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Founded 1902

Legal Guide to Doing Business in Oklahoma

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 Oklahoma**

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DISCLAIMER

PLEASE NOTE: The information contained in this guide is for general reference only and discusses certain laws applicable to doing business in Oklahoma as of June 2008. This publication should not be relied upon in any specific factual or legal situation, does not create an attorney-client relationship, and does not cover all laws or regulations that may be applicable in all circumstances. Readers of this guide should seek independent professional advice from a lawyer authorized to practice in Oklahoma before proceeding to invest or do business in Oklahoma.



LEGAL GUIDE TO DOING BUSINESS IN OKLAHOMA

I. INTRODUCTION

A. Geographic Description

Oklahoma is the eighteenth largest state with a total land area of roughly 68,679 square miles. It is located equidistant between Los Angeles, New York City and Mexico City. It is bordered by Kansas on the north, Texas to the south and west, Arkansas and Missouri to the east, and Colorado and New Mexico at the tip of the Oklahoma panhandle.

High plains predominate the west, the Arkansas River Basin dominates the east-central region and the Red River Plains are in the south. Oklahoma's four mountain ranges include the Ouachitas, the Arbuckles, the Wichitas, and the Kiamichis. Forests cover approximately 24 percent of Oklahoma.

B. Investment Climate

A recent study named Oklahoma City as the most recession-proof city in the United States. Oklahoma offers a favorable business climate. It has consistently been one of the lowest taxed states per capita in the nation. Overall, Oklahoma's total business costs ranked tenth lowest, its labor costs ranked among the lowest, and its energy costs ranked seventeenth lowest overall. One recent study ranked Oklahoma as the tenth least expensive state in which to do business, while another study ranked Oklahoma in the top fifteen pro-business states for 2006.

Oklahoma is more diversified than ever before with employment in such technologically advanced fields as aviation, electronics, telecommunications, biotechnology, plastics, business services, fabricated metals, agriculture and energy. Oklahoma is a prime location to serve the growing manufacturing, merchandising, and distribution economy with commercial airports in major cities, two major international airports, the nation's most inland all weather seaport and fourteen rail carriers. Oklahoma is also America's trucking hub, offering same day delivery to more than 75 million people and overnight delivery to 94 percent of the nation. Hundreds of distribution firms take advantage of Oklahoma's One-Stop fleet registration system.

C. Demographic Description

Oklahoma's population grew at a rate of 3.7 percent between 2000 and 2006. Oklahoma has the second largest American Indian population in the nation. Over 244,326 American Indians from 67 tribes make their home in the state and 39 tribes have located their tribal headquarters in Oklahoma.

D. Information Resources

For more information on business and commerce in the State of Oklahoma, visit the official state website at www.ok.gov, or the Secretary of State at www.sos.state.ok.us or the Department of Commerce at www.okcommerce.gov.

II. BUSINESS ENTITIES

A. Corporations

The Oklahoma General Corporation Act (the "Act") controls the formation, operation, and dissolution of Oklahoma Corporations. As a general rule, the Act follows the Delaware General Corporation Law. The Act can be found at OKLA. STAT. Tit. 18, § 1001 *et seq.* (2008).

1. Corporate Formation

An Oklahoma corporation may be formed by filing a signed copy of the Certificate of Incorporation with the Secretary of State. A filing fee of one-tenth of one percent of the authorized capital stock of the corporation, but not less than \$50 (not for profit corporations are only required to pay \$25), is required to be paid to the Secretary of State at the time of filing.

2. Certificate of Incorporation

The Certificate of Incorporation must state the name of the corporation, the address of the corporation's registered office in the state, the name of the corporation's registered agent, the nature of business to be conducted, the total number of shares of all classes of stock, the par value of each class of stock or a statement that the shares are without par value, the name and mailing address of the incorporators, and the names and mailing addresses of persons who are to serve as directors if the powers of the incorporators terminate upon filing. A provision of the certificate of incorporation may be made dependent upon facts ascertainable outside the instrument, provided the manner in which the facts shall operate upon the provision is clearly and explicitly set forth.

3. Corporate Name

The corporate name must contain the word "association," "company," "corporation," "club," "foundation," "fund," "incorporated," "institute," "society," "union," "syndicate," or "limited" or abbreviations thereof. The name should also be distinguishable from other corporate, limited liability company, or limited partnership names reserved or registered with the Secretary of State.

4. Bylaws

The bylaws may contain any provision, not inconsistent with law or with the certificate of incorporation, relating to the business of the corporation, the conducting of its affairs, and the rights or powers of its shareholders, directors, officers, or employees. The original

bylaws may be adopted, amended or repealed by the incorporators, the initial directors if they are named in the certificate of incorporation, or the board of directors prior to the time payment is received for any of its stock. After the corporation has received payment for any of its stock, the power to adopt, amend or repeal the bylaws shall be in the board of directors unless the certificate of incorporation confers this power on the shareholders.

5. Authorized Shares

Every corporation may issue one or more classes of stock or one or more series of stock within any class. Stock may be issued with or without par value and may have full, limited, or no voting powers as designated in the certificate of incorporation. Stock may be issued for cash, services rendered, personal property, real property, leases of real property, or any combination thereof. Shares of stock with a par value may not be issued for a value less than par value.

6. Meetings of Shareholders and Directors

Unless directors are elected by written consent in lieu of an annual meeting, an annual meeting of shareholders must be held for the election of directors on a date and at a time provided for in the bylaws. A failure to hold the annual meeting will not affect otherwise valid corporate acts or cause a dissolution of the corporation. The board of directors may fix a record date for the shareholder meeting not more than 60 nor less than 10 days before the date of the meeting.

The board of directors shall consist of one or more members. A vote of the majority of directors present at a meeting in which a quorum is present shall be the act of the board, unless the certificate of incorporation or the bylaws require a greater number. Directors may take action without meeting if all members of the board consent in writing or by electronic transmission.

7. Authority of Shareholders, Directors and Officers

Shareholders are entitled by the Act to vote on certain corporate actions such as: merger, amendment to the certificate of incorporation, the sale of all or substantially all of the corporation's assets, and dissolution.

Otherwise, the business and affairs of the corporation shall be managed under the direction of the board of directors. The board of directors may appoint committees to exercise any of the powers of the board, but no committee shall have the power to approve, adopt, or recommend to the shareholders any action expressly required by the Act to be submitted to the shareholders, other than the election or removal of directors.

Every corporation shall have officers with titles and duties as stated in the bylaws or in a resolution of the board of directors. Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors. Any number of offices may be held by the same person unless the certificate of incorporation or the bylaws provide otherwise. The certificate of incorporation may confer upon one or more directors, voting powers greater than or less

than those of other directors. A failure to elect officers shall not dissolve or otherwise affect the corporation.

8. Limited Liability

Except as provided in the certificate of incorporation, the shareholders of a corporation shall not be personally liable for the payment of the corporation's debts, except for liability occurring by reason of their own conduct or acts.

When the certificate of incorporation provides that a shareholder shall be personally liable, no suit can be brought against the shareholder for a debt of the corporation until a judgment has been obtained against the corporation and the judgment has not been satisfied.

9. Annual Report and Franchise Tax

All corporations, associations, joint stock companies and business trusts operated for profit doing business within the state must pay franchise tax on capital used or invested in the state. An annual franchise tax statement setting forth certain financial information relating to the calculation of the franchise tax must also be filed with the franchise tax return. Requirements of the annual report and franchise tax are governed by OKLA. STAT. Tit. 68, §§ 1201, 1210 (2008).

B. Limited Liability Companies

The Oklahoma Limited Liability Company Act (the "Act") controls the formation, operation, and dissolution of Oklahoma Limited Liability Companies. The Act can be found at OKLA. STAT. Tit. 18, §§ 2000 *et. seq.* (2008).

1. Formation and Name

One or more persons may form a limited liability company by filing executed articles of organization with the Secretary of State and by paying a \$100 fee to the Secretary. The LLC's name must include the designation "limited liability company" or "limited company" or the abbreviation "LLC," "LC," "L.L.C. ," or "L.C. ," and must be distinguishable from the names of other entities filed with the Secretary.

2. Registered Office and Agent

Every domestic LLC must maintain a registered office and agent in the state to receive service of process. The name and address of such agent must be provided in the articles of organization.

3. Members and Managers

An LLC may consist of one or more members who either did or did not make a contribution to the LLC to acquire the membership interest. Except as otherwise provided in the articles of organization, an LLC shall be managed by or under the

authority of one or more managers who may, but need not be, members. Unless otherwise provided in the articles of organization, managers are elected by the members.

4. Limitation of Liability

Members and managers are not liable for the LLC's obligations solely because they are members or managers. The articles of organization may eliminate or limit the personal liability of the members and managers for good faith breaches of their duty of care, but the articles of organization may not eliminate or limit liability for a manager's breach of a fiduciary duty of loyalty, for acts undertaken in bad faith, or for any transfer from which the manager derived an improper personal benefit.

5. Filing Requirements

Every domestic and foreign LLC registered to do business in this state shall file a certificate each year with the Secretary of State which shall confirm it is an active business.

C. General Partnerships

A partnership is an association of two or more persons to carry on a business for profit as owners. Oklahoma partnerships are governed by the Oklahoma Revised Uniform Partnership Act (the "Act") which can be located at OKLA. STAT. Tit. 54, § 1-100 *et seq.* (2008). Except as provided by the Act, the partnership agreement governs the relations between the partners and between the partners and the partnership. If not addressed by the partnership agreement, the Act governs those relations.

1. Partners as Agents of the Partnership

Each partner is an agent of the partnership for the purpose of its business. An act of a partner apparently performing the ordinary course of the partnership business binds the partnership unless the partner had no authority to act for the partnership in the matter and the person with whom the partner was dealing knows the partner lacks authority. Generally, all partners are jointly and severally liable for all obligations of the partnership.

2. Formation

A statement of partnership authority may be filed in the office of the Secretary of State along with a filing fee of \$100. A partnership may become a limited liability partnership by filing a statement of qualification with the Secretary of State.

D. Oklahoma Limited Partnerships

Oklahoma limited partnerships formed after November 1, 1984 are governed by the Oklahoma Revised Uniform Limited Partnership Act ("Revised Act") which can be found at OKLA. STAT. Tit. 54, § 301 *et seq.* (2008). Oklahoma limited partnerships formed prior to November 1, 1984 are governed by the Oklahoma Uniform Limited

Partnership Act (the "Act") which can be found at OKLA. STAT. Tit. 54, §§ 141-181 (2008), unless these limited partnerships choose to be governed by the Revised Act.

1. Formation

A limited partnership is a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners. A limited partnership may carry on any business that a partnership without limited partners may carry on, except that a limited partnership may not carry on business as a bank or domestic insurer.

2. Name

The name of the limited partnership must contain the words "limited partnership" or abbreviation "L.P." or "LP," and generally, the name should not include the name of a limited partner. Moreover, the name should be distinguishable from other corporate, LLC, or limited partnership name reserved or registered with the Secretary of State.

3. Office and Agent

Each domestic limited partnership shall maintain in the state an office and an agent for service of process.

4. Formation

A certificate of limited partnership may be filed in the office of the Secretary of State for a fee of \$100. An additional fee of \$50 must be paid for cancellation or amendments. Foreign limited partnerships must register with the Secretary and pay a registration fee of \$300.

5. Rights and Liabilities of Partners

Except as provided in the Revised Act or in the partnership agreement, a general partner of a limited partnership has the rights and powers and is subject to the restrictions of a partner in a partnership without limited partners. Except as provided in the Revised Act or in the partnership agreement, a general partner of a limited partnership has the liabilities of a partner in a partnership without limited partners.

Limited partners have the right to obtain certain information regarding the state of the business and financial condition of the limited partnership. Except as provided by the Revised Act, a limited partner is not liable for the obligations of a limited partnership unless he is also a general partner or, in addition to the exercise of his rights and powers as a limited partner, he participates in the control of the business.

