

# ECKERT SEAMANS

## Legal Guide to Doing Business in Pennsylvania

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**TABLE OF CONTENTS**

DISCLAIMER ..... 1

MESSAGE FROM ECKERT SEAMANS’ CEO..... 2

INTRODUCTION TO PENNSYLVANIA LAW ..... 3

CHOICE OF ENTITY ..... 4

    Introduction..... 4

    Entity Taxation..... 4

    Management..... 5

    Owner Liability..... 7

    Summary Table..... 9

    Formation..... 10

FOREIGN ENTITIES..... 13

COVENANTS NOT TO COMPETE ..... 14

CONTRACTS – INTENT TO BE LEGALLY BOUND ..... 17

CONFESSIONS OF JUDGMENT ..... 18

TAXATION ..... 19

    Corporate Net Income Tax..... 19

    Capital Stock/ Franchise Tax ..... 21

    Sales & Use Tax..... 23

    Realty Transfer Tax ..... 27

    Personal Income Tax..... 28

REAL ESTATE ..... 30

    Types of Estates in Real Property..... 30

    Deeds..... 30

    Tenancy..... 32

    Mortgages ..... 33

    Mechanics’ Lien Law ..... 34

    Forms of Acknowledgement..... 36

    Form of Certificate of Residence..... 38

LABOR.....	39
Equal Employment Opportunity.....	39
Hiring.....	39
Terms and Conditions of Employment.....	40
Termination of Employment.....	41
Miscellaneous Statutes.....	42
Recognized Common Law Claims.....	44
INTELLECTUAL PROPERTY.....	45
Trade Secret Law.....	45
Trademarks and Service Marks.....	46
Trade Names/Fictitious Names.....	48
Employee Inventions.....	49
Employee Confidentiality.....	49
Right of Publicity.....	50
Franchises and Business Opportunities.....	51
USEFUL REFERENCES.....	53
BUSINESS INCENTIVES.....	55
Loans.....	55
Loan Guarantees.....	56
Bond Financing.....	56
Technology Investments.....	57
Workforce Development.....	57
Grants.....	57
Tax Credits.....	58
Technical Assistance.....	59

## **DISCLAIMER**

The information contained in the attached summary is intended as a general discussion of certain legal topics as considered under Pennsylvania law. As such, the discussion does not attempt to cover the exceptions or nuances of state law and should not be relied upon to cover all laws applicable to any particular factual situation. Users are encouraged to seek Pennsylvania counsel to assist in specific matters.

Eckert Seamans Cherin & Mellott, LLC

## MESSAGE FROM ECKERT SEAMANS' CEO

Dear Legal Guide Reader:

The following Legal Guide to Doing Business in Pennsylvania is intended as an overview of the laws of the Commonwealth of Pennsylvania for companies and individuals doing business in the Keystone State.

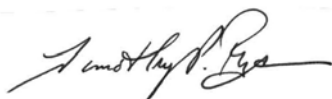
Eckert Seamans Cherin & Mellott, LLC prides itself on being able to deliver superior legal services throughout Pennsylvania. The firm was founded in 1958 by nine attorneys practicing in Pittsburgh. Today the firm has more than 250 attorneys with four offices in Pennsylvania and services clients ranging from start-ups to the Fortune 500.

Eckert Seamans is proud of its affiliation and active participation with Lex Mundi and invites its fellow members to call upon it for assistance when the need arises. If you have a question or would like to contact the firm, the following attorneys can either answer your questions or put you in touch with the appropriate person:

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We hope you find the information contained in this Guide useful in your practice.

Sincerely,



Timothy P. Ryan  
Chief Executive Officer

## **INTRODUCTION TO PENNSYLVANIA LAW**

It might surprise the reader to learn that Pennsylvania has the nation's sixth largest population and an economy that would be the 15th largest in the world, just ahead of Australia (which has us beat in both beachfront and beer consumption). The State, Commonwealth actually, is also the beneficiary of a very low crime rate, ranking 42nd in the nation. Pennsylvania has the nation's third largest number of colleges and universities, 75 percent of our high school graduates go on to college, and is sixth in the nation in total doctorate degrees awarded.

Persons doing business in Pennsylvania should be cautious not to develop a false sense of security just because our state beverage is milk. Pennsylvania has some unique laws and taxes:

- Real estate transfer can result in a transfer tax equal to four percent of the property's value;
- Pittsburgh has the highest parking tax (50 percent) in the known universe;
- On the labor side, from 1971 to 2002, one out of every four public school strikes in the United States occurred in Pennsylvania; and
- Of concern for mergers and acquisitions are the exceptions to the general rule that the successor does not acquire the liabilities of the transferor corporation in an asset sale, as courts applying Pennsylvania law can find liability as a result of a de facto merger, continuity of enterprise theory, or under the product line exception.

The lesson is that use of local counsel is generally a good idea.

As a final note, you will see citations throughout this guide to titles and sections of "Pa. C.S.A." These are citations to Pennsylvania's Consolidated Statutes (Annotated).

# **CHOICE OF ENTITY**

## **Introduction**

In organizing a business endeavor there are many matters that one must consider. Among the most fundamental of these is what type of entity should be used to conduct the business. The primary factors that affect choice of entity decisions are (i) how will the entity be taxed, (ii) how will the entity be managed, and (iii) to what extent are the owners protected from liabilities of the entity. The following is a brief description of the above considerations under Pennsylvania law.

## **Entity Taxation**

### *Corporation (S and C Corporation)*

A “C” corporation, which is the standard form of corporation, is an entity distinct from its owners. This means that earnings that are distributed to the owners are taxed twice, once at the corporate level and once at the personal level. Business owners seeking to avoid that “double taxation” often choose the “S” corporation as an alternative. The earnings of an “S” corporation pass through to the owners, and thus, as with a partnership, are taxed only once. An “S” corporation also has drawbacks, however. The tax laws limit the number of investors in an “S” corporation and also prevent partnerships, “C” corporations and most other entities, as well as non-resident aliens, from being shareholders in an “S” corporation. Therefore, business owners who want to go public usually find that a “C” corporation is the best form of business for them.

### *Flow-Through Tax Treatment*

If the choices of entity include corporations, the difference between how the entity will be taxed can be significant (i.e., double taxation for a “C” corporation vs. flow-through taxation for partnerships and “S” corporations). However, with respect to general partnerships, limited partnerships, limited liability companies and limited liability partnerships, there is not much difference as to how each will be taxed, because as a general rule, people choose these entities to take advantage of the flow-through tax treatment.

### *Capital Stock/Foreign Franchise Tax*

It is important for those people choosing to operate as a limited liability company (“LLC”) and to be taxed as a partnership for federal tax purposes to understand that an LLC is nevertheless subject to Pennsylvania’s capital stock/franchise tax. Pennsylvania LLCs are subject to the capital stock tax and foreign LLCs are subject to the foreign franchise tax on capital stock apportioned to Pennsylvania. An LLC is subject to the tax because it is imposed on a corporation as that term is defined in 72 Pa. C.S.A. § 7601(a), and includes the limited liability company as a corporation (except as noted below). More detailed information about these taxes is provided in the Taxation Section of this Guide.

## **Management**

### *Corporations*

Like other jurisdictions, Pennsylvania provides for the typical tiers of corporate management. These include shareholders, directors and officers. Unless otherwise specified in the bylaws, the Pennsylvania corporation is managed under the direction and authority of the board of directors. The standard of care exercised by the board of directors is often fertile ground for disputes among shareholders of both publicly traded and privately held corporations. Directors stand in a fiduciary relationship to the corporation and must perform their duties in good faith, in a manner reasonably believed to be in the best interests of the corporation, and with the inquiry, skill and diligence of a person of ordinary prudence. This standard requires that a director acting in good faith may rely on information, opinions, reports prepared by those the director reasonably believes has competence in the matters addressed in such documents. 15 Pa. C.S.A. § 1712. The director has both a duty of loyalty and a duty of care. The Business Corporation Law also recognizes that a director’s decisions may be affected by social as well as economic factors. 15 Pa. C.S.A. § 1715(a).

### *General Partnerships*

Unless the partnership provides otherwise, each general partner is entitled share equally in all aspects of the management of the partnership. 15 Pa. C.S.A. § 8331(5). In addition, each

general partner is considered an agent of the partnership and has the authority to bind the partnership. 15 Pa. C.S.A. § 8321.

### *Limited Partnerships*

In contrast to a general partnership, only the general partner of the limited partnership acts as the agent of the limited partnership. 15 Pa. C.S.A. § 8533. As a general rule, limited partners do not participate in the management of the partnership's business. In fact, in many jurisdictions a party must not participate to maintain a limited partner's liability protection. This, however, is not the case in Pennsylvania. 15 Pa. C.S.A. § 8523. As originally enacted, the Pennsylvania Revised Uniform Limited Partnership Act provided that limited partners were not liable for the debts of the limited partnership unless they participated in the control of the business. However, this provision was revised effective January 1, 2002, because as explained in the comment to that section, the safe harbor was so broad as to generally "swallow" the rule and under the circumstances the rule created a trap for the unwary.

### *Limited Liability Companies*

LLCs can be managed by the members or one or more appointed managers. The default rule in Pennsylvania is that an LLC is managed by the members. Each member has the authority to bind the LLC because each member is deemed to be a general partner for management purposes.

15 Pa. C.S.A. § 8904. The members of an LLC may choose to appoint one or more managers to operate and control the business of the LLC. Each manager is vested with the authority to bind the LLC because each manager is deemed to be a general partner for management purposes.

15 Pa. C.S.A. § 8904. In order to choose this type of management, the members must explicitly say so in the Certificate of Organization. 15 Pa. C.S.A. § 8913. The manager-managed structure also can be used to form a management structure that is similar to a corporate structure with the managers acting as directors who appoint officers and the members acting as passive shareholders.

## **Owner Liability**

Individuals form a corporation because a shareholder's liability is limited to the money used to purchase the stock of the corporation. The drawback as compared to partnerships and LLCs is that corporations are subject to entity level tax. As noted below, however, with certain types of partnerships and LLCs, owners can achieve the advantages of limited liability and flow-through partnership taxation.

