.

If the parties intend that any of the representations, warranties or covenants in the purchase agreement will survive the closing and the filing of the deed for record, the purchase agreement must expressly provide for such survival. If the agreement is silent, the representations, warranties and covenants will merge with the deed and only those covenants and warranties contained in the deed will continue after closing.

Title Insurance

Evidence of title is typically provided by purchasing title insurance from a title insurance company. A title insurance policy insures that the ownership interest being transferred is good and marketable. Generally, title insurance commitments list the current owner of the property, a legal description of the property, standard exceptions which are applicable to all policies, and specific exceptions to title which apply only to that parcel of property. Examples of specific exceptions include mortgages, construction liens, easements and other encumbrances. It may be possible for both standard and specific exceptions to be removed upon presentation of the proper documentation to the title company.

The rates and premium charges for title insurance are regulated by the state. The cost of title insurance is typically paid at least in part by the seller; the allocation is usually negotiated between the seller and purchaser.

Transfer Taxes

A real property conveyance fee is levied on a seller in connection with the sale of real property. The fee is calculated based on the purchase price for the real property. The fee is typically paid in full or in part by the seller, although this item is frequently a negotiated item between buyer and seller, especially in commercial transactions. The amount of the fee varies from county to county, but it is generally $4.00 per thousand dollars of consideration based on the purchase price.

Taxes are prorated as of the closing date based on the most recent available tax bills or tax duplicate to the extent available from the county where the property is located. Because real estate taxes are generally paid in arrears, the tax duplicate may be more current than the last available bill. The proration procedures may vary slightly from county to county, depending upon how and when taxes are billed. A purchase agreement may provide that, upon the receipt of the final tax bill for the period in which the closing has occurred, the seller and purchaser will recalculate the tax proration and make any necessary adjustments outside of escrow. In some circumstances, the parties may wish to hold some funds in escrow for the purpose of this adjustment in the tax proration, especially if it is known that a current re-assessment will impact the proration of the arrearages.

Deeds

Effective February 1, 2002 deeds are no longer required to be executed in the presence of witnesses. To be in proper form in Ohio, deeds must be signed by the grantor and acknowledged by the grantor in the presence of a notary public or other officer authorized to take acknowledgments by statute. Deeds must recite the name and address of the person who prepared such instrument at the bottom. A deed is in compliance with 317.11.1 of the Code if it contains a statement in the following form: "This instrument was prepared by (name and address)." Deeds must contain a sufficient description of the property and, if the deed contains a new legal description (different from the last title instrument of record), then the description must recite the name of the surveyor who prepared it. *See* §5301.25 of the Code. A newly prepared legal description may cause delay in recording because it is likely to be reviewed by the recorder or county engineer. The deed must be filed in the office of the recorder of the county where the property is located. In addition, written standards governing the conveyances in each Ohio county are promulgated by each county's auditor and engineer. *See* §319.20.3 of the Code.

A deed may contain a reference by volume and page to the record of the deed or other recorded instrument under which the grantor claims title, but the omission of such reference shall not affect the validity of the same. *See* §5301.01 of the Code. The use of the word "grant" is sufficient for conveyance without need for additional language, and all rights, easements, privileges, and appurtenances belonging to the granted estate shall be included in the conveyance, unless the contrary is stated in the deed, and it is unnecessary to enumerate or mention them either generally or specifically.

As of July 1, 2009, §317.114 of the Code established new rules for the recordation of deeds and other recordable documents in Ohio. The following requirements apply to all documents presented for recording at county recorders in Ohio:

Margins:	Top Margin - three-inch margin (with right side reserved for the county) on page one, and one and one-half inches at the top of each remaining page. Once-inch margins are required on the sides and bottom of each page.
Font/Ink:	Not less than 10 point font using blue or black ink only (no highlighting allowed).
Paper Size:	Minimum of 8-1/2" x 11" and maximum of 8-1/2" x 14"

A county recorder shall accept non-conforming documents but may charge additional fees for recording any non-conforming document.

Types of Deeds

There are four statutory forms of deeds established under the Ohio Rev. Code: general warranty deed, limited warranty deed, quit claim deed and survivorship deed. Deeds must be recorded in the county in which the real property is located. *See* §5301.01 of the Code. Statutory forms are prescribed but are not mandatory.

General Warranty Deed

In a conveyance of real estate, or any interest therein, the words "general warranty covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his heirs, assigns, and successors, that he is lawfully seized in fee simple of the granted premises; that they are free from all encumbrances; that he has good right to sell and convey the same, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, against the lawful claims and demands of all persons" (§5302.06 of the Code). The statutory form of general warranty deed is reviewed in §5302.05 of the Code.

Limited Warranty Deed

In a conveyance of real estate, or any interest therein, the words "limited warranty covenants" have the full force, meaning, and effect of the following words: "The grantor covenants with the grantee, his heirs, assigns, and successors, that the granted premises are free from all encumbrances made by the grantor, and that he does warrant and will defend the same to the grantee and his heirs, assigns, and successors, forever, against the lawful claims and demands of all persons claiming by, through, or under the grantor, but against none other" (§5302.08 of the Code). The statutory form of limited warranty deed is reviewed in §5302.07 of the Code.

Quit-Claim Deed

In a conveyance of real estate, or any interest therein, the words "quit-claim" have the force and effect of a deed in fee to the extent of grantor's interest to the grantee, his heirs, assigns, and successors, and to his and their own use, but without covenants of any kind on the part of the grantor. The statutory form of quit-claim deed is found in §5302.11 of the Code.

Transfer on Death

Effective December 28, 2009, §5302.22 of the Code was amended abolishing the transfer on death deed but allowing that a person or persons who own real property or who convey an interest in real property may create an interest in the real property that is transferable on death to a designated beneficiary or beneficiaries (which beneficiary may include a trust) by the execution and recording of a transfer on death designation affidavit.

The transfer of the decedent's interest is effected by the recording of a confirmatory affidavit, accompanied by a certified copy of the decedent's death certificate, filed with the county recorder's office in the county where the real property is located.

Fiduciary Deed

In a conveyance of real estate, or any interest therein, the words "fiduciary covenants" have the full force, meaning and effect of the following words: "The grantor covenants with the grantee, his heirs, assigns, and successors, that he is duly appointed, qualified, and acting in the fiduciary capacity described in such deed, and is duly authorized to make the sale and conveyance of the granted premises, and that in all of his proceedings in the sale thereof he has complied with the requirements of the statutes in such case provided" (§5302.10 of the Code).

Closing: Formalities of Transfer Instruments

If financing is required for a buyer to complete a real property purchase, a financing contingency is typically included in the purchase agreement. Financing may be obtained through commercial lending institutions or other third parties. In some cases, financing programs through state agencies or local enterprise zones or economic development zones may be available to provide incentives for the buyer to locate its business in the subject community. A prospective purchaser should explore the available financing sources prior to entering into a binding agreement to purchase real property.

Ohio has uses both round table closings and "mail" closings; however, the most common method is the "mail closing." Most closings are completed in escrow by a title insurance company. The HUD-1 settlement statement form is typically used even if not required by federal law.

MORTGAGES AND LAND CONTRACTS

In form, a mortgage in Ohio is a conveyance of an estate, but Ohio is a "lien" state. The conveyance is then stated as made to secure the repayment of money or to guarantee performance of an agreed act. If the obligor repays the money or discharges the act, the conveyance becomes void.

In Ohio, mortgages are used as opposed to deeds of trust. Any real property interest may be mortgaged in Ohio, such as a tenant's leasehold interest, a land contract vendee's interest or an interest in minerals. However, in order for a mortgage to constitute a lien, there must be a genuine and valid obligation created for which consideration has been given.

Mortgages must be executed and recorded in the same manner as deeds (described above).

Types of Ohio Mortgages

There are several types of mortgages in Ohio, including a purchase money mortgage, vendor's lien mortgage, construction mortgage, wrap around mortgage and open-end mortgage. The most common in commercial transactions is the open-end mortgage. The open-end mortgage, under §5301.232 of the Code, secures unpaid balances of loan advances made after the mortgage is delivered to the county recorder for record, to the extent that the total unpaid loan indebtedness, exclusive of interest, does not exceed the maximum amount of loan indebtedness which the mortgage states may be outstanding at any time. A preparer must comply with §5301.232 of the Code to create a valid open-end mortgage (see below).

Elements of an Ohio Mortgage

In order for a mortgage to be in recordable form, Ohio law requires the names of the parties, current address of the mortgagee and must specify the secured property, including a legal description. Ohio follows the general rule that as between two mortgages on the same property, generally the mortgage first recorded has priority, unless the mortgagee under the first recorded mortgage had actual notice of a pre-existing but subsequently recorded mortgage. However, a mortgage that has been recorded first may be made expressly subordinate to a subsequent mortgage if valid consideration is given.

All properly executed mortgages shall be recorded in the office of the county recorder of the county in which the mortgaged premises are situated and shall take effect at the time they are delivered to the recorder for record. If two or more mortgages pertaining to the same premises are presented for record on the same day, they shall take effect in the order of their presentation. The first mortgage presented shall be the first recorded, and the first mortgage recorded shall have preference. A mortgage that is presented for record shall contain the then current mailing address of the mortgagee. The omission of this address or the inclusion of an incorrect address shall not affect the validity of the instrument or render it ineffective for purposes of constructive notice.

A mortgage securing unpaid balances of advances is a lien on the mortgaged premises from the time the mortgage is delivered for recording, for the full amount of the total unpaid loan indebtedness, including the unpaid balances of advances made under the mortgage, plus interest, regardless of when the advances are made. Thus, the priority of each future advance relates back to the time the open-end mortgage was filed. However, to secure such advances, the mortgage must state, in substance or effect, that the parties thereto intend that the mortgage shall secure the same, the maximum amount of unpaid loan indebtedness, exclusive of interest thereon (§5301.232 of the Code).

An open-end mortgage is effective only if it:

- States that the parties intend for it to secure such balances;
- States the maximum amount of unpaid loan indebtedness, exclusive of interest, which may be outstanding at any time; and
- Contains at the beginning the words "Open-End Mortgage" (§5301.232 of the Code).

Foreclosure

Foreclosures through judicial process are used almost exclusively in Ohio. Local court rules govern the conduct of foreclosure proceedings, and, in particular, the requirements of furnishing evidence of title to the court. The process may take several months to complete. Upon entry of a decree of foreclosure, a sheriff's sale is held at which the property is sold to the bidder, providing such bid exceeds the legal minimum bid. The holder of a mortgage may bid any amount up to or above the amount of its outstanding lien. The property owner may redeem the property at any time prior to confirmation of the sale by the court upon payment of the amount of the judgment, plus costs and interest. Upon confirmation of the sale, the property is conveyed to the highest bidder by sheriff's deed. A receiver may be appointed for the property by the court pending the completion of the foreclosure process to protect and preserve the property. Mortgagee may avail itself of the deed-in-lieu of foreclosure process.

Land Contracts

Land installment sales contracts are recognized in Ohio. Although §5313 of the Code provides for a residential land installment contract, it has not been clearly established if and to what extent these statutes govern commercial land installment contracts. Under statute, land contracts are foreclosed by judicial foreclosure process in the same manner as mortgages after the contract has been in effect for five years or the purchaser has paid more than 20 percent of the purchase price. Because the state laws concerning mortgages are more established, it is more typical for a seller to finance a purchase and sale by taking back a note and mortgage in the amount of the purchase price than by using a land installment sales contract.

EASEMENTS

Easements may be created by grant in an instrument in writing executed in the same manner as a deed and recorded in the real property records of the county in which the subject property is located. Easements may also be created by reservation or exception in a deed or by prescription by one who uses the land of another for the statutory period of twenty-one years, provided that the use is open, notorious, continuous, hostile or under claim of right to the interest of the owner. Courts may also recognize the existence of an easement in certain circumstances. However, easements created by grant are favored by the courts. Easements may be granted as an appurtenance to a specific parcel of real property if that property is properly described in the easement. Easements are estates in land and can only be transferred as real property. There are generally no restrictions or limitations on the types of uses that the parties may provide for in an easement.

REAL PROPERTY LEASES

Acknowledgement

Under Ohio Rev. Code §§5301.01 and 5301.08, a lease for a term of greater than three (3) years must be signed by the lessor and acknowledged by lessor before a notary or other office authorized by statute to take acknowledgements. Chapter 5301.01 of the Code was recently revised to eliminate the requirement that a lease for a term of greater than three years be acknowledged by the lessor in the presence of two witnesses.

Term

Leases in Ohio may be for a fixed term or may be entered into on a periodic basis, such as month-to-month. A lease for a term greater than one year must, however, be in writing in order to be enforceable. Under an oral lease for a periodic

tenancy, either party may terminate the lease upon seven days notice for a week-to-week tenancy or 30 days notice prior to the periodic rental date for a month-to-month tenancy.

Costs and Expenses

A written lease should allocate responsibility between the landlord and tenant for expenses in addition to rent. Such expenses include taxes, insurance and property maintenance. A lease under which the tenant pays a flat sum for rent is referred to as a "Gross Lease." Under a Gross Lease, the landlord is expected pay other expenses related to the property out of the rent paid by the tenant. A lease under which the tenant assumes responsibility for rent, utilities and all other expenses associated with the property, including mortgage interest and amortization, is called a "Triple Net Lease."

Default Remedies

Residential leases are governed by §5321 of the Code, which provides for various default remedies for breach of a rental agreement by either the landlord or the tenant. Commercial leases, on the other hand, are generally viewed as contracts between sophisticated parties, and as such, the parties are limited to the remedies specified in the lease or to general contract remedies. Therefore, the default remedies discussed in this section are associated with residential leases.

When either the landlord or the tenant breaches a residential lease, a cause of action accrues in favor of the injured party. The injured party may bring a claim for damages sustained as a result of the breach or may seek an injunction from the court to enforce the covenant in the lease that has been breached by the other party. An action for breach of the lease may bar subsequent actions between the parties unless the action is considered one for breach of a specific provision of the lease, such as an action for the agreed rent, rather than for a breach of the entire lease. *See* 65 Oh. Jur. 3d Landlord and Tenant §115 (2002).

A residential landlord may bring an action for forcible entry and detainer for possession of the premises under certain conditions as provided in §1923 of the Code. Other than as provided in §1923, a landlord may not, however, initiate any retaliatory action such as termination of utilities or exclusion from premises in order to recover possession of the premises in light of a tenant's breach. A landlord that violates the provisions of the Code governing the remedies available for recovery of residential premises may be liable to the tenant for any damages sustained and for reasonable attorneys' fees. *See* §5321.02(B) of the Code. The tenant may also be able to recover punitive damages. *See* 65 Oh. Jur. 3d Landlord and Tenant §532 (2002).

