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Guide to Doing Business

Illinois

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JENNER&BLOCK

A guide to

DOING BUSINESS IN *Illinois*

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Introduction

This guide is intended to serve as an introduction to the basic types of laws and regulations that affect individuals and businesses engaged in business in the State of Illinois. The subjects covered in this guide are only introductions and are not exhaustive descriptions of the federal, state, and local laws that may be implicated when conducting business in Illinois. Additionally, the laws described in this guide may be affected or preempted by federal statutes or regulations and may be amended or repealed.

This guide is for informational purposes only and not for the purpose of providing legal advice, is not to be acted on as such, and may not be current. You should contact a qualified attorney to obtain advice with respect to any particular issue or business project involving the State of Illinois.

The State of Illinois

Geography

Founded on December 3, 1818, the State of Illinois is located in the Midwestern United States. The state capital is Springfield. Illinois is rich in flat, fertile prairies earning it the nickname the Prairie State. Illinois is bordered by Wisconsin, Iowa, Missouri, Kentucky, and Indiana. The western boundary of the state is formed largely by the Mississippi River. The state's total area is 56,400 square miles, making it the 25th largest of the 50 states. The population of Illinois is 12,830,632, making it the 5th most populous state.

Chicago is Illinois' largest city, supporting a population of 2,722,389. Chicago is located at the northeast corner of the state, which abuts Lake Michigan, the second largest of the Great Lakes by volume. Chicago has the third-largest gross metropolitan product -- about $630.3 billion according to 2014–2016 estimates. The Chicago metropolitan area has the third-largest science and engineering work force of any metropolitan area in the nation. Chicago is a major world financial center, with the second-largest central business district in the United States. Chicago has a diverse economy, where no single industry employs more than 14 percent of the workforce. Chicago is also a major world tourist and convention destination. Nearly 40 million people visit Chicago annually. The city's main convention center, McCormick Place, is the largest convention center in North America (2.2 million sq. ft.). Chicago is also the largest hub in the railroad industry, and O'Hare International Airport is consistently one of the busiest airports in the world in terms of aircraft traffic.

Illinois has warm, humid summers and cold winters, with monthly average temperatures ranging from a high of 75.3 degrees to a low of 26.3 degrees Fahrenheit. Annual precipitation averages 40.20 inches.

Cultural & Ethnic Background

Located in the middle of the country, Illinois became a hub for industry. Transport of commercial goods was made possible by the Mississippi River, Lake Michigan, and the railroad. The multiple modes of commercial transport allowed Chicago to grow rapidly during the industrial revolution in the 19th century. The city was largely destroyed in 1871 by the Great Chicago Fire, which spurned the 'Great Rebuilding.' As part of the celebration of its rebirth, Chicago hosted the World's Fair in 1893.

Beyond Chicago, Illinois is predominantly known as an agricultural state and is one of a group of states referred to as America's Corn Belt. The heart of Illinois' cultural experience lays in Chicago, which is known as the home of Blues and Jazz music. The state features numerous museums, national parks and historic sites. Chicago's Lincoln Park Zoo is the oldest free public zoo in the United States. Chicago is home to the Grant Park Music Festival, the nation's only free, outdoor classical music series of its kind.

Investment Climate

The Office of Trade and Investment ("OTI") promotes Illinois as an excellent place for business based on the state's unique transportation infrastructure and location, talented workforce, easy access to key markets, and its positive business climate. Illinois has been ranked third in the country for new and expanded corporate facilities and second in the country in attracting projects through foreign direct investment. Illinois is also ranked second among states where businesses are being formed and created and is one of the fastest growing cities for technology jobs.

Business Entities

Sole Proprietorship

Sole proprietorships are the simplest form of business entity, because it does not require the filing of organizational documents. Sole proprietorships are not considered a distinct entity; under federal and state law, the business and the business owner are considered a single entity. The business owner must therefore file all business income and loss on the business owner's personal income tax return. Also, because the business and the business owner are considered one entity, the business owner can be found personally liable for the obligations of the business. Therefore, the business owner's personal assets could be taken to cover the business's obligations. Liability insurance can help protect the assets of the business owner against the business's creditors.

As with any business, the business owner must attain the necessary permits, licenses, and other documents to legally conduct business. If the business seeks to operate the business under a name that is not the business owner's full legal name, then the business owner must file for an assumed name under the Illinois Assumed Business Name Act, 805 ILVS 405/0.01, *et seq.*

A sole proprietorship's life is limited to the life of the owner; there is no continuity of existence independent of the owner. Sale of the sole proprietorship can be effectuated by selling the assets of the business. Similarly, termination of the sole proprietorship is done by ceasing operating of the business.

Partnerships

A partnership is an association of two or more persons to carry on as co-owners of a business for profit. The Uniform Partnership Act (1997) ("UPA (1997)"), 805 ILCS 206/101, *et seq.*, governs all partnerships in Illinois. An advantage over corporations is that a partnership is considered a pass-through entity for tax purposes; meaning that the profits and losses of the business are allocated to the individual partners in the proportion defined by the partnership agreement. Partnerships are broken out into general partnerships or limited partnerships.

1. General Partnerships.

A general partnership requires no formal documentation to be created. Instead, a general partnership is formed when two or more people or legal entities associate for the purpose of operating a business and sharing in the profits. Even if the parties do not intend to form a general partnership, the partnership is formed as soon as the parties join together to operate the business and share in profits. Since a partnership involves the sharing of profits and losses as well as management of the business, it is highly recommended that general partners draft a partnership agreement to set forth the bounds of their relationship. As with sole proprietorships, if the partnership seeks to conduct business under a name that is not the names of the partners, the partnership must register the fictitious name.

General partners can make capital contributions to the partnership by contributing cash, property, or services to the partnership. Illinois provides broad discretion for the partners to arrange capital contributions. The partnership agreement traditionally sets forth the capital being contributed by each partner. If the current general partners agree, the partnership may bring in additional capital by increasing the capital contributions of the current partners or bringing in a new partner who can offer additional capital contributions.

As its own legal entity, separate from its owners, the general partnership may own real property and be sued in the general partnership's name. Although a general partnership is its own legal entity, the general partners jointly share unlimited personal liability for the partnership's liabilities. 805 ILCS 206/306. For tax purposes, the general partnership is not treated as a separate entity. A general partnership is only required to file an annual information tax return showing the partnership's income or loss for the year and each partner's share of the partnership's income or loss. No income tax is imposed at the partnership level, taxes are only imposed at the individual level of the general partners. The share of the taxable income or loss of the partnership must conform to the partner's share of the profits or losses in the partnership agreement.

Absent a general partnership agreement signed by all partners, UPA (1997) governs the relationship of the general partners. 805 ILCS 206/103(a). To the extent the partnership agreement does not provide, UPA (1997) provides that:

- Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits. 805 ILCS 206/401(f).

- Each partner has equal rights in the management and conduct of the partnership. *Id*.

- Decisions in the ordinary course of business may be decided by a majority of the partners. 805 ILCS 206/401(j).

- An act outside the ordinary course of business may be taken only with the consent of all partners. *Id*.

General partnership interests are not transferable unless agreed to by all general partners. Section 801 of UPA (1997) provides for dissolution events. Examples of when the partnership will be dissolved and its business wound up are: (1) expiration of a pre-agreed term or other pre-agreed event that would trigger the winding up of the partnership; (2) an event that makes it unlawful for the business to be continued; and (3) judicial determination that the partnership cannot practicably carry on the business of the partnership. The general partnership will continue after dissolution until the winding up of its business is completed. 805 ILCS 206/802.

2. Limited Partnerships.

Limited partnerships are governed by the Uniform Limited Partnership Act (2001) ("ULPA (2001)"), 805 ILCS 215/0.01, *et seq*. To form a limited partnership, a certificate of limited partnership must be filed with the Secretary of State of Illinois. 805 ILCS 215/201. The certificate must state:

- the name of the limited partnership;
- the street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;
- the name and the street and mailing address of each general partner;
- whether the limited partnership is a limited liability limited partnership; and
- the purpose or purposes for which the limited partnership is organized, which may be stated to be or to include, the transaction of any or all lawful businesses for which limited partnerships may be organized under ULPA (2001).

Unlike general partnerships, limited partnerships consist of at least one general partner and at least one limited partner. As with general partnerships, the general partner has unlimited personal liability for the partnership's liabilities. Unlike a general partnership, limited partnerships have limited partners, whose liability is limited to the amount of the limited partner's investment into the partnership. 805 ILCS 215/303. Limited partners do not participate in the management of the business and could lose their status as a limited partner and be considered a general partner if he/she participates in the control of the business.

As with general partnerships, partners in a limited partnership can make capital contributions to the partnership by contributing cash, property, or services to the partnership. The partnership agreement traditionally sets forth the capital being contributed by each partner. Additional capital can be raised by issuing additional partnership interests to new partners, subject to the consent of all existing partners or the terms of the partnership agreement.

Actions that could cause dissolution of a limited partnership are: (1) the happening of an event specified in the partnership agreement; (2) the consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time of the consent; (3) the dissociation of a general partner; and (4) judicial dissolution. 805 ILCS 215/802.

Corporations

Corporations, unlike sole proprietorships and general partnerships, offer their shareholders limited liability. For corporate shareholders, liability is limited to the amount of the shareholder's investment in the corporation. In rare instances, a court may 'pierce the corporate veil' to hold

shareholders liable, but this traditionally only occurs if certain corporate formalities are not maintained and the corporation is merely acting as the 'alter-ego' of the shareholders. As a standalone entity, corporations can hold property and be sued in their own name. Through a doctrine of *respondeat superior*, corporations can even be found liable for actions of employees who are acting on behalf of the corporation. For these reasons, it is recommended that the corporation retain adequate insurance, which may include insurance for directors and officers, what is commonly referred to as 'D&O Insurance.'

An Illinois corporation can be formed by filing its articles of incorporation, signed by the organizer, with the Illinois Secretary of State. The corporation name must include one of the following abbreviations: Corporation, Company, Incorporated, Limited, Corp., Co., Inc. or Ltd. When naming the corporation, it is important to search the Illinois Secretary of State database to see if the chosen name is already in use. In addition to a name, the articles of incorporation must state the corporate purpose, stock structure, registered agent, registered office and name and address of the incorporators. The Illinois Secretary of State website allows users to file articles of incorporation online through its website. When filing online, the corporation can only have one class of stock, Common Stock, and the corporate purpose will be "the transaction of any or all lawful purposes for which corporations may be incorporated under the Illinois Business Corporation Act." Along with the articles of incorporation, it is helpful to draft bylaws for the governance of the entity as well as apply for a Federal Employer Identification Number ("FEIN"), which is also known as a Federal Tax Identification Number ("TIN").

Any foreign corporation seeking to transact business in Illinois must qualify to conduct business in Illinois by attaining an Authority to Transact Business in Illinois (form BCA 13.15) from the Secretary of State's Department of Business Services. The form BCA 13.15 application will ask the foreign corporation to state the:

- Corporate name;
- Date and state of incorporation;
- Registered agent and registered office in Illinois;
- Names and addresses of directors and officers;
- Purpose to be pursued in the transaction of business in Illinois;
- Authorized and issued shares of each class;
- Total paid-in capital; and
- Estimated amounts of property and business.

Along with the two copies of the application, the foreign corporation must submit a recent (within the last 90 days) certified copy of the corporation's articles of incorporation, as amended.

The proceeds from the sale of a corporation's shares are the traditional source of capital for the corporation. The board of directors determines the price for each share to be issued. A corporation's shares are freely transferable unless the shareholders agree otherwise. Shares can be transferred from one individual to another by transferring the stock certificate, which represents the owner's equity in the corporation. Shares of a corporation are considered securities under both federal and state securities laws.