### *Corporations*

When you incorporate in Pennsylvania you form a separate person from the one or ones who own it. Therefore, when a Pennsylvania corporation is sued, there are provisions in the law to protect the owners (shareholders) and managers (officers and directors) from personal liability. Once you do incorporate it is important that your business follows certain, relatively simple, formalities so that it looks and acts like a corporation. In Pennsylvania, where a party enters into a contract with a corporation, no action will lie against the shareholders of that corporation individually for a breach of that contract. Only where a participation theory or the equitable doctrine of piercing the corporate veil can be established will shareholders, officers or directors of a corporation be liable for a corporation's breach of contract. Under a participation theory, liability falls on the individual, rather than the corporation, when the record establishes the individual's participation in tortious activity. In contrast, a court pierces the corporate veil upon a finding that the corporation is not a bona fide independent entity. There is a strong presumption against piercing the corporate veil. Courts are reluctant to pierce the corporate veil, doing so only when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime.

### *General Partnerships*

With a general partnership, the owners do not get the advantage of limited liability. Unless the general partnership registers as a limited liability partnership, the partners have no protection from the liabilities of the partnership as each partner is jointly and severally liable for the liabilities of the business. 15 Pa. C.S.A. § 8327.

### *Limited Partnership*

In a limited partnership, only the limited partners have the benefit of limited liability. 15 Pa. C.S.A. § 8533(b). In many jurisdictions, the liability protection applies only to limited partners who do not actively participate in the management of the business. However, as noted above, this is not the case in Pennsylvania.

### *Limited Liability Partnerships (LLPs)*

A limited liability partnership (or LLP) is a general partnership or limited partnership that registers with Commonwealth of Pennsylvania Department of State as a LLP. LLPs generally are professional partnerships, such as law firms and accounting firms. The general partners of an LLP are not personally responsible for the negligent misconduct committed by another partner, but they do remain liable for all other debts of the partnership such as contractual liabilities. 15 Pa. C.S.A. § 8204. This “tort only” protection of an LLP is an important consideration when deciding what type of entity to form.

### *Limited Liability Companies (LLCs)*

LLC owners can achieve limited liability and have pass-through tax treatment. Unlike a limited partnership, there is no requirement that there be an owner – the general partner – that must be responsible for potential liability. Members are not liable for the debts of the LLC solely because they are members. 15 Pa. C.S.A. § 8922(a). This aspect of the LLC is primarily the reason why LLCs have become so popular. However, their popularity in Pennsylvania is tempered because of the application of the capital stock/foreign franchise tax to LLCs (except for LLCs that also restricted professional corporations, such as law firms). More detailed information about these taxes is provided in the Taxation Section of this Guide.

## **Summary Table**

Below is a summary table comparing general partnerships, limited partnerships, limited liability partnerships and limited liability companies.

Type	Ownership	Control	Liability	Federal Taxation	State Taxation
<b>General Partnership</b>	<ul style="list-style-type: none"> <li>▪ Two or more owners</li> <li>▪ Individuals or entities</li> </ul>	<ul style="list-style-type: none"> <li>▪ By partners in accordance with partnership agreement</li> <li>▪ Each partner has authority to bind the company</li> </ul>	<ul style="list-style-type: none"> <li>▪ All partners are jointly and severally liable for all partnership debts</li> </ul>	<ul style="list-style-type: none"> <li>▪ Each partner's share of income or loss is included on income tax return of the partner and taxed at the personal or corporate rate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as federal</li> <li>▪ Not subject to capital stock/foreign franchise tax</li> </ul>
<b>Limited Partnership</b>	<ul style="list-style-type: none"> <li>▪ Two or more owners</li> <li>▪ Individuals or entities</li> <li>▪ At least one general partner and one limited partner</li> </ul>	<ul style="list-style-type: none"> <li>▪ Typically controlled by general partner(s) in accordance with partnership agreement</li> <li>▪ Each general partner has authority to bind the company</li> </ul>	<ul style="list-style-type: none"> <li>▪ General partners are jointly and severally liable for all partnership debts</li> <li>▪ Each limited partner's liability limited to capital invested</li> <li>▪ In Pennsylvania, limited partners may participate in management of business and maintain liability protection</li> </ul>	<ul style="list-style-type: none"> <li>▪ Each partner's share of income or loss is included on income tax return of the partner and taxed at the personal or corporate rate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as federal</li> <li>▪ Not subject to capital stock/foreign franchise tax</li> </ul>
<b>Limited Liability Partnership</b>	<ul style="list-style-type: none"> <li>▪ Two or more owners</li> <li>▪ Individuals or entities</li> </ul>	<ul style="list-style-type: none"> <li>▪ By partners in accordance with partnership agreement</li> <li>▪ Depends in part on whether LLP began as general partnership or as limited partnership</li> </ul>	<ul style="list-style-type: none"> <li>▪ General partners not liable for "negligent or wrongful acts or misconduct" committed by other partners; remain jointly and severally liable for all other partnership debts (e.g., contractual obligations)</li> <li>▪ Each limited partner's liability limited to capital invested</li> </ul>	<ul style="list-style-type: none"> <li>▪ Each partner's share of income or loss is included on income tax return of the partner and taxed at the personal or corporate rate</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as federal</li> <li>▪ Not subject to capital stock/foreign franchise tax</li> </ul>
<b>Limited Liability Company</b>	<ul style="list-style-type: none"> <li>▪ One or more owners</li> <li>▪ Individuals or entities</li> </ul>	<ul style="list-style-type: none"> <li>▪ Depends on whether company is member- or manager-managed</li> <li>▪ By members or managers (as case may be) in accordance with terms of operating agreement</li> </ul>	<ul style="list-style-type: none"> <li>▪ Member's liability limited to capital invested</li> <li>▪ Managers do not have liability of general partners; only authority</li> </ul>	<ul style="list-style-type: none"> <li>▪ May be taxed as corporation or partnership (default is partnership tax treatment)</li> <li>▪ If only a single member and taxed as a partnership, then treated as a disregarded entity</li> <li>▪ If treated as partnership, then each member's share of income or loss is included on income tax return of the member and taxed at the personal or corporate rate</li> <li>▪ Could elect to be taxed as a corporation and then make the subchapter S election</li> </ul>	<ul style="list-style-type: none"> <li>▪ Same as federal</li> <li>▪ Subject to capital stock/foreign franchise tax (unless also a restricted professional company)</li> </ul>

## **Formation**

### *Corporation Articles and Bylaws*

The Business Corporation Law can be found at 15 Pa. C.S.A. § 101, et. seq. (the “BCL”). The articles of incorporation and the bylaws are the fundamental documents establishing the existence and governance of a corporate entity. Upon filing the articles of incorporation with the Secretary of State, an entity becomes validly existing under Pennsylvania law. Section 1306 of the BCL requires that the articles contain at a minimum:

- Signatures of the incorporators;
- Name of the corporation;
- Address of the initial registered office (in Pennsylvania);
- Statement that the entity is incorporated under the BCL;
- A statement whether the corporation is incorporated on a stock or non-stock basis;
- The number of shares the corporation is authorized to issue;
- A statement of voting rights, designations and preferences limitations and special rights in respect of the shares of any class;
- The name and address of each incorporator; and
- The term of the corporation, if not perpetual.

The bylaws of a corporation contain provisions for managing the business affairs of the corporation provided that the provisions are not inconsistent with the law or the articles of incorporation. 15 Pa. C.S. § 1504(a). A corporation’s bylaws act as the internal statutes of the corporation executed by the shareholders, or, stated another way, constitute a contract among the shareholders. In Pennsylvania the general rule is that the bylaws must be reasonable and not operate to prejudice the rights of the parties affected. Similar to other states, Pennsylvania’s prior governing corporate law prohibited provisions in the articles and bylaws that were contrary to the express statutory rules. These strict rules have now been replaced with a more flexible approach permitting a corporation’s articles and bylaws to include alternate provisions whether or not such provisions are explicitly authorized in, or are consistent with, the BCL. 15 Pa. C.S.A. §§ 1306(a)(8)(ii) and 1504(a). Notwithstanding this flexibility, there are certain

provisions that may not be inconsistent with statutory rule. These include provisions relating to: corporate records and inspections, § 1508(d); liability for unlawful dividends and distributions, § 1553(e); financial reports to shareholders, § 1554(e); dissenters' rights, § 1571(f); statutory right of shareholders to notice, § 1701(b); shareholder right to remove directors for cause, § 1726(b); prohibition against indemnification for willful misconduct or recklessness, § 1746(b); 10-day notice requirement for partial written shareholder consents, § 1766(c); and inapplicability of custodian rule to certain corporations, § 1767(d).

### *General Partnership*

As mentioned previously, there are two types of partnerships: a “general” partnership and a limited partnership. The Uniform Partnership Act (“UPA”), which nearly every state has adopted, including Pennsylvania, governs general partnerships. See 15 Pa. C.S.A. § 8101. The UPA defines a general partnership as “an association of two or more persons to carry on as co-owners a business for profit.” 15 Pa. C.S.A. § 8311(a). Partnerships are based upon contract among the partners that comprise the partnership. The “persons” associated in a partnership may be natural persons, corporations, or any other entity. 1 Pa. C.S.A. § 1991 (defining “person”).

Forming a partnership is quite simple. First there must be an agreement among the parties. The agreement does not have to be in writing but rather may be oral. The only requirements are that the agreement includes the clear mutual assent of two or more persons, it is supported by consideration, there is co-ownership of the business, and it provides for a sharing of profits and losses. There is no filing to be made with Pennsylvania’s Department of State.

### *Limited Partnerships*

Pennsylvania limited partnerships are governed by the Pennsylvania Revised Uniform Limited Partnership Act. 15 Pa. C.S.A. § 8511. Unlike a general partnership that is a creation of the parties comprising the partnership, limited partnerships are creations of the state and to exist require a certificate of limited partnership be filed with the Department of State. 15 Pa. C.S.A. § 8511.

The certificate must include:

- Name;
- Address;
- Name and address of each general partner;
- If a partner's interest in the limited partnership is to be evidenced by a certificate of partnership interest, a statement to that effect; and
- Any other provision the partners elect to set forth in the certificate.

A partnership agreement may be written, but does not have to be. 15 Pa. C.S.A. § 8520. A person may be admitted as a limited partner if the person orally agrees to the terms of the partnership or executes the written partnership agreement or other writing evidencing the intent of the person to become a limited partner.