Residential Leases

Residential leases are governed by §5321 of the Code. They may be oral or written, and are not typically recorded. These statutory provisions limit the obligations that a landlord can impose upon a residential tenant and provide for strict eviction and lease termination procedures. The landlord is required to properly maintain the premises, supply heat and running water under specified conditions, and provide reasonable notice (usually 24 hours) of his intent to enter the premises. Under §5321.04 (B) of the Code, if the landlord unlawfully enters the premises, the tenant may seek damages or may terminate the lease. If the landlord fails to fulfill any other obligation imposed on him by §5321.04 of the Code or by the rental agreement, and the tenant has given notice to the landlord of such failure, there are several remedies available to the tenant under §5321.07 of the Code. These remedies include depositing any rent due with the clerk of the municipal or county court having jurisdiction, application to the court for an order directing the landlord to remedy the condition, or termination of the rental agreement.

The tenant's obligations are defined in §5321.05 of the Code and include a requirement to keep the premises safe and sanitary and a requirement that the tenant conduct himself in a manner that does not interfere with his neighbors' right to quiet enjoyment of the premises. If the tenant violates any provision of §5321.05 of the Code, the landlord may be entitled to actual damages and to termination of the rental agreement.

Ground Leases

A ground lease is a lease of vacant or unimproved real property. Generally, a ground lease is a long-term lease under which lessor retains title to the property, but lessee takes possession of the land and is entitled to construct improvements on the property. A ground lease is often a net lease; in addition to rent, the lessee pays such expenses as taxes, insurance and maintenance charges.

Commercial Leases

While residential leases are governed by §5321 of the Code, commercial leases generally are not. Chapter 5321.01 of the Code defines "tenant" as a person entitled under a rental agreement to use and occupy residential premises and "landlord" as the owner, lessor or sublessor of residential premises. Unless the agreement expressly deals with an item covered by §5321, a commercial lease is commonly viewed as a contract between sophisticated parties and is governed by the terms of the lease itself rather than by provisions of the Code.

In addition, commercial leases, as well as a third party's guaranty of the performance of the tenant's obligations under such leases, generally must be in writing to be enforceable. Leases for a term of three years or more must be executed in the same manner as deeds and may be recorded in the real property records of the county in which the subject property is located. In lieu of recording the entire lease, a memorandum of lease may be recorded setting forth the landlord, the tenant, date of the execution of the lease, the term of the lease, a description of the leased premises and setting forth such other information as the parties wish to include.

ZONING AND LAND USE

Zoning is determined by local law (city or county, in the case of unincorporated townships) and varies across the state. Additional land use restrictions may be imposed by the state or the United States federal government on properties located in designated historic districts or designated as having special historic significance, or properties located in coastal areas, areas designated as wetlands or areas designated as erosion hazard areas. Because zoning regulations are not title matters, but laws governing the use of the real property, they are not necessarily covered by a title examination.

Under §713.13 of the Code, the municipality or a neighboring property owner who would be harmed may institute an action for injunction to prevent or terminate a violation of a zoning ordinance. A variance may be granted by a township board of zoning appeals under §519.14 of the Code where unnecessary hardship would result from enforcement of a zoning ordinance.

Condominium Property and Planned Unit Developments

Under §5311 of the Code, before an interest in a condominium unit may be conveyed, a declaration submitting the property to the provisions governing condominium developments is required to be signed and acknowledged by the property owner and then filed with the recorder and the auditor for the county in which the property is located. The information that must be included in the declaration is listed in §5311.05 of the Code.

A planned unit development is defined as a development which is designed to integrate residential, commercial, industrial or any other use. *See* 10 Oh. Jur. 3d Buildings, Zoning, and Land Controls §95 (2002). A planned unit development may be established or modified by a county or a township zoning resolution or amendment. *See* §§303.022 and 519.021. Each of these sections of the Ohio Rev. Code contains the available procedures for including a planned unit development in a zoning resolution. Also under these sections of the Code, "regulation of planned unit developments must further the purpose of promoting the general public welfare, encouraging the efficient use of land and resources, promoting greater efficiency in providing public and utility services, and encouraging innovation in the planning and building or all types of developments." 10 Oh. Jur. 3d Buildings, Zoning, and Land Controls §95 (2002). Planned unit developments allow for varying uses within an area with a single zoning classification.

The initial designation of a property as a planned unit development act is considered a legislative act and is, therefore, subject to referendum. Regulations establishing a planned unit development apply to the property only at the election of the property owner.

Municipal Subdivision Regulations

Zoning rules and regulations in Townships of Ohio are specified under §519.01-.99 of the Code. Municipal Corporations zoning rules are specified under §713.06-.15 of the Code.

MINERAL RIGHTS

When real property is conveyed or granted without specific exception or reservation of the underlying minerals, the rights to the property conveyed will include the subsurface rights and minerals. The mineral interest may be conveyed separately as land, using the same formalities as an estate in land. The grant of mineral interests gives the owner of the mineral interest an easement across the surface of the grantor that is reasonably sufficient to gain access to the underlying minerals. The owner of the surface rights is entitled to use his or her property provided that no activity derogates the rights of the mineral owner. The owner of the mineral interests is obligated not to act negligently in failing to provide lateral support for the surface, unless the right is waived by the surface owner. A conveyance of mineral rights without specific limitation as to which minerals are conveyed includes a broad list of substances, including oil and gas. Mineral rights may also be created by lease, in which case the lessee is granted the right to enter the surface and extract such substances as are specifically identified in the lease, upon the terms and conditions set forth in the lease. A right to extract minerals may also be given in the form of a license, which does not create any interest in land. Mineral leases and oil and gas leases must comply with the requirements for conveyances of land in §5301.01 of the Code. Oil and gas leases must also be recorded and must comply with §5301.09 of the Code. Oil and gas leases are also subject to securities laws and §1509 of the Code. Mining and mineral operations (including the production of oil and gas, and closing and capping of wells) are governed by the Ohio Department of Natural Resources.

Creation

The Ohio Supreme Court has determined that a person may own a fee interest in mineral rights. *See* Ohio Sand and Gravel Co. v. Masheter (1964) 176 Ohio St. 327. Additionally, under Ohio law, it is possible for the total interest in real property to be divided in such a way that the surface estate is severed from the mineral estate. When a deed grants or reserves the minerals, but does not specifically mention the grant or retention of the right to explore for and extract the minerals, such a right is implied. *See* Quarto Mining Co. v. Litman (1975) 42 Ohio St. 2d 73.

Leasing

A mineral interest may be leased in Ohio. A standard lease form is usually used. Leases for oil and gas must be recorded in the record of leases in the county where such land is located and must state the name and addresses of both the lessor and lessee. *See* §5301.09 of the Code.

Drilling

Permits to drill, deepen, plug, reopen or convert wells are issued by the Chief of Division of Mineral Resources Management. Rules governing the application are set forth in §1509.06 of the Code. Each application must be accompanied by a map prepared by a registered surveyor. Wells in coal bearing townships are specially regulated and subject to additional requirements. *See* §1509.18-.19 of the Code.

EMINENT DOMAIN

Broad eminent domain power has been granted to municipal corporations under the Ohio Constitution, together with the authority to delegate such power to boards or commissions other than city councils. Universities and institutions of

higher learning, a railroad company, providers of communications facilities and providers of electrical power are granted the power of eminent domain by statute. Appropriation of land by the state is governed by Ohio Rev. Code Chapter 163, townships are governed by §§504.19 and 511.24, municipalities are governed by Chapter 719, and counties are governed by §307.08. Other relevant provisions of the Revised Code governing appropriations of land include the following: §1501 for the Department of Natural Resources; §4933 for gas, electric and water providers; §4951 for street railways and interurban railroads; §5519 for highways and bridges; §6103 for county water supply systems; §6117 for sewer systems; §1723 for corporations and §3333.08 for private colleges and universities.

Owners of property subject to condemnation action may seek damages (i.e., the difference between the value of the land before and after the taking) and compensation in the amount of the fair market value of the land taken. The right of eminent domain extends generally to every kind of property and all interests in that property.

ENVIRONMENTAL LAW

Federal Environmental Law

Although there are upwards of 20 federal environmental statutes, the most significant, in terms of widespread impact on the states, including Ohio, are the four so-called "media-based" statutes and their associated regulations: The Clean Air Act (CAA); the Federal Water Pollution Control Act (FWPCA, also known as the Clean Water Act or CWA); the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or RCRA); and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). These statutes generally begin by establishing federal standards which are administered by the United States Environmental Protection Agency (U.S. EPA). If a state adopts laws and regulations and U.S. EPA agrees that the standards established by the state are at least as stringent as the federal standards already in place, U.S. EPA will authorize the state to enforce its own program in lieu of the federal requirements. Until U.S. EPA authorizes a state program, or in the event that U.S. EPA rescinds authorization, the federal standards continue to be enforced in the state by U.S. EPA. Nonetheless, even after it authorizes a state to implement a particular environmental law, U.S. EPA frequently retains the right to enforce the federal program as well.

In general, federal environmental laws grant to U.S. EPA broad powers to inspect regulated facilities, require such facilities to provide information on their compliance status and comply with numerous recordkeeping and reporting requirements, and enforce both federal and state environmental laws.

State Environmental Law

The state agency charged with primary responsibility for environmental matters, the Ohio Environmental Protection Agency (Ohio EPA), operates through a number of divisions. The Divisions of Surface Water, Air Pollution Control, Materials and Waste Management and Environmental Response and Revitalization[2] administer and enforce state statutes and regulations corresponding to the FWPCA, the CAA, RCRA and CERCLA, respectively.

The office of the Director of Ohio EPA is located at its Central Office (headquarters) in Columbus, the state capital, at:

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Mailing Address:
P.O. Box 1049
Columbus, Ohio 43216-1049

In addition to the headquarters office, there are five regional offices serving the different areas of the state:

Central District Office (Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, Morrow, Knox and Union Counties)

50 West Town Street, Suite 700
Columbus, Ohio 43207-3417
Telephone: 614-728-3778
Fax: 614-728-3898
http://www.epa.state.oh.us/cdo/

[2] The Division of Materials and Waste Management combines certain functions formerly performed by Division of Solid and Infectious Waste and the Division of Hazardous Waste Management; the Division of Environmental Response and Revitalization combines certain functions formerly performed by the Division of Emergency and Remedial Response and the Division of Hazardous Waste Management. As of August 2011, however, Ohio EPA had not yet developed new Internet sites for the recently-merged divisions.

Northeast District Office (Ashtabula, Carroll, Columbiana, Cuyahoga, Geauga, Holmes, Lake, Lorain, Mahoning, Medina, Portage, Stark, Summit, Trumbull and Wayne Counties)

2110 East Aurora Road
Twinsburg, Ohio 44087
Telephone: 330-963-1200
Fax: 330-487-0769
http://www.epa.state.oh.us/nedo/

Northwest District Office (Allen, Ashland, Auglaize, Crawford, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Richland, Sandusky, Seneca, Van Wert, Williams, Wood and Wyandot Counties)

347 North Dunbridge Road
Bowling Green, Ohio 43402
Phone: 419-352-8461
Fax: 419-352-8468
http://www.epa.state.oh.us/nwdo/

Southeast District Office (Adams, Athens, Belmont, Coshocton, Gallia, Guernsey, Harrison, Hocking, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Tuscarawas, Vinton and Washington Counties)

2195 Front Street
Logan, Ohio 43138
Phone: 740-385-8501
Fax: 740-385-6490
http://www.epa.state.oh.us/sedo/

Southwest District Office (Brown, Butler, Champaign, Clark, Clermont, Clinton, Darke, Greene, Hamilton, Highland, Logan, Miami, Montgomery, Preble, Shelby and Warren Counties)

401 East Fifth Street
Dayton, Ohio 45402
Phone: 937-285-6357
Fax: 937-285-6249
http://swdoweb.epa.state.oh.us/

Other state agencies with responsibility for environmental compliance are the Ohio Department of Natural Resources (ODNR) and the Bureau of Underground Storage Tank Regulations (BUSTR), within Ohio's Department of Commerce-Office of State Fire Marshal. ODNR is responsible for the management of the state's natural resources, including parks, waterways and mineral resources. BUSTR is responsible for regulating the operation of underground storage tanks containing petroleum and other "regulated substances" and conducting the investigation and cleanup of releases from underground storage tanks. In addition, Permits to Install and NPDES permits for wastewater discharges from certain concentrated animal feeding facilities are issued by the Ohio Department of Agriculture.

Ohio is also home to state or regional offices of virtually all major environmental organizations, including the Sierra Club, the Nature Conservancy and the Audubon Society. All of these, and many others, are politically active and are represented by lobbyists at the state capital in Columbus. In addition, as might be expected in one of the more industrialized states, the Ohio Chamber of Commerce, the Ohio Chemistry Technology Council, the Ohio Manufacturers Association and the American Petroleum Institute maintain full- or part-time offices and personnel in Ohio, devoted to environmental issues.

AIR POLLUTION CONTROL

Federal - The Clean Air Act, 42 U.S.C. §7401, et seq. (CAA)

The goal of the CAA is to "protect and enhance the quality of the Nation's air resources so as to promote the health and welfare and the productive capacity" of the country.

Pursuant to the CAA, U.S. EPA has established national air quality standards to protect public health and welfare, known as the National Ambient Air Quality Standards (NAAQS), for six "criteria pollutants": sulfur oxides; particulate matter; carbon monoxide; ozone; nitrogen oxides; and lead. The CAA requires each state to prepare and submit for U.S. EPA review and approval a regulatory plan, known as a State Implementation Plan (SIP), which sets forth its program for attaining and maintaining the NAAQS by a specified date through enforceable limitations and other controls on emissions from specific stationary sources. If a state fails to develop or enforce an adequate SIP, U.S. EPA may impose its own plan, called a Federal Implementation Plan (FIP).

In *Massachusetts v. Environmental Protection Agency*, 549 U.S. 497 (2007), the Supreme Court held that greenhouse gases (GHG), including carbon dioxide, fall within the Clean Air Act's broad definition of "air pollutant," U.S. EPA has statutory authority to regulate emissions of such gases from new motor vehicles. The decision likely will cause regulation of GHG emissions to expand to stationary sources such as coal-fired power plants, oil refineries and other industrial facilities.

The CAA includes permitting requirements applicable to construction of certain new and modified sources of air emissions. Briefly, in areas that do not attain the NAAQS, the New Source Review (NSR) program requires the permittee to apply the lowest achievable emissions rate (LAER) and obtain emissions offsets from existing sources in the area, such that there will be reasonable progress toward attainment of the NAAQS. In areas already in attainment for the applicable NAAQS, the permittee must install best available control technology under the Prevention of Significant Deterioration (PSD) program. Under the CAA, U.S. EPA has also adopted emissions standards for new sources of air pollution applicable to certain categories of industrial facilities (New Source Performance Standards or NSPS).