Termination of a corporate entity is accomplished by liquidation or dissolution of the corporation, which requires approval of the shareholders. Upon termination of the company, the corporation must file articles of dissolution with the Secretary of State and should provide notice of dissolution to creditors. After all creditors have been satisfied, the remaining assets are distributed among the shareholders in accordance with the rights of the securities they own.

Limited Liability Company

A popular type of corporation is a limited liability company or LLC. Similar to a regular corporation, limited liability companies limit the liability of its members to that of their contributions to the company and can be sued in their corporate name. *See* 805 ILCS 180/10-10. However, similar to partnerships, limited liability companies benefit from pass-through taxation, so the entity is taxed at the individual level, which often means a lower tax rate.

Forming a limited liability company requires filing articles of organization with the Illinois Secretary of State. The articles of organization need to identify the:

- Limited liability company name;
- Address of the principal place of business;
- Effective date of the articles of organization;
- Name of the registered agent and address of registered office;
- Purpose;
- Term of existence; and
- Statement as to whether the LLC will be manager-managed or member-managed, and the names and addresses of the initial managers or members.

Along with the articles of organization, it is helpful to draft an operating agreement for the governance of the entity as well as apply for a FEIN.

In a limited liability company, the members have significant freedom to divide profits and losses as well as distributions in almost any manner they choose. The default provision provided for under Illinois law is that profits and losses are shared by the members in proportion to their

actual contributions to the limited liability company. The default provision can be overridden by a provision setting forth profit and loss allocation in the operating agreement.

Membership interests in a limited liability company may be transferred, subject to restrictions typically contained in the operating agreement. Traditionally, a member cannot sell or assign his or her interest in a limited liability company in a way that makes that person a member without the consent of all other members. An alternative arrangement is to sell or assign a member's economic rights to receive distributions without transferring to the buyer or assignee any management or voting rights as a member.

Dissolution of a limited liability company is traditionally set forth in the operating agreement or the articles of organization. Section 35-1 of the Illinois Limited Liability Company Act, 805 ILCS 180/35-1, also specifies events that would trigger dissolution of a limited liability company. Upon dissolution of the limited liability company, barring any other agreements among the members covering events of dissolution, the business and assets of the company must be wound up and liquidated. After dissolution, but prior to filing of the articles of termination, the limited liability company may only carry on the business necessary to wind up and liquidate the company. Once the business is wound up, the limited liability company must file its articles of dissolution.

Joint Ventures

Joint ventures allow two or more business entities to coordinate and work together to develop a business opportunity while remaining separate, independent entities. Parties seeking to embark on a joint venture may choose to form a new entity for the joint activities or execute a contract, typically a joint venture agreement, to set forth the roles and responsibilities of the parties, including the management and potential dissolution of the arrangement.

Trade Regulation

Federal Antitrust Law

The antitrust laws of the United States are primarily reflected in five federal statutes: the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

1. The Sherman Antitrust Act of 1890.

The Sherman Act is divided into two primary sections. Section 1 prohibits contracts, combinations, and conspiracies made in restraint of trade. Section 2 prohibits unilateral and combined conduct that monopolizes or attempts to monopolize trade. Under the Sherman Act, some restraints are "*per se*" unreasonable (such as price-fixing agreements between competitors) and others are subject to analysis under a "rule of reason" (such as some restrictions placed on a distributor by a manufacturer). Restraints subject to the "*per se*" rule are never permitted, while those governed by the "rule of reason" test will be evaluated on a case-by-case basis.

2. The Clayton Act of 1914.

The Clayton Act prohibits certain specific anticompetitive activities. For example, the Act prohibits some corporate mergers, exclusive dealing contracts, and agreements under which one product is sold subject to the requirement that the purchaser also buy another product from the seller (known as a "tying" arrangement).

3. The Robinson-Patman Act of 1936.

The Robinson-Patman Act prohibits a seller from discriminating (or inducing others to discriminate) among competing purchasers in the price charged for commodities "of like grade and quality." While the Act focuses on price discrimination, it also addresses other concerns such as discriminatory advertising allowances.

4. The Federal Trade Commission Act.

The FTC Act declares unlawful "unfair methods of competition" and "unfair or deceptive acts or practices."

5. The Hart-Scott-Rodino Antitrust Improvements Act of 1976.

The Hart-Scott-Rodino Act requires that, under certain circumstances, a company proposing to merge with or acquire another company must give prior notice of the proposed acquisition to the Federal Trade Commission and the Justice Department. Failure to report may result in very substantial fines.

Enforcement: Private individuals and corporations may bring lawsuits under the Sherman Act, the Clayton Act and the Robinson-Patman Act. Remedies may include injunctive relief, treble damages and attorney fees. The government may enforce the Sherman Act through criminal prosecutions and civil suits. In addition, the government may enforce the Clayton Act and the Robinson-Patman Act through the FTC or the Justice Department. Only the government can enforce the Federal Trade Commission Act and the Hart-Scott-Rodino Act.

Regulation of International Trade and Investment

Foreign investment in the U.S. and other international commercial activities involving U.S. entities are subject to a number of U.S. statutes and related regulations. The following discussion outlines some of the more important aspects of these laws which might be relevant to someone investing in or trading with entities located in the U.S.

1. Restrictions on Foreign Investment.

Under a statutory provision commonly referred to as the Exon-Florio Amendment (Section 721 of Title VII of the Defense Production Act of 1950, as added by Section 5021 of the Omnibus Trade and Competitiveness Act of 1988), the President has broad authority to investigate and prohibit any merger, acquisition or takeover by or with foreign persons which could result in foreign control of persons engaged in interstate commerce if the President determines that such merger, acquisition or takeover constitutes a threat to the national security. The U.S. Congress has indicated that the term "national security" is to be interpreted broadly and that the application of the Exon-Florio Amendment should not be limited to any particular industry.

The statute sets out a timetable for investigations of transactions which can take up to 90 days to complete. The President or his designee has 30 days from the date of receipt of written notification of a proposed (or completed) transaction to decide whether to undertake a full-scale investigation of the transaction. The President has delegated the authority to make investigations pursuant to the Exon-Florio Amendment to the Committee on Foreign Investment in the U.S. ("CFIUS"), an interagency committee made up of representatives of various executive branch agencies. Notifications of transactions are not mandatory and may be made by one or more parties to a transaction or by any CFIUS member agency.

If at the end of the initial 30-day period after notification of a transaction, CFIUS decides that a full-scale investigation is warranted, it then has an additional 45 days to complete an investigation and make a recommendation to the President with respect to the transaction. The President then has 15 days in which to decide whether there is credible evidence that leads the President to believe that the foreign interest exercising control might take action to impair the national security. If the President makes such a determination, Exon-Florio empowers the President to take any action which the President deems appropriate to suspend or prohibit the transaction, including requiring divestment by the foreign entity if the transaction has already been consummated.

U.S. law also places certain restrictions on acquisitions of businesses which require a facility security clearance in order to perform contracts involving classified information. Under

Department of Defense regulations, foreign ownership may cause the Department to revoke a security clearance unless certain steps are taken to reduce the risk that a foreign owner will obtain access to classified information (DOD5220.22-R). Assuming that a foreign owner will be in a position to "effectively control or have a dominant influence over the business management of the U.S. firm," the Department of Defense may require, as a condition to continuation of the security clearance, that the foreign owner establish a voting trust agreement, a proxy agreement or a "special security agreement" approved by the Department of Defense and designed to preclude the disclosure of classified information to the foreign owner or other foreign interests.

2. Reporting Requirements for Foreign Direct Investment.

All foreign investments in a U.S. business enterprise which result in a foreign person owning a 10% or more voting interest (or the equivalent) in that enterprise are required to be reported to the Bureau of Economic Analysis, a part of the U.S. Department of Commerce. Pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108) and the regulations promulgated thereunder (15 C.F.R. 806), such reports must be made within 45 days after the investment transaction. Depending on the site of the entity involved, quarterly, annual and quintennial reports may be required thereafter.

3. The International Investment and Trade in Services Survey Act.

The International Investment and Trade in Services Act ("IISA"), passed in 1976, authorizes the President to collect information and conduct surveys concerning the nature and amount of international investment in the U.S. The IISA's primary function is to provide the federal government with the information necessary to formulate an informed national policy on foreign investments in the U.S. It is not intended to regulate or dissuade foreign investment but is merely a tool used to obtain the data necessary to analyze the impact of such investments on U.S. interests.

Under the IISA, international investments are divided into two classifications – direct investments and portfolio investments. Congress has delegated its authority to collect information on both types of international investments to the President. In turn, the President has delegated the power to collect data on direct investments to the Bureau of Economic Analysis ("BEA"), a part of the Department of Commerce, and on portfolio investments to the Department of the Treasury.

A "foreign person" is any person who resides outside of the U.S. or is subject to the jurisdiction of a country other than the U.S. A "direct investment" is defined as the ownership or control, directly or indirectly, by one person of 10% or more of the voting interests in any incorporated U.S. business enterprise or an equivalent interest in an unincorporated business enterprise. Because the IISA defines "business enterprise" to include any ownership in real estate, any foreign investor's direct or indirect ownership of U.S. real estate constitutes a "direct investment" and falls within the requirement that reports be filed with the BEA.

Unless an exemption applies, a report on Form BE-13 must be filed with the BEA within 45 days of the date on which a direct investment is made. The form collects certain financial and operating data about the investment, the identity of the acquiring entity and certain information

about the ultimate beneficial owner. In addition, a Form BE-14 must be filed by any U.S. person assisting in a transaction which is reportable under Form BE-13. The purpose is, obviously, to ensure that those required to file a Form BE-13 do so.

4. The Agricultural Foreign Investment Disclosure Act of 1978.

The Agricultural Foreign Investment Disclosure Act ("AFlDA") of 1978 requires all foreign individuals, corporations and other entities to report holdings, acquisitions and dispositions of U.S. agricultural land occurring on or after February 1, 1979. The AFIDA contains no restrictions on foreign investment in U.S. agricultural land and is aimed only at gathering reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of this foreign investment. Unlike the reports filed under the International Investment Security Act of 1976, reports filed under AFIDA are not confidential but are available for public inspection.

For the purposes of the AFIDA, a "foreign person" is (i) any individual who is not a citizen or national of the U.S. and who is not lawfully admitted to the U.S.; (ii) a corporation or other legal entity organized under the laws of a foreign country; and (iii) a corporation or other legal entity organized in the U.S. in which a foreign entity, either directly or indirectly, holds 5% or more of an interest. The definition of "agricultural land" is any land in the U.S. which is used for agricultural, forestry or timber production. AFIDA requires a foreign person to submit a report on Form ASCS-153 to the Secretary of Agriculture any time he holds, acquires or transfers any interest, other than a security interest, in agricultural land. The report requires rather detailed information concerning such matters as the identity and country of organization of the owning entity, the nature of the interest held, the details of a purchase or transfer and the agricultural purposes for which the foreign person intends to use the land. In addition, the Secretary of Agriculture may require the identification of each foreign person holding more than a 5% interest in the ownership entity.

5. Export Controls.

In general, U.S. export controls are more stringent and restrict a wider array of items than the export controls of most other countries. *See* the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420 and the regulations promulgated thereunder, 15 C.F.R. 730-799. Except for exports to U.S. territories and possessions, and in most cases, Canada, all exports from the U.S. are subject to an export "license." An export license is an authorization which allows the export of particular goods or technical information. Two basic types of licenses exist, general licenses and individual validated licenses.

There are many types of general licenses. These are authorizations which are generally available and for which it is not necessary to submit a formal application. They cover all exports which are not subject to a validated license requirement. Most exports can be made under one of these general classifications.