E. Not for Profit Corporations

Oklahoma not for profit corporations are governed by the Oklahoma General Corporation Act (the "Act"). A complete discussion of the Act can be found in Subsection A above and at OKLA. STAT. Tit. 18 §§ 1001 *et seq.* (2008).

1. Liabilities of Board of Directors

Members of the board of directors of not for profit corporations will not be vicariously liable for the negligence of corporate employees or other directors but may be liable for their own intentional torts or grossly negligent acts or omissions.

Members of the board of directors will not be personally liable to the corporation or its members for breach of fiduciary duty as a director unless the breach is made in bad faith or constitutes intentional misconduct or a knowing violation of the law.

F. Authorization of Foreign Entities to Do Business

1. Foreign Corporations

A foreign corporation may conduct business in the state only after receiving a certificate from the Secretary of State. The certificate will be issued only after the foreign corporation files a certificate issued by an authorized officer of the foreign corporation's jurisdiction of incorporation evidencing the corporation's existence. The foreign corporation must also file a signed statement of an authorized officer of the corporation and pay a filing fee of one-tenth of one percent of the maximum amount of capital invested by the corporation in the state at any time during the fiscal year that the certificate is issued but not less than \$300.

2. Foreign Limited Liability Companies

No foreign LLC may transact business in the state until it registers with the Secretary of State by filing appropriate statements and paying a \$300 fee. A foreign LLC must appoint a registered agent and maintain a registered office to accept service of process or designate the Office of the Secretary of State as the appointed agent.

3. Foreign Limited Partnerships

No foreign LLP may transact business in the state until it registers with the Secretary of State by filing appropriate statements and paying a \$300 fee. A foreign LLP must appoint a registered agent to accept service of process or designate the Office of the Secretary of State as the appointed agent.

G. Assumed Business Names

A corporation or other business entity doing business in this state under any name other than its legal name must file a report with the Secretary of State setting forth the legal name of the business, the jurisdiction of organization, the trade name used, a brief

description of the business transacted under the name, and the address where the business is to be conducted. The trade name should also be distinguishable from the names of any other business entities that have filed with the Secretary of State.

III. OKLAHOMA TRADE REGULATION

A. Oklahoma Antitrust Law

The Oklahoma Antitrust Reform Act is found in OKLA. STAT. Tit. 79, §§ 201 *et seq.* (2008) and is similar to the federal Sherman Act ("Act"). The Act prohibits certain acts that monopolize, restrain trade or commerce, and discriminate in pricing and seeks to correct procedural deficiencies, create new enforcement procedures, and repeal onerous, unconstitutional, or unnecessary provisions.

The Act is intended to apply to both single actors and business entities and municipalities are not immune from the Oklahoma Antitrust Reform Act. The Act makes it unlawful for any person in control of an essential facility to unreasonably refuse to give a competitor or customer access to the essential facility if the purpose of such denial is to injure competition. This gives the injured competitor or customer a cause of action to enforce this provision of the Act so long as the complaining party has not previously sought remedy before the Oklahoma Corporation Commission.

Price discrimination in Oklahoma virtually mirrors section 13(a) of the Robinson-Patman Act found in 15 U.S.C. § 13 (1994). In Oklahoma, price discrimination is unlawful but is limited to purchasers of commodities. The Act includes the defenses of meeting competition, cost justification, and changing conditions.

The Act provides that treble damages, equitable relief, and one-way attorneys' fees are available for private litigants. In addition, the Attorney General may bring a civil action on behalf of a natural person, the State, or a political subdivision. The statute of limitations for an action under this Act is four (4) years. However, any person or governmental entity may not recover under both this Act and the similar federal law provision based on the same conduct that was the subject of the federal suit.

B. Franchise Regulation

1. Business Opportunity Sales Act

This Act, OKLA. STAT. Tit. 71, § 801 *et seq.* (2008), requires persons offering or selling "business opportunities" to provide each prospective buyer with a disclosure document and to register the business opportunity by filing the disclosure document with the Oklahoma Department of Securities prior to the offer or sale.

The Act requires the contract of sale to be in writing and to set forth the terms and conditions of the sale. If provisions of the Act are violated, the Administrator who administers the Act may suspend or revoke registration, enjoin further sales, and refer violations to the Attorney General or district attorney for criminal prosecution. The purchaser may sue for rescission, damages, interest, costs and attorney fees.

2. Franchised Vehicle Dealers

Under OKLA. STAT. Tit. 47 § 565.3 (2008), a franchised vehicle dealer proposing to sell, transfer, or assign a franchise agreement, business, or assets of a dealership must notify the manufacturer or distributor whose vehicles the dealer is franchised to sell of the proposed transaction. Irrespective of the conditions of any franchise, or the terms or provisions of any waiver, no manufacturer may terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer has satisfied state statutory notice requirements and has good cause. The manufacturer may not attempt to cancel or fail to renew the franchise agreement of a new motor vehicle dealer unfairly and without just provocation or without due regard to equity or without good faith.

3. Oklahoma Equipment Dealer Buyback and Fair Dealership Statute

Under OKLA. STAT. Tit. 15, §§ 245-251 (2008), a supplier is required to repurchase inventory previously purchased and held by the retailer on the date of termination of any dealer agreement, with some exceptions, although the retailer may keep the inventory if he has a contractual right to do so. The supplier must pay to the retailer 100% of the actual dealer cost of all new, unsold, undamaged and complete farm tractors, farm implements, utility and industrial tractors, and the attachments thereto or outdoor power equipment, lawn and garden equipment and attachments thereto, and 85% of the current net price on new, unused and undamaged repair parts.

Under the terms of the statute, "actual dealer cost" means the original invoice price the retailer paid for the merchandise to the manufacturer, wholesaler or distributor, less all applicable discounts allowed, plus the freight cost from the location of the manufacturer, wholesaler or distributor to the location of the retailer. "Current net price" means the price listed in the printed price list or catalog of the manufacturer, wholesaler or distributor in effect at the time the dealer agreement is canceled or discontinued, less any applicable trade and cash discounts.

C. Consumer Protection Laws

The Oklahoma Consumer Protection Act ("OCPA"), OKLA. STAT. Tit. 15 § 751 *et seq.* (2008), provides for protection to buyers against fraud and other practices by sellers. The Attorney General of Oklahoma is vested with the authority to enforce the OCPA and civil penalties for violation thereof. Remedies available under the OCPA include declaratory judgment, injunction or restraining order, actual damages, attorney's fees, and recoverable expenses including investigation fees.

The OCPA declares certain acts unlawful when the acts occur during the course of the person's business. These unlawful practices include making knowingly false or misleading representations regarding the brand or make of a good, the certification or association by another, the geography or origin of a good, the originality or newness of a good, or its particular style or model. The OCPA prohibits conducting a "closing out sale" without a license, resuming the same business within year after such sale, falsely

stating that services, repairs, or replacements are needed, misrepresenting mail solicitations as invoices or billing statements, and other unlawful consumer practices. Further, the Act declares certain false advertisements regarding consumer transactions to be unlawful, including "under the guise of obtaining sales personnel" and "bait and switch" advertisements.

The following are additional specific consumer protection laws in Oklahoma:

1. Automobiles

a. Oklahoma "Lemon Law"

This Act, OKLA. STAT. Tit. 15 § 901 (2008), protects consumers of new motor vehicles in Oklahoma. According to the Lemon Law, the manufacturer, agent, or authorized dealer of a new vehicle must make repairs in accordance with any express warranties if the consumer reports the problem in writing during the warranties' term or within one year of the vehicle's delivery to the consumer, whichever comes first. If the manufacturer, agent, or dealer cannot repair the vehicle after a reasonable number of attempts, the consumer has the right to receive either a new vehicle or a refund of the full purchase price, less an allowance for use of the vehicle, provided the consumer first uses any arbitration procedure available from the manufacturer. If the vehicle's problems do not substantially impair the vehicle's use or value, or the problem is due to the consumer's abuse, neglect, or unauthorized modifications, the consumer cannot receive relief under this Act.

b. Aftermarket Crash Parts Regulation Act

The purpose of the Act, OKLA. STAT. Tit. 15 § 951 *et seq.* (2008), is to regulate the use of aftermarket crash parts by requiring disclosure when any use is proposed of an aftermarket, non-original equipment manufacturer's crash part and requiring that the manufacturers of such aftermarket crash parts be identified. "Aftermarket crash part" means a replacement for any of the nonmechanical sheet metal or plastic parts of the exterior of a motor vehicle. The Act also provides that any aftermarket crash part supplied by a non-original equipment manufacturer shall bear the logo or name of its manufacturer, and requires insurers to specifically notify consumers in order to use such parts.

2. Home, Telephone, and Electronic Mail Fraud

a. Commercial Telephone Solicitation

The Act, OKLA. STAT. Tit. 15 § 775A.1 *et seq.* (2008), provides that no commercial telephone seller shall conduct business in Oklahoma without having registered with the Attorney General at least ten days earlier, and the Act outlines the time limits, fees, and requirements for registration and renewal. The Act further notes that telemarketing practices that are unlawful under this Act are violations of the OCPA, including: conducting business without registering with

the Attorney General; failing to allow a purchaser to cancel within three days of receipt of goods or to refund payments within thirty days; failing to disclose a consumer's rights or misrepresentation to the consumer of the nature of the goods or their cost; using identity-blocking devices or devices that automatically dial and engage multiple numbers that result in more than 5% of answered calls being abandoned.

The Oklahoma Telemarketer Restriction Act, OKLA. STAT. Tit. 15 § 775B.1 *et seq.* (2008), allows Oklahomans to register with the Attorney General to prevent unsolicited telemarketing calls from reaching their phone numbers. There are exceptions allowed for certain organizations, including solicitations for charitable or religious groups, political candidates and causes, not-for-profit organizations. Consumers can register by internet ([www.http://www.oag.state.ok.us](http://www.oag.state.ok.us)), by mail, or by telephone at (800) 390-5708.

The use of automatic dial announcing devices is regulated under title 15, section 755.1, which provides that the device shall be used only when the device disconnects from the called person's line no more than twenty seconds after the called person hangs up. For calls not for collection purposes terminating in Oklahoma, the device can only be used to make a call between 9 a.m. and 9 p.m. The device may be used only for the following calls or recorded messages: those made solely in response to calls initiated by the person to whom they are directed or who has made a written request to be called; those made regarding previously ordered or purchased goods; those made by creditors or their assignees; or those calls initiated by a live operator who gives the caller the option to disconnect prior to playing of a prerecorded message. The devices cannot be used to dial random or successive lists of numbers.

b. Electronic Mail Messages

This Act, OKLA. STAT. Tit. 15 § 776.1 *et seq.* (2008), prohibits initiating an electronic mail message if the sender knows or has reason to know that the message misrepresents or conceals its origin or transmission path, or contains false, malicious, or misleading information which purposely or negligently injures a person. The Act prohibits falsely representing that the message is being sent by a legitimate online business or linking the recipient to a web page to a seemingly legitimate online business with the intent of fraudulently using or possessing identifying information. The Act also prohibits selling or otherwise distributing software that is primarily designed to falsify electronic mail transmission information. The Act declares it unlawful to transmit a commercial electronic mail message that falsifies routing information or contains a false or misleading subject line, and it outlines requirements for sending unsolicited messages with sexually explicit material. Acts and practices found to be in subsections A and E of the Act will also be considered violations of the Oklahoma Consumer Protection Act.

c. Home Solicitation

This Act, OKLA. STAT. Tit. 14A § 2-501 *et seq.* (2008), governs "home solicitation sales," which are consumer credit sales of goods, other than farm equipment, or services in which the seller or seller's agent engages in a personal solicitation of the sale at a residence of the buyer and the agreement is made at the residence. The term does not include a sale made pursuant to a preexisting revolving charge account, or a sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale. The Act has a "cooling off" law that gives the buyer three days to provide written notice to the seller and cancel the contract. The buyer may not cancel a home solicitation sale if the buyer had requested the seller to provide goods or services without delay due to an emergency, the seller substantially performs on the contract in good faith, and the goods cannot be returned in substantially similar condition.