The CAA was amended extensively in 1990. Among other changes was a major expansion of the CAA's air toxics program. Prior to 1990, the CAA required U.S. EPA to designate pollutants as hazardous and to develop standards to control emissions from sources that emit such pollutants (National Emissions Standards for Hazardous Air Pollutants or NESHAPs). U.S. EPA initially designated eight pollutants as hazardous air pollutants (HAPs): asbestos; benzene; beryllium; coke oven emissions; inorganic arsenic; mercury; radionuclides; and vinyl chloride. The Clean Air Act Amendments of 1990 (CAAA) expanded the list of pollutants designated as HAPs from the eight previously designated by U.S. EPA to the 189 listed in the statute. As required by the CAAA, U.S. EPA has developed a list of categories of major sources of HAPs and has adopted technology-based Maximum Achievable Control Technology standards for more than 120 source categories; a "major source" is one which has the potential to emit 10 tons per year of a single HAP or 25 tons per year of all HAPs in the aggregate. U.S. EPA is also in the process of developing standards to control emissions of air toxics from area sources, *i.e.*, sources that emit less than 10 tons annually of a single HAP or 25 tons annually of HAPs in the aggregate. U.S. EPA has identified a total of 70 area source categories and is in the process of developing standards applicable to such sources.

The asbestos NESHAP applies to demolition and renovation activities where asbestos-containing material (ACM) is present above certain threshold amounts and is intended to minimize the release of ACM during such activities. The asbestos NESHAP requires notification to the delegated state or local environmental agency and/or the relevant U.S. EPA Regional Office at least 10 working days before commencement of any stripping, removal or other work that might disturb the ACM. In addition, the asbestos NESHAP prescribes requirements intended to limit emissions of asbestos, including requirements that the owner "adequately wet" exposed ACM or use another emission control method, such as a ventilation system. Also, the owner or operator of the facility must properly dispose of any ACM-containing waste material. The asbestos NESHAP is found at 40 C.F.R. §61.140, *et seq.*

Pursuant to Title V of the CAAA, all states have developed and implemented operating permit programs for various sources, including major sources of HAPs, sources subject to NSPS and sources subject to the NSR or PSD requirements. Among other things, all Title V permits include emissions limits, monitoring and reporting requirements and mandate the submittal of compliance certifications by the permitted facility. Also included in the CAAA were provisions intended to strengthen U.S. EPA's program to address nonattainment with the NAAQS for ozone, new programs to address acid rain and stratospheric ozone and requirements that companies that use certain flammable and toxic substances develop a Risk Management Plan (RMP), which includes an assessment of the potential risks associated with a chemical release and strategies to prevent and respond to such a release.

State Considerations

STATUTE(S)	**Ohio Rev. Code §3704.01, *et seq*.**
REGULATION(S)	**OAC Chapters 3745-14 to 26; 3745-31; 3745-71 to 80; and 3745-101 to 103**
INTERNET	**www.epa.state.oh.us/dapc**

Ohio Rev. Code §3704.01, *et seq.* empowers the Director of Ohio EPA to meet the Agency's obligations under the Clean Air Act, including monitoring (the responsibility of the Air Monitoring Section), enforcing the state and federal air toxics regulations (Air Toxics Unit), bringing non-attainment areas into attainment (Environmental Assessment Unit), reviewing new sources and strategic planning (New Source Review Unit). Permits for Title V and non-Title V sources are issued and enforced by the district offices of Ohio EPA and by local air agencies throughout the state.

Pursuant to Ohio Administrative Code (OAC) 3745-31-02, no person may cause, permit or allow installation of a new source of air pollution without a Permit-to-Install and Operate (PTIO) from Ohio EPA or the local air agency.[3] Sources which are specifically exempted from the PTIO requirements are listed in OAC 3745-31-03. In general, any air pollutant source which emits more than 10 pounds of pollutants per day is subject to the PTIO requirements, unless the source is specifically exempted under OAC 3745-35-03 or is subject to Title V permit requirements under OAC Chapter 3745-77. Title V permits are required for the same categories of sources as those included in Title V of the CAA.

Under SB 265, enacted in August 2006, Ohio Rev. Code §3704.03(F) requires that applications for permits for new and modified sources must contain sufficient information to determine conformity with what had previously been an Ohio EPA policy document, entitled "Review of New Sources of Air Toxics Emissions, Option A," dated May 1986, which the Director is to use to evaluate toxic emissions from such sources. In December 2006, Ohio EPA adopted OAC 3745-144-01, which identifies 303 toxic air contaminants.

SB 265 also amended requirements regarding "best available technology" (BAT) such that: (1) sources with a potential to emit of less than 10 tons per year are not required to install BAT; and (2) for sources with a potential to emit of 10 tons per year or more, Ohio EPA can only require BAT in accordance with standards adopted by regulation (rather than on a case-by-case basis). *See* Ohio Rev. Code §3704.03(T). It should be noted, however, that in *Sierra Club v. Korleski*, 716 F.Supp.2d 699 (S.D. Ohio 2010), the Court held that the Director of Ohio EPA had violated the Clean Air Act by failing to enforce the state implementation plan requirement that all new or modified sources whose potential to emit is less than 10 tons per year employ BAT.

In Ohio, RMPs must be submitted to U.S. EPA and Ohio EPA and must be updated and resubmitted every five years. Ohio's asbestos regulations are found at OAC Chapter 3745-20.

[3] In the past, non-Title V facilities were required to obtain both a Permit to Install (PTI) and then a separate Permit to Operate (PTO) for each air emissions source. However, in July 2008, Ohio EPA combined the PTI and PTI programs so that all facilities not subject to the Title V program are now only required to obtain a PTIO.

WATER POLLUTION CONTROL

The Federal Water Pollution Control Act (FWPCA), 33 U.S.C. §1251, et seq.

Also known as The Clean Water Act (CWA), the concept behind the FWPCA is simple enough: no point source may discharge any pollutant into the navigable waters without a federal or state permit issued under the FWPCA's National Pollution Discharge Elimination System (NPDES). The definition of point source includes a variety of conveyances from which pollutants are or may be discharged, including pipes, ditches, channels, tunnels, conduits and wells. "Navigable waters" broadly include all waters that are or were susceptible to use in interstate commerce, all interstate waters and all other waters the use or destruction of which could affect interstate commerce, and may include waters that are not navigable-in-fact. NPDES permits cover discharges from industrial operations, municipal wastewater treatment plants, known as "publicly owned treatment works" (POTWs), storm water from various types of industrial operations and certain construction sites, mining operations, animal feedlots and aquaculture facilities. NPDES permits establish the total amount and concentration of pollutants that a facility is allowed to discharge and also include monitoring, reporting and recordkeeping requirements.

"Indirect dischargers" are those that discharge their wastewater to a municipal sewer system so that it is then treated in a POTW prior to discharge to surface water. Because industrial wastewater may contain chemicals or other pollutants which could reduce the effectiveness of POTWs, U.S. EPA has established pretreatment standards, limiting the amount or concentration of pollutants which manufacturers, in certain industrial categories, are allowed to discharge to a POTW. Indirect dischargers are not required to obtain an NPDES permit, but may be required to obtain a discharge permit from the POTW pursuant to the local sewer use ordinance.

U.S. EPA regulations also require a permit for any facility with a point source that discharges storm water associated with industrial activity to waters of the United States. A discharge associated with industrial activity is one that is directly or indirectly related to manufacturing, processing or raw materials storage at an industrial plant. As a practical matter, a storm water permit is required for any industrial facility where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products or individual machinery are exposed to storm water. Owners or operators of facilities that discharge storm water associated with industrial activity must submit either an individual permit application, participate in a group application or seek coverage under a general permit. In the event that all industrial materials are protected by a storm-resistant shelter from exposure to rain, snow, snowmelt and/or runoff, a storm water discharge permit is not required. In that case, however, the facility must submit a "Certificate of No Exposure" to the permitting authority once every five years.

U.S. EPA and the U.S. Army Corps of Engineers (Corps) jointly administer one aspect of the Federal Wetlands Protection Program, namely, FWPCA §404, which governs the discharge of dredged and fill material into waters of the United States. Under §404, a permit (individual or general) must be obtained from the Corps in order to discharge fill material; the Corps also issues decisions as to which waters fall within the jurisdiction of §404. U.S. EPA has promulgated the substantive water quality criteria that permit applications must meet (in conjunction with the Corps) and has the authority to veto the Corps' permit decisions.

Some wetlands activities may be authorized under a Nationwide Permit (NWPs), a form of general permit issued by the Corps. NWPs authorize certain categories of activity, such as placement of aids to navigation, maintenance of previously filled areas, transportation projects and other activities that are considered minor in scope and expected to result in no more than minimal adverse impacts, both individually and cumulatively. Individuals wishing to perform work under one of the NWPs must ensure that their project meets the specific terms and conditions set forth in the individual NWP (including any notification requirements), as well as general terms and conditions applicable to all NWPs. If the conditions cannot be met, a regional general permit or individual permit is required.

FWPCA regulations also govern the conditions under which petroleum is stored in bulk. The primary enforcement mechanism here is the requirement that those storing petroleum products in excess of 1,320 gallons aboveground or 42,000 gallons underground must develop and implement a Spill Prevention Control and Countermeasure Plan. In July 2002, U.S. EPA adopted various changes to the SPCC requirements, including clarification of several definitions, changes in the oil

storage thresholds, deletion of the 660-gallon aboveground storage tank threshold and mandatory plan reviews every five years (rather than three years). However, U.S. EPA has delayed the deadline for complying with the revised SPCC rule on several occasions. As of August 2011, the compliance deadline has been extended to November 10, 2011 for many facilities. However, certain facilities, including offshore drilling, production or workover facilities and onshore facilities that are required to submit Facility Response Plans, were subject to a deadline of November 10, 2010 to prepare or amend SPCC Plans in accordance with the 2002 rule.

State Considerations

STATUTE(S)	**Ohio Rev. Code §6111.01, *et seq.***
REGULATION(S)	**OAC Chapters 3745-1 and 2 (water quality standards); 3745-3 (pretreatment standards); 3745-4 (surface water monitoring); 3745-5 (water quality trading program); 3745-33 (NPDES individual permits); 3745-32 (401 certifications); 3745-36 (indirect discharge permits); 3745-38 (NPDES general permits); 3745-42 (PTIs) and 3745-1-50 to 3745-1-54 (wetlands)**
INTERNET	**http://www.epa.state.oh.us/dsw**

Ohio Rev. Code §6111.01, *et seq.* reflects the goals of the FWPCA; achieving these goals is the responsibility of Ohio EPA's Division of Surface Water. Ohio's water quality standards are set forth in OAC Chapter 3745-1. OAC 3745-1-04 sets forth narrative standards and general water quality criteria which must be met for all waters of the state. Numeric criteria (chemical, whole effluent toxicity and biological) are set forth in OAC 3745-1-07, while beneficial use designations for specific waterbodies are set forth in OAC 3745-1-08 through 3745-1-32. As with the federal scheme, these standards are intended to be met through the imposition of water quality-based effluent limits in NPDES permits, issued by the Division of Surface Water under a program which has been approved by U.S. EPA. OAC 3745-42-02 requires generally that a PTI be obtained from Ohio EPA prior to installing or modifying any system for disposing of sewage, industrial waste or other liquid wastes, including sewage systems and treatment works.

Mirroring the federal system, OAC 3745-33-02 requires permits for point sources which discharge sewage, sludge or any other pollutant to the waters of the state. More specifically, each point source is required to have either an individual or general NPDES permit or, for certain facilities that discharge to a POTW, an indirect discharge permit. General NPDES permits govern direct discharges from general categories of activities. Ohio EPA has issued a number of general permits for wastewater discharges, including permits governing storm water discharges associated with industrial activity or construction activity, coal strip mining activities, discharges from petroleum-related corrective action sites, non-contact cooling water discharges, small sanitary wastewater treatment systems, small municipal separate storm sewer systems, geosystem thermal discharges and petroleum-related corrective actions. As the name implies, individual permits are issued to individual operations if their discharges are significant, are not in compliance with the terms of the general permit, if the operation is subject to specific effluent limitation guidelines or if the general permit covering the operation has been revoked by the Director of Ohio EPA. Individual permits are governed by OAC Chapter 3745-33 and general NPDES permits are governed by OAC Chapter 3745-38. Copies of the general permits issued by Ohio EPA are available at http://www.epa.ohio.gov/dsw/permits/gpfact.aspx.

Ohio EPA also administers the state's storm water permitting program. As noted above, Ohio EPA has issued general permits applicable to storm water discharges from industrial activity and construction activity. Both general permits require the permittee to develop and implement a Storm Water Pollution Prevention Plan (SWPPP or SWP3) which identifies potential sources of pollution and describes control practices to be implemented at the facility in order to minimize pollutants in storm water discharges. Ohio's current general permit for storm water discharges associated with industrial activity (OHR000004) expired on May 31, 2011. However, the general permit will continue in force until a new general permit is issued. Ohio's general permit for storm water discharges from small and large construction activities (OHC000003) will expire on April 20, 2013.

In order to obtain a permit to discharge dredge or fill materials from the U.S. Army Corps of Engineers under CWA §404, the applicant must obtain a §401 Water Quality Certification from Ohio EPA, certifying that the discharge will not violate state water quality standards. On July 6, 2007, Ohio EPA issued a §401 Water Quality Certification for all activities performed under Nationwide Permits 1-50 issued by the Corps, provided that the activities are performed in accordance with the conditions set forth in the NWPs and the §401 Water Quality Certification..

Following the U.S. Supreme Court's decision in Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, 531 U.S. 159 (2001), in which the Court limited the authority of the Corps to assert jurisdiction over certain non-navigable, isolated, intrastate wetlands, on July 17, 2001, Governor Taft signed into law Ohio HB 231, which requires that anyone who proposes to engage in an activity that involves the filling of an isolated wetland, *i.e.*, any wetland that is not subject to regulation under the FWPCA, must obtain a permit from Ohio EPA. HB 231 also mandated that Ohio EPA issue a general state wetland permit authorizing the filling of an isolated wetland and authorized the Agency to issue individual state isolated wetland permits.

Accordingly, on February 11, 2002, Ohio EPA issued a general permit authorizing the filling of certain isolated wetlands. Ohio's isolated wetlands general permit authorizes the filing of Category 1 (low quality) and Category 2 (medium quality) isolated wetlands where the proposed project involves the filling of, or discharge of dredged material into, no more than one-half acre of Category 1 and Category 2 isolated wetlands. Filling of Category 1 or 2 isolated wetlands more than one-half acre in area and Category 3 (high quality) isolated wetlands requires an individual permit. Category 3 isolated wetland may only be filled if the proposed activity is necessary to meet a "demonstrated public need." The general permit contains certain conditions, including requirements to submit a pre-activity notification (PAN) and to perform mitigation. The mitigation ratio depends on the isolated wetland category involved, whether the wetland is forested and the mitigation location. As of August 2011, Ohio EPA is in the process of reviewing public comments on draft regulations to establish a state water quality permit for discharges to isolated wetlands.