In contrast, individual validated licenses are required for those items for which the U.S. specifically controls the export for reasons of national security, foreign policy or short supply. If the export of a specific product to a specific destination is subject to an individual validated license

requirement, it is necessary to apply for and obtain such a license from the Office of Export Administration, an office within the U.S. Department of Commerce, prior to the export. Certain commodities cannot be exported to any country without an individual validated license, while certain other commodities may require a validated license only for shipment to specified countries.

For purposes of the U.S. export control regulations, an export of technical information occurs when the information is disclosed to a foreign national even if such disclosure occurs in the U.S. Thus, if disclosure of information is subject to a validated license requirement, the disclosure may not be made to a foreign national without first obtaining the necessary validated license, whether or not the disclosure is to occur outside the U.S.

6. Foreign Trade Zones.

Foreign trade zones are areas in or adjacent to ports of entry which are treated as outside the customs territory of the U.S. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to the customs laws of the U.S. until the goods are ready to be imported into the U.S. or exported. These foreign trade zones are isolated, enclosed and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act (19 U.S.C. 81a-u) and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while U.S. Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.

7. Anti-Dumping Law.

The U.S. anti-dumping law (19 U.S.C. 1671-1677) provides that if a foreign manufacturer sells goods in the U.S. at less than fair value and such sales cause or threaten material injury to a U.S. industry, or materially retard the establishment of a U.S. industry, an additional duty in an amount equal to the "dumping margin" is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price which is less than their "foreign market value" (which generally is equivalent to the amount charged for the goods in the home market). The dumping margin is equal to the amount by which the foreign market value exceeds the U.S. price.

The Secretary of Commerce is charged with determining whether merchandise is being sold at less than fair value in the U.S. The International Trade Commission makes the determination of whether such sales cause or threaten material injury to a U.S. industry.

State Considerations

1. Illinois Antitrust Laws.

The Illinois Antitrust Act is codified at 740 ILCS 10/1 *et seq.* (West 2016) ("Antitrust Act"). Section 11 of the Antitrust Act states that where its wording is identical or similar to federal antitrust law, federal court decisions should be used as a guide in construing the act. 740 ILCS 10/11. The committee comments to section 11 note that "what it really intended is that the Illinois [Antitrust] Act will be given a construction which keeps it consistent with the Sherman Act." 740 ILCS Ann. 10/11, Bar Committee Comments-1967, at 71-72 (Smith-Hurd 2002). Despite section 11, however, Illinois courts have noted that they are not required to follow federal antitrust decisions, but may do so if they are persuasive. *People ex rel. Scott v. Convenient Food Mart, Inc*., 21 Ill. App. 3d 107, 107 (1st Dist. 1974).

Like the Sherman Act, the Antitrust Act creates liability for cartel-like violations, 740 ILCS 10/3(1), contract, combinations or conspiracies in unreasonable restraint of trade or commerce, 740 ILCS 10/3(2), and monopolistic behavior, 740 ILCS 10/3(3). The Antitrust Act is intended to preserve the freedom of consumers to buy in the open market place and to maintain freedom of competition. *Baker v. Jewel Food Stores, Inc*., 355 Ill. App. 3d 62, 68 (1st Dist. 2005). To that end, section 3(1)(a) of the Antitrust Act is meant to prevent competitors or would-be competitors from joining forces to fix prices. *Id*. A claim under the Antitrust Act must be brought within four years of the cause of action. 740 ILCS 10/7(2).

Price-fixing is considered a *per se* violation of the Antitrust Act, without regard to "the competitive economic purposes and consequences" of the price-fixing. 740 ILCS 10/3(1), Committee Comments-1967, at 15 (Smith-Hurd 2002); *People ex rel. Faher v. Carriage Way West, Inc*., 88 Ill.2d 300, 309 (1981). Actions not governed by the *per se* rule of the Antitrust Act are governed by the judicially created "rule of reason." *Health Professionals, Ltd. v. Johnson*, 339 Ill.App.3d 1021, 1038 (2003). In proving an antitrust violation, Illinois courts permit plaintiffs to rely upon circumstantial evidence. *People ex rel. Scott v. College Hills Corp*., 91 Ill. 2d 138, 146 (1982).

2. State Regulation of Franchises.

Illinois regulates franchises through the Franchise Disclosure Act of 1987, 815 ILCS 705/1 *et seq*. ("IFDA"). The purpose of the IFDA is to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered for sale; and to protect the franchisee and the franchisor by providing a better understanding of the business and the legal relationship between the franchisee and the franchisor. 815 ILCS 705/2. The IFDA prohibits the sale of an unregistered franchise, the failure to deliver a disclosure statement under the terms in the IFDA, the sale of franchise by an unregistered franchise broker, and the filing of an untrue report. 815 ILCS 705/5. The state franchise administrator, the Illinois Attorney General, has broad powers to suspend, terminate, prohibit, or deny the sale of any franchise based upon a violation of the IFDA. 815 ILCS 705/22. The statute permits civil fines of $50,000 per violation, criminal prosecution, and a private right of action. 815 ILCS 705/24-26. Recovery under the IFDA does not preempt remedies under the common law and other

statutes. 815 ILCS 705/26. Actions under the IFDA must brought within three years after the act or transaction constituting the violation upon which it is based. *American Top English, Inc. v. Lexicon Marketing (USA), Inc*., 2004 WL 1403695, at *3 (N.D. Ill. 2004) (citing 815 ILCS 705/27).

3. Illinois Consumer Protection Laws.

The primary consumer protection statute in Illinois is the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq*. (West 2016). The Act is designed to protect Illinois consumers, borrowers, and in some cases businesses from fraud, unfair competition and deceptive business practices. Consumer fraud can be established under the Act by showing: (1) a deceptive act or practice by defendant; and (2) defendant's intent that plaintiff rely on the deception; and (3) the deception occurred in the course of conduct involving trade or commerce. *Connick v. Suzuki Motor Co., Ltd*., 174 Ill.2d 482, 501 (1996). A violation may be prosecuted by the Illinois Attorney General. 815 ILCS 505/3. A private party may have a cause of action if he suffered actual damages as a result of defendant's violation of the Act. 815 ILCS 505/10a; *Barbara's Sales, Inc. v. Intel Corp*., 227 Ill.2d 45, 72 (2007).

Illinois has numerous other statutes to protect consumers with respect to particular types of conduct. *See, e.g*., Uniform Deceptive Trade Practices Act, 815 ILCS 510; Electronic Mail Act, 815 ILCS 511; Home Repair and Remodeling Act, 815 ILCS 513; Home Repair Fraud Act, 815 ILCS 515; Internet Caller Identification Act, 815 ILCS 517; Internet Dating, Internet Childcare, Internet Senior Care, and Internet Home Care Safety Act, 815 ILCS 518; Pay-Per-Call Services Consumer Protection Act, 815 ILCS 520; Prizes and Gifts Act, 815 ILCS 525; Personal Information Protection Act, 815 ILCS 530; and Taxpreparer Disclosure of Information Act, 815 ILCS 535.

Taxation

Federal Taxation

1. Federal Income Taxes.

Federal income taxes are not affected by where a business chooses to locate in the U.S. There are various methods of controlling the amount of the U.S. income tax-payable, and many of these apply to domestic corporations as well as foreign owned corporations or foreign individuals.

2. Personal Income Tax.

Individuals are subject to U.S. income tax on their worldwide income if they are U.S. citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual who is not a U.S. citizen, and who does not wish to be taxed as such, and who plans to spend a substantial amount of time in the U.S., should pay careful attention to these rules. Currently, the highest marginal U.S. individual income tax rate is 39.6% for ordinary income and 28% for capital gains. A nonresident alien generally is subject to tax on dividends from U.S. corporations, as discussed below.

State Taxation

1. Income Taxes.

Illinois imposes an income tax on individuals, trusts, and estates at a flat rate of 3.75% on net income. Corporations are subject to tax at a flat rate of 5.25% on net income. Non-residents are liable for tax on Illinois source income.

Illinois follows the Internal Revenue Code in almost all regards, and state income taxes are calculated based on federal adjusted gross income with certain modifications (e.g. imposing income taxes on municipal bonds exempt from the federal income tax and modifying the timing of accelerated depreciation deductions). S Corporations and partnerships are not subject to the income tax in Illinois, and no elections are required at the state level for entity classification in addition to federal elections. But see below for the additional imposition of the Personal Property

Tax Replacement Income Tax on such entities in addition to corporations and others. The Illinois Constitution bars the imposition of income taxes by units of local government absent express authorization by the state legislature, and there are currently no income taxes imposed by local governments in Illinois. Illinois provides income tax credits for taxes paid by individuals to another state, and apportions income among states when appropriate to determine the tax base.

2. Corporate Franchise Tax.

Illinois imposes a corporate franchise tax on all Illinois corporations and all non-Illinois corporations that “transact business” in Illinois. The tax is imposed at a rate of a tenth of a

percent (0.1%) of the "paid-in capital" of a corporation allocable to Illinois and is paid annually. The maximum annual franchise tax is $2 million.

Although the statute does not define what constitutes transacting business, it does list activities that do not constitute transacting business. These exceptions include, but are not limited to, holding board meetings, selling through independent contractors, maintaining an office for the transfer, exchange, and registration of a company's own securities, and having a corporate officer or director who is a resident of Illinois. Maintaining a physical presence in the state through a business location, maintaining a stock of goods in the state, and having employees perform services in the state on a regular basis are some of the activities that are considered to be transacting business in the state.

Paid-in capital can be a trap for the unwary. It is the sum of: (i) consideration received by a corporation for issuing its shares to shareholders; (ii) contributions of capital to the corporation by its shareholders; and (iii) amounts transferred to paid–in capital by corporate actions such as issuing a share dividend (due to reclassification of corporate equity). This is especially important in the context of a merger, where paid-in capital will almost invariably increase. A reduction of paid-in capital requires a resolution of the board of directors except in extremely limited circumstances. Paid-in capital can be allocated for the purposes of franchise taxes based on gross receipts from Illinois business and property located in Illinois.

In addition to the annual franchise tax, Illinois also imposes an initial franchise tax and an additional franchise tax. The initial franchise tax and additional franchise tax are assessed at a higher rate than the annual franchise tax, and the additional franchise tax is not subject to a cap. Both the initial franchise tax and the additional franchise tax are imposed when capital is first "added" to a corporation—be it when the corporation is first formed (the initial franchise tax) or when paid-in capital increases over a previous year (additional franchise tax).

3. Personal Property Tax Replacement Income Tax ("PPRT").

Corporations, partnerships, and public utilities are subject to the PPRT. The PPRT is imposed on Illinois-source income or by virtue of being a resident of Illinois (e.g. a domestic corporation). The PPRT for C Corporations is 2.5% of income, and it is imposed on the same base as the income tax. S Corporations, partnerships, and trusts are subject to the PPRT at a rate of 1.5% of income.

The tax base for S Corporations is the taxable income as determined for S Corporations by the Internal Revenue Code. Similarly, partnerships are subject to the PPRT based on partnership income plus all separately stated items (e.g. capital gain income). As with the corporate income tax base, income is allocated to Illinois and other states to determine the tax base for Illinois.

The Illinois Constitution of 1970 places significant restrictions on the ability of local government to impose taxes, which includes a ban on imposing *ad valorem* personal property taxes. Funds raised by the PPRT are distributed to local governments to compensate them for the state constitutional limits on their ability to impose taxes.

4. Sales & Use Taxes.

Illinois imposes sales and use taxes at a state rate of 6.25% on the price at which an item of tangible personal property is sold. Local jurisdictions, including transportation districts, are also able to impose sales and use taxes on the same items as the state. Municipalities are allowed to impose sales and use taxes in ¼% increments with no maximum rate.