3. Consumer Credit

a. Credit/Debit Card Numbers

This Act, OKLA. STAT. Tit. 15 § 752A (2008), prohibits anyone who accepts credit or debit cards for a consumer transaction from printing more than the last five digits of the account number or the expiration date on the cardholder's electronically printed receipt.

b. Credit Reports

Requests for credit reports are governed by OKLA. STAT. Tit. 56, § 240.7 (2008), which provides that consumer reporting agencies may be required to pay fees to obtain credit reports and that there be periodic release to consumer reporting agencies of the names and amounts of child support arrearages of obligors who owe past-due support; obligors will receive notice and an opportunity to be heard before the information is released. Only valid consumer reporting agencies with sufficient capability to use the information are entitled to the credit information.

c. Credit Services

The Credit Services Organization Act, found in OKLA. STAT. Tit. 24, §§ 131-148 (2008), outlines the requirements for any credit services organization, or independent contractors who sell or attempt to sell the services of a credit services organization, i.e., improving a buyer's credit record or obtaining an extension of credit for a buyer. Such organizations may not: charge or receive any money before performing the services agreed upon, absent a surety bond; charge or receive any money solely for referral of the buyer to a retail seller who will extend credit to the buyer upon substantially the same terms as those available to the general public; advise any buyer to make any statement that is untrue or misleading or that should be reasonably known to be untrue or misleading, to a

credit reporting agency or to any actual or potential creditor regarding the buyer's credit; or make any false or misleading representations in the offer or sale of the services of a credit services organization or engage in any act, practice, or course of business that operates or would operate as fraud or deception in connection with the services of a credit services organization. Prior to the execution of a contract or agreement between the buyer and a credit services organization or before the organization receives any consideration, the credit services organization shall provide the buyer with a statement, signed and in writing, with certain requirements of form and a five-day cancellation period.

d. Debt Collection Agencies

OKLA. STAT. Tit. 15, § 755.1 (2008) prohibits the use of automatic dialing devices for collection purposes at any hour that collection calls would be prohibited under the federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692(c) (generally between 8 a.m. and 9 p.m.). In addition, OKLA. STAT. Tit. 59, § 3107 (2008) specifies that lenders must collect past-due accounts in a professional, fair and lawful manner and cannot threaten or pursue criminal action against debtors for unpaid debts. In addition, a debtor will not be subject to any criminal penalty if an instrument is dishonored.

4. Consumers Disclosure of Prizes and Gifts Act

This Act is found in OKLA. STAT. Tit. 21, §§ 996.1-996.3 (2008) of the Oklahoma Statutes, and provides that it is a violation of the OCPA to use the term "prize" or "gift" or other similar term in any manner that would be untrue or misleading, or to notify any person via an advertisement that he or she has won a prize and must pay money or rent goods or services to receive the prize, or to notify that he or she will receive a "gift" if as a condition the person must pay shipping or handling fees above a specified amount, or other unlawful conditions are present.

5. Defective Assistive Device Act

This Act, OKLA. STAT. Tit. 15 § 910 *et seq.* (2008) governs the rights of consumers of "assistive devices," including wheelchairs, hearing aids, TDDs, and other devices that aid disabled persons to communicate, see, hear, or maneuver. A one-year express warranty is mandated and repairs to the assistive device shall be free of charge within that one-year period. If the device is not repaired after a reasonable attempt (four service visits or a 30-day lapse in service), the manufacturer must replace the device or refund the cost less a reasonable allowance for use within thirty days. Consumers may submit their disputes to arbitration or pursue other remedies, including double damages, equitable relief, and attorney fees.

6. Funeral Services Licensing Act

This Act, OKLA. STAT. Tit. 36 § 6121 *et seq.* (2008), regulates the funeral services industry, including the Oklahoma Funeral Board, and outlines licensure requirements and minimum standards that all licensees must follow in offering funeral, cremation, and

related services. The Prepaid Funeral Benefit Act governs consumers' use of prepaid funeral benefits and the permit and application requirements. Consumer complaints within Oklahoma can be made to the State Board of Embalmers and Funeral Directors, 4545 N. Lincoln Blvd., Suite 175, Oklahoma City, OK 73105 (telephone: (405) 522-1790).

7. Home Repair Fraud Act

This Act, OKLA. STAT. Tit. 15 §§ 765.1-765.4 (2008), protects consumers against misrepresentations in home repair agreements, deception or false pretenses to induce consumers to enter transactions, unreasonable payment for home repair, and damage to property.

8. Identity Theft

OKLA. STAT. Tit. 21, § 1533.1 (2008) declares it unlawful for any person to willingly obtain another person's personal identifying information, or use the personal identity of another person, with fraudulent intent to use, sell, or allow any other person to use or sell the information to obtain money, credit, or goods without consent. Any person convicted of violating this section shall be guilty of identity theft, which is a felony offense, and may also be liable for civil damages.

Statutes have been enacted for the protection of various types of consumers and businesspeople in Oklahoma. These include: the Uniform Deceptive Trade Practices Act, OKLA. STAT. Tit. 78, §§ 51-55 (2008); the Bedding Regulation Act, OKLA. STAT. Tit. 63, §§ 1001.1-1001.8 (2008); the Health Spa Act, OKLA. STAT. Tit. 59, §§ 2000-2009 (2008); the Emergency Price Stabilization Act, OKLA. STAT. Tit. 15, § 777.1 (2008); and the Unsolicited Goods, Wares or Merchandise Act, OKLA. STAT. Tit. 15, §§ 721-722 (2008). Interested parties should review the specific statutory provisions or contact the relevant state agency for more information.

IV. STATE TAXATION

A. Individual Income Tax

Oklahoma residents (and nonresidents who receive gross income of at least \$1,000 of Oklahoma source income) are required to file an Oklahoma income tax return. The tax rates for all residents, part-year residents, and nonresidents are computed using a graduated scale. For 2008, the top marginal income tax rate is 5.50% which will decrease to 5.25% for 2009 and remain the same for subsequent years. Oklahoma allows various exemptions, and the standard deduction for an individual filing under single status is 15 percent of the Oklahoma adjusted gross income, not to exceed \$2,000. Recent legislation increased the maximum standard deduction to \$6,500 for 2008, \$8,500 for 2009, and in all subsequent years, a deduction equal to that as provided by the Internal Revenue Code. Oklahoma itemized deductions are the same as those defined in the Internal Revenue Code. Furthermore, individuals with long-term capital gains from the sale of Oklahoma-based property are eligible for a deduction that effectively exempts such gains from Oklahoma tax. OKLA. STAT. Tit. 68, § 2351 *et seq.* (2008).

B. Corporate Income Tax

Every partnership, corporation, resident estate and trust, and nonresident estate and trust with Oklahoma source income is required to file an Oklahoma income tax return. Oklahoma levies an income tax of 6 percent on the taxable income of every corporation doing business within or deriving income from a source within Oklahoma. However, educational, religious, charitable, and social corporations and associations are exempt from Oklahoma income tax if they are exempt for Federal income tax purposes. Corporations with long-term capital gains from the sale of Oklahoma-based property are eligible for a deduction that effectively exempts such gains from Oklahoma tax. OKLA. STAT. Tit. 68, § 2351 *et seq.* (2008).

C. Estate and Gift Tax

Currently, Oklahoma levies a tax on any transfer of a decedent's property interest, whether principal or income, which transfer takes effect at or after death or is made in contemplation of death. A detailed return must be filed with the Oklahoma Tax Commission within nine months of the death unless time is extended. However, recent legislation will repeal this tax effective January 1, 2010. Oklahoma does not tax gifts. OKLA. STAT. Tit. 68, § 801 *et seq.* (2008).

D. Property Tax

All real and tangible personal property is subject to ad valorem taxation in Oklahoma, unless an exemption is available. The amount of the tax is based on the fair cash value, which is the price the property would bring at a fair voluntary sale. Ad valorem taxes are levied by the county excise board for the county in which the property is located. The Oklahoma Constitution provides that a county may not levy total ad valorem taxes in excess of 15% in a taxable year. OKLA. STAT. Tit. 68, § 2801 *et seq.* (2008).

E. Sales and Use Tax

The State of Oklahoma levies a sales tax of 4.5 percent of the gross receipts from the sale or rental of tangible personal property and from the furnishing of specific services, unless an exemption is available. In addition, counties and incorporated cities and towns may levy sales taxes. While there is no maximum rate that may be levied by cities and towns, a county sales tax may not exceed 2 percent, which is in addition to the applicable state and municipal taxes. OKLA. STAT. Tit. 68, § 1301 *et seq.* (2008).

The State of Oklahoma also levies a use tax of 4.5 percent on the purchase price of tangible personal property stored, used or consumed in Oklahoma, even if the property was purchased in another state, unless an exemption is available. In addition, municipalities and counties that levy a sales tax may also levy a use tax, which may not exceed the existing local sales tax. OKLA. STAT. Tit. 68, § 1401 *et seq.* (2008).

F. Severance Tax

Oklahoma levies a Gross Production Tax on the production of certain natural resources, primarily oil and gas, produced in Oklahoma. The Gross Production Tax is levied at varying rates depending on the natural resource. Oil and gas are currently taxed according to a three-tiered rate structure which has been extended by recent legislation until June 30, 2010. OKLA. STAT. Tit. 68, § 1001 *et seq.* (2008).

G. Subchapter S

A corporation with an election under subchapter S of the Internal Revenue Code is not subject to Oklahoma income tax, and the shareholders must include their proportional shares of the distributive income in their taxable incomes. However, the corporation is taxable on any income allocated to a nonresident shareholder unless the corporation includes with its return an agreement executed by each nonresident stating that they will file an Oklahoma tax return reporting their share of the income. OKLA. STAT. Tit. 68, § 2365 (2008).

H. Other Taxes

Oklahoma also levies various other taxes, such as taxes regarding aircraft, alcoholic beverages, tobacco products, motor fuels and motor vehicles. For additional information on these or other miscellaneous taxes, contact the Oklahoma Tax Commission.

I. Tax Incentives

Oklahoma has various tax incentives and exemptions including, but not limited to, the College Savings Plan Act (OKLA. STAT. Tit. 70, § 3970.1 *et seq.* (2008), the Oklahoma Quality Jobs Program Act (OKLA. STAT. Tit. 68, § 3601 *et seq.* (2008), and the Small Employer Quality Jobs Incentive Act (OKLA. STAT. Tit. 68, § 3901 *et seq.* (2008). Prior to engaging in business in Oklahoma, businesses should engage local counsel to determine if their businesses may be structured to take advantage of these or other tax incentives currently available in Oklahoma.

Business taxes can be quite complicated and vary based on type of business. Questions regarding interpretations of Oklahoma tax laws should be directed to a qualified tax attorney or accountant.

V. LABOR AND EMPLOYMENT

A. Employment-At-Will

1. Doctrine

Oklahoma is an employment-at-will state, which means that unless an employer and employee have a fixed-term contract, or have agreed that termination will only be for cause, the employment relationship may be terminated by either party for no reason at all,

or for any reason that does not violate a state or federal statute or a local ordinance or charter.

2. Exceptions

In spite of the employment-at-will doctrine, Oklahoma courts do permit suits for breach of implied contract based upon statements contained within employment handbooks. However, general assurances of long-term employment are insufficient to create such claims. There also exists a judicially created exception to the at-will employment doctrine prohibiting discharge for reasons that violate public policy (i.e. policies clearly articulated and firmly established in Oklahoma laws). Finally, in some very limited circumstances, Oklahoma courts have recognized the concept of constructive discharge – but only where the employee can show that the employer's behavior is so objectively offensive that a reasonable person would find it intolerable and would be forced to resign.