SOLID AND HAZARDOUS WASTE

Federal - The Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq. (RCRA, also known as the Solid Waste Disposal Act or SWDA)

RCRA regulates the handling of hazardous wastes generated by manufacturing or other activities. These wastes are considered hazardous either by virtue of being "listed" or "characteristic" (*i.e.*, ignitable, corrosive, toxic or incompatible with other wastes). Once these wastes are generated through a manufacturing or similar process, RCRA regulates their entire life-cycle, from generation through transport to the treatment, storage and disposal (TSD) facility at which they are ultimately disposed. The primary mechanisms facilitating this "cradle to grave" tracking are the requirement that any person generating hazardous wastes in excess of certain quantities must obtain a Hazardous Waste Activity Identification number and use a manifest, a multiple-copy document that provides a mechanism for tracking the chain of custody of any hazardous waste from the generator's facility, through the transporter, until its final disposition at a TSD facility.

Different levels of regulation apply to generators, depending on the amount of hazardous waste they generate each month: a facility that generates 1,000 kg. (2,200 lb.) or more per month of hazardous waste is a Large Quantity Generator (LQG); a facility that generates more than 100 kg. (220 lb.) of hazardous waste, but less than 1,000 kg., is a Small Quantity Generator (SQG); and a facility that generates no more than 100 kg. of hazardous waste per month is a Conditionally Exempt Small Quantity Generator (CESQG). All generators must evaluate their waste to determine if it is hazardous and must maintain records to support such evaluation.

In general, LQGs and SQGs are required to comply with regulations regarding: labeling of hazardous waste containers; maintaining containers in good condition; inspection of hazardous waste accumulation areas; emergency preparedness and prevention; recordkeeping; limitations on the amount of hazardous waste that may be accumulated and the length of time of such accumulation; and training. LQGs and SQGs must also file "Exception Reports" in the event that they ship waste off-

site and do not receive a copy of a manifest, signed and dated by the owner/operator of the TSD facility to which it was shipped, within 45 days (LQGs) or 60 days (SQGs) of the date that the waste was accepted by the initial transporter. U.S. EPA regulations require LQGs and TSD facilities to submit a Biennial Report on hazardous waste activity. (Note: Ohio EPA requires such reports to be submitted annually.)

RCRA regulations also include extensive requirements which must be met by TSD facilities from the time that they are opened until final closure. With certain limited exceptions, all TSD facilities must be permitted. TSD facilities are required to comply with regulatory requirements regarding: facility location and design; waste analysis; security; inspections; personnel training; emergency preparedness; prevention and contingency planning; hazardous waste minimization; and ground water monitoring, among others. The owner/operator of a TSD facility must also report any releases, explosions, fires, ground water contamination, monitoring data and facility closure information. The owner/operator of a TSD facility must maintain written plans for closure and post-closure activities after the facility stops receiving hazardous waste. The approved closure plan must be submitted with the permit application and becomes a condition of the RCRA permit for the facility. In addition, prior to acceptance of any wastes, the owner/operator must establish financial assurance, using one of the various mechanisms established by regulation, to ensure that funds are available for closure and post-closure care.

The RCRA program also includes waste-specific treatment requirements for hazardous waste that is to be placed in land-based units, known as the Land Disposal Restrictions, or land ban. In addition, RCRA addresses exports of hazardous waste, medical waste, recycling and underground storage tanks containing regulated substances, a term which covers both hazardous substances and petroleum products.

State Considerations

Hazardous Waste Management

STATUTE(S)	**Ohio Rev. Code Chapter 3734 (hazardous waste); 3752 (cessation of regulated operations)**
REGULATION(S)	**OAC Chapters 3745-50 to 69, -205, -256, -266, ; 3745-270 (land disposal restrictions); 2745-273 (universal waste); 3745-279 (used oil); 3745-352 (cessation of regulated operations)**
INTERNET	**http://www.epa.state.oh.us/dhwm**

Hazardous waste management in Ohio, including regulation of the generation, transport, storage and disposal of hazardous wastes at permitted sites, is largely the responsibility of the Division of Materials and Waste Management (DMWM) under the authority of Subtitle C of RCRA, Chapter 3734 of the Ohio Revised Code, and OAC Chapters 3745-50 through 58, 65 through 69, 248, 270, 273 and 279. DMWM has primary responsibility for carrying out the Ohio version of the federal RCRA regulations governing the generation, transport, storage, and disposal of hazardous wastes. The requirement that each hazardous waste facility be issued an installation and operation permit is set forth in Ohio Rev. Code §3734.02(E)(2).

Ohio EPA has been delegated authority to administer some, but not all, of the federal programs under RCRA. For example, Ohio EPA has not been authorized to implement the Subpart AA (air emissions standards for process vents), BB (air emissions standards for equipment leaks) or CC (air emissions standards for tanks, surface impoundments and containers) regulations, some of the Land Disposal Restrictions or the Boiler and Industrial Furnace regulations. For more information on Ohio EPA's authority to administer various RCRA programs, *see* http://www.epa.state.oh.us/dhwm/index.html.

Prompted by an incident at the closed Dayton Tire & Rubber facility in 1987 in which vandals removed the copper cores from several large transformers resulting in a discharge of PCB oil to Wolf Creek and an $8 million clean-up, Ohio enacted a Cessation of Regulated Operations (CRO) program. The CRO program was designed to prevent abandonment of property where chemicals were used, stored or treated. The CRO program applies to "regulated facilities," *i.e.*, any facility that is

required to submit hazardous chemical reports to the State Emergency Response Commission, that discontinues or terminates the production, use, storage or other handling of regulated substances, or finalizes any transaction which results in discontinuation of such operations. Among other things, the CRO program requires facilities to submit a notice of CRO to Ohio EPA, the Local Emergency Planning Committee and the local fire department, secure the facility and designate a contact person within 30 days after CRO. Additional steps must be taken within 90 days after CRO, which include, generally, submitting the facility's most recent chemical inventory form and most recent hazardous chemicals list (or MSDSs), removing all regulated substances from the facility and certifying compliance with the CRO requirements to Ohio EPA. The CRO program also imposes requirements on certain holders of first mortgages and fiduciaries to notify Ohio EPA and to secure the facility when an owner or operator has abandoned the facility.

DMWM is also responsible for implementing the used oil management and disposal regulations at OAC Chapter 3745-279 and universal waste (unused pesticides, mercury-containing thermostats that fail the Toxicity Characteristic Leaching Procedure and spent batteries) regulations at OAC Chapter 3745-273.

Solid and Infectious Waste Management

STATUTE(S)	**Ohio Rev. Code Chapters 3714 (construction and demolition debris); and 3734 (solid waste);**
REGULATION(S)	**OAC Chapters 3745-27 to 31; 3745-37; 3745-400 (construction and demolition debris)**
INTERNET	**http://www.epa.state.oh.us/dsiwm**

Regulations governing solid waste facilities are also administered by Ohio EPA's newly-merged Division of Materials and Waste Management, in conjunction with delegated health departments throughout the state. Operations regulated include composting facilities, municipal solid waste landfills, construction and demolition debris landfills, industrial and residual waste landfills, scrap tire facilities, infectious waste generators, infectious waste transporters and scrap tire transporters.

Under Ohio Rev. Code §3734.04, the board of health for the area in which a solid waste facility is located is responsible for licensing, inspection and enforcement at solid waste facilities, other than scrap tire or hazardous waste facilities, which are the responsibility of Ohio EPA. Solid waste facilities are required by Ohio Rev. Code §3934.05 to obtain a PTI before construction of the facility may begin and, once operational, must maintain an annual license to operate. *See* Ohio Rev. Code §3734.05.

Pursuant to Ohio Rev. Code Chapter 3714, Ohio EPA has promulgated regulations governing the disposal of construction and demolition debris (C&DD). Briefly, C&DD may only be disposed of in a licensed C&DD or solid waste landfill or by open burning, if otherwise permissible under Ohio's open burning regulations (OAC Chapter 3745-19). However, construction debris, trees and brush removed in clearing a construction site may be used as fill material on the site where the materials are generated or removed. In addition, "clean hard fill" may be used as fill material on a site other than the one from which it was generated, provided that the person placing the fill provides a written "Notice of Intent to Fill" to each licensing authority where the clean hard fill is to be placed.

Underground Storage Tanks

STATUTE(S)	**Ohio Rev. Code §3737.87, *et seq.***
REGULATION(S)	**OAC Chapter 1301:7-7 (Ohio Fire Code) and OAC Chapter 1301:7-9 (underground storage tanks)**
INTERNET	**http://www.com.state.oh.us/sfm/bustr/**

The regulation of underground storage tanks (USTs) in Ohio is carried out by the Bureau of Underground Storage Tank Regulations (BUSTR), a unit of the State Fire Marshal's Office within the Ohio Department of Commerce. Recent changes to BUSTR regulations have expanded the regulatory obligations of owners/operators of USTs, particularly at "closure." UST activities regulated by BUSTR, which require a permit issued by the State Fire Marshal or a delegated fire department, include temporary closure, permanent abandonment, permanent removal, replacement and change in service. In addition to permitting, BUSTR is also responsible for release prevention, enforcement, corrective action, testing and registration of underground storage tanks.

Cleanup of Contaminated Properties

Federal - The Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq. (CERCLA or Superfund)

CERCLA was enacted with the intent of addressing the cleanup of abandoned hazardous waste sites and thus, casts a very broad net both in terms of who can be held liable for cleaning up such sites and the standards upon which liability can be imposed.

In order for there to be liability under CERCLA, there must have been "release" or "threatened release" of "hazardous substances" from a "facility" into the "environment," which release or threatened release caused "response costs" to be incurred. CERCLA grants to U.S. EPA authority to clean up contaminated sites, either by performing the work itself or ordering "potentially responsible parties" (PRPs) to do so, and establishes certain enforcement mechanisms by which U.S. EPA can pursue PRPs to perform or pay for cleanup. CERCLA also authorizes suits by PRPs to recover their cleanup costs from other PRPs. In addition, CERCLA imposes requirements on certain industrial facilities to report releases of hazardous substances and establishes a program for coordinating state, local and private responses to emergencies from hazardous chemical emergencies.

CERCLA lists four classes of "responsible parties" that may be liable for cleanup costs at a facility from which there is a release or a threatened release of hazardous substances: (1) the current owner and operator of the facility (regardless of whether the current owner or operator actually disposed of any waste at the site); (2) persons who owned or operated the facility at the time of any past disposal of any hazardous substances; (3) persons who arranged with a facility or transporter for the disposal or treatment of any hazardous substances owned or possessed by such persons; and (4) persons who transported hazardous substances to a disposal or treatment facility selected by such person.

CERCLA liability has been held to be retroactive and joint and several; because clean-up costs commonly run into the tens of millions of dollars, the potential cost of CERCLA liability is significant. Originally, CERCLA provided statutory defenses only where the release of a hazardous substance was caused solely by an act of God, an act of war or an act or omission of a third party, as long as the defendant exercised due care and took precautions against foreseeable acts of the third party (the so-called "innocent purchaser" defense). CERCLA now also excludes from liability those who hold a security interest in the property, as long as they do not "participate in management" of the facility.

As amended in 2002, CERCLA also provides exemptions for certain prospective purchasers of contaminated property and owners/operators of property contaminated as a result of a release of hazardous substances on a contiguous property owned

by someone else. However, there are a number of conditions applicable to both defenses. For example, prospective purchasers must demonstrate that they carried out all appropriate inquiries regarding past ownership of the property, exercised care with respect to hazardous substances and that they have cooperated with any party performing a response action at the facility. Contiguous property owners must demonstrate that they did not cause or contribute to the contamination, have taken reasonable steps to stop a continuing release or prevent a new release, and conducted all appropriate inquiries when they purchased the property. On November 1, 2006, regulations adopted by U.S. EPA to establish specific requirements for conducting "all appropriate inquiries" became effective. *See* 40 C.F.R. Part 312.

The 2002 amendments are also intended to clarify when the innocent purchaser defense will be available and create a "*de micromis*" exemption from liability for generators and transporters who can demonstrate that they contributed less than 110 gallons of liquid material or 200 pounds of solid material to the site and that the disposal, treatment or transport occurred before April 1, 2001.

In addressing hazardous waste facilities, U.S. EPA either issues an order under CERCLA §106 (42 U.S.C. §9606) requiring PRPs to undertake some or all of the cleanup process, or it performs certain aspects of the cleanup and then sues to collect its costs from PRPs under CERCLA §107 (42 U.S.C. §9607). Often, U.S. EPA will negotiate with a limited number of PRPs, usually the PRPs believed to be responsible for the largest contributions of waste to the site, with the goal of having the PRPs perform the cleanup themselves. Such PRPs will then pursue smaller volume PRPs to assist in performing or paying for the cleanup. CERCLA explicitly recognizes the right of a PRP to seek contribution for costs already incurred and a declaration of a PRP's liability for that portion of future response costs properly allocable to such PRP. Any cleanup must be performed in accordance with U.S. EPA's National Oil and Hazardous Substance Pollution Contingency Plan, more commonly called the National Contingency Plan (NCP).

State Considerations

STATUTE(S)	**Ohio Rev. Code §3745.12, §3746.01, *et seq.* (Voluntary Action Program); Chapters 3750 (emergency planning), 3734, 3745 and 6111 (remedial actions at unregulated sites)**
REGULATION(S)	**OAC Chapter 3745-300 (Voluntary Action Program)**
INTERNET	**http://www.epa.state.oh.us/derr** **http://www.epa.state.oh.us/derr/volunt/volunt.html (Voluntary Action Program)** **http://www.epa.state.oh.us/derr/ersis/ersis.html (emergency planning)** **http://www.epa.state.oh.us/derr/remedial/remedial.html (remedial response)** **http://www.epa.state.oh.us/derr/SABR/sabr.html (brownfields, Clean Ohio Fund)**

Ohio does not have a statute that tracks the liability scheme of CERCLA. However, Ohio law provides that any person responsible for causing or allowing an unauthorized spill, discharge or release of material into or upon the environment that requires emergency action to protect public health, safety or the environment is liable to Ohio EPA for costs incurred to investigate, mitigate, minimize, remove or abate such spill, release or discharge. Ohio Rev. Code §3745.12.

Ohio's "brownfields" program, known as the Voluntary Action Program, or VAP, was enacted in 1995 to facilitate the cleanup, redevelopment and reuse of properties contaminated with hazardous substances or petroleum that might otherwise remain idle, due to fear of potential liability and cleanup costs that would be incurred in order to redevelop these properties. The VAP permits any person to establish that there is no contamination underlying a piece of property exceeding applicable standards or that those standards have been achieved through remedial activities or will be achieved within time frames established in an operation and maintenance agreement entered into with the Director of Ohio EPA, all with minimal oversight by the agency. The VAP provides liability protection, in the form of a Covenant Not to Sue (CNS) issued by Ohio

EPA, for a volunteer who complies with the requirements of the VAP. However, certain properties are not eligible to participate in the VAP, including sites that are:

- Listed or proposed to be listed on the NPL;
- Subject to cleanup under the Underground Injection Control Program of the Safe Drinking Water Act or Ohio Rev. Code Chapters 6111 or 3734;
- Subject to RCRA corrective action;
- Subject to TSCA requirements for PCB assessment, removal or remediation;
- Subject to federal enforcement or response under RCRA or CERCLA;
- Subject to hazardous waste or solid waste closure;
- Subject to petroleum underground storage tank assessment, removal or remediation;
- Subject to oil and gas well abandonment; or
- Subject to state enforcement relating to the release or threat of release of hazardous substances or petroleum.