Sales and use tax in Illinois is made up of four separate taxing statutes: The Retailers' Occupation Tax, which is a sales tax imposed on sales at retail, the Use Tax, which is generally imposed where a purchase of tangible personal property is made outside the state for use in the state, the Service Occupation Tax, and the Service Use Tax, both of which are imposed on tangible personal property transferred by service persons to customers either in Illinois (Service Occupation Tax) or outside Illinois for use in the state (Service Use Tax). Importantly, the Service Occupation and Service Use Taxes are not imposed on the actual service; only the tangible personal property transferred incident to the service is subject to tax.

Although the Use Tax is generally imposed on the same base as the Retailers' Occupation Tax (price at sale), the price at sale for the purposes of the Use Tax can be reduced for reasonable depreciation before the item is brought into Illinois. Additionally, Illinois provides credits for sales taxes properly paid to other states.

5. Property Tax.

Taxes on real property in Illinois are imposed by virtually all local governments. Depending on the location the real property, there may be state limits on the amount of property tax imposed. The manner in which the value of real property is determined for property tax purposes is set by the state legislature and is uniform across the entire state. The Illinois Constitution bars the imposition of *ad valorem* personal property taxes.

6. Trusts & Estates.

Trusts and Estates are subject to income taxes as described above. Grantor trusts and trusts treated as grantor trusts are not subject to income tax in Illinois, as is the case under federal law, because the grantors (or those treated as grantors for tax purposes) are treated as the owners of the assets in the trust. Illinois imposes a state estate tax and generation-skipping tax. There is a $4 million exemption before the Illinois estate tax is applied.

7. Tax Incentives.

Illinois has generous tax incentives for businesses, which are attractive for both new and existing businesses. These incentives fall into two categories—(1) general exemptions that benefit a particular industry or activity; and (2) targeted tax incentives. General exemptions include provisions such as barring the imposition of state sales and use taxes on the purchase of manufacturing equipment.

Most of the more targeted incentives for business to relocate to Illinois or expand their operations in Illinois are income tax credits. S Corporations and partnerships generally can benefit from these income tax credits as well, as the tax credits will flow-through to the owners of these businesses in most cases. Below is a discussion of the most popular income tax credits available as of March 2016.

The most prominent of the targeted income tax credit programs in Illinois are the EDGE Credit, the Enterprise Zone Investment Credit, the River Edge Redevelopment Zone Investment Credit, and the Illinois Film Services Tax Credit. Additionally, taxpayers can earn credits against the PPRT for investing in their businesses by putting new property in service in Illinois. The PPRT credit is 0.5% of the basis of property put into service in a given year. The PPRT credit can be doubled by increasing the number of employees in Illinois. Besides these programs, there are numerous other tax incentives available for both income taxes and other taxes.

The EDGE credit is offered to businesses that locate in Illinois or expand their operations in Illinois. To qualify, the business must add to the export base of Illinois (e.g. manufacturing and exported services). Businesses must commit to make a capital investment of at least $5 million and must create a minimum of 25 new jobs. For businesses with fewer than 100 employees, the threshold is lowered to $1 million and 5 jobs.

The EDGE credit is designed to cover the cost differential of expanding or locating operations in Illinois as opposed to another state. The amount of the credit is at the discretion of the Illinois Department of Commerce and Economic Opportunity. The credit may completely eliminate Illinois state income tax liability, but is not refundable, and may last up to 10 years for each project. The credits may last up to 15 years for relocating a corporate headquarters to Illinois.

The Enterprise Zone Investment Credit and River Edge Redevelopment Zone Investment Credit programs operate similar to one another. Businesses that invest in these zones are given an income tax credit of 0.5% of the basis of property put into service in these zones. The credit for a River Edge Development Zone may be doubled if the business increases employment in Illinois. Businesses in an Enterprise Zone may also be eligible for a sales tax exemption on building materials.

The Illinois Film Service Tax Credit provides an income tax credit of 30% of amounts spent on production in Illinois. An additional 15% credit is offered on labor expenditures for residents of geographic areas of high unemployment or high poverty. In a similar vein, Illinois also offers a Live Theater Production Tax Credit, which provides a tax credit of 20% of amounts spent on production in Illinois. Like the Film Service Tax Credit, an additional 15% credit is offered on labor expenditures for residents of geographic areas of high unemployment or high poverty. Both of these credits can be transferred or sold, subject to certain conditions.

Labor and Employment

Federal Considerations

1. Immigration.

With the globalization of world markets, employers located in the United States often seek to employ foreign personnel. A variety of permanent and temporary visas are available depending on various factors such as the job proposed for the alien, the alien's qualifications, and the relationship between the United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time and often the employment authorization is limited to specific employers, jobs, and even specific work sites.

a. Permanent Residency (the "Green Card").

Permanent residency is most commonly based on family relationships, such as marriage to a United States citizen, or offer of employment. Permanent residence gained through employment often involves a time-consuming process that can take several years to obtain. Therefore, employers considering the permanent residence avenue for an alien employee should ascertain the requirements for that immigration filing prior to bringing the employee to the United States.

b. Temporary Visas.

The following are the most commonly used temporary visas:

i. E-1 Treaty Trader and E-2 Treaty Investor Visas.

E-1 Treaty Trader and E-2 Treaty Investor Visas (collectively referred to as "E visas") are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the United States. E visas are commonly used to transfer managers, executives or technicians with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its United States location. Generally, E visa holders receive a five-year visa stamp but only one-year entries at any time.

ii. H-1A and H-1B Specialty Occupation Visas.

H-1B visas are for persons in specialty occupations that require at least a bachelor's degree. Examples of such professionals are engineers, architects, accountants, and, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. H-1B visas are employer-and job-specific. H-1A visas are for registered nurses only.

iii. L-1 Intracompany Transferee Visas.

Most often utilized in the transfer of executives, managers or persons with specialized knowledge from international companies to United States-related companies, L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to seven years in certain categories. As in the case of certain E visa capacities, some L managers or executives may qualify for a shortcut in any permanent residence filings.

iv. B-1 Business Visitors and B-2 Visitors for Pleasure.

These visas are commonly utilized for brief visits to the United States of six months or less. Neither visa authorizes employment in the United States. B-1 business visitors are often sent by their overseas employers to negotiate contracts, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment for brief periods in the United States. B-1 or B-2 visitors cannot be on the United States payroll or receive United States-source remuneration.

v. TN Professionals.

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specific defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders are granted one-year stays for specific employers and other employment is not allowed without prior INS approval. Particularly with regard to Canadians, paperwork required for filing these requests is minimal.

vi. F-1 Academic Student Visas Including Practical Training.

Often foreign students come to the United States in F-1 status for academic training or M-1 status for vocational training. Students in F-1 status can often engage, within certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time. Vocational students cannot obtain curricular work authorization but may receive some post-completion practical training in limited instances.

vii. J Exchange Visitor Visas.

These visas are for academic students, scholars, researchers, and teachers traveling to the United States to participate in an approved exchange program. Training, not employment, is authorized. Potential employers should note that some J exchange visitors and their dependents are subject to a two-year foreign residence requirement abroad before being allowed to change status and remain or return to the United States.

viii. O-1 and O-2 Visas for Extraordinary Ability Persons.

O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.

ix. P-1 Athletes/Group Entertainers and P-2 Reciprocal Exchange Visitor Visas.

These temporary visas allow certain athletes who compete at internationally recognized levels or entertainment groups who have been internationally recognized as outstanding for a substantial period of time, to come to the United States and work. Essential support personnel can also be included in this category.

x. **Non-Immigrant Visas.**

There are a number of other non-immigrant visas categories that may apply to specific desired entries. When planning to bring foreign personnel to the United States, United States employers should allow several months for processing by the Immigration and Naturalization Service, as well as the Department of State and Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties, may dramatically affect (if not invalidate) the employment authorization of foreign employees.

2. Labor and Employment Statutes.

a. Age Discrimination in Employment Act ("ADEA").

The ADEA forbids discrimination based on age in employment decisions. The ADEA applies to employers engaged in interstate commerce who have twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

b. Americans with Disabilities Act ("ADA").

The ADA proscribes discrimination in employment based on the existence of a disability. Furthermore, the ADA requires that employers take reasonable steps to accommodate disabled individuals in the workplace. The Act applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

c. Employee Polygraph Protection Act ("EPPA").

The EPPA greatly restricts polygraph testing of employees. The Act applies to all employers engaged in interstate commerce. Exempted are employers whose primary business purpose is running a security service or manufacturing, distributing or dispensing a controlled substance.

d. Equal Pay Act ("EPA").

The EPA was an amendment to the Fair Labor Standards Act and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.

e. Fair Labor Standards Act ("FLSA").

The FLSA establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees.

f. Family and Medical Leave Act ("FMLA").

The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child or the serious health condition of the employee or the spouse, parent or child of the employee. This Act applies to all employers engaged in commerce where the employer employs fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

g. Federal Contractors.

Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations under Executive Order 11246 and the Vocational Rehabilitation Act. Certain federal contractors are also covered by the Drug-Free Workplace Act.

h. Other Federal Regulations.

Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug test employees who drive motor vehicles of over 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.

i. National Labor Relations Act and Labor Management Reporting and Disclosure Act.

These statutes set forth the guidelines governing labor-management relations. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act are not subject to these Acts.

j. Occupational Safety and Health Act ("OSHA").

OSHA created the mechanism for establishing and enforcing safety regulations in the workplace. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees.

k. Title VII.

Title VII is the broad civil rights statute that forbids discrimination in hiring based on race, religion, gender and national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

l. Worker Adjustment Retraining and Notification Act ("WARN").

WARN requires employers to give sixty days notice to their employees of plant closings or mass layoffs. This Act applies to all businesses that employ 100 or more employees, excluding part-time employees, and to businesses that employ 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime).

m. Immigration Reform and Control Act ("IRCA").

IRCA requires that employers verify employment authorization for all employees hired on or after November 6, 1991. Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers or discriminating against persons who appear or sound foreign.

3. Employee Benefits.

a. Employee Retirement Income Security Act of 1974 ("ERISA").

ERISA governs implementation and maintenance of most types of employee benefit plans, including most retirement programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance policies. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA generally preempts state laws governing employee plans and arrangements.

b. Consolidated Omnibus Budget Reconciliation Act ("COBRA").

COBRA requires employers to make continuing coverage under medical reimbursement and health care plans available to certain terminated employees, at the cost of the employees. The usual period for which this coverage must be continued is eighteen months. COBRA contains very specific procedures for notifying terminated employees of their COBRA rights.

State Considerations

1. At-Will Employment.

Illinois is an at-will employment state, meaning either the employer or the employee are free to terminate the employment relationship at any time for any reason, or for no reason at all. There is a presumption of employment being at-will unless proven otherwise. Although employers may generally fire employees for any reason, Illinois law provides for certain public policy exceptions to the at-will employment doctrine. That is, employers are prohibited from terminating employees for reasons that violate clearly mandated public policies. There is no strict definition for what constitutes a mandated public policy. The most common public policy exception is when an employee is terminated in retaliation for exercising their constitutional or statutory rights, or otherwise supporting or assisting others in exercising their rights. This includes, for example, employees pursuing a claim for workers compensation benefits, exposing possible crimes of the employer, or filing a claim of discrimination.

2. Discrimination.

The Illinois Constitution prohibits discrimination on the basis of race, color, creed, national ancestry, and sex in hiring and employment actions. The Constitution further provides that employers may not discriminate against employees with physical or mental handicaps that are unrelated to the employee's ability to perform the job in employment decisions.