B. Right-to-Work (Okla. Const. Art 23 § 1A)

The Oklahoma Constitution makes it illegal to require an employee, as a condition of employment, to resign or refrain from or join a labor organization. Similarly, an employee's eligibility for hire cannot be dependent upon the recommendation, approval, or referral of a labor organization. It is also unlawful, in the state of Oklahoma, to deduct union dues or fees from an employee's wages unless such employee has authorized those deductions.

C. Wage & Hour Laws

1. Minimum Wage / Overtime

The Oklahoma Minimum Wage Act employs the same minimum wage schedule as required by the Fair Labor Standards Act. Under State law, Oklahoma requires small employers—not covered by the federal statute—to pay only \$2/hour to certain classifications of employees. Additionally, all employers are required to post the State minimum wage poster in their place of employment. Oklahoma does not have any separate requirement for the payment of minimum overtime compensation. OKLA. STAT. Tit. 40, § 197 *et seq.* (2008).

2. Payment of Wages

Employers are required to pay all wages, due employees, at least twice a month – on days designated in advance by employers. If an employee is terminated, their employer is required to pay the full amount owed that employee at the next regularly scheduled payday. Severance pay is normally not required in the absence of a published policy, a specific agreement with the employee, or a longstanding practice of the employer. In the event of an employee's death, up to \$3,000 in wages owed are payable directly to the deceased's spouse or dependent children without probate. Employers failing to comply with these payment provisions are subject to an administrative fine by the Department of Labor or to a private lawsuit to recover damages and attorney's fees. OKLA. STAT. Tit. 40, § 165 *et seq.* (2008).

3. Equal Pay Act

In Oklahoma, it is unlawful to willfully pay women employees less than male employees who are performing comparable work on jobs which have comparable requirements relating to skill, effort, and responsibility – except where the differential is based upon an established merit or seniority system. OKLA. STAT. Tit. 40, § 198.1 (2008).

4. Unemployment Compensation

Oklahoma has a system for the payment of unemployment compensation benefits to employees who are out of work through no fault of their own. OKLA. STAT. Tit. 40, § 1-101 *et seq.* (2008). Employers are required to contribute to the Unemployment Compensation Fund based upon the amount of wages paid and experience rating of the particular employer. OKLA. STAT. Tit. 40, § 1-207 (2008). Employees can be disqualified from the receipt of such benefits if found to have engaged in willful misconduct or for being voluntarily out of work. OKLA. STAT. Tit. 40, §§ 2-404, 2-406 (2008). Additionally, employers are required to display posters, at their place of employment, concerning the rights of employees to receive benefits under this Act. OKLA. STAT. Tit. 40, § 2-502 (2008).

5. Benefits

Oklahoma law enforces an employer's established benefit policies, but does not mandate that employers provide such benefits to their employees. Additionally, when an employee receiving insurance benefits is terminated, that employee and their dependents are entitled to continued coverage of those benefits for at least 30 days after termination – unless the employee and dependents become covered by another plan. Similarly, where an employee has been covered under an employer's plan for at least 6 months, that employer must provide coverage for ongoing medical treatment, which arose during the policy period. OKLA. STAT. Tit. 36, § 4509 *et seq.* (2008).

D. Medical Exams & Testing

1. Medical Examinations

Under Oklahoma law, an employee who is required to take a medical exam as a condition of employment, or continued employment, may not be required to pay for the exam. Additionally, if requested, the employee must be given a copy of any report regarding such exam at no charge. OKLA. STAT. Tit. 40, § 191 *et seq.* (2008).

2. Drug/Alcohol Testing

In Oklahoma, an employer may extend conditional offers of employment, which are subject to the passing of a drug/alcohol test. An employer may refuse to hire an applicant who declines to undergo testing or who tests positive for drugs. Additionally, employers may test for drugs/alcohol if there is a reasonable suspicion that an employee has violated the employer's written drug/alcohol policy. Employers may also require drug/alcohol testing if the employer has a reasonable suspicion that drugs or alcohol were the direct

cause of a work-related injury accident. Finally, employers who have adopted a written, detailed, policy – setting forth the specifics of its drug/alcohol testing program – may conduct both random and periodic drug/alcohol tests. All information and results relating to an employee's drug test must be kept confidential and separate from other personnel records. OKLA. STAT. Tit. 40, § 551 *et seq.* (2008).

E. Occupational Health & Safety

The Oklahoma Occupational Health and Safety Standards Act extends federal OSHA rules to all public employers in the State of Oklahoma. Each public employer is required to furnish employment free from recognized hazards commensurate with federal standards. Public employers with 25 or more employees must designate an employee to coordinate all safety programs of the employer, and the employer must provide its workforce with safety training no less than four times per year. Under the statute, employers are also required to notify the Oklahoma City office of the Oklahoma Department of Labor of employment accidents which result in a fatality to one or more employees or the hospitalization of 5 or more employees. OKLA. STAT. Tit. 40, § 401 *et seq.* (2008).

F. Discrimination

1. Anti-Discrimination Act

Much like federal law, the Oklahoma Anti-Discrimination Act prohibits discrimination, by companies with 15 or more employees, on the basis of race, color, religion, sex, national origin, age, or handicap. The Act is administered by the Oklahoma Human Rights Commission – who has the authority to hold administrative hearings, and seek enforcement of its orders in Oklahoma District Courts. OKLA. STAT. Tit. 25, § 1101 *et seq.* (2008).

2. Genetic Non-Discrimination Act

Oklahoma employers may not discriminate based on the results of any genetic testing (i.e., DNA, RNA, chromosome testing). In fact, except for the limited purposes of determining insurance coverage or benefits, an employer may not even request that an employee take such a test. It is, however, lawful for the employer to conduct routine lab tests and collect family medical histories. OKLA. STAT. Tit. 36, § 3614.2 (2008).

3. Tobacco Use

Oklahoma law prohibits the discrimination or discharge of an employee because the individual is a nonsmoker or smokes or uses tobacco products during non-working hours. It is also unlawful for an employer to require an employee to abstain from smoking or using tobacco products during non-working hours, unless non-smoking is a bona fide occupational qualification or is required by union contract. OKLA. STAT. Tit. 40, § 500 (2008).

G. Worker's Compensation

1. Scope and Coverage

Oklahoma's Workers' Compensation Act is administered by the Workers' Compensation Court. Under the Act, employers must pay or provide compensation for the disability or death of an employee resulting from an accidental personal injury arising out of and in the course of employment – without regard to the cause or fault of such injury (aside from the limited exceptional situations provided by the statute). Additionally, employers are required to post a notice at their place of employment advising employees that they are entitled to certain benefits under the Act. OKLA. STAT. Tit. 85, § 2.1 *et seq.* (2008).

2. Retaliation

Oklahoma law prohibits discrimination against employees who file, testify, or otherwise bring (or help others to bring) Workers' Compensation claims. Additionally, an employer may not discharge or stop insurance benefits of an employee drawing Temporary Total Disability (TTD) solely because of their absence from work. OKLA. STAT. Tit. 85, § 5 (2008).

H. Child Labor

Under Oklahoma law, no child under the age of 16 is permitted to work in any occupation other than those proscribed by the Fair Labor Standards Act. Aside from limiting the occupations of child laborers, Oklahoma law prohibits children from working more than 3 hours on any school day, not to exceed 18 hours per week. During the school year, children under age 16 are only permitted to work between the hours of 7:00 a.m. and 7:00 p.m. On a nonschool day and during the summer (June 1 through Labor Day), children under age 16 may work up to 8 hours per day, not to exceed 40 hours per week, between the hours of 7:00 a.m. and 9:00 p.m. OKLA. STAT. Tit. 40, § 71 *et seq.* (2008).

I. Covenants Not To Compete

In the absence of the sale of a business, restrictive covenants are generally not enforceable. At most, former employees are not permitted to solicit the sale of goods, services, or the combination of goods and services from the established customers of their former employers. However, Oklahoma has adopted the Uniform Trade Secrets Act, making agreements to refrain from disclosing customer lists or other confidential information enforceable. OKLA. STAT. Tit. 15, §§ 217–19A (2008).

J. Other Employment Laws

1. Referencing and Blacklisting

Employers in Oklahoma may be liable for defamation lawsuits stemming from the unauthorized referencing of employees. Employers have limited immunity from such suits if references were provided in good-faith, upon the request of a current or former

employee. Additionally, Oklahoma law prohibits the blacklisting of a former employee with the intent or purpose of preventing that employee from engaging in other employment. OKLA. STAT. Tit. 40, § 172 (2008).

2. Fraudulent Hiring Practices

It is unlawful to induce, influence, persuade, or engage workers to move from one place to another within the state or into the state with the use of false representations, false advertising, or false characterizations concerning the work to be done, amount of compensation, or the conditions of employment. OKLA. STAT. Tit. 40, §167 (2008).

3. Time Off for Voting

It is unlawful to deny employees sufficient time-off to vote, if a request for such leave has been made. Under the statute, voting requests must be made no later than the day before the particular election. Additionally, the employee may not be penalized for the missed time, but an employer may select the hours in which an employee may be absent from work. OKLA. STAT. Tit. 26, § 7-101 *et seq.* (2008).

K. Contact Information

1. Oklahoma Department of Labor

1. Oklahoma Department of Labor

Oklahoma City	Tulsa
4001 N. Lincoln Blvd.	440 S. Houston, Suite 300
Oklahoma City, OK 73105	Tulsa, OK 74127
(405) 528-1500	(918) 581-2400
(888) 269-5353	(918) 581-2431 (fax)
(405) 528-5751 (fax)	

2. Oklahoma Human Rights Commission

Oklahoma City	Tulsa
Jim Thorpe Building, Rm 480	Robert S. Kerr Office
2101 N. Lincoln Blvd.	Building, Rm 302
Oklahoma City, OK 73105	440 S. Houston
(405) 521-2360	Tulsa, OK 74127
(888) 456-2558	(918) 581-2733
(405) 522-3655 (fax)	(918) 581-2940 (fax)

3. Oklahoma Employment Security Commission

Mailing address	Physical address
PO Box 52003	Will Rogers Memorial Office
Oklahoma City, OK 73152	Bldg
(405) 557-7100	2401 N. Lincoln Blvd.
1-888-980-WORK (9675)	Oklahoma City, OK 73105

4. Oklahoma Worker's Compensation Court
1915 N. Stiles Ave.
Oklahoma City, OK 73105
(405) 522-8600
(800) 522-8210

VI. ENVIRONMENTAL REGULATIONS

The Environmental Quality Code is the primary source of environmental regulations within the state. Violation of the provisions of the Environmental Quality Code or any rule issued or promulgated under the Code is a misdemeanor punishable by a fine of \$200 to \$10,000 for each violation and/or imprisonment for up to six months. Administrative and civil penalties are also provided for. Any additional penalties which are unique to particular acts under the Code, including criminal penalties, are noted below. OKLA. STAT. Tit. 27A, § 2-1-101 *et seq.* (2008). The following programs have been implemented pursuant to the Environmental Quality Code:

A. Energy Efficiency and Emission Reduction Program

Under the administration of the Department of Environmental Quality ("DEQ"), the Energy Efficiency and Emission Reduction Program is authorized to make matching grants to qualified Oklahoma entities that undertake measures, such as the retrofitting of truck and bus fleets or the implementation of energy efficiency plans, designed to reduce air pollution. OKLA. STAT. tit. 27A, § 2-3-109 (2008).

B. Clean Air Act

The Clean Air Act authorizes DEQ to promulgate rules for the prevention, control and abatement of air pollution and for the establishment of health and safety tolerance standards for the discharge of air contaminants into the atmosphere. The Act further authorizes DEQ to investigate and make recommendations on petitions for variance from the requirements of the Act and to issue requisite permits. The primary and secondary ambient air quality standards and the significant deterioration increments are enumerated by the DEQ in the Oklahoma Administrative Code. Civil penalties for violations of the Act can be assessed up to \$10,000 per day, plus attorneys' fees and collection costs. Criminal penalties for specified violations can be imposed up to \$25,000 per day and/or one (1) year imprisonment for misdemeanors and up to \$250,000 or ten (10) years imprisonment for felonies. OKLA. STAT. Tit. 27A, § 2-5-101 *et seq.* (2008).