Under the VAP, Ohio EPA has established generic numerical cleanup standards for the treatment or removal of soils, sediments and water media for hazardous substances and petroleum. The rules establish separate generic numerical standards, based upon the whether the intended use of the property following the voluntary action is for industrial, commercial or residential purposes. In lieu of meeting generic cleanup standards, the volunteer may perform a property-specific risk assessment to establish site-specific clean-up standards. The risk assessment must demonstrate that the remedy selected by the volunteer is sufficiently protective of public health and safety and the environment. The VAP rules contain detailed procedures for performing property-specific risk assessments, including procedures for property-specific human health risk assessments, ecological risk assessments, and assessment and remediation of sediments.

The VAP contains a classification system for characterizing ground water, based upon its capability to be used for human use and its impact on the environment; the ground water classification system is used to determine the applicable standard and point of compliance. In certain circumstances, the volunteer may request an urban setting designation (USD) from Ohio EPA for the property for the purpose of classifying ground water and determining applicable standards. For a property located in an area designated as an urban setting, ground water remediation standards will be less stringent.

Any person who participates in the VAP must utilize the services of a "Certified Laboratory" to perform any required analyses and a "Certified Professional" (CP) to verify that the property and any remedial activities undertaken at the property in connection with the VAP meet applicable standards. The VAP regulations establish criteria for an environmental professional to become a CP and for a laboratory to become a Certified Laboratory.

To participate in the VAP, a property owner or other volunteer undertakes a "voluntary action," which may include a Phase I property assessment, a Phase II property assessment, a sampling plan, a remedial plan or other remedial activities. When the property meets the applicable standards based on the designated use, the CP will issue a No Further Action (NFA) letter for the property. Ohio EPA will then review the NFA letter and, upon its approval, the Director will issue a CNS.

A CNS under the VAP releases the volunteer from all civil liability to the State of Ohio to perform additional investigative and remedial activities to address a release of hazardous substances or petroleum at the property, except claims for natural resource damages under CERCLA. A CNS remains in effect only so long as the property continues to comply with the applicable standards which were in effect when the voluntary action was performed. Like the NFA letter, the CNS and any restrictions on the use of the property must be properly recorded. The NFA letter, CNS and any agreement authorized under the VAP may be transferred to any other person.

There are, however, limitations to the protections provided by a CNS. For example, while a CNS releases the volunteer from civil liability to the State of Ohio, it does not shield the volunteer from liability to private parties. With respect to potential liability to the United States, U.S. EPA and Ohio EPA entered into a Memorandum of Agreement (MOA) in July 2001 which states that U.S. EPA generally will not take action under CERCLA with respect to a site that is cleaned up in accordance with

the so-called "MOA Track" procedures. In addition to the requirements for VAP cleanups set forth in OAC Chapter 3745-300, the MOA Track requires a participant to notify Ohio EPA of its entry into the MOA Track VAP Program. An MOA Track volunteer must comply with certain public notification and participation procedures, including publishing a notice of intent in the local newspaper and making the notice of intent available for review in the local library; the proposed Remedial Work Plan must also be published in the local newspaper. In addition, the MOA Track provides for direct oversight by Ohio EPA by requiring the submittal of site assessments and work plans developed under the VAP to Ohio EPA for its review and approval. Under the MOA Track procedures, Ohio EPA is authorized to take enforcement action if it determines that the cleanup was deficient. Under the 2002 amendments to CERCLA, no federal administrative or judicial enforcement action may be taken by U.S. EPA with respect to a site at which response action is being taken in compliance with a state program that specifically governs response actions.

Several types of grants and loans for brownfields cleanups are available from the state. The Ohio Water Pollution Control Loan Fund (WPCLF) is authorized to provide low interest loans for activities conducted under the VAP that benefit the state's water resources. Anyone taking responsibility for the cleanup of an eligible property under the VAP may apply for WPCLF assistance, including individuals, businesses and political subdivisions. Loans may also be available to municipalities under the Ohio Department of Development's Brownfield Grant Assistance Program and Competitive Economic Development Program. Other sources of financial assistance to private entities include Ohio EPA's Pollution Prevention Program and the Ohio Water Development Authority. In addition, the Ohio Department of Development's Urban and Rural Initiative Corporate Franchise Tax Abatement and Grant Assistance Program provides an opportunity for both non-profit and for-profit entities to take advantage of economic incentives offered to volunteers in the VAP. The Brownfield Site Cleanup Tax Credit Program may provide a taxpayer a state franchise or income tax credit for the voluntary remediation of a contaminated Ohio site. Assistance may also be available through local governmental programs, such as the Cuyahoga Brownfield Redevelopment Fund, which provides loans to municipal and county entities, non-profit community development corporations and private businesses through the Cuyahoga County Department of Development.

In addition, monies from the Clean Ohio Fund (the Fund) may be available for the assessment, cleanup or remediation of brownfield sites and public health projects. The Fund was created by the enactment of Ohio HB 3 on July 26, 2001 to utilize funds generated from the proceeds of a $200 million bond issuance authorized by amendment to the Ohio Constitution passed in November 2000, known as "Issue 1," with a maximum bond issuance of $50 million in any one year. Twenty percent of the Fund must be used for grants in "eligible areas," which include "distressed areas," "inner city areas," "labor surplus areas" and "situational distress areas." Grants and loans from the Fund are to be used to assess and remedy contamination at brownfield sites, *i.e.*, abandoned, idled, or under-used industrial or commercial sites where redevelopment or expansion is complicated by known or potential releases of hazardous substances or petroleum. The goal of any project that is the subject of any grant or loan from the Fund is to meet the cleanup standards applicable to the site under either the VAP Ohio's hazardous waste laws under Ohio Rev. Code Chapter 3734.

To receive a grant or loan from the Fund, an applicant must be a county, township, municipal corporation, port authority, or a conservancy district or a park district, or other similar park authority or a non-profit organization. However, a for-profit organization may apply for monies from the Fund if it enters into an agreement with a county, township, municipality, port authority or conservancy district to work together to achieve the redevelopment of a brownfield area. Importantly, the applicant must submit an affidavit that it did not cause or contribute to the contamination on the property.

EMERGENCY PLANNING

Federal - Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001, et seq.

Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III), also known as the Emergency Planning and Community Right-to-Know Act (EPCRA), established a program to inform certain state, community and local agencies of the presence and nature of hazardous materials within the community to enable them to plan for emergencies from hazardous materials incidents.

EPCRA requires facilities that use hazardous chemicals to submit copies of their material safety data sheets (MSDSs) or a list of the chemicals for which they maintain MSDSs to the State Emergency Response Commission (SERC), the Local Emergency Planning Committee (LEPC) and the local fire department. Such facilities must also prepare and submit an emergency and hazardous chemical inventory form (Tier I or Tier II) to the SERC, LEPC and local fire department annually. In addition, EPCRA requires owners and operators of certain facilities that manufacture, process or otherwise store more than a threshold amount of any listed toxic chemical to submit a Toxic Chemical Release Inventory, also known as a "Form R," for such toxic chemicals each year. The Form R identifies the amount of the listed toxic chemical "released" annually, e.g., through air emissions, wastewater discharges, off-site disposal, etc.

State Considerations

STATUTE(S)	**Ohio Rev. Code Chapters 3750 (emergency planning); 3751 (toxic chemical release reporting); 3734, 3745 and 6111 (remedial actions at unregulated sites)**
REGULATION(S)	**OAC Chapters 3745-100 (toxic chemical release reporting); 3750-10 (emergency planning); 3750-20 (chemical emergency planning); 3750-25 (emergency release reporting); 3750-30 (hazardous chemical reporting)**
INTERNET	**http://www.epa.state.oh.us/derr**

Ohio's "Right-to-Know" regulations, which track the federal requirements, are administered by the Emergency Response Unit within Ohio EPA's Division of Emergency and Remedial Response.

MISCELLANEOUS STATE CONSIDERATIONS

Privilege/Immunity

STATUTE(S)	**Ohio Rev. Code §3745.70-73**
REGULATION(S)	**None**

In March 1997, Ohio enacted a limited privilege and immunity statute intended to encourage the use of internal environmental audits. Under the act, since revised and codified at Ohio Rev. Code §§3745.70-73, information gathered pursuant to an approved audit may be inadmissible in civil or administrative proceedings. The privilege does not apply to criminal proceedings or to information gathered under certain conditions. The immunity provisions apply, generally, to the voluntary disclosure of noncompliance if: (1) the disclosure is promptly made; (2) the violation is corrected within a reasonable time; (3) the disclosure was not otherwise required by any law, court or government agency; (4) the violation did not result in serious harm or imminent threat to human health or the environment; (5) there has not been a pattern of repeated or continuous violations over the previous three years; and (6) the party making the disclosure does not know or have reason to know that an investigation has been initiated by a governmental agency concerning the violation disclosed.

As noted above, if the information was required by law to be collected and reported, such as under an NPDES or Title V permit, it does not fall under the privilege. As a practical matter, this exception significantly limits the availability of immunity under the statute because the Oho EPA can (and does) assert that if a permit is in place, monitoring and reporting of all violations are required under the permit and, therefore, by law. If there is no permit in place for the facility Ohio EPA, the Agency, can assert that, under the law, a permit should have been applied for and issued and, if it had been, monitoring and reporting would have been required by law. In either case, the privilege may be held not to apply.

Administrative Action

STATUTE(S)	**Ohio Rev. Code Chapter 119 and §3745.07 (requests for adjudication); §§3745.02-3745.07 (administrative appeals)**
REGULATION(S)	**OAC Chapters 3745-47 (requests for adjudication); and 3746-1 to 3746-15 (administrative appeals)**
INTERNET	**http://www.epa.state.oh.us/legal/appeal.html**

Before issuing, denying, modifying, revoking or renewing any permit, license or variance, the Director of Ohio EPA may issue a proposed action to the applicant. If, within 30 days of issuance of the proposed action, the Director receives a written objection from any person subject to the proposed action or who would be aggrieved or adversely affected by the action, an adjudication hearing is held before one of Ohio EPA's hearing examiners. Following the adjudication hearing, the hearing examiner must submit a written report to Ohio EPA setting forth findings of fact, conclusions of law and a recommendation as to the action to be taken by the Agency. Within five days of filing, a copy of the written report and recommendations must be served upon the parties by certified mail. Within 10 days of receipt, the parties may file written objections to the report. After Ohio EPA journalizes an order approving, modifying or disapproving the hearing examiner's recommendation, Ohio EPA must serve a copy on the affected party, along with a statement of the time and method for appealing such action. Such orders are appealable to the Environmental Review Appeals Commission (ERAC).

Final actions of the Director of Ohio EPA are appealed to ERAC, formerly known as the Environmental Board of Review or EBR. In addition, appeal of a final action issuing, denying, modifying, revoking or renewing a permit, license or variance that is not preceded by a proposed action is directed to ERAC. ERAC is an independent review board with three members appointed by the Governor. Generally, anyone who was a party to a proceeding before the Director may file an appeal. Appeals must be filed with ERAC within 30 days of notice of the action, and notice of the appeal must be served on Ohio EPA within three days after the appeal is filed. If an adjudication hearing was held, ERAC is confined to the written record, unless ERAC finds that additional evidence sought to be introduced is newly discovered and could not, with reasonable diligence, have been ascertained prior to the adjudication hearing. If no adjudication hearing was conducted, ERAC conducts a *de novo* hearing.

ERAC must affirm the Director's action if it finds that the action appealed from was lawful and reasonable. For appeals filed after October 15, 2009, Ohio Rev. Code §3745.05(F)(3) mandates that ERAC issue a written order affirming, vacating, or modifying the action appealed from not later than 12 months after the filing of the appeal. Appeals from ERAC decisions are either to the Franklin County Court of Appeals or, if the appeal arises from an alleged violation of a law or regulation, to the Court of Appeals for the district in which the violation is alleged to have occurred.

INTELLECTUAL PROPERTY

TRADE SECRET LAW

In 1994, Ohio adopted its version of the Uniform Trade Secrets Act (UTSA). It preempts other Ohio laws providing civil remedies for misappropriation of a trade secret, except for remedies arising under contract.

The Ohio Uniform Trade Secret Act, Ohio Revised Code §1333.61 *et seq.* (OUTSA), closely resembles the Uniform Trade Secrets Act. Under OUTSA, any information which derives independent economic value from not being generally known and not being readily ascertainable by proper means can qualify as a trade secret, so long as reasonable efforts are made to keep it secret. Misappropriation of a trade secret under OUTSA includes the improper acquisition of the trade secret, as well as its unauthorized disclosure or use. Monetary damages for misappropriation include the actual loss caused by the misappropriation, as well as any unjust enrichment received by the misappropriator that is not taken into account in calculating actual loss. In lieu of these damages, monetary damages may also be measured by a reasonable royalty that is equitable under the circumstances considering the loss to the complainant, the benefit to the misappropriator, or both. Injunctive relief may also be obtained under OUTSA to prevent any actual or threatened misappropriation. Any such injunction will terminate when the trade secret expires, unless the termination will likely provide the misappropriator with commercial advantage.

OUTSA differs from the UTSA in that the statute of limitations under OUTSA is four years rather than three, and treble rather than double damages can be obtained for willful and malicious misappropriation. In addition, where an injunction issues to prevent actual or threatened misappropriation of a trade secret, OUTSA provides for a mandatory rather than discretionary continuation of the injunction until any likely commercial advantage derived by the misappropriator is eliminated, even if the trade secret expires.

Ohio law also provides that an employee who discloses confidential information learned in the course of his employment without the consent of his employer is guilty of a first degree misdemeanor.

TRADEMARKS AND SERVICE MARKS

In Ohio, rights in trademarks and service marks are obtained by adoption and use and, once obtained, are protected under Ohio common law and by statute (Ohio Revised Code §1329.54 *et seq.*). Rights in a mark are maintained as long as the mark remains in use or is not abandoned. Use and abandonment are defined by Ohio statute in a manner conforming with the Lanham Act. Both trademarks and service marks can be registered, but registration is not required to protect the mark.

A mark can be registered in Ohio by filing a verified application with the Ohio Secretary of State, submitting a specimen of use and paying the required fee. Limitations on the registration parallel those in Section 2 of the Lanham Act. The application is examined, although this examination is not as extensive as for federal registration. If the application meets all statutory requirements, a certificate of registration is issued. Unlike a federal registration, an Ohio registration is merely proof of registration, not of any fact recited in the registration.

Registration is effective for 10 years and, if the mark is still in use, can be renewed in perpetuity for additional 10 year periods. Renewal is effected by filing the required renewal form during the last six months of the current term, submitting a current specimen of use, and paying the required fee.