In addition to the Illinois Constitution, the Illinois Human Rights Act ("IHRA"), 775 ILCS 5/2-101 *et seq*., prohibits employers from "refus[ing] to hire, to segregate, or to act with respect to recruitment, hiring, promotion, renewal of employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges or conditions of employment on the basis of unlawful discrimination or citizenship status." 775 ILCS 5/2-102(A). The IHRA applies to any employer in Illinois with 15 or more employees during a 20 week period at anytime in the preceding 12 months. Unlawful discrimination includes adverse employment actions based on national origin, age when the employee is at least 40 years old, physical or mental handicap, marital status, gender, religion, citizenship status, sexual orientation, or status as active military duty or veteran.

a. Sexual Harassment.

The IHRA prohibits an employer or any of its employees from engaging in sexual harassment. An employer is only liable for sexual harassment committed by a non-supervisory employee if the employer becomes aware of the misconduct and does not take reasonable corrective actions in response.

b. Pregnancy.

Employers are prohibited from discriminating "on the basis of pregnancy, childbirth, or medical or common conditions related to pregnancy or childbirth." 775 ILCS 5/2-102(I). Employers are required to make reasonable accommodations for such employees or job applicants

upon request, unless the employer can demonstrate that providing the accommodation would impose an undue hardship. The IHRA provides a detailed description of what constitutes a reasonable accommodation, as well as providing a list of potential accommodations. Whether a requested accommodation creates an undue hardship will be considered based on the nature and cost of the accommodation, the financial resources of the employer and the facility at which the employee works, and the employer's type of operation.

c. **Arrests and Convictions.**

Employers may not inquire into or use the fact of an individual's arrest or criminal history record information ordered expunged, sealed or impounded under Section 5.2 of the Criminal Identification Act when making employment decisions. This prohibition on using the fact of an arrest does not limit employers from considering, obtaining, or using "other information which indicates that a person actually engaged in the conduct for which he or she was arrested." 775 ILCS 5/103(B).

d. **Retaliation.**

In addition to prohibiting discrimination, the IHRA makes it illegal for employers to treat an employee adversely because he or she opposed an illegal employment practice, filed a charge of discrimination, or participated in an investigation of a claim.

e. **Notice Requirement.**

Employers are required to post in a conspicuous location a detailed statement of employees' rights under the IHRA. As an alternative, the employer may place the notice in an employment handbook.

3. Employee Compensation.

Minimum Wage. The Illinois Minimum Wage Law, 820 ILCS 105/1 *et seq*., mandates that employees be paid at least $8.25 per hour, however non-tipped employees may be paid $7.75 per hour for the first 90 days of employment. In addition, employees under the age of 18 may be paid $7.75 per hour. The City of Chicago requires that employees working within the City be paid $10.00 per hour. Effective July 1, 2016, the Chicago minimum wage is $10.50 per hour.

a. Overtime Wages.

Employers must pay an employee who works more than 40 hours in a workweek overtime, which is defined as one-and-one-half times the employee's normal rate of pay. Employers are not required to pay overtime to employees who work in executive, administrative, or professional positions as defined under the federal Fair Labor Standards Act.

b. Payment of Wages.

The Illinois Wage Payment and Collection Act, 820 ILCS 105 *et seq.*, applies to any employer with one or more employees in Illinois. Employers must notify employees at the time they are hired what the employee's rate of pay will be, and the Act encourages that the notification be made in writing wherever possible.

Employees must be paid at least twice per month, however wages for employees who work in executive, administrative, or professional positions as defined under the federal Fair Labor Standards Act may be paid monthly. All employees must receive their wages no later than 13 calendar days after the pay period ends. Employers must pay terminated employees their final wages "at the time of separation, if possible, but in no case later than the next regularly scheduled payday." 820 ILCS 115/5. These provisions do not apply to employees working under a collective bargaining agreement.

c. Penalty.

An employer who fails to timely pay wages or final compensation is subject to a civil action, and an injured employee may recover the improperly withheld wages, plus a penalty of 2% of the amount of the withheld wages for each month the wages were not properly paid.

d. Deductions from Wages.

Employers are not permitted to deduct amounts from an employee's wages unless the deductions are (1) required by law; (2) for the benefit of the employee; (3) in response to a wage assignment or deduction order; or (4) made with the employee's freely given written consent at the time the deduction is made.

e. Unemployment Compensation.

The Illinois Department of Employment Security collects a tax from employers that is then used by the Department to administer unemployment insurance benefits. Employers are required to register with the Department within 30 days of starting a business in Illinois. Generally, most employers in Illinois are subject to paying the unemployment tax if they have either (1) paid $1,500 USD in wages during a single four month period, or (2) employed one or more person during a 20 week period during a calendar year.

Employers must file quarterly wage and unemployment insurance contribution reports with the Illinois Department of Employment Security. Failure to timely file the report can result in a fine equal to $5 for each $10,000 in total wages paid during the quarter, or $2,500 per month, whichever is less, with a maximum penalty of $10,000 per quarter.

Employers are required to post a notice, in a conspicuous place, describing workers' unemployment rights. Employers must also provide employees who leave the company with a pamphlet written by the Illinois Department of Employment Security.

4. Workers' Compensation.

The Illinois Workers' Compensation Act, 820 ILCS 305/1 *et seq*., requires that employers obtain workers' compensation insurance or apply to be self-insured. Workers' compensation insurance covers employees who sustain an injury or occupational disease in the course of employment. Employers may not pass the cost of workers' compensation insurance on to employees. The requirement to carry insurance or be self-insured applies to employers with one or more employee. Employers are prohibited from discriminating against employees for exercising their rights under the Act.

a. Notice to Employees.

Employers are required to post a notice in a conspicuous place identifying the employer's workers' compensation insurance carrier and giving an explanation of injured workers' rights.

b. Record-Keeping Requirements.

Employers must keep records of employment-related injuries and report to the Illinois Workers' Compensation Commission any injury that involves an employee missing more than three workdays. Employers must report the death of an employee resulting from a workplace injury or disease within two days of the death.

c. Penalty.

An employer that fails to obtain workers' compensation insurance, or apply and be approved to be self-insured, may be found guilty of a misdemeanor, and a Class 4 felony if the failure is found to be knowing.

d. Notice of Mass Layoffs or Plant Closings.

The Illinois Worker Adjustment and Retraining Notification Act, 820 ILCS 65/1 *et seq.*, also known as the Illinois WARN Act, requires that employers provide at least 60 days notice to employees of an impending mass layoff, relocation, or employment loss. The Act applies to employers who have 75 or more full-time workers, or 75 or more employees who work, in the aggregate, 4,000 hours a week exclusive of overtime. In the case of the sale of a business, the seller is required to provide the required WARN Act notice through the effective date of the sale. After the sale, the purchaser is required to provide notice.

A mass layoff, relocation, or employment loss is defined as the termination of an employee without cause or because of a voluntary separation; a layoff lasting more than 6 months; or the termination or reduction in hours of more than 50% of employees during a 6 month period. The Act also applies where an employer closes a single site of employment that results in 50 or more full time employees losing employment during a 30 day period. However, employment loss or plant closing does not include instances where the mass layoffs results from relocation or consolidation of a business and, prior to closing, the employer offers to transfer the employee to a

different employment site within a reasonable commuting distance. An employment loss does not occur for purposes of the Illinois WARN Act if the employer offers to transfer the employee to another location, regardless of distance, and the employee accepts the transfer.

An employer that fails to give the required 60 days notice is liable to each effected employee for (1) back pay at the employee's average rate of pay over the past 3 years for each day the notice was not provided, up to the 60 day requirement; and (2) the value of any lost employment benefits the employee otherwise would have been entitled to receive but for the mass layoff or plant closing. In addition to penalties owed to each employee, employers are also subject to a civil penalty of not more than $500 per day for each day the notice was not provided. An employer can avoid the civil penalty if the employer pays employees the sums identified above within 3 weeks from the date the employer ordered the mass layoff or plant closing.

e. "Whistleblower" Protections.

The Illinois Whistleblower Act, 740 ILCS 174/1 *et seq*., provides that an "employer may not make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of State or federal law, rule, or regulation." 740 ILCS 174/10. The Act also prohibits employers from retaliating against any employee who discloses information to a law enforcement agency if the employee believes a violation is occurring. The Act applies to any employer with one or more employees within Illinois.

An employer who violates the Act can be found guilty of a Class A misdemeanor. In addition, employees can file a civil action and be compensated with "all relief necessary to make the employee whole," including but not limited to reinstatement of employment, back pay for time out of work, and damages resulting from the violation, as well as attorneys' fees and costs in bringing a civil action.

f. Employee Access to Employment Records.

The Illinois Personnel Review Act, 820 ILCS 40/1 *et seq.*, governs employee access to their personnel records. The Act applies to employers with five or more employees. Under the Act, employees are entitled to request to view records in their personnel file related to determining the employee's qualifications for employment, promotion, transfer, additional compensation, discharge, or other disciplinary action. Employees may request to review their personnel files up to two times in a calendar year unless a collective bargaining agreement provides otherwise.

Employers may require that an employee's request to review his or her personnel file be made in writing on a form supplied by the employer. The records must be made available within 7 working days of the request, unless the employer can show that the request cannot be reasonably met, in which case the employer will then be granted an additional 7 days to comply. Employees are not permitted to remove any part of the personnel file during their review.

Employees are entitled to receive a copy of the documents in their personnel file, and the employer may charge the employee a fee for doing so, but the fee must be limited to the actual

duplication costs. If an employee submits a signed, written request, the employer must make the employee's personnel file available to the employee's representative.

The Act prohibits an employer from disclosing any "disciplinary report, letter of reprimand, or other disciplinary action" to a third party without first providing written notice to the employee in question. The notice must be mailed by first-class mail to the employee's last known address on or before the day the information is disclosed to a third party. The notice requirement does not apply if the employee has provided a written waiver of such notice, such as in an employment agreement. Even if the employer provides written notice or the employee has waived notice, the employer is prohibited from disclosing any disciplinary action contained in a personnel record that is more than four years old. The Act requires employers to review each personnel record prior to disclosure to a third party and remove materials related to discipline occurring more than four years prior.

g. Employee References.

Illinois law grants immunity to an employer "who, upon inquiry by a prospective employer, provides truthful written or verbal information, or information that it believes in good faith is truthful, about a current or former employee's job performance…" 745 ILCS 46/10. In such a situation, the employer is presumed to be acting in good faith. That presumption can be rebutted by evidence that the employer knowingly disclosed false information or otherwise violated the employee's civil rights.

h. Employment Records Retention Requirements.

Employers are required to keep various records related to each applicant and employee. For applicants, employers must retain the following records for one year after an application is submitted:

- Employment applications, resumes, other documents submitted in conjunction with an application for employment, and any interview notes or forms;
- Aptitude or qualifying tests and results;
- Personal history or background examination reports; and
- Medical history or physical examination reports.

For one year after an employee is terminated, employers must retain the following:

- The employee's personnel file, including performance evaluations;
- Records reflecting the employee's attendance at work; and
- Any disciplinary, reprimand, suspension, layoff, or termination documents.

In addition, for a period of three years, employers are required to maintain records of employees' names, addresses, number of vacation days used and paid, rate of pay, and wages earned and paid.

i. Employment of Minors.

Illinois' Child Labor Law Act prohibits employing minors under the age of 12. Minors between the ages of 13 and 16 are generally permitted to work outside of school hours and during school breaks, except in certain industries or occupations expressly identified in the Act. Minors under 16 years of age are prohibited from working more than 6 consecutive days in any one week, for more than 48 hours in any one week, for more than 8 hours in one day on a non-school day, or for more than 3 hours in a day on a school day. Moreover, they are prohibited from working between 7:00 p.m. and 7:00 a.m. between Labor Day and June 1, and 9:00 p.m. and 7:00 a.m. from June 1 to Labor Day. Minors are entitled to a 30 minute meal break for each 5 consecutive hour period they work.