It should be noted that although there is no requirement that a partnership agreement be in writing, Pennsylvania requires that certain provisions be in writing to be binding. These provisions include:

- Admission of additional general partners, § 8521(a);
- Events of withdrawal, § 8532(a)(4) and (5);
- Sharing of profits and losses, § 8543;
- Sharing of distributions, § 8544;
- Withdrawal of limited partner, § 8553(a);
- Distribution in kind, § 8555; and
- Non-judicial dissolution, § 8517(a)(2) and (4).

## **FOREIGN ENTITIES**

Foreign corporations are subject to Chapter 41 of the BCL. 15 Pa. C.S. § 4101 et. seq. Prior to doing business in Pennsylvania, foreign corporations must obtain a certificate of authority from the Department of State. 15 Pa. C.S. § 4121(a). Foreign corporations that do not obtain a certificate are penalized by being prohibited from bringing suit in Pennsylvania. Similar to most states, Pennsylvania enumerates only those activities that DO NOT constitute “doing business.” (15 Pa. C.S. § 4122 contains the list). In order to obtain a certificate of authority, a corporation must execute an application for a certificate of authority that must set forth:

- Name of the corporation;
- Jurisdiction under which the corporation is incorporated;
- Address of the corporation’s principal place of business in the state of incorporation;
- Address of the corporation’s proposed registered office in Pennsylvania, subject to the statutory provision permitting; in lieu thereof, the name of a commercial registered office; and
- A statement that the corporation is a corporation incorporated for a purpose(s) involving pecuniary profit (non-profits must state they are not incorporated for such purposes).

Upon receipt of the application, the Department of State will send to the foreign registrant the Pennsylvania Enterprise Registration Form (also known as the PA Form 100). This form must be completed by all entities to register for certain taxes and services administered by the Pennsylvania Department of Revenue and the Pennsylvania Department of Labor and Industry.

## **COVENANTS NOT TO COMPETE**

Common law, as opposed to statutory law, governs restrictive covenants in Pennsylvania. A restrictive employment covenant is valid if it is reasonably limited in duration of time and geographic extent, reasonably necessary to protect the employer without imposing an undue hardship on the employee, ancillary to an employment relation and supported by consideration.

The duration of a restrictive covenant may only be for such length of time as is reasonably necessary to protect the interests of the employer. For instance, if the purpose of the restraint is to protect customer relationships, its duration is reasonable only if it is no longer than necessary for the employer to put a new employee on the job and for that new employee to have a reasonable opportunity to demonstrate effectiveness to customers. While the particular circumstances are important, one-year restrictions have been frequently upheld, while in one instance a five-year restriction was upheld with the warning that it either approached or exceeded the bounds of reasonableness in most settings.

The geographic limits in a restrictive covenant are reasonable if tied to the geographic area in which the employee actually performed services and developed customer relationships on behalf of the employer. This can include territory beyond Pennsylvania.

In order for a restrictive covenant to be reasonably necessary for the protection of the employer, the employer must have a protectable interest in preventing the activities of the former employee. Trade secrets of the employer, customer goodwill, and specialized training and skills acquired from the employer are all legitimate interests protectable through a general restrictive covenant. On the other hand, where the restrictive covenant has been characterized by the court as oppressing an employee or fostering a monopoly, the covenant has not been enforced. Also, in evaluating the reasonableness of the covenant protecting the employer's interest, an employee discharged for poor performance does not pose the same competitive threat to his employer's business interests as another employee whose performance is not questioned and who resigns to join a direct competitor of the employer.

The initial employment is sufficient consideration to support a restrictive covenant, even if that employment is terminable at will. When the restrictive covenant does not appear in the initial employment agreement, but instead is agreed upon at some later time, it must be supported by “new consideration.” In order to constitute new consideration, the employee must receive some change in employment status or benefits upon entering into the restrictive covenant.

Traditionally, the mere promise of continued employment on the same terms has been held not to be sufficient new consideration. A salary increase which is not tied to the restrictive covenant, but is merely one of a series of increases received by the employee on a regular basis, also is not sufficient new consideration.

A covenant not to compete is not enforceable by an assignee of the employer without an assignability provision in the contract. Furthermore, the assignor may not enforce the covenant absent a protectable business interest of the assignor to be protected by the covenant. If the assignor is no longer engaged in the assigned business, such a protectable interest will not be found.

Where a restrictive covenant is broader than reasonably necessary to protect the employer, Pennsylvania courts have the power to enforce only those provisions which are reasonable, or to modify the offending provisions, such as by reducing the duration or geographic scope of restricted activity.

While an injunction is the usual remedy sought by an employer for breach of a restrictive covenant by a former employee, damages also may be awarded, and if damages are the only remedy pursued, the reasonableness requirements can be relaxed. Damages can include lost profits, replacement costs, and loss of goodwill or profits of the new competitor. Such damages are usually difficult to prove, but reasonable liquidated damages have been enforced.

While restrictive covenants in employee agreements are strictly construed, those ancillary to the sale of a business are not subject to the same stringent test of reasonableness. Also, nondisclosure covenants are not limited by the reasonableness criteria applicable to non-competition covenants. However, a restrictive covenant which only prohibits an employee’s

solicitation of his former employer's customers might not be considered a restrictive covenant but might more appropriately be analyzed under the common law of unfair competition, without regard to the unreasonableness of the covenant.

The party challenging reasonableness has the burden of proof. As the standard regarding most elements of a restrictive covenant is reasonableness, each case depends upon the totality of the facts.

The statute of limitations for bringing suits for violation of a non-competition clause is four years.

## **CONTRACTS - INTENT TO BE LEGALLY BOUND**

Pennsylvania contract principles incorporate a unique twist not present in other jurisdictions. The twist involves the phrase “intending to be legally bound,” which appears either in the “NOW, THEREFORE” provision between the recitals and the body of an agreement or in the “IN WITNESS WHEREOF” provision that accompanies the parties’ signatures. This “intending to be legally bound” phrase is magic language that makes a contract binding absent consideration. It comes from the Uniform Written Obligations Act promulgated by the National Conference of Commissioners on Uniform State Laws in the 1920s, and it was meant to be a substitute for sealed contracts, which also may be binding absent consideration.

But, beware of relying on the phrase “intending to be legally bound” as a consideration substitute. Unlike some other uniform laws that enjoy widespread acceptance, such as the Uniform Commercial Code, the Uniform Written Obligations Act was enacted only in Pennsylvania and Utah, and remains effective only in Pennsylvania. 33 Pa. C.S.A. § 6. So, at the end of the day, this phrase may be magic only for contracts governed by Pennsylvania law.

## **CONFESSIONS OF JUDGMENT**

Pennsylvania is one of the remaining jurisdictions that permits use and enforcement of confessions of judgment. Today, confessions of judgment are governed by the Pennsylvania Rules of Civil Procedure (for confession of judgment for possession see Pa. R. Civ. Proc. § 2970 et. seq.; for confession of judgment for money see Pa. R. Civ. Proc. . § 2950 et. seq.) The rules for possession are similar to judgment for money, with a few exceptions.

Judgment for money may be confessed by two methods: (1) entry of judgment by the Prothonotary where the instrument evidencing the debt meets certain criteria, or (2) filing a form complaint where the criteria are not met. Pa. R. Civ. Proc. § 2951. Confession of judgment for possession through ejectment is only available through the complaint process requiring a description. Pa. R. Civ. Proc. § 2971. It should be noted that the remedies of confession of judgment for money and ejectment are not mutually exclusive, however. If an instrument provides for both, a creditor may obtain both types of relief, but recovery beyond the actual debt will not be permitted. For example, a landlord may eject a tenant and obtain judgment in the amount of rent accrued when eviction occurs, but may not obtain judgment for the entire amount of rent due under the lease.

In 1996, the Pennsylvania Rules of Civil Procedure were revised to eliminate confession of judgments arising in commercial credit transactions and now requires a plaintiff seeking judgment to file an affidavit or aver in the complaint that the judgment is not being entered in a consumer credit transaction. As a result, confessions of judgment only arise in commercial transactions.

# **TAXATION**

## **Corporate Net Income Tax**

Pennsylvania's Corporate Net Income Tax (CNIT) is imposed upon corporations pursuant to Article IV of the Tax Reform Code of 1971. In the Commonwealth of Pennsylvania, the CNIT is a flat rate of 9.99 percent. Corporations are required to pay CNIT for the privilege of doing business, carrying on activities, having capital or property employed or used, or owning property in the Commonwealth. "Corporation" is defined, as a corporation, joint-stock association, business trust, limited liability company or other entity which for federal income tax purposes is classified as a corporation. Consolidated returns are not permitted, thus each taxpayer must report its CNIT on a separate company basis.

Groups statutorily exempt are:

- Building and loan associations, banks, bank and trust companies, national banks, savings institutions, trust companies, insurance and surety companies;
- Business trusts qualifying as a real estate investment trust under IRC § 856 or as a real estate investment trust subsidiary under § 856(i);
- Domestic or foreign business trusts qualifying as a regulated investment company under IRC § 851 and registered with SEC, or any related domestic or foreign business trust which confines its activities in Pennsylvania to the maintenance, administration, and management of intangible investments and activities or regulated investment companies;
- Corporations, trusts, or other entities which are exempt organizations per IRC § 501;
- Corporations, trusts, or other entities, organized as non profits, that: (a) would qualify under IRC § 501; (b) would qualify as a homeowners association per IRC § 528(c); (c) are membership organizations subject to IRC § 277 limitation on deductions, and no pecuniary gain or profit inures to a member or related entity; or (d) are a nonstock commodity or on a nonstock stock exchange; and
- Cooperative Agricultural Associations which are subject to Agricultural Cooperative Net Income Tax.

The starting point to determine the tax base is the federal taxable income before the net operating loss deduction.

For CNIT purposes, there is no deduction for any taxes imposed on or measured by net income. Any such taxes deducted for federal purposes must be added back to the federal taxable income. The CNIT is decoupled from the federal bonus depreciation provisions. The bonus depreciation (30 percent) is added to federal taxable income, and the taxpayer is allowed additional Pennsylvania depreciation equal to 3/7 of the regular federal depreciation. In the year of sale, the taxpayer reduces federal gain by the amount of any disallowed bonus depreciation which has not been recovered through additional Pennsylvania depreciation.