C. Article VI

Article VI pertains to water quality and aims to prevent, abate and control the pollution of state waters. The Act includes the Pollutant Discharge Elimination System Act, which authorizes the DEQ to set effluent standards, limitations, and prohibitions, and to authorize permits to regulate the discharge of pollutants into state waters. Fines for violating provisions of the Act can range up to \$25,000 per day and/or one (1) year

imprisonment for negligent violations and up to \$500,000 and/or thirty (30) years imprisonment (or \$1,000,000 for organizations) for knowing violations. Article VI also contains the Water Supply Systems Act, which authorizes the DEQ to adopt standards as to the source, manner of storage, purification, treatment and distribution of water supplied to the public. OKLA. STAT. Tit. 27A, §§ 2-6-101 *et seq.* (2008).

D. Hazardous Waste Management Act

The Hazardous Waste Management Act governs all entities and their affiliates involved in the generation, handling, transportation, storage, recycling, treatment, or disposal of hazardous waste. The DEQ is charged with promulgation and enforcement of specific regulations and requirements, as well as issuance of permits for storage, treatment, or disposal, subject to specified limitations. Civil or criminal penalties can be assessed up to \$25,000 per day and/or six (6) months imprisonment. OKLA. STAT. Tit. 27A, §§ 2-7-101 *et seq.* (2008).

E. Central Interstate Low-Level Radioactive Waste Compact

The Central Interstate Low-Level Radioactive Waste Compact is an agreement among various states establishing regional facilities to accept compatible wastes generated in and from member states. The development and operation of the regional facilities is regulated by the Central Interstate Low-Level Radioactive Waste Compact Commission, which is made up of members from each party state. Penalties for violations are assessed in accordance with the law of the state accepting waste, and can include the suspension or revocation of the violator's right of access to the regional facility. OKLA. STAT. Tit. 27A, §§ 2-8-101 *et seq.* (2008).

F. Radiation Management Act

The Radiation Management Act authorizes the DEQ to regulate and establish standards for safe levels of protection against radiation for all activities presenting radiation hazards, not including diagnostic x-ray facilities. OKLA. STAT. Tit. 27A, §§ 2-9-101 *et seq.* (2008).

G. Solid Waste Management Act

The Solid Waste Management Act is overseen by the DEQ and governs the collection, transportation, processing and disposal of *non-hazardous* solid waste. The Act is designed to promote solid waste reduction through recycling and other prevention and minimalization efforts aimed at conservation of valuable land. The Act includes the Oklahoma Recycling Initiative, which outlines the requirements for establishing a recycling facility and makes certain regulatory exemptions to incentivize businesses to facilitate recycling of non-hazardous materials. OKLA. STAT. Tit. 27A, §§ 2-10-101 *et seq.* (2008).

H. Article XI

Article XI pertains to waste reduction and recycling is designed to prevent pollution through source reduction and promote the recycling and reuse or source reduction of *hazardous* waste. This is primarily achieved through tax credits authorized by the Recycling, Reuse, and Source Reduction Incentive Act, which is administered by the DEQ and the Oklahoma Tax Commission. Any litter reduction programs are developed by the DEQ in conjunction with the Oklahoma Department of Transportation. The Act also contains specific provisions for waste tire recycling, including compensation for facilities accepting and appropriately discarding waste tires, as well as provisions for plastic container labeling, including authorization of misdemeanor convictions for failure to label plastics by type. OKLA. STAT. Tit. 27A, §§ 2-11-101 *et seq.* (2008).

I. Computer Equipment Recovery Act

The Computer Equipment Recovery Act is designed to establish a convenient and environmentally sound recovery program for the collection, recycling and reuse of computers and computer monitors. The program prohibits the sale of recovered computer components, absent appropriate labeling and the manufacturer's documented compliance with an approved recovery plan. Recovery plans are to provide consumers with a reasonably convenient and accessible collection service through which to return their used computers to manufacturers, either by mail or through the establishment of a staffed physical collection site. The program also prohibits manufacturers from disposing of computer components in landfills or from transferring such components to recycling facilities that ultimately dispose of them in landfills. OKLA. STAT. Tit. 27A, §§ 2-11-601 *et seq.* (2008).

J. Lead-Based Paint Management Act

The Lead-Based Paint Management Act contains procedures and requirements for the accreditation of lead-based paint services training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint services, including renovation and demolition of housing and buildings constructed before 1978, and work practice standards for performing such services. OKLA. STAT. Tit. 27A, §§ 2-12-101 *et seq.* (2008).

K. Uniform Environmental Permitting Act

The Uniform Environmental Permitting Act is intended to provide uniform procedures for granting and processing permit applications and authorizations issued by the DEQ. Under the Act, all permit applications are subject to heightened notice and public participation opportunities pursuant to federal requirements for individual state permitting programs. Permits must be obtained from the DEQ for activities specified throughout the Environmental Quality Code, including (1) the discharge of any pollutant into state waters; (2) the construction of sewer systems, treatment plant or solid waste fills, or permitting sewage or waste to flow into state waters; (3) the underground injection of hazardous and non-hazardous liquids, except for injection purposes of brine

recovery, saltwater disposal or secondary or tertiary oil recovery; (4) the construction or operation of hazardous waste processing facilities – (proof of adequate liability insurance is required); (5) the land application of non-hazardous sludge; and (6) operating a disposal site accepting more than 200 tons per day of solid waste generated more than 50 miles from the disposal site. OKLA. STAT. Tit. 27A, §§ 2-14-101 *et seq.* (2008).

L. Brownfields Voluntary Redevelopment Act

The Brownfields Voluntary Redevelopment Act provides for the establishment of a voluntary program administered by the Department of Environmental Quality to foster the redevelopment and reuse of brownfields by limiting the civil and administrative liability of property owners, lenders, lessees, and successors and assigns who undertake remedial action for environmental contamination located on or issuing from their property, as long as such action is not performed in a reckless or negligent manner. A "brownfield" is defined as "an abandoned, idled or underused industrial or commercial facility or other real property at which expansion or redevelopment of the real property is complicated by environmental contamination caused by regulated substances." OKLA. STAT. Tit. 27A, §§ 2-15-101 *et seq.* (2008).

M. Oklahoma Refinery Revitalization Act

The Oklahoma Refinery Revitalization Act is designed to encourage the expansion of refining capacity within the State by providing incentives for growth and by detailing an accelerated review and approval process of all regulatory approvals for certain refinery facilities. Additionally, the Act seeks to provide legal and technical assistance to state agencies, which may have resources that are inadequate to meet refinery facility permit review demands. The Act explicitly states that none of its provisions should be construed to waive any environmental laws and rules and specifically designates coordination with federal agencies to ensure compliance with a series of federal environmental acts. OKLA. STAT. Tit. 27A, § 2-16-101 *et seq.* (2008).

N. Other Environmental Regulations

Other environmental regulations include the Concentrated Animal Feeding Operations Act (OKLA. STAT. Tit. 2, § 20-1 *et seq.* (2008)), Storage Tank Regulation Act (OKLA. STAT. Tit. 17, § 301 *et seq.* (2008)), Petroleum Storage Tank Reform Act (OKLA. STAT. Tit. 17, § 321 *et seq.* (2008)), Asbestos Control Act (OKLA. STAT. Tit. 40, § 450 *et seq.* (2008)), Hazardous Liquid Transportation System Safety Act (OKLA. STAT. Tit. 52, § 47.1 *et seq.* (2008)), Liquefied Petroleum Gas Research, Marketing and Safety Act (OKLA. STAT. Tit. 52, § 420.20 *et seq.* (2008)), Alternative Fuels Conversion Act (OKLA. STAT. Tit. 74, § 130.1 *et seq.* (2008)), and the Rural Water, Sewer, Gas and Solid Waste Management Districts Act (OKLA. STAT. Tit. 82, § 1324.1 *et seq.* (2008)).

VII. INTELLECTUAL PROPERTY

A. Trademark and Servicemark

A Trademark is any word, name, symbol, emblem, or device or any combination thereof that is adopted and used to identify and distinguish goods made or sold or services rendered by others. A trademark is "used" when: 1) it is placed on the goods or their containers, tags, or labels affixed thereto and such goods are sold or distributed in the state; or 2) it is used in connection with the sale or advertising of services in the state. Trademarks may be used by any individual, firm, partnership, corporation, association, union or other organization. OKLA. STAT. Tit. 78, § 21 (2008).

A Trademark may be registered in Oklahoma by filing an application with the Secretary of State. The application must be signed by the applicant or by a member of the firm or an officer of the corporation or association applying. The application must include: (a) the name and business address of the person applying for the registration, and, if a corporation, the state of incorporation; (b) the goods or services in connection with which the mark is used; (c) the manner in which the mark is used; (d) the class in which the goods or services are categorized; (e) the date when the trademark was first used anywhere and the date it was first used in the state; (f) a statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in the state; (g) a specimen or facsimile of the trademark that is in a form compatible with electronic scanning; (h) and a filing fee of Fifty Dollars. OKLA. STAT. Tit. 78, § 23 (2008). The application form can be obtained from the Secretary of State's website at <http://www.sos.state.ok.us/forms/FORMS.HTM>.

The Secretary of State will not register a trademark if it consists of or comprises: (a) immoral, deceptive or scandalous matter; (b) matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt or disrepute; (c) the flag or coat of arms or other insignia of the United States, state or municipality, or of any foreign nation, or any simulation thereof; (d) the name, signature or portrait of any living individual, except with his/her written consent; (e) a trademark that so resembles a trademark registered in this state or a non-abandoned trademark previously used in this state if it would likely cause confusion when applied to the goods or services of the applicant; (f) a mark which, when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive, or is primarily geographically descriptive or deceptively misdescriptive, or is primarily a surname. Subsection (e), however, does not prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. Proof of the applicant's continuous use of the mark in this state or elsewhere for the five years preceding the date of the filing of the application for registration may be used by the Secretary of State to find that the mark has become distinctive. OKLA. STAT. Tit. 78, § 22 (2008).

A registered Trademark will be effective for ten years from the date of registration. The Trademark may be renewed for a period of five years by sending an application for renewal and payment of twenty-five dollars to the Secretary of State. The application for

renewal must be filed six months before the previous Trademark expires. The process is the same if an individual or business is renewing an original Trademark or a previously renewed Trademark. OKLA. STAT. Tit. 78, § 25 (2008).

Any Trademark and its registration may be assigned with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark, by paying a fee of twenty-five dollars and recording the assignment with the Secretary of State. An assignment shall be void against any subsequent purchaser for consideration without notice of that assignment unless the assignment is recorded with the Secretary of State within three months after the date of the assignment or prior to such subsequent purchase. OKLA. STAT. Tit. 78, § 26 (2008).

A registered trademark is protected against the use or creation of any reproduction, counterfeit, copy or colorable imitation of such trademark used in connection with the sale, offering of sale, or advertisement of goods or services which is likely to cause confusion or mistake or to deceive as to the source of the goods or services. Any person who infringes on a registered Trademark is liable in a civil action. OKLA. STAT. Tit. 78, § 31 (2008). The remedies available to the owner of a Trademark in an infringement action are an injunction, payment of profits derived from the use, wrongful manufacture, display, or sale of the Trademark, and all damages suffered by reason of the wrongful use of the Trademark. However, an infringement under OKLA. STAT. Tit. 78, § 31(b) (2008) shall not entitle the owner of the trademark to recover profits or damages unless the acts are committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive. OKLA. STAT. Tit. 78, § 31-32 (2008).