Minors must obtain a certificate from their school superintendant before commencing work. The certificate is valid only for the employer identified on the form. Employers are required to maintain the certificate on the site where the minor is employed and immediately return the certificate to the superintendant upon the termination of the minor's employment.

Employers who are found to have violated the Act are subject to a civil penalty of not more than $5,000 for each violation. If the violation is found to be willful, the employer is guilty of a misdemeanor.

Environmental Law

Federal Considerations

1. Resource Conservation and Recovery Act ("RCRA"): 42 U.S.C. 6901, *et seq.*

RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been delegated to a number of states by statute and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. Section 7003 of RCRA authorizes the Federal Environmental Protection Agency ("EPA") to bring suit against any person or entity contributing to the handling, storage, treatment or disposal of a hazardous waste in a manner presenting an imminent and substantial endangerment to health or the environment.

RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984, which added new requirements pertaining to groundwater contamination. Currently, a permit for a treatment, storage or disposal facility must detail required corrective action for any release of hazardous waste from any solid waste management unit, regardless of when the waste was placed on the site.

2. The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"): 42 U.S.C. 9601, *et seq.*

CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of abandoned disposal sites. It also provides a vehicle for the EPA to recover for damage to natural resources caused by hazardous substance releases. This statute has possibly generated more litigation and controversy in the past decade than any other federal legislation.

CERCLA allows the government and private parties to sue "potentially responsible parties," or "PRPs" for reimbursement of clean-up costs caused by releases, actual or threatened, of hazardous substances. Liability is strict, joint and several, with little or no regard for causation. By statute, there are four categories of persons liable for clean-up costs:

- "Owners or operators" of the contaminated facility. A "facility" is virtually any place in which a hazardous substance is found. The current owner or operator is liable, regardless of when the hazardous substance was disposed of at the facility and whether the present owner or operator did anything to contribute to the release.

- "Owners or operators" of the facility at the time of release of the hazardous substances. Any person who contracted or arranged to have hazardous substances taken to, disposed of, or treated at a facility. This category generally applies to generators and manufacturers.

- Transporters of hazardous substances.

There are limited defenses under Superfund that are narrowly construed. A PRP can escape liability if it can establish that the hazardous substance release was caused solely by an act of war, an act of God, or an act of unrelated third parties. This latter "third party" defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

3. The Clean Air Act ("CAA"): 42 U.S.C. 7401, *et seq.*

The CAA regulates air pollutants under federal standards implemented and enforced by the states. The Act was amended in 1990 to add several new programs, including acid rain control and stratospheric ozone protection programs, coupled with modification of existing programs for attaining the national ambient air quality standards ("NAAQS") and reducing emissions of hazardous air pollutants. Because of the nature of air pollution and its sources, this program is generally considered to be the most complex of the federal environmental programs.

Under the Act, air emissions are regulated through various controls. The sources that will be affected range in size from large petrochemical complexes to neighborhood dry cleaners. The CAA, as amended, requires a new operating permit for all "major" air sources, with state administration and enforcement. A significant new feature is a permit fee based on tons of pollutants emitted on an annual basis; the permit fees are to fund and support the state operating permit programs.

4. The Clean Water Act ("CWA"): 33 U.S.C. 1251, *et seq.*

The CWA regulates the discharge of pollutants into all navigable waters. The CWA prohibits the discharge of any pollutant into the water of the U.S. unless a permit has been issued. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. The permit limits are based upon the EPA's effluent limitation regulations and are incorporated into a National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA effluent limitations for industrial dischargers will also specify standards for pretreatment for those who discharge to a publicly owned treatment work. In 1990, EPA promulgated new rules regarding permits for storm water discharges under the NPDES permit program.

State Considerations[1]

1. State Environmental Organizations.

The most common Illinois environmental forums are created by statute. Today, most environmental matters are handled by the Illinois Environmental Protection Agency ("IEPA"), the Illinois Pollution Control Board ("IPCB"), and the Illinois Department of Natural Resources ("IDNR").

The Illinois General Assembly became the first state legislature in the nation to adopt a comprehensive Environmental Protection Act, 415 ILCS 5/1 *et seq.*, which became effective on July 1, 1970. Regulations and adjudications are determined by the IPCB. The IEPA functions as the investigation, permitting, and enforcement arm.

a. Illinois Environmental Protection Agency.

The IEPA is divided into bureaus (Air, Land, and Water) and further subdivided by function. The most likely IEPA interaction will be in the context of permits, enforcement, regulatory relief (*i.e.*, variances, site-specific rules, and adjusted standards), negotiations regarding upcoming regulations, and remediation of soil or groundwater. Today, the IEPA is composed of roughly 1,200 employees, working in the headquarters in Springfield and in nine field offices and three laboratories throughout the state.

b. Illinois Pollution Control Board.

The IPCB also was created with the original 1970 enactment of the Environmental Protection Act as a quasi-legislative, quasi-judicial administrative agency for environmental matters. The IPCB is a relatively small agency consisting of 5 voting board members and a staff of approximately 20 attorney assistants, administrative personnel, and scientific staff. Board members are nominated by the Governor and confirmed by the Senate for a three-year term of office.

Most adjudicative matters come to the IPCB by formal document filings; the IPCB has no direct investigative functions. While the IPCB has authority to initiate its own regulatory proceedings, and frequently does for its own procedural rules, the IPCB rarely proposes substantive regulations on its own motion. The IPCB does adopt regulations that are identical in substance to federal regulations in certain limited substantive areas. Most regulatory matters are initiated before the IPCB by the IEPA, usually in response to some federal requirement.

Each formal regulatory matter that comes before the IPCB is assigned a docket number. Regulatory matters are usually assigned by the IPCB chair to one or more board members. These board members, their attorney assistants, and the scientific staff are responsible for conducting the required hearings and developing an adequate record. The proceeding before the IPCB will be under the direction of an attorney assistant acting as a hearing officer. The record will consist of

[1] Some research and writing originally prepared by Jenner & Block lawyers for the Illinois Institute for Continuing Legal Education and its various environmental law publications.

transcripts from the hearings, exhibits offered at hearings, formal filings by the participants, and any public comments received by the IPCB. Once the record is deemed complete, the matter will be taken under advisement by the IPCB for deliberation and decision.

Adjudicatory proceedings (*i.e.*, enforcement, variances, permit appeals), also called contested cases, are initiated before the IPCB with a formal legal filing. The majority of the enforcement proceedings are filed by the Office of the Illinois Attorney General although there are a significant number of citizen-initiated enforcement actions. Variances and permit appeals are typically filed by the individual facility subject to the environmental obligation. Citizens can also file permit appeals if they disagree with the final permit issued by the IEPA. Contested cases are managed by an IPCB hearing officer; no board member need attend the hearings. The hearing officer does not issue a draft order or findings of fact. Once the record is deemed complete, the matter will be taken under advisement by the IPCB for deliberation and decision.

Since the Environmental Protection Act was adopted in 1970, the IPCB has been the primary forum for civil environmental enforcement in Illinois. The original basis for proceeding before the IPCB was that these matters were technically complex and should be heard by a specialized tribunal whose members were technically qualified —the IPCB. Historically, the Office of the Illinois Attorney General has filed few enforcement actions in the circuit courts, mostly only when there was an ongoing violation for which injunctive relief may be necessary (which is not relief that can be requested by the IPCB). This pattern may be changing, however, as there is a growing tendency for the Attorney General's Office to file civil environmental enforcement actions in the circuit courts even when there is no ongoing violation for which injunctive relief is necessary.

c. Illinois Department of Natural Resources.

The IDNR has expanded over the last ten years and often is considered a "super" agency as to matters associated with natural resources and environmental issues. IDNR responsibilities include oversight and support of regulatory programs, including endangered species, mines and minerals, oil and gas resource management, and water resources. In addition, IDNR has maintained its traditional mission of managing public access to the state's natural resources and wilderness areas, including parks/recreation, hunting/trapping, fishing and boating.

d. Other State Agencies.

For most of the conflicts, the IEPA and the IPCB will be the most likely environmental forums. However there are a number of other state agencies with environmental responsibilities. For example, the Office of the State Fire Marshal plays a significant role in the regulation and removal of underground storage tanks. The Department of Natural Resources regulates mines and minerals, as well as streams and rivers and locks and dams. The Department of Agriculture regulates pesticides and licenses pesticide applicators. The Illinois Emergency Management Agency has significant programs for nuclear safety, as well as reporting and notification requirements for chemical safety issues, including the release of hazardous materials.

e. Local Environmental Authorities.

In any given jurisdiction, there may be a number of environmental entities. One of the largest local organizations is the Metropolitan Water Reclamation District of Greater Chicago ("MWRDGC"). With a budget of around $1 billion and about 2,000 employees, the MWRDGC accepts and treats wastewaters from industries, businesses, and residents in the greater Chicago metropolitan area. Industries or businesses that discharge to sewers need permits or approval to discharge and are subject to monitoring and enforcement for noncompliance with any MWRDGC requirements.

Both the City of Chicago and Cook County have established departments that are tasked with addressing environmental issues. Both governments have adopted environmental control ordinances that require securing permits for certain types of operations and establish control requirements. Other local jurisdictions in Illinois have adopted ordinances that have an environmental component.

Generally, local environmental ordinances are not more stringent than state standards. Many local government environmental agencies operate under a formal or informal agreement with the IEPA. Any environmental problems they discover will be referred to the IEPA for investigation and possible enforcement. Other local government environmental agencies operate purely under the authority of their local ordinances. Any discovered violations are likely to be referred to the law department or corporation counsel for enforcement, frequently in municipal court.

f. Illinois Attorney General, State's Attorney, or Municipal Corporation Counsel.

The Environmental Protection Act provides a specific role for the Attorney General or a state's attorney in prosecuting environmental enforcement before the IPCB. *See* 415 ILCS 5/31(c)(1) or in the circuit courts (*see* 415 ILCS 5/42(e). In addition, these prosecuting authorities and municipal authorities may pursue claims based on common law or local ordinances. Their role is not only limited to enforcement. The Attorney General has become involved, on occasion, in regulatory proceedings, permit appeals, and variances.

2. State Environmental Laws.

a. IPCB and IEPA Regulations.

Because the IPCB acts in a formal manner by pleadings, hearings, motions, and written opinions, it has developed a series of procedural rules about activities before it. Most of the IPCB procedural regulations are found at 35 Ill.Admin. pt. 101, in the following subparts:

Subpart A — General Provisions (35 Ill.Admin. Code §§101.100 – 101.114);

Subpart B — Definitions (35 Ill.Admin. Code §§101.200, 101.202);

Subpart C — Computation of Time, Filing, Service of Documents, and Statutory Decision Deadlines (35 Ill.Admin. Code §§101.300 – 101.308);

Subpart D — Parties, Joinder, and Consolidation (35 Ill.Admin. Code §§101.400 – 101.408);

Subpart E —Motions (35 Ill.Admin. Code §§101.500 – 101.522);

Subpart F — Hearings, Evidence, and Discovery (35 Ill.Admin. Code §§101.600 – 101.632);

Subpart G — Oral Argument (35 Ill.Admin. Code §101.700);

Subpart H — Sanctions (35 Ill.Admin. Code §§101.800, 101.802); and

Subpart I — Review of Final Board Opinions and Orders (35 Ill.Admin. Code §§101.902 – 101.908).