The following are subtractions from federal taxable income:

- Interest on U.S. and state obligations, reduced by related expenses;
- Gains and losses on certain Pennsylvania and federal obligations;
- Dividends from domestics, to the same extent as for federal;
- Dividends from foreign corporations, to the extent as would be deductible if the company were domestic;
- Foreign dividend gross-up; and
- Amount of reduction in employer's deduction for wages and salaries as a result of employer taking credit for its FICA tax obligations on its employees' tips or "targeted jobs" pursuant to IRC §§ 45B or 51.

Net Operating Loss Deductions are subject to an annual limitation of the greater of \$3 million or 12.5 percent of taxable income and have a 20-year carry forward period. No carry forward period is permitted from a Pennsylvania S corporation year. However, a Pennsylvania S corporation year does count as a taxable year for "counting" the carry forward period.

Estimated tax is to be paid in quarterly payments on March 15, June 15, September 15, and December 15 for calendar year companies and the 15th day of the third, sixth, ninth, and twelfth

month for fiscal year filers. If the amount paid as of any quarterly due date is less than the appropriate pro rata portion of 90 percent of the actual final tax, then a straight interest rate applies, unless there is a substantial underpayment (25 percent or more), then the rate is 120 percent of the straight interest rate. The addition to tax bears interest while the interest does not.

The filing deadline is April 15th for calendar filers and the 15th day of the fourth month for fiscal year filers. Extensions for filing must be requested before the regular due date and there are no extensions for payment of tax.

Penalties and interest:

- Interest is based on federal rate at the beginning of calendar year;
- Failure to file and knowingly filing a false report penalty is 10 percent of the first \$1,000; 5 percent of the next \$4,000; 1 percent of anything in excess of \$4,000;
- Penalty for neglecting or refusing to file upon demand by department is \$500;
- Penalty for failure to file report of change is \$5 per day; and
- Additional criminal penalties may apply.

Corporations that transact business outside of Pennsylvania and are taxable in another state may allocate and apportion their income. Non-business income such as rents and gain/losses on the sale of real estate located in Pennsylvania are allocated to Pennsylvania. Apportionment is based on a three-factor apportionment fraction including a property factor, a payroll factor, and a sales factor. For taxable years beginning after 2006, the property and payroll factors contribute 15 percent of the apportionment factor and the sales factor contributes 70 percent. The property factor is based solely on real and tangible personal property.

### **Capital Stock/ Franchise Tax**

Capital Stock Tax is a property tax imposed upon the value of a domestic corporation's capital stock based upon the company's taxable property and assets within Pennsylvania. The Franchise Tax is imposed upon a foreign corporation's value of capital stock apportioned to Pennsylvania.

These taxes are levied on corporations, certain limited partnerships, joint stock associations, business trusts, and limited liability companies. Non-profit corporations deemed exempt under § 501(c)(3) of the Internal Revenue Code, cooperative agricultural associations not conducted for profit, state and national banks and saving institutions, title insurance and trust companies, building and loan associations, family farm corporations, and insurance companies are not subject to the tax. Also, tax exemption is provided for all or a portion of the capital stock of corporations that are organized for manufacturing, processing, research, or development purposes and that are invested in and actually and exclusively engage in carrying on such activities. The tax rate for taxable years beginning in 2007 is 4.89 mills. Both the Capital Stock Tax and the Franchise Tax are to be phased out for taxable years beginning after December 31, 2010.

The rules for valuation of capital stock are the same for capital stock and franchise tax purposes. Capital stock value is defined as “the product of  $\frac{1}{2}$  times the sum of the average net income capitalized at the rate of  $9\frac{1}{2}$  percent plus 75 percent of net worth, from which product shall be subtracted \$150,000, the algebraic formula of which is  $(.5 (\text{average net income}/.095 + (.75) (\text{net worth})) - \$150,000$ .” The tax is then determined by multiplying the value by a rate (5.99 mills in 2004, to be reduced by one mill each year until the rate reaches zero).

The definition of “average net income” (after tax) is the average of the net income or loss for each of the current and immediately preceding four years. If the entity has not been in existence for five years, the average net income shall be the average net income for the number of years that the entity has actually been in existence. In no case shall average net income be less than zero. The net income or loss of the entity for any taxable year shall be the amount set forth as income per books on its federal income tax return. Such net income will be computed on an unconsolidated basis.

“Net worth” is defined as the sum of the entity’s issued and outstanding capital stock, surplus and undivided profits per books set forth for the close of such tax year on its federal income tax return. In the case of an entity owning the common stock of other corporations, the net worth will be the consolidated net worth of the entity in accordance with generally accepted accounting

principles. Net worth will never be less than zero. In the case of a limited liability company or business trust, net worth is the entity's assets minus its liabilities as of the close of such tax year.

Limited Liability Companies are subject to the Capital Stock/Franchise Tax. Distributions to members are deductible in arriving at book income only if (a) the limited liability company is not taxable as a corporation for federal income tax purposes and the members materially participate in its activities or (b) the limited liability company is a disregarded entity of a natural person for federal income tax purposes.

A taxpayer must make installment payments of estimated capital stock or franchise tax. The estimated tax must be paid in four installments that are due on or before the 15th day of the third, sixth, ninth, and twelfth months of the taxable year.

## **Sales & Use Tax**

A tax of 6 percent is imposed on (i) each separate sale at retail (any transfer of tangible personal property, including the license to use, or the rendition of selected services, for a consideration) or (ii) use of tangible personal property or services as defined.

“Tangible personal property” includes:

- All corporeal personal property;
- Goods;
- Wares;
- Merchandise;
- Steam;
- Natural, manufactured, and bottled gas for non-residential use;
- The non-residential use of electricity;
- Prepaid telecommunications;
- Premium cable service;

- Interstate and intrastate telecommunication services with the exception of subscriber line charges and basic local telephone services for residential use and pay phones operated by inserting money;
- Spirituous and vinous liquor;
- Malt or brewed beverages; and
- Soft drinks.

Philadelphia and Allegheny County both impose an additional one percent sales and use tax.

Tax is due on:

- Property or service;
- Transportation, delivery, handling;
- Postage insurance;
- Labor, services, installation;
- Manufacturer's federal excise taxes, mercantile taxes, gross receipt tax;
- Restocking;
- Waiting time, meals, mileage;
- Cash discounts for timely payments; and
- Warranty charges, even if separately itemized or invoiced.

However, tax is excluded from the following charges:

- Property or service taken in trade;
- Charges for returnable container;
- Store discounts, volume or trade discounts, rebates, store or manufacturer's coupons, employee discounts taken at the time of the sale so as to reduce the purchase price at the time of sale;
- On-the-spot cash discounts;
- Gratuities;
- Federal retail excise tax;

- Finance charges separately stated; and
- Charges for alcoholic beverages except purchases from Liquor Control Board Stores or licensed malt beverage distributors.

Services subject to tax include:

- Repairing, altering, mending, pressing, fitting, dyeing, laundering, dry cleaning, or cleaning of tangible personal property other than wearing apparel or shoes;
- Applying or installing tangible personal property as a repair or replacement part of other personal property, except wearing apparel or shoes;
- The purchase of printing services, however, tangible personal property directly and predominantly used in printing may be excluded under manufacturing;
- Washing, cleaning, waxing, polishing, or lubricating of motor vehicles;
- State inspection and washing, cleaning, waxing, polishing, or lubricating of motor vehicles;
- Disinfecting or pest control services;
- Building maintenance or cleaning services;
- Lawn care services;
- Self-storage services;
- Lobbying services;
- Adjustment, collection, or credit reporting services;
- Secretarial or editing services; and
- Employment agency services and help supply services.

Computer services which were previously subject to tax became tax exempt for services rendered on or after July 1, 1997. The purchase of “canned” software and computer hardware are subject to tax.

The exclusions to the sales tax are construed against the Commonwealth. A sale for the purposes of resale, including rental, is excluded from tax. Also excluded is property in Pennsylvania used solely for fabrication, manufacture, etc., and thereafter transported outside Pennsylvania for exclusive use outside Pennsylvania. “Manufacturing” is defined as any operation engaged in as

a business which involves manufacturing, fabricating, compounding, processing, or other operations, whereby tangible personal property is placed in a form, composition or character different from that in which it was acquired whether for sale or use by the manufacturer. This manufacturing exclusion extends only to property used directly in manufacturing operations. Physical incorporation of tangible personal property as a constituent into other tangible personal property which is sold in the regular course of business is excluded. The purchase or use of property, tangible personal property, or related services performed thereon are exempt from tax if such property is predominately used by the purchaser directly in the operations of manufacturing, farming, public utilities, dairying, and processing.

The tax is also subject to exemptions which are construed against the taxpayer. These include but are not limited to:

- Isolated transactions (except registered motor vehicles, trailers, motor boats and aircraft);
- Out-of-state purchases;
- Residential utility services;
- Charitable organizations, volunteer firemen's organizations, non-profit educational institutions and religious organizations;
- Gasoline (subject to other tax);
- United States, Pennsylvania, political subdivisions;
- Wrapping materials;
- Medicines, drugs, and selected medical equipment;
- Coal;
- Vehicles sold to nonresident for out-of-state use and registered out-of-state;
- Water;
- Wearing apparel;
- Religious articles, bibles, and religious publications;
- Food and beverages (except soft drinks, alcohol, and take-out);
- Newspapers and printed advertising materials circulated therewith;
- Mail order catalogues, direct mail advertising literature or materials, and the sale at retail or use of subscriptions for magazines, including trade journals;

- Investment metal bullion and investment coins;
- Building machinery and equipment pursuant to a construction contract with the United States, Pennsylvania, instrumentalities and subdivisions, charitable organizations, volunteer firemen’s organizations, nonprofit educational institution or religious organization;
- Employee cost portion of office building cleaning services; and
- Prebuilt housing.

The Hotel Occupancy Tax is a six percent tax imposed on the occupancy of any room, including meeting rooms.