B. Trade Names

A corporation, business trust, common law trust, limited liability company, or any unincorporated business, including any form of partnership, may conduct any portion of its business under a trade name by filing a report with the Oklahoma Secretary of State. The report shall set forth the legal name of the corporation or business entity, the jurisdiction of organization of the corporation or business entity, the trade name under which the business is carried on, a brief description of the type of business being transacted, and the address wherein the business is to be carried on. New trade names must be distinguishable from any other trade name registered or reserved with the Secretary of State that currently exists or has existed in the preceding three years. OKLA. STAT. Tit. 18, § 1140 (2008).

The Secretary of State may accept for reservation or filing a name which is the same as or indistinguishable from a name previously filed when one of the following is filed with the Secretary of State: 1) the written consent of the holder of the trade name, fictitious name, or reserved name to use the same or indistinguishable name with the addition of one or more words to make that name distinguishable upon the records, except that the addition of words shall not be required where the consenting entity states that it is about to change its name, cease to do business, withdraw from the state, or be wound up; 2) a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of

the holder of a reserved name, trade name, or fictitious name to the use of the name in this state; or 3) in the case of any foreign business entity, a resolution adopting a fictitious name not prohibited by this section, which shall be used to the exclusion of its true name when transacting business within this state. OKLA. STAT. Tit. 18, § 1141 (2008).

If a corporation or other business entity elects to cease doing business in Oklahoma under a trade name it must file a report, in duplicate, with the Secretary of State withdrawing such trade name. OKLA. STAT. Tit. 18, § 1140.1 (2008). A corporation or other business entity may also transfer a trade name to another entity by filing, in duplicate, a report with the Secretary of State containing the name of the corporation to which the trade name is transferred and the address wherein such business is to be carried on. OKLA. STAT. Tit. 18, § 1140.2 (2008)

A trade name report shall be amended when: 1) it contains a false or erroneous statement; 2) there is a change in the kind of business transacted under the trade name; or 3) there is a change in or an additional address where the business is to be carried on. An amended report shall set forth the trade name and specify any amendment therein. OKLA. STAT. Tit. 18, § 1140.3 (2008).

All filing fees required by the Secretary of State for the various filings can be found in OKLA. STAT. Tit. 18, § 1142 (2008).

C. Trade Secrets

Oklahoma has adopted the Uniform Trade Secrets Act. OKLA. STAT. Tit. 78, § 85 *et seq.* (2008). The Act defines a "trade secret" as information, including a formula, pattern, compilation, program, device, method, technique or process that derives independent economic value by not being generally known or readily ascertainable by other persons who can obtain economic value from its disclosure or use, and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. OKLA. STAT. Tit. 78, § 86 (2008).

To prevail on claims under the Oklahoma Trade Secrets Act, the plaintiff must prove by a preponderance of the evidence the existence of a trade secret, misappropriation of that secret by the defendant(s), and the use of that secret by defendant(s) to plaintiff's detriment. *Micro Consulting, Inc. v. Zubeldia*, 813 F. Supp. 1514, 1534 (W.D. Okla. 1990). Trade secret law applies to computer software and protects attaches to a broad range of subject matter including computer programs and accompanying documentation as well as ideas and expression of those ideas contained therein.

Actual or threatened misappropriation of a trade secret may be enjoined. The injunction will be terminated when the trade secret has ceased to exist. The court may, however, continue the injunction for a reasonable time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation. In exceptional circumstances, an injunction may condition future use of the trade secret upon payment of a reasonable royalty for no longer than the period of time for which use could have

been prohibited. In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order. OKLA. STAT. Tit. 78, § 87 (2008).

In addition to injunctive relief, the court may award damages for both actual loss and unjust enrichment caused by a misappropriation. The damages caused by misappropriation may be measured by imposing a reasonable royalty for a misappropriation's unauthorized disclosure or use of a trade secret. If the misappropriation was willful and malicious, the court may award exemplary damages in an amount not exceeding twice that of the regular damages. OKLA. STAT. Tit. 78, § 88 (2008).

An action for misappropriation must be brought within three years after the misappropriation was discovered or by the exercise of reasonable diligence should have been discovered. OKLA. STAT. Tit. 78, § 91 (2008). In causes of action based upon trade secrets the court may award reasonable attorney's fees to the prevailing party if: 1) a claim of misappropriation is made in bad faith; or 2) a motion to terminate an injunction is made or resisted in bad faith; or 3) willful and malicious misappropriation exists. OKLA. STAT. Tit. 78, § 89 (2008).

The Uniform Trade Secrets Act displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret. However, the Act does not affect contractual or criminal remedies, whether or not based upon misappropriation of a trade secret, or other civil remedies that are not based upon misappropriation or a trade secret. OKLA. STAT. Tit. 78, § 92 (2008).

Oklahoma imposes a criminal penalty on any person who steals or embezzles a trade secret. Any person who, with the intent to deprive or withhold from the owner thereof the control of a trade secret, or with an intent to appropriate a trade secret to his own use or to the use of another, steals, embezzles or without authority makes a copy of an article representing a trade secret is guilty of larceny or petit larceny. In distinguishing the difference between larceny and petit larceny only the value of the trade secret, and not the value of the article, will be considered. OKLA. STAT. Tit. 21, § 1732 (2008).

D. Right of Publicity

Oklahoma protects a person's right to privacy by statute and common law. In general, it is illegal for any person or corporation to use for the purpose of advertising the name, portrait or picture of any person, without first receiving the consent of that person. If the person is a minor, their parent or guardian must approve, and if the person is deceased either the surviving spouse, personal representatives, or that of a majority of the deceased's adult heirs must approve. If a person or corporation violates this law they are guilty of a misdemeanor and the person whose rights have been violated may bring a civil action for damages. If the defendant knowingly used such person's name, portrait or picture in an unlawful manner, the jury or court in its discretion may award exemplary damages. OKLA. STAT. Tit. 21, §§ 839.1-2. (2008).

Under common law, Oklahoma has recognized the tort of invasion of privacy. There are four distinct types: (1) unreasonable intrusion upon the seclusion of another; (2) appropriation of the other's name or likeness; (3) unreasonable publicity given to the other's private life; (4) publicity that unreasonably places a person in a false light before the public. *McCormack v. Oklahoma Publ'g Co.*, 613 P.2d 737, 739 (Okla. 1980). A person is liable for invasion of privacy of another for unreasonable publicity given to private life if the matter publicized is of a kind that: (a) would be highly offensive to a reasonable person; and (b) is not of legitimate concern to the public. The elements of Publicity that unreasonably places a person in a false light are: (a) the false light in which the other was placed would be highly offensive to a reasonable person; and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. *Id.*

VIII. THE OKLAHOMA COURT SYSTEM AND DISPUTE RESOLUTION

A. Lower Courts

1. District Courts

District courts are courts of general jurisdiction, hearing both civil and criminal matters. There are 26 district courts in the State of Oklahoma, and there are 77 district judges who sit in the judicial district in which they are elected. Each county has at least one associate district judge, and there are 87 special judges. The districts are divided into nine administrative areas, each governed by a presiding judge elected by the district and associate judges of that area. OKLA. STAT. tit. 20, § 92.1 *et seq.* (2008).

2. Court of Tax Review

The Court of Tax Review is a court of limited jurisdiction that hears and determines all protests against legality and correctness of taxes and levies. The Chief Justice of the Oklahoma Supreme Court assigns each case to a judicial administrative district, the presiding judge of which appoints a panel of three judges of the district court. The 3 judge panel determines in what county the case will be heard. A majority of the three-judge panel is required to render a decision in each case. OKLA. STAT. tit. 68, § 3024 *et seq.* (2008).

3. Workers' Compensation Court

The Workers' Compensation Court is a court of special jurisdiction in Oklahoma that, effective July 1, 1978, replaced the State Industrial Court. This limited jurisdiction tribunal considers cases involving on the job injuries occurring while an employee is within the scope of employment. The court is composed of ten judges who are appointed to six-year terms by the Governor from a list supplied by the Judicial Nominating Commission. A presiding judge is appointed by the Governor for a two-year term and may not serve more than two terms in succession. A judge of the court must have been licensed to practice law in Oklahoma for at least five years prior to being appointed. Appeals are made to the Oklahoma Supreme Court. OKLA. STAT. tit. 85, § 1.2 *et seq.* (2008).

4. Municipal Criminal Court of Record

The Municipal Criminal Courts of Record are courts of limited jurisdiction in Oklahoma and are established in cities with populations that exceed 65,000. There are two such courts, one in Oklahoma City and one in Tulsa. Judges are appointed by their respective city governing bodies and serve two-year terms. The courts have original jurisdiction to hear and determine all prosecutions when a violation of any city ordinance where the court is established is charged, as provided by Article VII, Section 1 of the Oklahoma Constitution. The courts may hold jury trials when the case in question carries a penalty of more than \$500 or a jail sentence of any length. Appeals are made to the Court of Criminal Appeals. OKLA. STAT. tit. 11, § 28-101 *et seq.* (2008).

5. Municipal Court Not of Record

The Municipal Courts Not of Record are courts of limited jurisdiction in Oklahoma that may be established in any town or city with a population of 65,000 or less. The mayors of the cities and towns where the courts are established appoint judges to two-year terms with the consent of the municipal governing body. The courts have original jurisdiction of all city ordinance violations and may be required to supervise juveniles that are placed on parole, probation, or suspended. Appeals are made to the District Courts in a trial de novo. OKLA. STAT. tit. 11, § 27-101 *et seq.* (2008).

B. Appellate Courts

1. Supreme Court

The Oklahoma Supreme Court has appellate jurisdiction throughout the state in all civil cases at law and in equity. Besides deciding cases, the Court is also responsible for administering the state's entire judicial system and establishing rules of operation for all other courts in the state. The Supreme Court is a constitutional tribunal consisting of nine Justices, each from a separate judicial district. The Supreme Court Justices serve six-year terms, and must be at least thirty years old. The Justices must also have been a qualified elector in their judicial district for at least one year immediately prior to appointment, and must have been a licensed practicing attorney or judge of a court of record for five years proceeding appointment. Supreme Court Justices are appointed by the Governor from a list of candidates prepared by the Judicial Nominating Commission. OKLA. CONST., art. 7, § 2.

2. Court of Criminal Appeals

The Court of Criminal Appeals is the highest court in the state of Oklahoma with appellate jurisdiction in criminal cases. Oklahoma is divided into five Court of Criminal Appeals judicial districts. The court itself consists of five judges, any three of whom constitute a quorum, and the concurrence of three judges is necessary to a decision of the court. The judges have the same qualifications and receive the same salaries as the justices of the Supreme Court. Judges are nominated and appointed by the governor for six year terms. At the expiration of this initial term, a judge may seek retention in a statewide election on a nonpartisan ballot. The Court of Criminal Appeals has exclusive

appellate jurisdiction, in state, in all criminal cases appealed from the district courts, superior and county courts and such other courts of record. OKLA. STAT. tit. 20, § 31 *et seq.* (2008).

3. Court of Civil Appeals

The Court of Civil Appeals is an intermediate appellate court. Each division of the Court of Civil Appeals has jurisdiction to determine or otherwise dispose of cases assigned to it by the Supreme Court, and its final decisions are neither appealable to the Supreme Court nor subject to re-examination by another division of the Court of Civil Appeals.. The court consists of four permanent divisions, two in Tulsa County and two in Oklahoma County. A decision of the Court of Civil Appeals may be reviewed by the Supreme Court if a majority of its Justices direct that a writ of certiorari be granted, and the Supreme Court may, by order, recall a case from the Court of Civil Appeals. OKLA. STAT. tit. 20, § 30.1 *et seq.* (2008).

C. Tribal Courts

1. Tribal Courts in Oklahoma

Indian tribes possess inherent sovereign civil and criminal jurisdiction over lands designated as "Indian Country," which includes formal and informal reservations, dependent Indian communities, and Indian allotments. Indian Country lands remain under tribal and federal jurisdiction unless and until jurisdiction is specifically removed by a Congressional act. Several million acres of Oklahoma land are considered Indian Country.