The IPCB's substantive regulations are found at 35 Ill.Admin. Code in the following subtitles:

Subtitle B — Air Pollution (35 Ill.Admin. Code pts. 201 – 245);

Subtitle C —Water Pollution (35 Ill.Admin. Code pts. 301 – 312);

Subtitle D —Mine Related Water Pollution (35 Ill.Admin. Code pts. 401 – 406);

Subtitle E — Agriculture Related Water Pollution (35 Ill.Admin. Code pts. 501 – 506);

Subtitle F — Public Water Supplies (35 Ill.Admin. Code pts. 601 – 620);

Subtitle G —Waste Disposal (35 Ill.Admin. Code pts. 702 – 848);

Subtitle H — Noise (35 Ill.Admin. Code pts. 900 – 910);

Subtitle I — Atomic Radiation (35 Ill.Admin. Code pts. 1000, 1010);

Subtitle J — Clean Construction or Demolition Debris (35 Ill.Admin. Code pt. 1100);

Subtitle M — Biological Materials (35 Ill.Admin. Code pts. 1420 – 1422); and

Subtitle O — Right to Know (35 Ill.Admin. Code pt. 1600).

The IEPA promulgated general regulations affecting a wide variety of actions that the IEPA takes in the following code sections:

2 Ill.Admin. Code pt. 1828 — Access to Public Records of the Illinois Environmental Protection Agency;

35 Ill.Admin. Code pt. 164 — Procedures for Informational and Quasi-Legislative Public Hearings;

35 Ill.Admin. Code pt. 166 — Procedures for Permit and Closure Plan Hearings;

35 Ill.Admin. Code pt. 168 — Procedures for Contested Case Hearings;

35 Ill.Admin. Code pt. 170 — Procedures for Coordinated Permit Review;

35 Ill.Admin. Code pt. 174 — Delegation of Construction and Operating Permit Authority for Sanitary and Combined Sewers and Water Main Extensions;

35 Ill.Admin. Code pt. 180 — Procedures and Criteria for Reviewing Applications for Provisional Variances;

35 Ill.Admin. Code pt. 181 — Toxic Pollution Prevention Innovation Plans;

35 Ill.Admin. Code pt. 182 — Procedures for Review of Petitions for Mercury Product Exemptions;

35 Ill.Admin. Code pt. 184 — Licensing of Industrial Hygienists;

35 Ill.Admin. Code pt. 185 — Environmental Laboratory Certification Fee Rules;

35 Ill.Admin. Code pt. 186 — Accreditation of Environmental Laboratories; and

35 Ill.Admin. Code pt. 187 — Regulatory Innovation Projects.

In addition, the IEPA has regulations for specific substantive areas in Subtitles B – O of Title 35 of the Illinois Administrative Code. For each substantive regulatory area (each subtitle), the IPCB's regulations are in Chapter I of the regulations and the IEPA's regulations are in Chapter II.

b. Illinois Brownfield Legislation.

There is no shortage of contaminated properties on the market. One of the unforeseen and unintended consequences of the environmental regulation of industrial activity has been to encourage the abandonment of former industrial properties. These abandoned former industrial sites are often referred to as "brownfields." CERCLA defines "brownfield sites" as abandoned, idled, or underused industrial and commercial facilities at which expansion or redevelopment is complicated by real or perceived environmental contamination. 42 U.S.C. §9601(39). Similarly, the IEPA defines a "brownfields site" or "brownfields" as "a parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment." 415 ILCS 5/58.2. The federal and Illinois definitions focus on the unrealized developmental potential of these sites, identifying the problem of how to return brownfield sites

to productive use. At the same time, changes in demand and land use have made it important to determine how to convert former industrial sites to new residential uses.

A related issue, and one that may have been responsible in part for the brownfield phenomenon, is the issue of "how clean is clean." Removing every last molecule of contamination from every property to meet residential standards has proven unrealistic, discouraging owners or prospective owners from pursuing development of contaminated sites. This phenomenon has been most visibly expressed in the cleanup of Superfund sites under CERCLA, the average cleanup for which, historically, has taken over a decade to complete. Experience with the CERCLA program led to a growing awareness that remediation can be substantially expedited and made significantly more cost effective. This occurs because the focus is on the actual risks presented by a site, which take into account site-specific factors, such as the proposed use of the site and the potential pathways of exposure in existence at the site, while still protecting human health and the environment.

In December 1995, the Illinois General Assembly responded to these issues by enacting P.A. 89-431 (eff. Dec. 15, 1995) and P.A. 89-443 (eff. July 1, 1996), which amended the IEPA, adding the Illinois site remediation, or brownfield, statute under Title XVII of the Act, 415 ILCS 5/58, *et seq.* The brownfield statute is intended to achieve the following objectives: (1) establish a risk-based system of remediation based on the protection of human health and the environment, taking into account the present and future use of land; (2) establish means to ensure that the land use for remediated sites will not be changed without consideration of the adequacy of the remediation for the new land use; (3) provide incentives to the private sector to undertake remediation of brownfield sites; (4) establish expeditious alternatives for the review of site investigation and remedial activities, including a privatized review process; (5) ensure that the resources of the Hazardous Waste Fund are used in a manner that is protective of human health and the environment relative to present and future uses of the site and the surrounding area; and (6) provide assistance to units of local government for the remediation of properties contaminated or potentially contaminated by commercial, industrial, or other uses; providing loans for the redevelopment of brownfields; and establishing and providing for the administration of the Brownfields Redevelopment Fund. 415 ILCS 5/58.

To meet these objectives, the IEPA proposed, and the IPCB adopted, two separate regulatory schemes: the regulations for the Tiered Approach to Corrective Action ("TACO") objectives, 35 Ill.Admin. Code pt. 742, which address the first two objectives by creating a methodology for establishing risk-based remediation objectives; and the Site Remediation Program ("SRP") regulations, 35 Ill.Admin. Code pt. 740, which address the remaining objectives by creating a program for the remediation of contaminated sites under IEPA oversight. Essentially, the SRP provides the process to follow, and the TACO regulations provide the substantive standards for the cleanup under the future use scenario chosen for the site. Used together, the SRP provides a prompt mechanism to use the flexible and predictable cleanup standards of the TACO regulations.

c. Overview of the Site Remediation Program.

The SRP establishes procedures for (a) the investigation and remediation of sites at which there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and (b) the IEPA's review and approval of the investigation and remediation activities. 35 Ill.Admin. Code §740.100(a). The sites to be remediated pursuant to the SRP are those that have fallen through the cracks in the existing regulatory scheme; they are too small to warrant the attention of the Superfund program under CERCLA and are not subject to the remediation requirements of the program under the Resource Conservation and Recovery Act of 1976 (RCRA), Pub.L. No. 94-580, 90 Stat. 2795, which deals with hazardous waste storage sites. By number, they include the vast majority of contaminated sites. Typical SRP sites include the abandoned industrial properties referred to as "brownfields" and also include sites that currently are being used for productive purposes but that may have areas of contamination from historic operations for which there is no clear regulatory requirement mandating that corrective action be taken. The SRP offers a voluntary program for responsible parties to address contamination and receive the approval of the IEPA for the remediation. It establishes procedures to be followed in assessing and addressing contamination at a remediation site, requirements for submissions to the IEPA, and deadlines for IEPA action. It also establishes procedures for review of the IEPA's decisions regarding SRP submittals through appeals to the IPCB.

Examples of the activities that the IEPA may provide during the SRP process include reviewing and evaluating various reports, collecting and analyzing samples, assisting with community relations, helping with communications with other government bodies, and various other activities as requested. *See* the overview of the SRP process at www.epa.state.il.us/ land/site-remediation/overview.html.

Successful remediation of a site in accordance with the requirements of the SRP will result in the IEPA's issuance of a No Further Remediation ("NRF") letter for the site appropriate to the scope of the remediation. 415 ILCS 5/58.7(d)(4). If the remediation is limited to take advantage of the flexibility of the tiered approach to corrective action objectives rules, then the NFR letter may contain restrictions on the use of the property or other requirements to ensure that human health and the environment are still protected. An NFR letter constitutes prima facie evidence that the site, when used in accordance with the terms of the NFR letter, does not constitute a threat to human health or the environment and does not require further remediation under the Environmental Protection Act. 415 ILCS 5/58.10(a). Obtaining an NFR letter for a site can significantly increase the value of a site when a sale or other transfer is contemplated and can be of great value to site owners using their property as collateral for funding.

Participation in the SRP is voluntary, and any person performing investigation and remediation activities may elect to proceed under the SRP. This person is known as the "remediation applicant." *See* 415 ILCS 5/58.2. However, certain sites subject to alternative remedial obligations under other remedial programs cannot proceed under the SRP. These include Superfund sites listed on the National Priorities List pursuant to CERCLA and those subject to a federally delegated program or RCRA's solid waste or hazardous waste programs, as well as those being remediated pursuant to a court order. 35 Ill.Admin. Code §740.105(a).

d. Leaking Underground Storage Tank Program Sites.

The IEPA's Leaking Underground Storage Tank ("LUST") program supervises remedial activities after a release from an Underground Storage Tank ("UST") is reported to the Illinois Emergency Management Agency ("IEMA"). All releases from USTs are reported to the IEMA first, and the IEMA notifies the IEPA of the release. Under the LUST program, once the site meets its remediation objectives and the program requirements, the IEPA issues a no further remediation letter for the LUST site. *See* the description of the LUST program at www.epa.state.il.us/land/lust/introduction.html. For some USTs, there is partial reimbursement of costs from the Illinois UST Fund.

3. Permitting.

The EPA assigns most environmental permitting obligations to the IEPA. *See* 415 ILCS 5/39. The permit process begins when applicants submit permit applications. The IEPA's website contains many environmental permit application forms. *See* www.epa.state.il.us/forms-publications. The Illinois Pollution Control Board's website, www.ipcb.state.il.us, has the substantive regulations relating to environmental permitting and pollution control obligations. Section 39 of the Environmental Protection Act describes general permitting, but the Act also has numerous other provisions detailing the procedures and requirements for specific types of permits.

When the Act was originally adopted in 1970, it contained relatively few permitting procedures, which were contained in §40 of the Act, but over time, the Act has been amended to create a variety of different permitting procedures and standards. Some of the variations in the procedures are required by differences in permitting under the controlling federal legislation. Some of the variations simply reflect unique Illinois permitting obligations that are tailored to fit the circumstances. As a consequence, it is difficult to describe permitting in a general manner without losing some of the important details. Some of the permitting procedures, such as those for Clean Air Act Permit Program ("CAAPP") major stationary sources (*see* 415 ILCS 5/39.5), have over 21 pages of statutory language describing the process and requirements. A complete description of CAAPP or other complex permit programs is beyond the scope of this chapter.

4. Enforcement.

The IEPA initiates the vast majority of civil and environmental enforcement in Illinois. The IEPA conducts routine inspections of facilities, often annually, to determine compliance. In addition, many local governments have environmental inspection programs that may discover problems and refer them to the IEPA for enforcement. The IEPA has internal procedures to detect violations identified in routine monitoring reports filed with the IEPA. Complaints from the public may also form the basis of IEPA inspections and subsequent enforcement.

It is very uncommon for an IEPA enforcement action to begin without substantial advance notice to the facility. Most commonly, the IEPA inspector will identify potential problems to the facility during the inspection, with a follow-up written report that is also provided to the facility. The IEPA may start a more detailed process of investigation by submitting formal information

requests to the facility. This may result in follow-up conversations in which the IEPA's questions focus on particular aspects of facility operations or equipment.

As the enforcement process unfolds, the IEPA must determine whether the particular issue is sufficiently important to warrant enforcement. If it is, the IEPA must decide whether to pursue the action at the state level or refer the matter to the United States Environmental Protection Agency for enforcement. There is a wide variety of federal and state policy guidance documents that dictate when the matter is sufficiently important to justify enforcement and whether the matter should be preferentially handled by the state or federal government.