A registered mark can be assigned along with the goodwill of the business in which the mark is used. Assignment is effected by a duly executed legal instrument of transfer, which may be recorded with the secretary of state on payment of the applicable fee.

For determining infringement under Ohio law, the courts apply the same likelihood of confusion analysis applied by the federal courts under the Lanham Act. An action for infringement, whether under common law or statute, may seek both injunctive and monetary relief.

Ohio law also provides a claim for relief to persons injured by any false or fraudulent representation or declaration made in connection with an application to register or registration of a mark.

TRADE NAMES AND FICTITIOUS NAMES

Rights in trade names are obtained under Ohio common law by adoption and use and, once obtained, are protected. However, unlike trademarks or service marks, some form of government filing is required before an action for enforcement can be undertaken.

Under Ohio law, a trade name is a name used to designate the business or trade of the user. A fictitious name is a name used in business that (i) is not the correct legal name of the entity, (ii) has not been registered as a trade name, or (iii) is not entitled to be registered as a trade name. Names that are not entitled to be registered are those that falsely suggest a connection to a government agency or an incorporation status. Names which are indistinguishable from an already-registered name or mark of another entity also cannot be registered, unless written consent from the other entity is obtained.

The user of a trade name in Ohio must either (a) apply to register the name with the Ohio Secretary of State or, (b) if the name is fictitious, report use of the name to the Ohio Secretary of State. If not, the user may not commence or maintain a civil action in Ohio courts to enforce any contract or transaction made in the trade or fictitious name. Also, the user of a fictitious name is subject to injunctive action if the fictitious name is not reported to the attorney general within thirty days of first use in Ohio.

Trade name registrations and fictitious name reports are effective for an initial term of five years and, as long as the name remains in use, can be renewed in perpetuity for additional five year terms. Renewal is effected by filing the appropriate renewal form in the last six months of the current term and paying the required fee.

Trade and fictitious names can be assigned by executing the prescribed form and may be recorded with the secretary of state on payment of the applicable fee.

DILUTION

There are no Ohio statutes that provide protection against the dilution of a trademark, service mark or trade name in Ohio. Ohio cases recognize a claim for dilution. One federal case applying Ohio law held that a dilution claim would withstand a summary judgment motion where the mark was not nationally famous but was "strong in a particular geographical or product area" (*Ameritech, Inc. v. American Info. Technologies Corp*., 811 F.2d 960 (6th Cir. 1987)). Another federal court applying Ohio law declined to dismiss a dilution claim where the mark was alleged merely to be "strong" (*Universal Tube & Rollform Equipment Corporation v. Youtube, Inc*., 504 F. Supp.2d 260 (N.D. Ohio 2007)).

UNFAIR COMPETITION

Ohio common law recognizes a claim for unfair competition on which injunctive and monetary relief may be awarded. A wide variety of conduct has been held to be unfair competition under Ohio common law, including palming off, commercial disparagement, and infringement of unregistered marks, names or trade dress.

Ohio codified much of its common law of unfair competition when it enacted the Ohio Deceptive Trade Practices Act, Ohio Revised Code §4165.01 *et seq.* (ODTPA). The ODTPA defines a wide range of questionable business conduct (e.g., palming off or causing a likelihood of confusion) as unfair. In addition, the Act also defines certain specific types of conduct (e.g., bait and switch advertising) as unfair.

Persons likely to be damaged by unfair conduct may seek injunctive relief. Persons actually harmed may also seek monetary relief, including reasonable attorneys' fees where the offending conduct is willful.

NONCOMPETITION CLAUSES

Statutes

Although Ohio Revised Code §1331.02 addresses contracts that restrain trade, Ohio courts typically do not discuss this statute in their analyses of covenants not to compete.

Case Law

Under Ohio law, a covenant not to compete will be deemed enforceable where the business interests of the party seeking to enforce the covenant are determined to be sufficient. Moreover, in a recent decision, the Ohio Supreme Court ruled that continued At-will employment constitutes sufficient consideration to support a noncompetition agreement entered into after the employee's at-will employment began.

If it is determined that the aggrieved employer has an interest that requires protection, Ohio courts will evaluate whether the restrictions imposed by the covenant are reasonable. A covenant not to compete will be deemed reasonable if:

- It is not greater than is required for the protection of the employer;
- It does not impose undue hardship on the employee; and
- It is not injurious to the public.

Ohio courts consider the following factors when assessing the reasonableness of a covenant not to compete:

- Absence or presence of limitations as to time and space;
- Whether the employee is possessed with confidential information or trade secrets;
- Whether the covenant seeks to eliminate competition which would be unfair to the employer or merely seeks to eliminate ordinary competition;
- Whether the covenant seeks to stifle the inherent skill and experience of the employee;
- Whether the benefit to the employer is disproportional to the detriment to the employee;
- Whether the covenant operates as a bar to the employee's sole means of support;
- Whether the employee's talent which the employer seeks to suppress was actually developed during the period of employment; and
- Whether the forbidden employment is merely incidental to the main employment.

In Ohio, if the court deems the covenant to be unreasonable, the court may modify the covenant, such that it protects the employer's legitimate business interests, and enforce the modified version of the covenant.

RIGHT OF PUBLICITY

As of 1999, commercial rights in an individual's "persona" (*i.e.*, name, voice, likeness, etc.) are protected by statute in Ohio. *See* Ohio Revised Code §2741.01 *et seq.* Such rights are restricted to Ohio residents and last for the individual's lifetime plus sixty years thereafter; they are transferable and descendible (*i.e.*, by contract, gift, will, etc.).

A civil action may be brought to enforce such rights within four years of a violation, and an injured party may be awarded actual or statutory damages (and in certain instances, exemplary, punitive or treble damages), as well as injunctive relief and impoundment and destruction of goods made in violation of such rights.

There are "fair use" exceptions to these rights for, *e.g.*, literary, dramatic or historical works, political or newsworthy materials, works of art, and other uses protected by the First Amendment.

ANTITRUST AND CONSUMER PROTECTION LAWS

STATE AND FEDERAL ANTITRUST LAW

Chapter 1331 of the Ohio Revised Code, commonly known as the Valentine Act, is Ohio's antitrust law. While the statutory language is rather extensive, civil and criminal liability under the Valentine Act generally parallel liability under Section 1 of the Sherman Act (15 U.S.C. §1). Indeed, Ohio courts interpret the Valentine Act in light of the federal judicial construction of Section 1 of the Sherman Act, and cite federal Sherman Act cases in deciding claims under the Valentine Act. Like Section 1 of the Sherman Act, recovery under Ohio's Valentine Act requires proof of the existence of a combination or conspiracy between two or more persons. *See* Johnson v. Microsoft, 106 Ohio St. 3d 278, 281, 834 N.E.2d 791, 794-795 (2005); Daily Monument Co. v. Crown Hill Cemetery Ass'n., 114 Ohio App. 143, 152-53 (Summit Cty. 1961); Volvo GM Heavy Truck Corp. v. Key GMC Truck Sales, Inc., 773 F. Supp. 1033 (S.D. Ohio 1991). The Valentine Act does not, however, reach single firm conduct, and Ohio has no counterpart to Section 2 of the Sherman Act (15 U.S.C. §2). Thus, Ohio has no monopolization offense. In addition, under the Valentine Act a prevailing plaintiff is entitled to treble damages. *See* Ohio Rev. Code §1331.08. The applicable limitations period for civil or criminal violations of the Valentine Act is four years. *See* Ohio Rev. Code §1331.12.

Section 1331.16 of the Valentine Act provides the Ohio Attorney General with a mechanism to issue "investigative demands," which are the State's counterpart to federal civil investigative demands. The Attorney General may use investigative demands to discover information relevant to any investigation conducted to determine whether any person has violated the Valentine Act. The tools available to the Attorney General through §1331.16 are written interrogatories, requests for documentary materials, and/or demands for oral testimony. Section 1331.16(I) provides a mechanism to request, within 20 days after service, an Ohio court to modify or set aside the investigative demand. The time permitted for compliance with the investigative demand is tolled while the request is pending in the court.

OHIO REGULATION OF FRANCHISES

The State of Ohio has not enacted a statute that specifically regulates the sale of franchises; however, Ohio Revised Code §1334.01, et seq., regulates the sale of a "business opportunity" in the State of Ohio. This statute provides, among other things, that the seller of a business opportunity, as defined within the statute, must provide sufficient documentation relating to the sale of such business opportunity to substantiate any claims regarding any potential sales, incomes or profits. In the event of a breach of the business opportunity laws, a purchaser may sue to rescind the transaction and recover three (3) times the purchaser's actual damages, or $10,000, whichever is greater. Attorneys' fees may be awarded in addition to the foregoing damages.

OHIO CONSUMER PROTECTION LAWS

The Consumer Protection Sales Act (CPSA), Ohio Revised Code §1345, et seq., is the primary consumer protection statute in Ohio. The CPSA regulates consumer sales practices, including sales, leases, assignments, awards by chance or other transfers of items of goods, services, franchises or intangibles to individuals for purposes that are primarily personal, family or household. The Act is intended to protect consumers and eradicate unfair, deceptive or unconscionable acts or practices. The attorney general's office investigates alleged violations of the Act upon reasonable cause derived from its own inquiries, as a result of complaints, or from consumer transaction cases referred to it by the Director of Commerce. The attorney general may bring an action for declaratory judgment, temporary or permanent injunction, or a class action on behalf of consumers damaged by practices in violation of the Act. Under the statute, a consumer may bring a class action or an action for declaratory judgment or injunction. Additionally, he may rescind the transaction or recover his damages. If the practice is determined to be deceptive or unconscionable, the consumer may rescind the transaction or recover three times his actual damages or $200, whichever is greater. Attorneys' fees may be awarded to a prevailing party. The attorney general may also initiate criminal proceedings to prosecute violations of the CPSA.

Ohio has also enacted consumer protection statutes dealing with specific matters, including weights and measures (Ohio Rev. Code §1327.46), retail installment sales (Ohio Rev. Code §1317.01), consumer sales (Ohio Rev. Code §1345.01), equal credit opportunity (Ohio Rev. Code §4112.021), labeling commodities (Ohio Rev. Code §§1327.57, 3715.60, 3715.64, 3715.67, 3741.02), home solicitation sales (Ohio Rev. Code §1345.21), prepaid entertainment contracts (Ohio Rev. Code §1345.41), travel agencies and tour promoters (Ohio Rev. Code §1333.96), pyramid sales (Ohio Rev. Code §1333.91), motor vehicles (Ohio Rev. Code §1345.71), and natural gas and public telecommunications services (Ohio Rev. Code §1345.18).

LABOR AND EMPLOYMENT

Employment relations in Ohio are governed by federal and state statutes and regulations, as well as local ordinances and the common law. This guide will address both federal considerations and the state of Ohio considerations.

Federal Considerations

A number of federal laws and regulations affect the employment relationship by addressing the areas of employment discrimination, wages and hours, safety and health, veterans' rights, immigration reform and control and employer/union relationships. Summaries of the more significant laws appear below.

Title VII of the Civil Rights Act of 1964 (Title VII)

Title VII of the Civil Rights Act of 1964, as amended, is a federal statute prohibiting employment discrimination on the basis of race, color, religion, sex or national origin. Sex discrimination under Title VII includes discrimination on the basis of pregnancy, as well as sexual harassment. The statute applies to all employers with 15 or more employees engaged in an industry affecting commerce. Violations of the statute occur if an employer fails or refuses to hire, discharges, segregates or otherwise discriminates against individuals concerning their wages, terms, conditions or privileges of employment on account of their membership in one of the protected classes.

Title VII is enforced by the Equal Employment Opportunity Commission (EEOC) which entertains charges of discrimination filed by individuals against employers. The EEOC *sua sponte* may file charges against an employer. Following an investigation by the agency, the agency will determine whether there is probable cause to believe that discrimination occurred. If it finds probable cause, the EEOC will attempt to resolve the situation through mediation, conciliation and persuasion. Whether it finds probable cause or not, the EEOC typically will issue a right to sue letter to the charging party and that person may commence a lawsuit against the employer in federal court within 90 days of receipt of the letter. Alternatively, the EEOC may sue the employer in its name, if it found probable cause and conciliation failed.

The 1991 Civil Rights Amendments broadened the remedies available under the Act to include, *inter alia*, capped compensatory and punitive damages ranging from $50,000 to $300,000, depending on the size of the employer. The 1991 Amendments also allowed trial by jury.

In 1998, the United States Supreme Court held that allegations of same sex sexual harassment can state a claim. The Court also held that employers will be held vicariously liable for the hostile work environment and sexual harassment committed by supervisors subject to a two-pronged affirmative defense.

The Age Discrimination in Employment Act (ADEA)

The Age Discrimination in Employment Act of 1967, as amended, makes it unlawful for employers to fail or refuse to hire, to discharge, limit, segregate, or classify employees age 40 or above or to otherwise discriminate against said employees regarding their compensation, terms and conditions of employment on account of their age. The statute applies to employers of 20 or more employees.

Aggrieved persons may file claims of age discrimination with the EEOC, which administers the statute. After proceeding through the Agency, regardless of result, a charging party may bring a civil action in court of competent jurisdiction, have a trial by jury and receive legal and/or equitable relief including, but not limited to, back pay, liquidated damages for willful violations, orders of reinstatement and/or front pay.

There are certain limited exceptions to the ADEA, including age as a bona fide occupational qualification (BFOQ) or for bona fide executives or high policy makers who have attained 65 years of age and are entitled to an immediate non-forfeitable annual retirement benefit from a pension or profit sharing plan, or deferred compensation plan of the employer which equals at least $44,000 per year. The amended Act also regulates waivers and releases of ADEA claims.

Americans with Disabilities Act (ADA)

The Americans with Disabilities Act of 1990 covers employers with 15 or more employees engaged in industries affecting commerce. The ADA prohibits discrimination against qualified individuals with disabilities because of the disability in regard to job application procedures, hiring, advancement, or discharge of employees, compensation, job training, and other terms, conditions, and privileges of employment. Discrimination includes limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of the employee.

At the pre-employment level, the Act prohibits pre-employment medical examinations and inquiries of job applicants as to whether they are individuals with disabilities or as to the nature or severity of the disability. Employers, however, may make pre-employment inquiries into the ability of an applicant to perform job-related functions. The statute allows post-offer/pre-employment medical examinations with certain restrictions. Pre-employment drug testing is not considered to be a medical examination under the statute.

Disability is defined as a physical or mental impairment that substantially limits one or more of the major life activities of the individual, having a record of such an impairment, or being regarded as having such an impairment. In 2008, the ADA was amended to expand the definition of disability and ensure broad interpretation of the ADA. Certain conditions are specifically excluded from the term "disability," including homosexuality, bisexuality, transvestitism, transsexualism, voyeurism, compulsive gambling, kleptomania or pyromania. The term "qualified individual with a disability" means an individual who, with or without reasonable accommodation, can perform the essential functions of the job. Current illegal drug users are excluded from the definition. The remedies set forth in Title VII, including a jury trial, are the remedies available under the ADA.