D. Alternative Dispute Resolution

1. Mandatory (Alternative) Dispute Resolution

A district court may order a settlement conference upon its own motion. Prior to commencement of any dispute resolution proceedings, the disputing parties shall enter into a written consent that specifies the method by which the parties will attempt to resolve the disputed issues. OKLA. STAT. tit. 12, § 1801 *et seq.* (2008).

2. Voluntary (Alternative) Dispute Resolution

A district court, by agreement of the parties, may refer any civil case for mediation. A referral to mediation may be made at any time while a civil case is pending. Mediation is a process in which an impartial person facilitates communication between the disputing parties to promote understanding, reconciliation, and settlement. District courts may maintain a list of qualified mediators to assist the parties in selecting a mediator. OKLA. STAT. tit. 12, § 1821 *et seq.* (2008).

IX. OKLAHOMA FINANCIAL AND SECURITIES MATTERS

A. Tax Exempt and Other Financing Means

Several state and local sponsored financing programs are available to firms wishing to locate or expand in Oklahoma. Generally, government and quasi-government entities provide financing for manufacturing and other projects that promote economic development and other goals targeted by the legislature. The following section briefly outlines Oklahoma's most common tax-exempt financing and other financing means.

1. Oklahoma Finance Authorities

The OFA provides permanent financing for real estate and equipment. OFA has both tax-exempt and taxable financing available for most types of industries, including manufacturing, agricultural processing, and certain mining or recreational/tourism facilities. Qualifying projects include: construction of a new plant expansion, of an existing plant or replacement of all or part of the plant.

The Oklahoma Industrial Finance Authority (OIFA) funds bonds issued by local economic development authorities (public trusts). The maximum funding is \$5 million on fixed collateral assets for up to 15 years. Loans are fixed rate and are below market for tax-exempt qualified projects.

The Oklahoma Development Finance Authority (ODFA) has established a credit enhancement program to bolster the credit of revenue bonds issued by the ODFA for loans to Oklahoma businesses or governmental borrowers. All bonds are state tax-exempt and may be federally tax-exempt. The ODFA may also issue tax-exempt bonds to support certain exempt facilities such as transportation, infrastructure or environmental facilities. OKLA. STAT. Tit. 74, §§ 851 *et seq.*, 5062.1 *et seq.* (2008).

2. Small Business Linked Deposit Program

The Small Business Linked Deposit Program provides below market interest rates for qualified small businesses and certified industrial parks through local financing sources. Small businesses with less than 200 employees and gross annual receipts of less than \$4 million are eligible for loans up to \$1 million. Industrial parks certified by the Oklahoma Department of Commerce are eligible for up to \$6 million. OKLA. STAT. Tit. 62, § 88.1 *et seq.* (2008).

3. Public Trust Financing: Industrial Revenue Bonds (IRBs)

Oklahoma authorizes public trust financing for economic development purposes at the state, county and city level. Local authorities may access the Oklahoma Industrial Finance Authority's pool to fund bonds or notes issued. There are over 700 public trust authorities in Oklahoma. An allocation from the Private Activity Bond allocation pool through the State Bond Advisor's Office is necessary if a federal or state income tax exemption of interest earned is allowed on private activity bonds. OKLA. STAT. Tit. 60, §§ 176 *et seq.* (2008).

4. General Obligation Limited Tax Bonds (GOLTBs)

Many Oklahoma counties and cities have approved General Obligation Limited Tax Bonds for industrial development. Generally, revenue bonds are issued in association with projects to build particular manufacturing or industrial facilities. Lease income is the primary revenue source to retire the bonds. The funding from the tax levy is secondary and is accessed when lease income is inadequate to meet interest and principal payments on the bonds. This credit enhancement through GOLTBs enables a community to finance 100% of fixed assets. Okla. Const. Art 10, § 35.

5. Tax Increment Financing (TIF)

Cities and counties in Oklahoma may create tax increment districts to provide funding for economic development in distressed areas for up to 25 years. OKLA. STAT. Tit. 62, §§ 850 *et seq.* (2008).

6. Sales Tax Financing

Oklahoma cities and counties are authorized, upon a vote of the people, to build facilities and provide other economic development benefits for businesses financed by sales tax collections. Some have pooled economic development funds from this method. OKLA. STAT. Tit. 68, § 1370 (2008); OKLA. STAT. Tit. 68, § 2701 (2008).

7. Private Activity Bond Allocation

Private Activity Bonds that render interest payments that are federally tax-exempt, in accordance with the Internal Revenue Code, must receive an allocation from the State Bond Advisor's Office. Public Issuers in Oklahoma may issue approximately \$281 million in Private Activity Bonds for the 2004 calendar year. OKLA. STAT. Tit. 62, §§ 695.23 *et seq.* (2008).

8. Oklahoma Capital Investment Board

Through its venture capital program the Oklahoma Capital Investment Board (OCIB) facilitates investment in venture capital companies that focus on investing in quality Oklahoma companies. To date \$57.6 million in OCIB funds have been invested in fifteen (15) venture capital firms. OKLA. STAT. Tit. 74, § 5085.1 (2008).

9. Community Development Block Grants (CDBG)

Non-entitlement cities, towns, and counties may apply for grants and/or loans toward the creation of jobs for targeted income groups. Local units of government apply to the Oklahoma Department of Commerce on behalf of a business. The use of the CDBG resources is for the development of publicly-owned infrastructure that is directly related to the business location or expansion. Businesses obtaining financing through CDBG programs typically must comply with numerous requirements, such as establishing a certain number of new jobs that varies with the amount of the grant or loan. CDBG grants and loans have varying dollar limitations, ranging from \$100,000 to \$750,000 for

grants and up to \$400,000 for loans. The amount of financing that a business may obtain generally depends upon the type of CDBG program and the socio-economic status of the community in which the business operates.

10. Small Business Loan Guarantees

The Small Business Administration's loan guarantee program increases the ability of "small businesses" to obtain loans from private lending institutions. The SBA will serve as a guarantor on loans by certain lending institutions to a qualified small business. What qualifies as a "small business" is determined with reference to the NAICS size standards, which set benchmarks based on the number of employees or the annual receipts of the business. The State of Oklahoma, through its Oklahoma Development Finance Authority and in partnership with Rural Enterprises, Inc., enlarges loans available through additional state funding.

11. Quality Jobs Investment Program

The Quality Jobs Investment Program encourages the growth of equity and near equity capital for Oklahoma businesses. Under the Program, the ODFA can match dollar for dollar an investment enterprise's private capital for helping new and expanding businesses. The primary function of the Program is to use private and public resources to build a more comprehensive and efficient financing infrastructure for businesses expanding or relocating in the State of Oklahoma. OKLA. STAT. Tit. 74, § 5062.8A (2008).

B. Commercial Banking

In Oklahoma, state regulation of financial institutions falls within the jurisdiction of the Oklahoma State Banking Department. The Banking Department is headed by the Banking Commissioner, a position appointed by the Governor. The Banking Department also includes a Banking Board, consisting of seven members that include the Commissioner and six prominent individuals with extensive banking experience. The Banking Department regulates state-chartered banks, credit unions, savings and loans, and trust companies as well as cemeteries and money order companies. The primary objectives of the Commissioner and the Board are to maintain a sound banking system, to encourage a competitive banking environment, and to provide convenience to the public.

Oklahoma has both national banks and state-chartered financial institutions that provide businesses with a full range of commercial banking opportunities. According to the Oklahoma Bankers Association, as of 2004 there were approximately 188 Oklahoma commercial banks and 84 National commercial banks located in Oklahoma. Total bank assets equaled approximately \$48.35 billion.

The Oklahoma Banking Code allows banks to establish and operate an unlimited number of branches at any location upon prior approval by the Banking Commissioner or the Comptroller of the Currency. Generally, total bank obligations to any person, association, or corporation shall at no time exceed thirty percent (30%) of the bank's total capital not including intangible assets. OKLA. STAT. Tit. 6, § 1 *et seq.* (2008)

C. The Oklahoma Securities Act

1. General

The Oklahoma Uniform Securities Act of 2004 regulates offers and sales of securities in Oklahoma. Similar to the federal securities laws, the Oklahoma Act is designed to protect and educate investors by regulating the offer and sales of securities through registration, disclosure and other substantive requirements, and prohibiting fraudulent, manipulative, and deceptive practices in connection with the offer or sale of securities.

2. Registration

Securities offered for sale or sold within Oklahoma must either be (1) registered with the Oklahoma Department of Securities, (2) exempt from such registration, or (3) covered under Section 18(b) of the Securities Act of 1933. Generally, securities may be registered under the Oklahoma Act through notification, coordination, or qualification. OKLA. STAT. Tit. 71, § 1-301 *et seq.* (2008).

Under Oklahoma law, every registration statement must (1) specify the amount of securities to be offered in this state; (2) specify the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) specify any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator or by any court or the Securities and Exchange Commission. OKLA. STAT. Tit. 71, §1-305 (2008).

3. Registration Exemptions

The Oklahoma Uniform Securities Act of 2004 contains two broad categories of exemptions from registration. First, the Oklahoma Act allows for certain types of securities to be exempt from registration. Exempt securities under the Oklahoma Act include: (1) securities issued, insured, or guaranteed by the United States, any state, any political subdivision of a state, any public authority agency, any instrumentality of one or more states, or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; (2) securities issued, insured, or guaranteed by foreign governments or political subdivisions thereof with whom the United States maintains diplomatic relations; (3) securities issued or guaranteed by an international banking institution, United States banking institution, a member bank of the Federal Reserve System, or a depository institution that receives a substantial portion of loans backed by the FDIC or NCUSIF, certain trust companies authorized to exercise fiduciary power similar to national banks, and any other depository institution; (4) railroad and public utility securities; (5) securities issued, insured, or guaranteed by insurance companies; (6) non-profit corporate securities; (7) securities of entities operating for religious, charitable, educational, benevolent, fraternal, social, athletic, or reformatory purposes; (8) a security (or any put, call, option, warrant, or subscription right in a security) that is listed on the New York Stock Exchange, American Stock Exchange, NASDAQ, or other approved security exchange; (9) interests in a non-profit

cooperative; and (10) equipment trust certificates on equipment leased or conditionally sold to an individual. OKLA. STAT. Tit. 71, § 1-201 (2008).

The second type of exemption is for the particular nature of the transaction by which the securities will be offered and sold. The Oklahoma Act identifies twenty-four (24) types of securities transactions that are exempt from registration. These transactional exemptions include several non-issuer exemptions; offers and sales to certain institutions (including banks, oil and gas units, and non-profit organizations); offers to an existing security holder of the issuer (if no commission or other remuneration is given for soliciting the security holders); and an offer or sale to a financial or institutional investor or to a broker-dealer, among others. OKLA. STAT. Tit. 71, § 1-202 (2008).

4. Broker-Dealer and Investment Adviser Registration

Generally, to transact business in Oklahoma as a broker-dealer, a person must be registered with the Oklahoma Department of Securities, unless an exemption from registration is applicable. OKLA. STAT. Tit. 71, §§ 1-401 – 1-404 (2008).

A person is exempt from registration as a broker-dealer if the person has no place of business in Oklahoma and (1) effects transactions in this state exclusively with (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, (iii) institutional investors, or (iv) an investment advisor managing an investment fund of over one-hundred million dollars (\$100,000,000) for the benefit of other investors; (2) is licensed under the securities act of a state in which that person maintains a place of business and offers and sells securities in this state to a person who is an existing customer of the broker-dealer and whose principal place of residence is the same as the state where the broker maintains a place of business; (3) during any period of twelve (12) consecutive months, does not sell to more than three (3) customers in Oklahoma (not including other exempt transactions), so long as that person is licensed under the laws of a state in which he or she maintains their principal place of business; or (4) effects transactions with a preexisting customer who moves to Oklahoma after the customer relationship is established, provided that the broker is registered in the state where the relationship was established and where the customer had a principal place of residence, and provided that the broker files an application to become registered as an Oklahoma broker within 45 days after the transaction and does not engage in another transaction in Oklahoma for seventy-five (75) days after the application is filed. OKLA. STAT. Tit. 71, § 1-401(B) (2008).