### **Realty Transfer Tax**

The state realty transfer tax is one percent of the value of the realty transferred. Local taxing authorities are allowed to impose an additional realty transfer tax. The typical local tax rate is an additional one percent, but rates vary by locality. For example, the City and School District of Pittsburgh impose an additional three percent tax and the City and School District of Philadelphia impose an additional three percent tax. The tax is based on the property value, which normally is the actual consideration paid in any bona fide sale of real estate at arm’s length for actual monetary worth. In other cases such as gifts, bargain sales and foreclosures (where the consideration is nominal or does not equal the actual monetary worth), the tax is based on the “computed value,” which is the assessed value as adjusted by the common level ratio factor for the county in which the property is located.

The scope of taxable transfers is quite broad. For example, a lease with a term of 30 years or more (including all renewal terms) is a taxable transfer. To prevent parties from avoiding the tax by transferring equity interests in a partnership or corporation, the statute taxes the acquisition of a “real estate company”. A real estate company is an entity primarily engaged in the business of holding, selling or leasing real estate and which (i) holds real estate the value of which is 90 percent or more of its assets, or (ii) derives 60 percent or more of its gross receipts from the ownership or disposition of real estate. For purposes of the local tax, the threshold may differ - the value test is 50 percent in Philadelphia and Pittsburgh. A real estate company is “acquired” if

the change in ownership does not affect the continuity of the company and the total changes in ownership in any three year period has the effect of transferring 90 percent or more of the total ownership interest in the company. Generally, entities are deemed to be separate from their owners, and transfers between them are taxable.

Certain transfers of realty are exempt from the tax. Transfers by will, transfers between husband and wife, parent and child, between siblings, and transfers made pursuant to a statutory merger are exempt. A change in form of an entity which owns real estate, for instance a conversion of a general partnership to a limited partnership, may be exempt depending on the circumstances.

The tax is due and payable upon presentation of the instrument of conveyance for recordation or, in the case of an acquired company, upon the requisite change of ownership. Under the statute, the parties are jointly and severally liable for the tax. Between themselves, the parties are free to allocate responsibility for payment of the tax as they may agree. If the agreement is silent, an agreement to pay the tax in equal shares will be presumed.

Pennsylvania currently does not levy a tax on mortgages or other indebtedness secured by real estate.

### **Personal Income Tax**

The Pennsylvania personal income tax applies at a flat rate of 3.07 percent and is levied on each of eight categories of income:

- Compensation;
- Net profits from a business;
- Net profits, net gains from disposition of property;
- Net gains or income from rents, royalties, patents and copyrights;
- Dividends;
- Interest;
- Net gambling and lottery winnings; and

- Net gains or income derived through estates or trusts.

A loss in one class of income may not be offset against income in another class, nor may gains or losses be carried backward or forward from year to year.

The personal income tax does not provide for a standard deduction or personal exemption. A credit is allowed for gross or net income taxes paid to other states or foreign countries by Pennsylvania residents.

# **REAL ESTATE**

## **Types of Estates in Real Property**

Under Pennsylvania law, there exist three types of estates in real property: (i) coal and minerals (which consist of the right to mine under the surface); (ii) surface; and (iii) right of support.

Pennsylvania is unique because a property owner may own real property in any combination of the foregoing estates, and each estate may be owned by a separate party.

## **Deeds**

With respect to the different types of estates of real property under Pennsylvania law, the state is roughly split into three separate regions, Western, Central and Eastern. Local practices between the three regions differ to some extent. For example, a deed conveying real property in Western Pennsylvania must contain: (i) a coal notice from the grantor/seller, which is in normal black lettering; and (ii) a coal notice signed by the grantee/buyer, which must be in red lettering.

These notices serve to notify the grantee/buyer that a third party may (and often does) own the coal rights and/or the right of support. In Central Pennsylvania, a specific issue to be aware of is the severance of the real property for oil or gas rights. In Eastern Pennsylvania, general warranty deeds are almost never used, while such deeds are still sometimes used in Western Pennsylvania. It is extremely important to identify the local practices for each of these regions.

The most common forms of deeds in Pennsylvania are: (i) the general warranty deed; (ii) the special warranty deed; and (iii) the quitclaim deed. The general warranty deed is becoming rare, and title insurance is now the generally accepted method of insuring that title is good and marketable. A general warranty deed warrants title against claims of all persons whomsoever. A special warranty deed only warrants title against the claims of the grantor/seller and those making claims under such grantor/seller. The quitclaim warranty basically conveys all title and interest the grantor/seller may have in the real property, if any, and there is no representation or warranty as to the nature of the title conveyed, and there is no duty to defend adverse claims against the title conveyed therein.

Another requirement which is specific to Pennsylvania for deeds is the certificate of residence whereby the grantee/buyer certifies its proper and correct mailing address for tax bill purposes (including name of person or entity responsible for receiving the tax bills). The accepted form of the certificate varies from county to county. A representative form is included below.

For a conveyance of land to be effective, the legal description of the real property must be described with sufficient definitiveness and certainty so as to locate and distinguish it from other lands of the same kind.

While there is no requirement in Pennsylvania that the actual consideration be recited in the deed, the party recording a deed which recites no or nominal consideration will be required to record a Realty Transfer Tax Statement of Value setting forth either the actual consideration paid or permits the calculation of fair market value for the calculation of realty transfer tax. In the event that the parties deem the conveyance as exempt from realty transfer tax, the party recording the deed will be required to record a Realty Transfer Tax Statement of Value setting forth the basis for such exemption.

Standard execution requirements for deeds in Pennsylvania require signature of and delivery by the grantor/seller and a notary/acknowledgement of grantor/seller's signature. While witnesses are not required, it is a common practice in Pennsylvania to have at least one witness. If the deed is coming from a corporation, then the deed may be attested by the corporate secretary.

Corporate seals are no longer necessary in Pennsylvania. If the grantor/seller is a married individual, it is recommended that the spouse execute a joinder releasing and waiving any right, title or interest to the real property acquired by virtue of the existing marriage. The requirement of seals for a natural person has been abolished in Pennsylvania.

Pennsylvania has enacted the Uniform Written Acknowledgement Act, which prescribes the accepted form of a notary or other acknowledgement. Under the Act, documents executed in another state are eligible for recordation in Pennsylvania, if the acknowledgement is made in the statutory form of that state. However, the various Pennsylvania Recorders of Deeds are not

always familiar with out-of-state forms, and it is recommended that the Pennsylvania format be used. Alternatively, practitioners may call ahead to the Recorder and have the out-of-state acknowledgement approved in advance. The statutory forms of acknowledgement by an individual and a corporation are attached below.

Pennsylvania is a race-notice jurisdiction. A bona fide purchaser without knowledge will take free of and have priority over the unrecorded interest of an earlier claimant. To give legal notice to third parties, the deed must be properly recorded. The deed must be recorded in the Office of the Recorder of Deeds of the county in which the real property is located; and the recording fee and the realty transfer tax, if any, must be paid upon presentation of the deed for recording. The recording fee is set by the county and may vary. The realty transfer tax is charged by both the Commonwealth of Pennsylvania (the State rate is currently one percent) and the municipality in which the real property is located (the local rate is generally is one percent but varies by municipality). The tax is determined by multiplying the tax rate times the consideration paid for the property (or, if not consideration is paid, by the assessed value of the property), times a “common ratio multiplier” which is announced from time to time by the Department of Revenue. The realty transfer tax is customarily split equally between the grantor/seller and the grantee/buyer.

### **Tenancy**

Pennsylvania continues to recognize tenancy by the entireties. An acquisition made by a husband and wife is presumed to create a tenancy by the entireties. The parties must expressly state otherwise if they do not wish to obtain title as such.

An acquisition by two or more parties, other than husband and wife, is presumed to create a tenancy in common. For the parties to create a joint tenancy, the parties must use language sufficient to overcome the presumption of tenancy in common and expressly provide for survivorship; namely, specifying as joint tenants with rights of survivorship.

## **Mortgages**

Pennsylvania follows the lien theory of mortgages. Accordingly, deeds of trust are not used in Pennsylvania. Pennsylvania is a foreclosure state, and private powers of sale are not used since the action of mortgage foreclosure is the only method of cutting off the equity of redemption. The ancient forms of foreclosure have been abolished, and mortgage foreclosure actions are now governed exclusively by the Pennsylvania Rules of Civil Procedure.

The execution requirements of a mortgage follow those same requirements set forth for the execution of a deed, including inclusion of a certificate of residence.

Future Advances may be secured under the Open End Mortgage statute, 42 Pa. C.S.A. § 8143 et seq. If the mortgage is an “open-end mortgage” which meets the requirements of the Act, and if the mortgage is properly recorded, then subsequent advances of loan proceeds will take priority over intervening encumbrances and liens. In addition, subsequent advances to pay taxes and insurance, costs maintaining the property, and costs of securing the lien will also take priority over intervening interests. In order to comply with the statute, the mortgage must include the words “open end” in the heading (title) of the instrument and must contain the statutory language. Notice that if the lender receives statutory notice of a junior lien, and the subsequent advance is not obligatory, then subsequent advances will not retain priority over the junior lien. There are several other statutory exceptions to the priority of open end mortgage liens which the practitioner should review.

Under a Pennsylvania statute (21 PS § 721-1 et seq., known as the Mortgage Satisfaction Act), a lender must satisfy the mortgage by recording a satisfaction piece in the Recorder of Deeds Office in the county in which the real property is located within 60 days following: (i) payment in full of the underlying debt of the mortgage and (ii) borrower’s first written request to satisfy the mortgage. Failure to properly satisfy the mortgage within the 60-day period may result in the lender forfeiting the mortgage lien and lender becoming subject to a penalty in an amount not exceeding the amount of the original loan. The lender may also be required to reimburse any costs and expenses, including reasonable attorneys’ fees, incurred by the borrower in pursuing

satisfaction of the mortgage. The Mortgage Satisfaction Act provides a form of the satisfaction piece which meets the statutory requirements.

## **Mechanics' Lien Law**

Under 49 PS §§ 1101 to 1902, Pennsylvania permits a claimant (including contractors, subcontractors and other specified suppliers of labor and/or materials in excess of \$500) to file a statutory lien against real property to enforce payment for materials and/or labor furnished in the erection or construction or the alteration or repair of an improvement to real property. This right is an additional concurrent and cumulative right in rem, and does not limit or detract from any other remedies available at law or in equity for breach of contract or otherwise. The claimant who properly perfects a mechanics lien may foreclose on the lien and have the property sold to pay its claim. A mechanics lien claim must be filed within six months of the last date when the claimant provided substantial labor and materials to the real property. The claimant is required to provide various forms of notice to the owner and others having an interest in the real property and to serve and file notice of the lien within a fairly short time frame.