The ADA also prevents discrimination based on an employee or applicant's "association with a person with a disability." Employers are obliged to make reasonable accommodation to employees or applicants requiring same, unless the employer can establish that the accommodation would cause an undue hardship, which determination includes considerations of difficulty and expense in light of the overall financial resources of the employer.

Family and Medical Leave Act (FMLA)

The Family Medical Leave Act of 1993 applies to employers engaged in commerce or in industry or activity affecting commerce which employ 50 or more employees within 75 miles. Employees eligible for family and medical leave are persons who have been employed for at least 12 months and have at least 1,250 hours of service with such employer during the previous 12 month period.

Employees eligible for family and medical leave are entitled to a total of 12 work weeks of leave during a 12 month period for any of the following reasons: (1) for the birth of a son or daughter of the employee in order to care for the child; (2) for the placement of a child with the employee for adoption or foster care; (3) for the care for a spouse, a child under eighteen (18) years of age, or parent of the employee if such spouse, child or parent has a serious health condition; or (4) because of a serious health condition of the employee that renders the employee unable to perform the functions of his or her position. The statute provides for intermittent or reduced schedule leaves. In 2008, the law was amended to permit leave for caregivers to wounded and disabled military service members, and to permit leave for service members and their families who need time off to handle their affairs following a call-up to active duty or a deployment.

The statute generally requires that the employee be restored to the position of employment held by the employee when the leave commenced or be restored to an equivalent position with the equivalent employment benefits, pay and other terms and conditions of employment. There are exceptions to the restoration requirement for certain highly compensated employees. The FMLA does not require that leave be paid, nor does it require employers to offer health insurance. However, the statute requires employers to maintain coverage under any group health plan during the period of the leave, under the same conditions coverage would have been provided had the employee continued in employment for the duration of the leave.

The statute is administered by the U.S. Department of Labor. Employees damaged by violations of the FMLA can bring an action in any federal or state court of competent jurisdiction for back-pay, liquidated damages, and equitable relief.

Fair Labor Standards Act (FLSA)

The Fair Labor Standards Act of 1938, as amended, regulates wages and hours of employees of employers engaged in commerce or in the production of goods for commerce. Employees must receive a minimum hourly rate of pay, currently $7.25, for each hour worked up to 40 hours per workweek. Unless exempted, employees must receive time and one-half of the regular hourly rate for all hours worked over 40 in a workweek.

The Wage and Hour Division (WHD) of the Department of Labor administers the FLSA. Aggrieved employees may bring an action for unpaid minimum wages or overtime, and, if the violation is willful, receive an additional identical amount as liquidated damages in addition to attorneys' fees. The WHD conducts wage and hour investigations of employers randomly, but more frequently after the receipt of a complaint by a current or former employee.

Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Act of 1970, as amended, applies to employers engaged in a business affecting commerce which utilizes employees. The Act requires each employer to furnish a place of employment, free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees, and requires the employer to comply with occupational safety and health standards promulgated under the statute. Additionally, employers are prohibited from discharging or discriminating against employees for exercising rights under OSHA.

The Act created the Occupational Safety and Health Administration, which is empowered by statute to conduct inspections of work places and to cite employers if violations are found. Citations issued for non-compliance or violations can be accompanied by a civil penalty of up to $7,000 for each serious or non-serious violation, $7,000 for each day during which an employer fails to correct the violation and, in the case of a willful violation causing an employee's death, fines of not more than $10,000, imprisonment for not more than six months, or both. A second conviction raises the punishments to a fine of not more than $20,000, imprisonment for not more than one year, or both.

Ohio is a "Federal" plan state under the OSHA Act. Ohio is part of Chicago-based Region V, with area offices found in Cincinnati, Cleveland, Columbus and Toledo. Historically, enforcement priorities and attitudes have varied from office-to-office, depending on the particular area director involved.

The Cleveland/Northeast Ohio office, for instance, is largely complaint-driven in its inspection efforts. In other areas of the state, SST, NEP and construction industry, "Dodge Report" inspections constitute a larger percentage of actual on-site inspections. Recently, Ohio OSHA offices have been active in the formation of OSHA/employer "strategic alliances," or "partnerships," with various industry groups. The Construction Employers Association (Cleveland Chapter) "Elite Contractors" partnership with the Cleveland area office is one of the largest of its kind in the nation.

Veterans' Employment and Reemployment Rights

This statute forbids discrimination against, and addresses the employment and reemployment rights of, employees who leave their jobs to go into the military service or to take periodic military training in the reserves or the National Guard. Additionally, it requires employers to provide the seniority and benefits to employees returning from military leave they would have received had they never left their employment.

Immigration Reform and Control Act (IRCA)

The Immigration Reform and Control Act requires employers to verify the identity and eligibility to work in the U.S. of all persons hired after November 6, 1986. The Act authorizes specific documents for this purpose and employers are required to prepare and retain I-9 forms to prove compliance. The Act provides significant fines and penalties for employers failing to comply with the documentation requirements, hiring unauthorized workers or discriminating against persons who appear or

sound foreign. IRCA is enforced by the Immigration and Naturalization Service and the Department of Labor's Wage/Hour Division.

Worker Adjustment and Retraining Notification Act (WARN)

The Worker Adjustment and Retraining Notification Act requires employers of 100 or more employees to give 60 days notice in advance of a plant closing (if the shutdown results in an employment loss of 50 or more employees) and/or of a mass layoff, which is defined as a reduction in force of six months or longer which results in an employment loss both of at least 33 percent of the employees at the location and of at least 50 employees, or at least 500 employees. There are several exceptions to the notice requirement. However, employers who cannot avail themselves of an exception are liable for a day's wages and benefits for each aggrieved employee for the number of work days occurring during the 60 calendar days when the notice was not given. Other civil penalties exist for failure to comply with the provisions of the WARN.

Employee Polygraph Protection Act

The Employee Polygraph Protection Act of 1988 severely circumscribes employers' rights to use lie detectors, defined to include polygraphs, deceptigraphs, voice stress analyzers, psychological stress evaluators or other similar devices, the results of which are used for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual. Private sector exceptions from the Act's coverage are limited to security services providers, on-going investigations involving economic loss when supported by reasonable employer's suspicion, and FBI contractors. Employers subject to the Act that directly or indirectly require, request, suggest or cause an employee or prospective employee to take a test or use, accept, refer to or inquire concerning the results, or discharges, disciplines or discriminates against, or threatens to do so because of an employee's refusal to take a test, is subject to civil penalties of not more than $10,000 and private civil actions by employees damaged by a violation of the statute. The statute contains a broad anti-waiver of rights provision.

National Labor Relations Act

The National Labor Relations Act of 1935 (NLRA), as amended, created a federal administrative agency, the National Labor Relations Board (NLRB), as the federal authority to regulate the relations between labor and management. The 1935 Act is also sometimes referred to as the Wagner Act. The Wagner Act was amended by the Taft-Hartley Act of 1947, also called the Labor Management Relations Act (LMRA) and by the Landrum-Griffin amendments of 1959, also called the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA). The Act, basically divided into two parts, regulates and governs the selection of an employee representative and the prevention of unfair labor practices by employers or labor organizations. The NLRB maintains a number of regional offices, including Region 8 in Cleveland, Ohio and Region 9 in Cincinnati, Ohio.

Petitions for selection of employee representative are filed in the regional office and result in NLRB-conducted secret ballot elections which, depending on the type of petition, can result in selection of a labor organization as an exclusive bargain representative, deselection of a labor organization or withdrawal of union security authorization.

Unfair labor practice charges are filed in the regional office having geographic jurisdiction over the employer. The regional office investigates the charge, and if after investigation, the regional director finds probable cause, a complaint and notice of hearing is issued, and the matter is set for hearing before an NLRB administrative law judge.

Equal Pay Act

The Equal Pay Act of 1963, codified as part of the Fair Labor Standards Act, prohibits discrimination on the basis of sex. The Act requires equal pay for equal work performed under similar working conditions. Exceptions exist based on seniority systems, merit systems, systems measuring earnings by quantity or equality of production, and differentials based on any other factor than sex.

Norris-LaGuardia Act

The Norris-LaGuardia Act of 1932 predated the Wagner Act by some three years. The Act severely restricts the federal courts from issuing restraining orders or temporary or permanent injunctions in labor disputes, renders unenforceable in

federal courts the "yellow-dog" contract, by which employees obligated themselves to refrain from union membership, and limited the imposition of vicarious liability upon union officials and members for acts of other agents in the union.
Several exceptions exist, most notably the *Boys Markets* exception which allows the issuance of restraining orders against labor organizations on strike in breach of a no strike clause in certain circumstances.

Obligations of Government Contractors and Subcontractors Pursuant to Executive Order 11246, as Amended, the Rehabilitation Act of 1973 and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and Other Statutes
Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations to minorities and females under Executive Order 11246, as amended, to handicapped persons under the Rehabilitation Act of 1973 and to Vietnam-era veterans and disabled veterans under the Vietnam Era Veterans Readjustment Assistance Act of 1974.

Employers who have contracts with the federal government for the procurement of certain property or services have certain obligations under the Drug Free Workplace Act.

Additionally, employers holding various sorts of contracts with the federal government, depending on the size and type of contract, may have obligations under one or more of the following federal statutes: Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Walsh-Healey Government Contracts Act, Anti-Kickback Act of 1986 and Service Contract Labor Standards Act.

State Law Considerations

Employers doing business in Ohio are subject to a number of state statutes, some of which are similar to federal statutes and some of which are not, as well as certain judicially-created causes of action.

Presently, Ohio has no laws which require allowing an employee to review his or her personnel file, no "little Norris-LaGuardia Act" and no "little WARN Act."

Ohio law does require that all employers report new hires to the Ohio Department of Job and Family Services within 20 days of an employee's hiring or rehiring, or face a fine of $25 per employee. If the failure to make a report is the result of a conspiracy between the employer and the employee, the employer will be fined $500 for each failure.

Employment Discrimination
The Ohio laws against discrimination are contained in Chapter 4112 of the Ohio Revised Code, which also created the Ohio Civil Rights Commission (OCRC), the state agency which administers the "administrative side" of the laws against discrimination. They first became effective in 1959 and preceded Title VII by five years. Ohio law prohibits discrimination by employers on the basis of race, color, religion, sex, national origin, handicap, age or ancestry. Charges must be filed within six months after the alleged discriminatory practice occurred. The definition of handicap parallels the federal ADA and contains the same exclusions from the definition as the federal act.

Under Ohio Rev. Code §4112.05, persons claiming discrimination on one or more of the covered bases may file charges of discrimination with the Ohio Civil Rights Commission which will investigate the matter. Charges must be filed within six months after the alleged discriminatory practice occurred. If the OCRC finds it is not probable that an unlawful discriminatory practice occurred, it will dismiss the charge. If the agency finds probable cause, it will attempt by informal methods of conference, conciliation or persuasion to induce compliance with the law. If it is unable to secure a resolution of the matter, the OCRC will issue a complaint which will eventually be heard before an administrative law judge. Respondents and the assistant attorney general, on behalf of the complainant, have full discovery rights similar to those available under Rules 26 to 37 of the Federal Rules of Civil Procedure and the Ohio Rules of Civil Procedure. However, at hearing, the rules of evidence are not binding on the Commission or the hearing examiner. The Commission may order a respondent to cease and desist from an unlawful discriminatory practice and require further affirmative or other action including but not limited to hiring, reinstatement, or promotion, with or without backpay.

Judicial review of the OCRC's orders is available to any aggrieved complainant or respondent. It is triggered by the filing of petition in court of common pleas within the county where the unlawful discriminatory practice was committed, where the respondent resides or where the respondent transacts business. The common pleas court has jurisdiction over the proceeding and has the power to grant on the record and on such additional evidence as it has admitted, orders enforcing, modifying, setting aside or remanding commission orders. Objections not urged before the Commission may not be considered by the court unless the failure to urge the objection is excused because of extraordinary circumstances. The Commission's finding as to the facts are conclusive, if supported by reliable, probative, and substantial evidence on the record and such additional evidence as the court has admitted, considered as a whole.

Section 4112.02(N) of the Ohio Rev. Code provides that individuals may enforce their rights relative to age discrimination, as provided in 4112.02, by instituting a civil action within two years after the alleged unlawful discriminatory practice appeared. Employees filing civil actions under this section are barred from instituting a civil action under Section 4112.14 and from filing a charge with the Commission under Section 4112.05. This direct-action statute has a two-year statute of limitations.

Section 4112.14 of Chapter 4112 of the Ohio Rev. Code is another prohibition against age discrimination by employers. This statute prohibits age discrimination in any job opening against any applicant or prohibits discharge of any qualified employee aged forty without just cause. This stand-alone age discrimination cause of action provides persons age 40 and over who believe they have been discriminated against on the basis of their age the right to institute a civil action. While the precise statute of limitations under Section 4112.14 currently is unclear, nearly all courts considering the issue have held that an action must be brought within six years after the discrimination or discharge occurred. This direct action statute provides for reimbursement of cost including reasonable attorneys' fees, reinstatement, compensation for lost wages and fringe benefits. There are no punitive damages available under this statute.

The anti-discrimination statute most frequently used by the plaintiffs' bar is Section 4112.99 of the Ohio Rev. Code, entitled "Civil Remedies for Violation." The section contains a six-year statute of limitations, and the Ohio Supreme Court has held that prevailing plaintiffs may recover uncapped compensatory and punitive damages. Recovery of attorneys' fees is not available under Section 4112.99. The Ohio Supreme Court recently held that individual liability on the part of supervisors or co-employees may be found.

In addition to the statutory prohibitions against discrimination, the Ohio Supreme Court, in a 1991 case styled as Kerans v. Porter Paint, by judicial fiat created a sexual harassment tort. The case was replete with ugly facts, and the plaintiff had failed to bring a claim under either Title VII or the Ohio Revised Code for civil rights violations. Instead, she pled various torts. The defendant's sole defense was to claim that plaintiff's exclusive remedy would have been through the workers' compensation system, but that the conduct of the offending employee was outside the scope of his employment. Kerans sexual harassment tort claims are rarely seen and may have been a creature of the facts and posture of that case.

In the Ohio Supreme Court's 1997 decision in Kulch v. Structural Fibers, Inc., 78 Ohio St. 3d 134 (1997), the Court determined that remedies for violation of a statute and remedies for the tort of wrongful discharge are cumulative, meaning that a plaintiff could "piggyback" a wrongful discharge tort claim on a claim under Section 4112.14 to obtain additional tort remedies.

Miscellaneous Labor Laws

Ohio has various miscellaneous labor statutes which *inter alia* require the semi-monthly payment of wages, prohibit compelling employees to purchase at certain places, forbid issuing payment in scrip, and provide that employees shall not be required to pay the cost of medical examinations required by the employer as a condition of employment.