Similarly, an investment adviser must register with the Oklahoma Department of Securities in order to transact business in Oklahoma, unless an exemption from registration is applicable. OKLA. STAT. Tit. 71, § 1-403(B) (2008).

A person is exempt from registration as an investment adviser if (1) the person is licensed as an investment adviser under the laws of another state, has no place of business within this state, and the person's only clients in this state are other investment advisers; broker-dealers; institutional investors; preexisting clients who have a principal place of residence in another state, provided that the investment advisor is registered under the securities act

of that state; and other clients exempt under the Oklahoma Act; (2) the person has no place of business located within this state and during any period of twelve (12) consecutive months, has no more than five clients, other than those clients specified as investment advisers, broker-dealers, or investors, who are residents of this state; or (3) the person is registered under the Investment Advisers Act of 1940 as an investment adviser. OKLA. STAT. Tit. 71, § 1-403(B) (2008).

5. Anti-Fraud Provisions

The Oklahoma Securities Act makes it unlawful for any person, in the connection with the offer, sale, or purchase of any security, directly or indirectly, to (1) employ any device, scheme, or artifice to defraud; (2) make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or (3) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person. OKLA. STAT. Tit. 71, § 1-501 (2008).

X. REAL ESTATE

A. Ownership

As a general rule, real property may be owned and transferred by non-alien individuals and other recognized legal entities, including corporations, estates, trusts, partnerships, limited liability companies, joint ventures, and unincorporated associations. OKLA. STAT. Tit. 16, § 1 *et seq.* (2008); OKLA. STAT. Tit. 60, § 121 (2008).

1. United States Citizens

Individuals at least eighteen (18) years of age, legally married, having rights of the majority, or otherwise qualified may own real estate provided they are citizens of the United States OKLA. STAT. Tit. 16, § 1 (2008); OKLA. STAT. Tit. 60 § 121 (2008).

2. Non-Citizen Aliens

Individuals who are non-citizen aliens may not acquire title or own land. However, the acquisition of title by a non-citizen alien through devise, descent, or purchase, where such purchase is made under a legal foreclosure of a lien in favor of the non-citizen, is valid for five (5) years from the date of acquisition. Okla. Const. Art. 22, § 1; OKLA. STAT. Tit. 60, §§ 121, 123 (2008).

3. Corporations

Foreign and domestic corporations qualified to do business in Oklahoma may own real estate, subject to limitations on the purpose of the ownership of land outside of incorporated cities and towns. OKLA. STAT. Tit. 18, §§ 955, 1020 (2008).

4. Partnerships

Foreign and domestic partnerships may own real estate. OKLA. STAT. Tit. 16, § 13.1 (2008); OKLA. STAT. Tit. 54, §§ 1-203, 1-204, 1-1104 (2008).

5. Limited Liability Companies

Foreign and domestic limited liability companies may own real estate. OKLA. STAT. Tit. 16, §14.1 (2008); OKLA. STAT. Tit. 18, § 2003 (2008).

6. Trusts

The trustee of either an express trust or an express private trust may own real estate. OKLA. STAT. Tit. 16, §§ 15.1, 15.2 (2008); OKLA. STAT. Tit. 60, § 175.6a (2008).

B. Concurrent Ownership

1. Tenancy in Common

Tenancy in common is recognized in Oklahoma and is, unless otherwise specifically stated at creation of the interest, the default form of concurrent ownership. There is not a specific statutory description, as with joint tenancy and tenancy by the entirety. Rather, tenancy in common is governed by the common law.

2. Joint Tenancy

Joint tenancy is recognized in Oklahoma, but its creation must be expressly declared in the instrument granting it. OKLA. STAT. Tit. 60, § 74 (2008).

3. Tenancy by the Entireties

Oklahoma recognizes tenancy by the entirety only as between husband and wife. OKLA. STAT. Tit. 60, § 74 (2008).

C. Purchase and Sale Transactions

Contracts for real estate purchases must be in writing to be enforceable, and must be signed by the person to be charged. OKLA. STAT. Tit. 15, § 136 (2008). Title 16 contains specific requirements for corporations, partnerships, limited liability companies, and trusts.

D. Purchase Agreements

Many real estate brokers prepare and furnish semi-standardized, real estate commission approved, pre-printed forms for use in residential transactions. Copies of these forms can be found on the Oklahoma Real Estate Commission's website, www.ok.gov/orec. Purchasers should review these agreements with counsel prior to execution.

E. Financing Statements

Oklahoma has adopted revised Article 9 of the Uniform Commercial Code. A mortgage may constitute a financing statement covering fixtures if expressly provided for therein. OKLA. STAT. Tit. 12A, § 1-9-501 *et seq.* (2008).

F. Closing Costs of Real Estate Transfer

1. Escrow Account

Escrow agreements are not required for real estate transfers in Oklahoma.

2. Assessments

All property, unless exempted, is subject to ad valorem taxation. OKLA. STAT. Tit. 68, § 2804 (2008). All taxable real property is assessed annually as of January 1, at its fair cash value, estimated at the price it would bring at a fair voluntary sale for either the highest and best use for which the property was actually used during the preceding calendar year or for the highest and best use for which the property was last classified for use if not actually used during the preceding calendar year. OKLA. STAT. Tit. 68, § 2817(B) (2008).

3. Payment of Taxes

With certain exceptions, every deed, instrument, or writing that conveys real estate, the consideration or value of which, exclusive of liens or encumbrances, is greater than one hundred dollars (\$100), is subject to a documentary stamp tax. The tax rate is seventy-five cents (75¢) per five hundred dollars (\$500). These taxes are to be paid, before the deed is accepted for recording, by anyone who creates, signs, issues, or sells documents subject to the tax or for whomever the documents were made, signed, issued or sold. The tax may only be paid with documentary stamps purchased from the county clerk. OKLA. STAT. Tit. 68 § 3201-3206 (2008).

4. Title Companies

Agents of title companies in Oklahoma are not required to be attorneys.

5. Conveyance of Real Estate

Conveyances of real estate must be in writing, contain a legal description and be subscribed by the grantor or his authorized agent. OKLA. Stat. Tit. 16, §§ 4, 5 (2008); OKLA. STAT. Tit. 19, § 298 (2008). Corporate deeds must be signed in the name of the corporation by the president, vice-president, chair, or vice-chair of the board of directors, or by the attorney in fact, and acknowledged. OKLA. STAT. Tit. 16, § 91 *et seq.* (2008).

G. Mechanics' Liens

Any person who performs labor or renders service in the improvement upon land is entitled to claim a mechanic's lien. The priority date for both general contractor liens and all subcontractor liens which are the subject of subcontracts directly with such general contractor is the date upon which material or equipment were first supplied or work was first performed on the subject property, by such general contractor or any subcontractor. Any separate contract directly with the owner of the property will have a lien priority as of the date such contractor first supplies material or equipment to or performs work on such property. Commercial lenders typically require a preconstruction certification by a surveyor stating that no materials have been supplied or work performed on the subject property as of establishment of the priority date of the mortgage. Certain time limits apply to perfection of mechanic's and materialmen's liens. OKLA. STAT. Tit. 42, § 141 *et seq.* (2008).

H. Foreclosure

1. Deeds of Trust

Deeds of trust on real property, intended as security, are subject to Oklahoma's mortgage laws. OKLA. STAT. Tit. 46, § 1.1 *et seq.* (2008).

2. Judicial Foreclosure

Mortgages on real estate can be judicially foreclosed in the district court of the county in which the real property is located. OKLA. STAT. Tit. 12 §§ 131, 686 (2008). Such a foreclosure can be pursued by the mortgagee at any time prior to foreclosure sale by terminating the power of sale proceeding. OKLA. STAT. Tit. 46, § 49 (2008).

3. Notice of Right to Redeem

Prior to foreclosure by power of sale, the mortgagee must give mortgagor, via certified mail, notice of intent to foreclose. Such notice must be sent to the mortgagor's last known address and must state the name and address of the mortgagee, the nature of the breach or default, that the mortgagor has a right for thirty-five (35) days from the date the notice is sent to cure a breach or default and to that extent reinstate the mortgage, the amount of money or action necessary to effect cure, that if the breach or default is not cured the mortgagee may accelerate the debt or otherwise foreclose the mortgage, information concerning legal rights under the mortgage and Oklahoma law, and that if the mortgagor has any questions an attorney should be consulted. OKLA. STAT. Tit. 46, § 44 (2008).

4. Limitations

The general rule is that no suit, action or proceeding to foreclose or otherwise enforce the remedies in any mortgage, contract for deed or deed of trust shall be had or maintained after the expiration of seven (7) years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein. If

the date of the last maturing obligation secured cannot be ascertained from the written terms, no such action or proceeding may be had or maintained after the expiration of thirty (30) years from the date of recording of the mortgage, contract for deed or deed of trust. Notices of Extension and Maturity Date may be filed under certain circumstances. OKLA. STAT. Tit. 46, § 301 (2008).

I. Landlord and Tenant

1. Types of Tenancy

Oklahoma recognizes tenancies at will, for a certain term, periodic, or at sufferance. Unless otherwise stated, tenancies are generally presumed to be at will. OKLA. STAT. Tit. 41, § 1 *et seq.* (2008).

2. Leases

Leases for a period longer than one (1) year must be written and subscribed by the lessor and the lessees in order to be valid. OKLA. STAT. Tit. 15, § 136 (2008). When a lessee retains possession of leased property and the lessor continues to accept rent beyond the term of the lease, the lease is presumed to have been renewed according to its original terms, for the same period of time, not to exceed one (1) year. OKLA. STAT. Tit. 41, § 35 (2008).

3. Forcible Entry and Detention

Actions for forcible entry and detention of real property are recognized in Oklahoma. OKLA. STAT. Tit. 12, § 1148.1 *et seq.* (2008).

J. Surface and Mineral Rights

The general rule in Oklahoma is that an owner of land in fee simple owns all that is permanently situated above and below that land. However, Oklahoma recognizes separate ownership of the surface, mineral, and water interests in land. Oklahoma law provides that owners of mineral and water easements may sue to enforce their rights under the easements. OKLA. STAT. Tit. 60, §§ 1, 50, 57 (2008).

XI. OTHER

A. Immigration

In 2007, Oklahoma passed the Oklahoma Taxpayer and Citizen Protection Act of 2007, which prohibits undocumented aliens from obtaining any state or federal government assistance and requires state agencies to verify the lawful presence of persons applying for benefits. In some cases, state agencies are required to report undocumented aliens to federal authorities. The legislation utilizes various measures to prevent public and private employers from employing undocumented workers or contracting for work performed by contractors who employ undocumented aliens.

Specifically, the Oklahoma Taxpayer and Citizen Protection Act prohibits the following activities:

- Transporting or attempting to transport illegal aliens with the knowledge or reckless disregard that the aliens are in the United States illegally.
- Concealing or sheltering illegal aliens.
- Contracting with the State without participating in the Basic Pilot Program to verify information of all employees.
- Discharging a citizen from employment while employing an illegal alien at the same time.
- Administration of State public benefits without determining a recipient's citizenship status.

On June 4, 2008, the District Court for the Western District of Oklahoma ordered a temporary injunction preventing enforcement of 25 Okla. Stat. § 1313(B)&(C) and 68 Okla. Stat. § 2385.32. These sections address the penalties associated with employers who hire illegal aliens. This litigation is still pending.

B. Restrictions on Specific Professions

Pursuant to state law, professionals in Oklahoma (physicians, accountants, dentists, etc..) are licensed and regulated by different regulatory boards. Each profession has its own regulatory board that regulates the certification, licensing, and practice of the profession.