Pennsylvania's mechanics' lien statute was substantially amended, effective as of January 1, 2007. In order to avoid a mechanics' lien under the prior law, the owner of a residential property would enter into a No Lien Agreement with the contractor, and would require the contractor to enter into such an agreement with each of its subcontractors, whereby the contractor/subcontractor agrees not to file a mechanics' lien against the property. Such an agreement with the contractor, if properly filed and indexed in the court records, would operate to waive and release the claims of all subcontractors and suppliers/material men. However, this statutory procedure is no longer available for construction projects exceeding \$1 million or for non-residential (commercial) projects. Advance waivers and releases of liens in connection with such projects are legally unenforceable. However, a waiver or release of liens will be valid if given by the contractor or subcontractor in exchange for (and only to the extent of) payment for labor and materials.

The amended mechanics' lien law protects lenders by providing that the lien of a purchase money mortgage and a statutory open end mortgage will take priority over a mechanics' lien.

It is important to note that a tenant may have sufficient interest in the real property to subject it to a mechanics' lien. A landlord will want to provide in the lease agreement that any work, repairs, alterations or any other construction by tenant shall be completed in a lien-free manner and to require that the tenant discharge or bond off any and all mechanics liens resulting from tenant's work, repair, alteration or other construction.

A mechanics' lien is filed in the Prothonotary's Office of the county in which the real property is situate and is indexed in the mechanics' lien docket.

**Forms of Acknowledgement**

*By individuals*

State of \_\_\_\_\_

County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me \_\_\_\_\_, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person whose name \_\_\_\_\_ subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Title of Officer

*By a corporation*

State of \_\_\_\_\_

County of \_\_\_\_\_

On this, the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me  
\_\_\_\_\_, the undersigned officer, personally appeared  
\_\_\_\_\_, who acknowledged himself to be the \_\_\_\_\_ of  
\_\_\_\_\_, a corporation, and that he as such \_\_\_\_\_, being  
authorized to do so, executed the foregoing instrument for the purposes therein contained by  
signing the name of the corporation by himself as \_\_\_\_\_.

In witness whereof, I hereunto set my hand and official seal.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Title of Officer

(“Commonwealth of Pennsylvania” is the proper heading to use for an instrument to be  
acknowledged in front of a Pennsylvania notary public).

**Form of Certificate of Residence**

CERTIFICATE OF RESIDENCE

The undersigned does hereby certify that the precise address of the Mortgagee is:

By: \_\_\_\_\_

## **LABOR**

### **Equal Employment Opportunity**

Pennsylvania's Human Relations Act, administered by the Pennsylvania Human Relations Commission, prohibits employers of four or more persons from discriminating in employment on the basis of race, color, religious creed, ancestry, disability, pregnancy, age (applies to individuals age 40 and over), sex, or national origin. Employees must file an administrative charge with the Human Relations Commission in order to exhaust remedies under the Human Relations Act.

State employers are also prohibited from discriminating on the basis of sexual orientation, AIDS or HIV status, union membership, as well as race, color, religious creed, ancestry, age, sex, national origin, or disability.

Discrimination in employment on public works contracts on the basis of race, creed, or color is also prohibited. There are also extensive equal employment and affirmative action obligations of the contracting agencies of Pennsylvania and of contractors who perform under state contracts.

### **Hiring**

In reaching an employment decision on applicants, employers in Pennsylvania are prohibited from considering an applicant's criminal record, except to the extent that such information concerns an applicant's suitability for the position sought. Applicants to public and private schools are required to submit a statement as to whether the applicant has been involved in criminal activity. Background checks are required of school employees and independent contractors who have direct contact with children. All employers must notify an applicant in writing if the decision not to hire the applicant is based in whole or in part on criminal history record information.

Employers may not require applicants to submit to a lie detector or similar test as a condition of employment (other than employment as a public law enforcement officer or in a job entailing access to narcotics or other dangerous drugs).

Pennsylvania law also prohibits an employer from requiring an applicant or an employee to pay the cost of a medical examination or for medical records required as a condition of employment. This law does not apply where, for example, the medical examination is required by law as a condition of employment.

### **Terms and Conditions of Employment**

Pennsylvania has enacted legislation which parallels the National Labor Relations Act – the Pennsylvania Labor Relations Act – which is applicable to employers that do not affect interstate commerce. All companies doing business in Pennsylvania – which is not a right-to-work state – should be aware that the Commonwealth has enacted additional legislation which affects the labor climate here. These acts include: an arbitration statute which provides that private arbitration agreements, including those found in collective bargaining agreements, and resultant awards are legally enforceable in Pennsylvania; the Pennsylvania Labor Mediation Act, which is designed to encourage employers and employees through their representatives to make and maintain agreements concerning wages, hours, and conditions of employment, and to settle all controversies arising out of the application of such agreements, including through the intervention of Department of Labor and Industry-supplied mediators; and the Strikebreakers Act, which prohibits an employer from hiring a professional strikebreaker, i.e., someone who customarily offers to work in place of strikers. In addition, the Labor Anti-Injunction Act strips the courts of the Commonwealth of jurisdiction to issue a restraining order or injunction in a labor dispute, except under limited circumstances.

Furthermore, Pennsylvania has enacted legislation which addresses wage and hour issues, including the Pennsylvania Wage and Hour Law and the Equal Pay Act, which, for the most part, parallel comparable federal legislation. Pennsylvania also has its own Prevailing Wage Act for those employed on state works.

Pennsylvania has enacted a variety of statutes which provide protection to employees who engage in public service and civic duty activities. For example, an employer may not deprive an employee of his/her employment, seniority position or benefits, or threaten to otherwise coerce him/her with respect thereto because the employee receives a summons, responds thereto, and serves as a petit or grand juror or attends court for prospective jury service. Nothing in this act requires the employer to compensate the employee for employment time lost because of such jury service, however. Similarly, an employer may not deprive an employee of his/her employment, seniority position or benefits, or threaten or otherwise coerce him/her with respect thereto because the employee attends court by reason of being a victim of, or a witness to, a crime. Again, the employer is not required to compensate the employee for such time lost. Moreover, it is a criminal violation for any individual or employer to attempt to coerce an employee's political opinion or actions. Further, employers are prohibited from discharging or otherwise disciplining any volunteer firefighter or volunteer member of the fire, police, ambulance service, or rescue squad because of an absence from work to fight a fire or to render emergency medical assistance in the line of duty, which duty commenced before the start of the employee's work shift.

On another front, Pennsylvania has included "whistleblower" provisions within the Work and Community Right-to-Know Act and various other state statutes such as the Municipal Waste Planning, Recycling and Waste Reduction Act. In addition, it has enacted a whistleblower law which applies to government contractors and public employers.

### **Termination of Employment**

Pennsylvania adheres to the common law principle of employment-at-will. This means that employees are not employed for any definite period of time, and either the employer or the employee may terminate the employment relationship at any time without prior notice and for no reason, provided that such termination does not violate any definite contractual provision between them, or that the reason for the termination is not an unlawful one. Pennsylvania courts

have recognized limited exceptions to the at-will principle, e.g., violation of public policy, but these have been narrowly construed.

Unless otherwise constrained by contract, employers in Pennsylvania are not required to pay terminated employees a specific severance pay, but the Pennsylvania Wage Payment and Collection Law entitles individuals whose employment is terminated – as well as current employees – to receive all of their earned wages, including any accrued but unpaid benefit pay, by the next regular pay day. This same law prohibits employers from making unauthorized deductions from any employee’s wages, and, further, provides harmed employees with civil remedies, including liquidated damages and attorneys’ fees.

Pennsylvania employers are not required to inform, either verbally or in writing, individuals of the reason for their termination of employment. Moreover, there is no state plant closing law comparable to the federal WARN Act, but Pennsylvania employers which require their employees to give advance notice of intention to quit under penalty of forfeiture of wages are required to pay a sum equal to such forfeiture to any employee who is discharged without similar notice for any reason other than incapacity, misconduct or work stoppage.

Employees involuntarily separated from their employment – other than for willful misconduct – who are able and available to work are ordinarily entitled to unemployment compensation benefits, which are ordinarily paid directly by the Commonwealth. The Commonwealth fund is maintained through an employer and employee payroll tax, which is affected by the employer’s experience rating.

### **Miscellaneous Statutes**

Pennsylvania, like other states, has enacted a number of laws which are designed to protect the physical well-being of its citizen-workers. For example, Pennsylvania has a child labor law. Pennsylvania also has the Workers’ Compensation Act and Occupational Disease Act which obligates employers to provide compensation and medical expense reimbursement to employees who are injured in the course of their employment or who contract a disease or debilitating

condition because of exposure to harmful substances during their employment. These benefits are typically provided through private insurance obtained by the employer. The cost of such insurance is generally determined by the size of the employer's payroll, the nature of the employer's business, and the employer's compensation experience rating. The amount of the compensation benefit payable is established by law, and these benefits are the employee's exclusive remedy against the employer for work-related injuries or illnesses.

Although much of the state statute is preempted by federal legislation, the Pennsylvania Work and Community Right-to-Know law does require employers to complete an inclusive Hazardous Substance Survey Form and an Environmental Hazard Survey Form for any substance found on the Commonwealth's Hazardous Substance List. Employers must also send survey forms and Material Safety Data Sheets ("MSDSs") to local public safety agencies upon request, allow Department of Labor and Industry employees to make on-site inspections, ensure that labels on containers include the manufacturer's telephone number, ensure that all MSDSs contain the chemical abstract service number and provide copies of employee health and exposure records to the Department upon request. Pennsylvania has also enacted a Clean Indoor Air Act to protect the public health and to provide for the comfort of all parties by regulating and controlling smoking in public places, including many workplaces.

Pennsylvania has enacted a variety of laws which control the labor relations environment of its public employees. This type of legislation includes the Port Authority Labor Relations Act, which addresses collective bargaining needs with respect to transit workers in counties of the second class. It also includes an act dealing with collective bargaining by policemen and firemen, and the Public Employee Labor Relations Act, which controls the collective bargaining process for all the public employees throughout the Commonwealth, including teachers.