Section 4113.30 of the Ohio Rev. Code, which does not apply to any public employer or to any employer who is subject to the National Labor Relations Act, provides that where collective bargaining agreement between an employer and a labor

organization contains a successor clause, such clause is binding upon and enforceable against any successor employer who succeeds to the contracting employer's business, except that no successor clause is binding upon or enforceable against any successor employer for more than three years from the effective date of the collective bargaining agreement between the contracting employer and the labor organization.

Qualified Immunity for Employer as to Job Performance Information Disclosures

Section 4113.71, effective in July 1996, provides qualified immunity for employers who have been requested by an employer or a prospective employer of an employee to disclose to the prospective employer information pertaining to the job performance of the employee and who disclosed the requested information.

Ohio Whistleblower Protection Act

The Ohio Whistleblower Protection Act, Ohio Rev. Code §§4113.51 to 4112.53, provides protection from retaliation for employees who report violations of law or of company policy by their employers in strictly defined circumstances. To be protected, the employee must notify the employer of the alleged violation orally and also file a written report describing the violation. The employee must reasonably believe the violation either is a criminal offense, likely to cause an imminent risk of physical harm or a hazard to public health or safety, or is a felony. If the employer does not correct the problem, the employee may report the violation to the appropriate public authority. If the employer takes any adverse employment action, the employee may bring a civil action for injunctive relief, reinstatement, backpay, and attorneys' fees. Any action must be brought within 180 days of the disciplinary or retaliatory action. If the employee strictly complies with the requirements of the Act, he may also recover in a common law public policy tort action.

Public Policy Exception to Employment At-Will

Although employees in Ohio are generally employed at-will, an employee can maintain a tort cause of action for wrongful discharge in violation of public policy in certain circumstances. Greeley v. Miami Valley Maintenance Contractors, Inc., 49 Ohio St. 3d 228 (1990). The employee must establish the following elements: 1) a clear public policy exists and is manifested in a state or federal constitution, statute or administrative regulation, or the common law; 2) dismissal of employees, in circumstances similar to plaintiff's, would jeopardize that public policy; 3) plaintiff's dismissal was motivated by conduct related to the public policy; and 4) the employer lacked overriding legitimate business justification for the dismissal.

In 1995, the Ohio Supreme Court expanded the wrongful discharge in violation of public policy tort, holding that the public policy tort may be based on a public policy that is expressed in a statute, even where the employer's conduct did not specifically violate the statute. Collins v. Rizkana, 73 Ohio St. 3d 65 (1995). Two years later, the Ohio Supreme Court held that the public policy exception is not limited to situations where an employee would otherwise have no remedy. Kulch v. Structural Fibers, Inc., 78 Ohio St. 3d 134 (1997). However, in 2002, the Court placed a limitation on the public policy tort, holding that there is no need to recognize a common-law action for wrongful discharge if there already exists a statutory remedy that provides adequate remedies to protect society's interests. Wiles v. Medina Auto Parts, 96 Ohio St. 3d 240 (2002).

Unemployment Compensation

Individuals in Ohio who become involuntarily unemployed are eligible to receive unemployment compensation, after a one week waiting period, where such individual is available and willing to accept other work. Individuals are not eligible if the unemployment is caused by: 1) a voluntary resignation without good cause related to the individual's work; 2) a termination for "just cause;" or 3) a labor dispute other than a lockout. The eligible individual will receive a weekly benefit, not to exceed $233, for up to 26 weeks.

Workers' Compensation Laws

Ohio's Workers' Compensation Act requires all employers, unless approved for self-insured status by virtue of having 500 or more employees, to pay insurance premiums for exclusive coverage with the State of Ohio's Bureau of Workers' Compensation (BWC), which covers benefits and medical expenses for injury, occupational disease, and death claims that

have occurred "in the course of, and arising out of employment." The BWC collects semi-annual premiums, and from that fund, the BWC pays temporary and permanent benefits, medical expenses, wage-loss benefits and vocational rehabilitation expenses. Along with the BWC, the Industrial Commission is the companion state agency that is primarily the adjudicating body entrusted with resolving all disputed claims for workers' compensation benefits.

Ohio's workers' compensation law is compulsory and the exclusive remedy for employees injured in the scope of their employment. The Ohio Constitution precludes an employee's right to pursue common law tort actions against employers participating in the system except when the employee's injury, occupational disease, or death results from intentional acts on the part of the employer.

Injury claims must be filed within two years of the date of injury, and occupational disease claims must be filed within two years of the date of diagnosis.

Rates of Compensation

Temporary Total Disability

Temporary total (TT) disability is defined as a disability which prevents a worker from returning to his former position of employment. The rate of compensation for temporary total benefits accrues only after seven days of lost time, and is computed as 66 2/3 percent of a worker's average weekly wage (so long as the disability is total), but not to exceed the amount determined by the state as the statewide average weekly wage. Unless a claimant voluntarily abandons his employment through resignation, retirement, incarceration, or otherwise, TT is payable until (1) the claimant returns to work; (2) the treating physician releases the claimant to return to his former position of employment; (3) the disability becomes permanent or has reached maximum medical impairment; or (4) work within the claimant's capabilities is made available by the employer.

Wage Loss

Wage loss compensation is available for claims arising on or after August 22, 1986. It is available to claimants whose injury creates: (1) a return to work but at a lower than pre-injury wage; or (2) an inability to find work consistent with his physical capabilities as a result of the conditions allowed in the claim. Wage loss compensation is calculated at 66 2/3 percent of his weekly wage loss not to exceed the statewide average weekly wage for a period of 200 weeks.

Permanent Partial Disability

Permanent partial disability compensation is payable to a claimant 26 weeks after the last payment of temporary total or wage loss compensation where such compensation has been paid, or 26 weeks after the date of injury or contraction of an occupational disease in claims for medical benefits only, at the percentage by which the claimant has been partially disabled. A claimant may receive an increase in the permanent partial disability award upon a showing of substantial evidence of new and changed circumstances after the hearing on the most recent award. In either event, the percentage of permanent partial disability must be based on "medical or clinical findings reasonably demonstrable" as to the permanent impairment, due to the allowed condition in the claim. This determination cannot take into consideration relevant nonmedical factors such as age, education and work experience that might affect the claimant's earning capacity.

Scheduled Losses

The statute contains a schedule of compensation that is to be paid to claimant as a result of the loss of specific body parts. In this context, "loss" includes not only "loss by severance," but also "loss of use." "Loss of use" means that a claimant has lost the use of the affected parts to the same extent as if amputated.

Permanent Total Disability Compensation

Permanent total disability compensation is payable to a claimant when he is no longer capable of engaging in sustained remunerative employment. The issue is not whether a job is actually available, particularly in a specified geographic area, but whether the claimant is reasonably qualified for sustained remunerative employment. This determination is based upon the claimant's medical impairment due to the allowed conditions in his claim, and consideration of nonmedical factors such

as age, education, work experience, and other psychological and sociological data relevant to the claimant's ability to work. However, the nonmedical factors may not be the basis of a finding of permanent total disability.

Death Benefits

If an employee dies as a result of an occupational injury or disease, his or her dependents may be eligible to receive death benefits. To be eligible, the dependent must provide notice of the employee's death within one year and must show a proximate causal relationship between the injury or occupational disease and his death. Benefits will be apportioned among all dependents as statutorily defined, as the Commission deems equitable based on the circumstances of the particular case. If a surviving spouse remarries, his or her death benefits will cease and will be apportioned among any remaining dependants. The remarrying surviving spouse will then receive a lump sum payment equal to two years of benefits.

Violation of Specific Safety Rule (VSSR) Awards

The Ohio Constitution provides the Industrial Commission with "full power and authority to hear and determine whether or not an injury, disease or death resulted because of the failure of the employer to comply with any specific requirement for the protection of the lives, health or safety of employees." To obtain an award for a violation of a specific safety requirement (VSSR), a claimant must show that his or her injury was caused by the employer's failure to comply with a specific safety requirement. A specific safety requirement is one that is enacted either by the General Assembly or under order of the administrator of workers' compensation, is specific as opposed to general in nature, and is designed for the protection of the lives, health and safety of employees, as opposed to the general public. The application for a VSSR award must be filed within two years of the injury, death or inception of disability due to occupational disease. VSSR awards are no less than 15 percent and no greater than 50 percent of compensation paid to the claimant at the maximum rate. VSSR awards are viewed as a separate penalty to the employer that is not covered by its state insurance fund premiums and must be paid by the employer directly. Multiple violations within a 24-month period are subject to a civil penalty of up to $50,000 for each violation.

Drug-Free Workplace Program

Ohio has instituted the Drug-Free Workplace Program (DFWP) which offers premium reductions to employers who participate in random drug tests of their employees. The program's goal is to eliminate work place injuries caused by employee substance abuse, but the employees remain employed with the focus of rehabilitation. The program functions as a risk management assistance for businesses and currently offers 6-20 percent premium savings to participating employers. Thus far, the program has been extremely well received by more than 500 Ohio businesses and has saved those employers thousands of dollars in premium charges.

DISPUTE RESOLUTION

FEDERAL COURT SYSTEM

The trial courts of the federal court system are the U.S. District Courts. Ohio is divided into two separate districts: The Northern District of Ohio, which is subdivided into the Eastern Division which sits in Akron, Cleveland and Youngstown, and the Western Division which sits in Toledo; and the Southern District of Ohio which is subdivided into the Eastern Division which sits in Columbus and the Western Division which sits in Cincinnati and Dayton. Federal district court judges are appointed by the President for life terms upon approval by the United States Senate. In addition to active district judges, cases are heard by senior judges who are retired but still hear cases part-time. All cases are assigned on an individual docket system to a district court judge and a magistrate judge who may hear various types of issues, dependent partially on the agreement of the parties. Bankruptcy matters are separately assigned to bankruptcy judges. Appeals of right are to the Sixth Circuit Court of Appeals which sits in Cincinnati, and ultimately by discretionary appeal to the U.S. Supreme Court in Washington, D.C.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are managed by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, patent and copyright, antitrust, postal matters, internal revenue, admiralty, and federal crimes, federal torts, and customs. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens of different states with an amount in controversy exceeding $75,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal district court in the U.S. In addition, the U.S. District Court for the Northern District of Ohio and for the Southern District of Ohio have each established their own rules applicable only to the procedure in that district court. Practice before each district court, each circuit court of appeals and the Supreme Court requires admissions to the bar of that particular court. These rules often set forth very specific guidelines for the handling of an action, and require close attention.

STATE COURT SYSTEM

Ohio Trial Court System

Ohio has municipal courts with limited jurisdiction in both civil and criminal cases. Many of the municipal courts also have a small claims division where many small consumer cases are heard. The original general jurisdiction in Ohio is in the Court of Common Pleas for each of the 88 counties. These courts vary in size from one judge in rural counties to over 40 in the largest county. In addition to judges in the general division, there are separate juvenile court judges, domestic relations division and probate division judges who limit their case load to the particular area specified. As well, a recent pilot program that runs through 2012, has introduced a commercial docket to hear strictly business cases in Cuyahoga, Franklin, Hamilton and Lucas Counties. All cases, regardless of type, are assigned on an individual docket. Busy counties also rely on retired or out-of-county judges who sit by assignment from the Chief Justice of the Ohio Supreme Court. Ohio judges are elected in a non-partisan general election for a six-year term after being nominated in a partisan primary election. Civil procedure is governed by the Ohio Rules of Civil Procedure which is similar to but not the same in all instances as the Federal Rules of Civil Procedure. The Ohio Rules of Civil Procedure are promulgated by the Ohio Supreme Court subject to review by the Ohio Legislature. Courts of Common Pleas for the larger counties (i.e., Cuyahoga/Cleveland, Franklin/Columbus, Hamilton/Cincinnati, Lucas/Toledo, Montgomery/Dayton, Stark/Canton, and Summit/Akron) also have published local rules of procedure. In addition to written or published procedural rules, some local courts have customs and local practice courtesies which will vary.

Ohio Appellate Courts

Ohio has an intermediate Court of Appeals which is divided into 11 District Courts of Appeals. Cases are heard by a panel of three judges. Some Appellate Court districts have more than three judges and panels are selected at random without notice prior to oral argument. In addition to appellate jurisdiction in all civil and criminal cases, the Courts of Appeals have limited jurisdiction to hear original actions such as mandamus and other extraordinary writs. The Ohio Supreme Court is comprised of a chief justice and six associate justices. It hears civil and criminal appeals. Most cases are reviewed under a discretionary appeal system. The grant of a discretionary appeal requires that the appeal involve an issue of public or great general interest. Issues of constitutional law may be appealed as of right unless the court finds that no substantial constitutional issue is involved. Other categories of cases heard by the Ohio Supreme Court are death penalty appeal cases and original actions seeking extraordinary writs as well as attorney disciplinary cases.

Additional Information

Restrictions on Specific Professions

Ohio has customary local licensing for professions such as law, medicine, stockbrokers, investment advisers, accounting, real estate and mortgage brokers, social workers, all the way to massotherapy and barbers, without any unusual restrictions.

Usury Laws

In the absence of a written instrument which provides otherwise, the rate of interest in the federal short-term rate, rounded to a whole number, plus three percent. Ohio Rev. Code §§1343.03(A) and 5703.47.

Generally, the maximum rate of interest allowed pursuant to a written instrument is 8 percent per annum. Ohio Rev. Code §1343.01(A). Subsection (B) of Section 1343.01 provides, however, that parties may agree to pay a higher rate of interest under certain circumstances, including, for example: (a) if the original amount of the principal indebtedness exceeds $100,000; (b) payment is to a broker or dealer registered under the Securities Exchange Act of 1934 for carrying a debit balance which is payable on demand and secured by stocks, bonds or other securities; (c) certain loans secured by real estate; (d) if the instrument is payable on demand or in one installment and not secured by goods used for personal, family or household purposes; and (e) a business loan not secured by an individual obligor's wages or compensation or household furniture or goods. Ohio Rev. Code §1343.01(B)(1)-(6).

In addition to the foregoing, certain transactions are subject to more specific interest rate limitations. *See*, e.g., Ohio Rev. Code §1317.06) (retail installment sales), Ohio Rev. Code §1321 (loans under the Ohio Small Loans Act), Ohio Rev. Code §1321.57(A) (certain second mortgage loans), Ohio Rev. Code §4727.06 (certain loans made by licensed pawnbrokers) and Ohio Rev. Code §1151.21 (certain loans and assessments by building and loan associations).

Charging, taking, or receiving interest at an annual rate in excess of 25 percent constitutes "criminal usury" under Ohio law, except where a greater rate of interest is "otherwise authorized by law" or where the creditor(s) and debtor(s) are members of the same immediate family. Ohio Rev. Code §2905.21(H)(1)-(2). Criminal usury is a fourth degree felony. Ohio Rev. Code §2905.22(B). It is punishable by imprisonment for up to eighteen months and a fine of up to $5,000. Ohio Rev. Code §§2929.14 and 2929.18. It is not entirely clear under Ohio law whether Ohio's criminal usury provisions limit the interest rate that can be charged in transactions excepted under Ohio Rev. Code §1343.01(B) from the general interest rate limitations set forth in Ohio Rev. Code §1343.01(A).