Finally, employers in Pennsylvania are required to permit employees to inspect their personnel files used to determine their own qualifications for employment, promotion, higher wages, termination, and disciplinary action.

## **Recognized Common Law Claims**

As noted, there is a very strong presumption of at-will employment relationships in Pennsylvania, and the level of proof required to overcome this presumption is arduous. Some Pennsylvania courts have found that the presumption may be overcome by express contract, implied-in-fact contract or additional consideration passing between the parties. In addition, a variety of employment-related torts have been recognized by Pennsylvania courts. These include: wrongful discharge, but only to the extent that the discharge is made with a specific intent to harm or is contrary to public policy; fraudulent misrepresentation; defamation; intentional infliction of emotional distress; interference with a contractual relationship; and certain privacy-related claims.

# **INTELLECTUAL PROPERTY**

## **Trade Secret Law**

In February 2004, Pennsylvania adopted a version of the Uniform Trade Secrets Act.

Pennsylvania has a relatively strong and well-developed body of common law covering trade secret protection. Additionally, there are some statutes requiring disclosure of trade secret information, for example, the identity and/or material safety data sheet for a hazardous substance, to appropriate state agencies or emergency service providers. Other statutes attempt to balance trade secret protection with safety and other government interests in the areas of air pollution, agricultural feeds, controlled substances, electric utilities, fertilizers, pesticides, and amendments to plants or soil. Furthermore, the rules of civil procedure provide for protective orders precluding or limiting the manner of disclosure of trade secrets during discovery.

Pennsylvania takes the view that a trade secret is a property interest that is legally protectable. A trade secret may consist of a formula, pattern, device or compilation of information which is used in one's business and provides an advantage over competitors without the knowledge of the trade secret. To be protectable, the trade secret must be the particular secret of the owner and not a secret generally known in the trade. Absolute secrecy is not required to establish a trade secret. Instead, relative secrecy is necessary. The precautions taken to protect a trade secret must be reasonable in view of all of the circumstances.

Various types of technical information such as engineering drawings, computer software and the like, can be protectable as a trade secret. Non-technical business information can also be protectable in some circumstances. For example, customer lists are generally protectable as trade secrets. Cost and pricing information that is not readily available in the industry may also be protectable trade secret information. However, supplier lists and general marketing information are usually not qualified for trade secret protection. A product subject to reverse engineering cannot be a trade secret.

In Pennsylvania, the elements necessary to establish trade secret misappropriation are that: (a) the plaintiff owns a trade secret; (b) the plaintiff disclosed the trade secret to the defendant or the defendant took the trade secret without authorization; (c) the relationship between the defendant and the plaintiff was such that the use or disclosure of the secret was wrongful; and (d) the defendant used or disclosed, or will use or disclose, the trade secret to the plaintiff's detriment.

The Pennsylvania case law follows the first Restatement of Torts Section 757. A breach of a confidential relationship is not absolutely required in order to establish a trade secret claim. Acquisition of a trade secret by wrongful means may also constitute misappropriation.

Damages for trade secret misappropriation are based on the value of the information taken and the unjust enrichment gained by the misappropriator, including profits. A new employer who hires a trade secret misappropriator, and who knows that the information was disclosed improperly, is equally liable for damages for trade secret misappropriation. Punitive damages also are available for trade secret theft, particularly if the theft was willful and wanton. Injunctive relief for trade secret misappropriation also is available. Pennsylvania courts currently follow the trend toward lead-time injunctions, where the misappropriator is enjoined only for as long as needed to independently develop the information.

The statute of limitations for bringing claim for misappropriation of trade secrets is two years.

## **Trademarks and Service Marks**

Pennsylvania, by statute, provides for registration of both trademarks and service marks while preserving all common law rights in trademarks and service marks. Any word, name, symbol or device, or combination thereof, may be adopted and used and then registered as a trademark or service mark if it is employed to indicate a source of goods or services.

Pennsylvania law generally parallels the federal system and the systems of a number of other states. Unlike the federal system, however, one must use the mark in Pennsylvania before seeking registration in Pennsylvania. One cannot file an application on the basis of a bona fide

“intention to use” the mark. Marks which are descriptive or deceptively misdescriptive or primarily merely a surname cannot be registered. Marks which so resemble a previously registered unabandoned mark so as to create a likelihood of confusion or mistake, or to deceive the public concerning the origin or manufacture of the goods, cannot be registered unless the second to apply to registration has a right by a prior adoption and use in Pennsylvania.

An application for registration must identify the applicant, the address, the mark, and the goods or services in connection with which the mark is used, the manner in which the mark is used, and the class in which the goods or services fall. The classifications are listed in the statute. The application must also state the date when the mark was first used anywhere, and the date when it was first used within the Commonwealth of Pennsylvania. There also must be a statement that the applicant is the owner of the mark, and that no other person has the right to use the mark within the Commonwealth of Pennsylvania, either in identical form or in any near resemblance thereto, as might be calculated to deceive or to be mistaken therefor. The applicant must disclose whether an application to register the mark or a portion thereof was filed with the U.S. Patent and Trademark Office. If such an application was filed, the applicant must provide the serial number, filing date, status, and if the application has not resulted in a registration, the reasons therefor. A facsimile of the mark and the required registration fee must also be provided.

Assignments of marks as well as their registrations, along with the goodwill of the related business, may be made. Assignments must be in writing and may be recorded with the Pennsylvania Department of State.

The registrations have a term of five years and may be renewed within six months prior to expiration for periods of five years, as long as the mark remains in use within the Commonwealth. Infringers are subject to civil action and remedies that include recovery of profits or damages and injunctions. The statute of limitations is two years.

A petition for cancellation may be file based on prior use by the petitioner, dissolution of a corporate owner of the mark at least three years prior, the registration owner going out of the business for which the mark is pertinent, or abandonment for at least five years.

Pennsylvania has an anti-dilution statute. Injunctive relief may be sought where there is a likelihood of injury to business reputation, or dilution of the distinctive quality of a mark registered in Pennsylvania, or common law rights in a mark or a trade name. There is no requirement that there be competition between the parties, or that there be confusion as to the source of goods or services. The only remedy is an injunction, unless intent to trade on the registration of the owner of the mark can be shown. In such case, the statute of limitations for damages is two years.

### **Trade Names/Fictitious Names**

One who conducts any business within the Commonwealth of Pennsylvania under or through any fictitious name is required to register the fictitious name. Excepted from this obligation are nonprofit or professional activities, activities which are expressly or impliedly prohibited by law from being carried on under a fictitious name and unincorporated associations.

An application for registration of a fictitious name must include a brief statement about the character or nature of the business or other activity to be carried on under the fictitious name; the address of the principal place of business for the activity carried on under the fictitious name; the name and address of each individual interested in the business or activity; and, as to each entity other than an individual interested in the business, the name, form of organization, identity of the jurisdiction under the laws of which it was organized, the address of its principal office, and the address of any registered office. The application must also contain a statement that the applicant recognizes that the filing does not create any exclusive or other right in the fictitious name. There are additional limitations as to selection of certain names. There is also a publication requirement wherein notice of the intention to file, or the filing of an application, must be advertised in the county in which the principal office or place of business is located. Such notice must identify the fictitious name, the address of the principal office, the names and addresses of the persons who are parties to the registration, and include a statement that an application for registration of the fictitious name has been or will be filed.

## **Employee Inventions**

### *Statutory Law*

There are no Pennsylvania laws expressly governing employee inventions.

### *Common Law*

Pennsylvania follows the Supreme Court's rules governing employer and employee rights to inventions. Generally, an employee owns the patent rights in the subject matter of an invention even if it was conceived and/or reduced to practice during employment. An employer will be entitled to ownership of an employee invention; however, if the employee has signed an agreement stating that the employer is the owner of employee inventions, or if an employee was specifically hired, or later directed, to use his or her inventive abilities.

Even if an employee is the owner of an invention, an employer may still have a "shop right" in the invention. The shop right rule holds that an employer is entitled to a non-exclusive, non-transferable royalty-free license to use an invention that was conceived and/or reduced to practice on the employer's time and using the employer's resources. A shop right can also arise if the employee allows his or her employer to use the invention without payment of royalties or other compensation.

## **Employee Confidentiality**

### *Statutory Law*

There is no Pennsylvania statute expressly governing employer-employee confidentiality.

### *Common Law*

Pennsylvania cases generally hold a breach of confidentiality requires three elements: (a) knowledge or information, which is not generally known, in the possession of the employee; (b) communication by the employer to the employee under an express or implied agreement limiting its use or disclosure by the employee; and (c) use or disclosure by the employee to the injury of the employer. The analysis generally hinges on whether or not the knowledge or information in

question rises to the level of a trade secret requiring judicial protection and intervention in the form of an injunction.

One point which consistently runs through decisions in this area is that the employee, upon terminating his employment relationship with his employer, is entitled to take with him the experience, knowledge, memory, and skill which he gained while there employed. A person's aptitude, skill, dexterity, manual and mental ability, and such other subjective knowledge as he obtains while in the course of his employment are not the property of his employer and the right to use and expand these powers remains his property unless curtailed through some restrictive covenant entered into with the employer. In practice it is often advisable for employers to enter into an express agreement with employees regarding employee confidentiality and trade secret protection.

### **Right of Publicity**

Pennsylvania has a statute establishing a cause of action for the use of a person's name or likeness for any commercial or advertising purpose without the written consent of the person, the parent or guardian of a minor plaintiff, an executor of a deceased person, or any other person, firm, or corporation authorized in writing by the person to license the commercial or advertising uses of the person's name or likeness. Eckert Seamans was instrumental in the drafting of the statute. The statutory cause of action required that the name or likeness have commercial value, defined in the statute as a valuable interest in the name or likeness developed through the investment of time, effort, and money. However, claims may be made under Pennsylvania's common law by any human beings, not just celebrities. Even under the common law, it will be appreciated that the commercial value of the right of publicity for different persons can vary widely. The right of publicity can be assigned or licensed to another. Any action based on misappropriation of a name or likeness must be commenced no more than 30 years after the death of the person whose name or likeness is used.

In order to make out a prima facie case for liability of infringement of the right of publicity, a plaintiff must plead and prove that a defendant, without permission, has used some aspect of the plaintiff's identity, such as the plaintiff's name, photograph, likeness, signature or voice and that

such use is identifiable from the defendant's use. In addition, the defendant's use must be likely to cause damage to the commercial value of the plaintiff's identity. Such damage, however, is presumed once infringement of the right of publicity is proved.

Remedies for infringement can be injunctions and/or money damages. Money damages, of course, will vary based on the commercial value of the plaintiff's persona, i.e., a celebrity's persona is worth much more, commercially, than the persona of the "man in the street."

There are defenses to the use of a plaintiff's persona, most notably, the First Amendment defense for "newsworthy event." Artistic works will be given greater protection than commercial works in balancing the right of publicity with the First Amendment. Additionally, courts recognize that celebrity status invites comment and that the right of publicity should not be used to prevent satire or parody. In determining whether a work is commercial or artistic, courts will consider whether a work is transformative, adding artistic and imaginative expression, or whether the work is merely a direct rip-off of the original persona.

The statute of limitations for bringing a suit based on appropriation of one's name or likeness is two years.

## **Franchises and Business Opportunities**

Pennsylvania has not adopted the Uniform Franchise and Business Opportunity Act nor does it have a statute governing the sale of franchises in general. Certain specific franchise relationships, in particular those between motor vehicle suppliers and dealers, gasoline and petroleum products suppliers and dealers, malt and brewed beverages suppliers and dealers, farm and landscaping suppliers and dealers, and distributors and dealers of equipment, are governed by statutory protections. Generally, these laws represent the legislature's attempt to provide that these particular types of franchisees will not have their franchisee agreements terminated other than for good cause, along with providing various other protections to the franchise owners and other dealers, depending on the specific business in which the franchise owner or dealer is engaged.

Since Pennsylvania has not adopted legislation that generally requires a franchisor to register its franchise offering circular with the Commonwealth and to provide disclosure to prospective franchisees, a franchisor generally must only comply with those disclosure obligations imposed by the Federal Trade Commission.

## **USEFUL REFERENCES**

Pennsylvania Department of Community & Economic Development

<http://www.newpa.com/>

Pennsylvania Small Business Resource Center

<http://www.hud.gov/offices/osdbu/resource/guide/local/penn.cfm>

Pennsylvania Department of Labor and Industry

<http://www.dli.state.pa.us/>

Pennsylvania Department of Revenue

<http://www.revenue.state.pa.us/>

Pennsylvania Department of State

<http://www.dos.state.pa.us/dos/site/default.asp>

Department of General Services (Vendor Services)

<http://www.dgs.state.pa.us/>

Pennsylvania Securities Commission

<http://www.psc.state.pa.us/>

Pennsylvania Insurance Department

<http://www.ins.state.pa.us/ins/site/default.asp>

Pennsylvania Department of Banking

<http://www.banking.state.pa.us/banking/site/default.asp>

Office of Attorney General (Consumer Protection)

<http://www.attorneygeneral.gov/>

Pennsylvania Liquor Control Board

<http://www.lcb.state.pa.us/>

Public Utility Commission

<http://www.puc.state.pa.us/>

Minority Business Advocate Office

<http://www.hud.gov/offices/osdbu/resource/guide/local/penn.cfm>

Women's Business Advocate Office

<http://www.hud.gov/offices/osdbu/resource/guide/local/penn.cfm>

Tax Exempt Forms for 501©(3) Status

<http://www.irs.gov/formspubs/index.html>

Federal Switchboard

[http://www.switchboard.com/Federal\\_Government/PA/47-/yellowpages\\_statewide.htm](http://www.switchboard.com/Federal_Government/PA/47-/yellowpages_statewide.htm)

United States Patent & Trademark Office

<http://www.uspto.gov/>

Bankruptcy Clerk (Middle District)

<http://www.pamb.uscourts.gov/>

Pennsylvania Bar Association

<http://www.pabar.org/>

Pennsylvania Chamber of Business and Industry

<http://www.pachamber.org/>

## **BUSINESS INCENTIVES**

Pennsylvania has a number of programs to provide economic assistance to companies locating to or expanding in Pennsylvania.

### **Loans**

#### *Pennsylvania Industrial Development Authority*

[http://www.harrisburgregionalchamber.org/business/finance\\_programs/pida.asp](http://www.harrisburgregionalchamber.org/business/finance_programs/pida.asp)

Low interest loan financing up to \$1.25 million for land and building acquisition, construction and renovation resulting in the creation or retention of jobs.

#### *Machinery and Equipment Loan Fund*

<http://www.agriculture.state.pa.us/pagrows/cwp/view.asp?a=439&q=137630>

Low interest loan financing up to \$500,000 to acquire and install new or used machinery and equipment or to upgrade existing machinery and equipment.

#### *Small Business First*

<http://www.newpa.com/programDetail.aspx?id=33>

Low interest loan for small businesses with 100 employees or less which are manufacturing, industrial, agricultural, processors, mining, energy, hotels, recyclers or defense related.

#### *Export Finance Program*

<http://www.newpa.com/programDetail.aspx?id=37>

Working capital and accounts receivable financing of up to \$350,000 for small businesses (250 employees or less) exporting goods or services internationally.

#### *Pennsylvania Minority Business Development Authority*

<http://www.newpa.com/programDetail.aspx?id=28>

Low interest loans up to \$500,000 to businesses owned and operated by ethnic minorities.

*Pennsylvania Community Development Bank Loan Program*

<http://www.newpa.com/programDetail.aspx?id=60>

Debt financing for CDFIs.

*Underground Storage Tank Upgrade Loan Program*

<http://www.newpa.com/programDetail.aspx?id=36>

Low interest loan financing to business owners of regulated underground storage tanks to meet EPA upgrade requirements.

*Community Economic Development Loan Program*

<http://www.newpa.com/programDetail.aspx?id=27>

Low interest loans for projects in distressed communities.

*Pollution Prevention Assistance Account*

<http://www.depweb.state.pa.us/enintech/cwp/view.asp?a=1413&q=503114>

Loans to small businesses that help implement pollution prevention and energy-efficiency projects.

## **Loan Guarantees**

*Pennsylvania Capital Access Program*

<http://www.newpa.com/programDetail.aspx?id=48>

Loan guarantee through participating banks to be used to support a wide variety of business purposes.

## **Bond Financing**

*Pennsylvania Economic Development Financing Authority*

<http://www.newpa.com/programDetail.aspx?id=29>

Tax-exempt and taxable bonds to be used to finance land, building, equipment, working capital and refinancings.

## **Technology Investments**

*Ben Franklin Technology Development Authority*

[http://www.benfranklin.org/about/pa\\_tech\\_strategy.asp](http://www.benfranklin.org/about/pa_tech_strategy.asp)

Offers direct investment to or on behalf of technology-oriented businesses located in or maintaining a substantial operating presence in Pennsylvania or into venture capital funds that are investing in Pennsylvania technology companies. Grants are also available and are designed to help groups or consortia of Pennsylvania companies positioning themselves at the cutting edge of emerging technologies and establish a competitive advantage through the use of advance e-business systems.

## **Workforce Development**

*Customized Job Training*

<http://www.newpa.com/programDetail.aspx?id=65>

Grant funds for specialized job training to existing or newly-hired employees up to 70 percent of the eligible costs.

*Guaranteed Free Training Programs*

<http://www.newpa.com/programDetail.aspx?id=67>

Basic skills and information technology training for businesses. Amounts are up to \$450 per trainee and \$100,000 per company.

## **Grants**

*Childcare Challenge Grant Program*

<http://www.pabulletin.com/secure/data/vol31/31-35/1604.html>

Provides grants to non-profit child care organizations to improve access to childcare by expanding capacity in underserved areas.

### *Opportunity Grant Program*

<http://www.newpa.com/programDetail.aspx?id=41>

Grant funds, with no minimum or maximum amounts, to create or preserve jobs in Pennsylvania.

### *Infrastructure Development Program*

<http://www.newpa.com/programDetail.aspx?id=26>

Grants and low interest loans financing for public and private infrastructure improvements.

### *Industrial Sites Reuse Program*

<http://www.newpa.com/programDetail.aspx?id=25>

Grants and loans up to \$200,000 for environmental assessments and up to \$1 million for remediation work at former industrial sites.

### *Rail Freight Assistance*

<http://www.newpa.com/programDetail.aspx?id=44>

Grants to build or repair rail lines or spurs up to \$100,000.

### *New Communities/Enterprise Zone Program*

<http://www.newpa.com/programDetail.aspx?id=76>

Grants to financially disadvantaged communities for preparing and implementing business development strategies within municipal Enterprise Zones.

## **Tax Credits**

### *Educational Improvement Tax Credit*

<http://www.newpa.com/programDetail.aspx?id=62>

Tax credits to eligible businesses who contribute to a scholarship organization or an educational improvement organization.

### *Job Creation Tax Credit*

<http://www.newpa.com/programDetail.aspx?id=63>

A \$1,000 per job credit to approved businesses that agree to create jobs in the Commonwealth within three years.

### *Keystone Opportunity Zones*

<http://koz.newpa.com/>

State and local tax abatement to businesses and residents locating in one of 12 designated zones.

### *Local Economic Revitalization Tax Assistance Act*

<http://www.newpa.com/default.aspx?id=339>

Local municipalities, school districts and counties can offer abatements or property taxes for up to 10 years.

### *Research and Development Tax Credit*

<http://www.newpa.com/programDetail.aspx?id=59>

Allows employers qualifying for the Federal R and D tax credit to receive a 10 percent tax credit for increased research activities in Pennsylvania over a base period.

### *Neighborhood Assistance/Enterprise Zone Tax Credit Program*

<http://www.newpa.com/programDetail.aspx?id=89>

An incentive program that provides tax credits to businesses investing in or making physical improvements to properties located within designated enterprise zones.

## **Technical Assistance**

### *Industrial Resource Center Network*

<http://www.newpa.com/default.aspx?id=69>

Financial and technical assistance to manufacturers to improve their manufacturing operations.

*Small Business Development Centers*

<http://www.pasbdc.org/>

Technical assistance and consulting services to entrepreneurs ranging from business plan development to issues of business operations.