Perhaps the most important aspect of the formal enforcement procedure is that the IEPA must provide the facility with detailed information on what violations they claim have occurred and how these violations can be resolved. Second, the process allows the affected facility at least two specific opportunities to meet with the IEPA and provide them with information to show that the claimed violation should not lead to a formal enforcement action. Anyone involved in the enforcement process would be well-advised to treat a violation notice very seriously and devote a significant amount of time and energy to providing the IEPA with an adequate amount of information to show why the matter should not result in enforcement.

One of the most important components that a facility can provide to the IEPA in the hopes of deferring enforcement is the compliance commitment agreement ("CCA"). The CCA can simply identify the corrective actions that the IEPA listed in the violation notice as necessary to achieve compliance. Affected facilities may want to consider including a supplemental environmental project in the CCA to make the proposed plan as appealing to the IEPA as possible.

If the facility and the IEPA cannot reach agreement, the Illinois Environmental Protection Act provides additional procedural steps before the matter can be referred to the Office of the Attorney General or a state's attorney for enforcement.

Intellectual Property

Federal Law

1. Copyright Law.

Copyright law is governed exclusively by federal law, specifically Title 17 of the U.S. Code. Copyright law provides the author of a copyrightable work (or such person's employer in the case of a "work made for hire") with certain specific exclusive rights to use, distribute, modify and display the work. Generally, works are entitled to copyright protection for the life of the author plus 50 years. However, as to works made for hire, copyright protection is for the shorter of 75 years after publication or 100 years after creation. Anyone who without authority exercises the rights reserved exclusively to the copyright owner is considered to infringe the copyright and may be liable for actual or statutory damages and may be subject to injunctive relief.

a. Copyrightable Works.

Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audiovisual works, pictorial, graphic and sculptural works, sound recordings and architectural works. The Computer Software Copyright Act of 1980 expressly made computer software eligible for copyright protection, a point previously in doubt. The precise scope of copyright protection for computer software has not yet been fully defined. Constantly developing technology is likely to present many new issues, presently unforeseen. All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form; there must be a physical embodiment of the work so that the work can be reproduced or otherwise communicated. Second, the work must be the result of original and independent authorship. The concept of originality does not require that the work entail novelty or ingenuity, concepts of importance to patentability.

b. Advantages of Copyright Registration.

Copyright protection automatically attaches to a work the moment that the work is created. However, "registration" of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the validity of the copyright, provided registration occurs not later than five years after first publication. With respect to works whose country of origin is the U.S., registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, certain damages and attorneys' fees relating to the period prior to registration cannot be recovered in an infringement action. Registration also is a useful means of providing actual notice of copyright to those who search the copyright records.

c. Copyright Registration Application Process.

In order to obtain registration of copyright, an application for registration must be filed with the U.S. Copyright Office. The application must be made on the specific form prescribed by the Register of Copyrights and must include the name and address of the copyright claimant, the name and nationality of the author, the title of the work, the year in which creation of the work was completed, and the date and location of the first publication. In the case of a work made for hire, a statement to that effect must be included. If the copyright claimant is not the author, a brief statement regarding how the claimant obtained ownership of the copyright must be included. An application must be accompanied by the requisite fee, and a copy of the work must be submitted.

d. Copyright Notice.

Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. A copyright notice is no longer mandatory, but a copyright notice is still advantageous. For example, the defense of "innocent infringement" is generally unavailable to an alleged infringer if a copyright notice is used.

If a copyright notice is used, the notice should be located in such a manner and location to sufficiently demonstrate the copyright claim. The notice should consist of three elements. First should be the symbol of an encircled "C," or the word "copyright," or the abbreviation "copr." Second should be the year of first publication. Third should be the name of the copyright owner.

e. Works Made for Hire.

In a "work made for hire" the employer is presumed to be the author. Authorship is significant because a copyright initially vests in the author. The parties can rebut the presumption of employer authorship by an express written agreement to the contrary. The term "work made for hire" applies to any work created by an employee in the course and scope of employment. On occasion there is dispute as to whether a work created by an employee arose from the employment. Employers often require execution of a formal employment agreement under which the employee expressly agrees that all copyright rights will belong to the employer. A similar agreement is also advisable in connection with the engagement of an independent contractor to perform copyrightable services for a business, but the employer should be aware that only certain types of works may be considered a work made for hire when created by an independent contractor. If the particular matter cannot be a work made for hire, the employer should negotiate an agreement for the assignment of the copyright by the independent contractor.

f. Copyright Protection for Foreign Authors.

Copyright protection is available under U.S. law for foreign authors until the copyrightable work is published. If the work has been published, the availability of continued U.S. copyright protection is dependent upon the location of the publication and the nationality or domicile of the author. Copyright protection continues in the U.S. subsequent to publication if publication by the

foreign author occurs in the U.S., or occurs in a country that is a party to the Universal Copyright Convention or to the Berne Convention, or occurs in a country named in a Presidential copyright proclamation. If the work is first published by a foreign author outside the U.S., continued copyright protection in the U.S. is only available if the foreign author is either a domiciliary of the U.S. or a national or domiciliary of a country that is party to a copyright treaty to which the U.S. is also a party. A person is generally a domiciliary of the country in which the person resides with the intention to remain permanently.

2. Patents.

Patent law is governed exclusively by federal law, specifically Title 35 of the U.S. Code. One who invents or discovers a new machine or device or a new manufacturing process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right for a specified time to make, use, import, offer to sell, or sell in the U.S. the patented invention. A patent provides the holder with a limited monopoly on the use of the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention.

a. Utility Patent.

A utility patent, which generally governs the functional aspects of a machine, manufacturing process, or composition of matter is enforceable beginning at the grant of the patent and ending 20 years (plus up to 5 more years for certain delays) after the filing date of the regular patent application. A design patent, which covers the design or appearance of an article of manufacture, is enforceable for 14 years from the granting date of the patent. A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application. Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to "infringe" the patent and may be liable for damages.

i. Effect of Foreign Patents.

A foreign patent is generally not enforceable in the U.S. Furthermore, an invention that is the subject of a foreign patent cannot be the subject of a U.S. patent, unless an application for a U.S. patent is filed within one year following issuance of the foreign patent. Accordingly, an inventor who holds a foreign patent and who fails to apply for a U.S. patent within one year from the date of issuance of a foreign patent will usually have no recourse against others who use the invention in the U.S.

ii. Patentability Under Federal Patent Statutes.

To be eligible for a federal utility patent, an invention must fall into one of the classes of patentable subject matter set forth in the United States patent statutes. These classes are machines (e.g., a mechanism with moving parts), articles of manufacture (e.g., a hand tool), compositions of matter (e.g., a plastic), and processes (e.g., a method of refining). An improvement falling within

any of these classes may also be patentable. Discoveries falling outside these categories are not patentable, unless some other statutory provision applies.

In addition to being within one of the four classes and being fully disclosed, a utility invention must also be:

- "novel," in that it was not previously known to or used by others in the United States or printed or described in a printed publication anywhere;
- "non-obvious" to a person having ordinary skill in the relevant art; and
- "useful," in that it has utility, actually works, and is not frivolous or immoral.

b. **Design Patent.**

A design patent may be obtained for the ornamental design of an article of manufacture. A design patent offers less protection than a utility patent, because the patent protects only the appearance of an article, and not its construction or function.

c. **Plant Patent.**

A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, such as a tree or flower. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the United States Department of Agriculture.

d. **Patent Process.**

In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the U.S. Patent and Trademark Office. There one may examine all U.S. patents, many foreign patents, and a large number of technical publications. A patent search is customarily performed by a patent attorney or by an individual with similar technical training, sometimes referred to as a patent agent. A patent attorney or patent agent may be asked to render an opinion regarding the patentability of a particular invention. An inventor can then make an informed decision as to whether to proceed with the cost of an actual patent application.

A U.S. patent application must be filed with the U.S. Patent and Trademark Office. A complete patent application includes four elements. First, the application must include the "specification." The specification is a description of what the invention is and what it does. The specification can be filed in a foreign language, provided that an English translation, verified by a certified translator, is filed within a prescribed period. Second, the application must include an oath or declaration. The oath or declaration certifies that the inventor believes himself or herself to be the first and original inventor. If the inventor does not understand English, the oath or declaration must be in a language that the inventor understands. Third, the application must include drawings, if essential to an understanding of the invention. Fourth, the appropriate fee must be included.

After a proper application is filed, the application is assigned to an examiner with knowledge of the particular subject matter. The examiner makes a thorough review of the application and the status of existing concepts in the relevant area to determine whether the invention meets the requirements of patentability. The patent review process takes from 18 months to three years. Rejection of a patent application by the examiner may be appealed to the Board of Patent Appeals. Decisions of the Board of Patent Appeals may be appealed to the federal courts. Provisional patent application requirements are less stringent than a regular patent application. The oath or declaration of the inventor and claims are not required and the application is held for the 12-month period without examination.

e. **Markings.**

After a patent application has been filed, the product made in accordance with the invention may be marked with the legend "patent pending" or "patent applied for." After a patent is issued, products may be marked "patented" or "pat.," together with the U.S. patent number. Marking is not required, but it may be necessary to prove marking in order to recover damages in an infringement action.

f. **Rights to Patented Inventions.**

Disputes sometimes arise between employers and employees over the rights to inventions made by employees during the course of employment. Because of this, employers often require employees to execute formal agreements under which each signing employee agrees that all rights to any invention made by the employee during the term of employment will belong to the employer.

3. Trademarks.

This area is governed by both state and federal law. A trademark is often used by a manufacturer to identify its merchandise and to distinguish its merchandise from items manufactured by others. A trademark can be a word, a name, a number, a slogan, a symbol, a device, or a combination. A trademark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or the name of a business; a trademark is used to identify the goods manufactured by the business. A business that sells services rather than goods may also use a service mark to distinguish its services. Generally, service marks and trademarks receive the same legal treatment.

a. Selection of Trademark.

A manufacturer should carefully consider the trademark selected for its merchandise. The level of protection against infringement of a trademark varies with the "strength" or "uniqueness" of the trademark. "Descriptive" marks are the weakest and least defensible. A descriptive trademark is a name that describes some characteristic, function, or quality of the goods. A "fanciful" mark, the strongest type of mark, is a coined name that has no dictionary definition.

Evaluation should also include consideration of the likelihood of success in obtaining federal and state registrations of the trademark. For example, a trademark that is "merely descriptive" cannot be registered under federal law.

Selection of a trademark should be accompanied by a trademark search to determine whether another manufacturer has already adopted or used a mark that is the same or similar to the one desired. Publications provide lists of existing trademarks, registered and unregistered, and there are businesses that specialize in trademark searches. Actual and potential trademark conflicts should be avoided, lest the manufacturer become involved in an expensive infringement lawsuit. Of even greater concern is the potential loss of the right to use a mark after considerable expenditure in advertising merchandise bearing the mark.

b. **Advantages of Trademark Registration.**

Under the trademark laws of the United States, the principal method of establishing rights in a trademark is actual use of the trademark. "Registration" of a trademark is not legally required but can provide certain advantages.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use of the mark in interstate commerce, strengthening the registrant's ability to prevail in any infringement action. Federal registration is also a prerequisite for bringing a lawsuit under the federal trademark laws.

After five years of continued use of the mark following federal registration the registrant's exclusive right to use of the trademark becomes virtually conclusive. Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the goodwill arising out of the implication of government approval of the trademark.

c. Federal Registration Application Process. 15 U.S.C. 1051, *et seq.*

Federal trademark registration requires that a trademark application be filed with the U.S. Patent and Trademark Office. The application must identify the mark and the goods with which the mark is used or is proposed to be used, the date of first use, and the manner in which it is used. The application must be accompanied by payment of the requisite fee, a drawing page depicting the mark, and three specimens of the mark as it is actually used. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the substantive ability of the mark to serve as a valid mark and the possibility of confusion with existing marks. If the examiner rejects the application, the examiner's decision can be appealed to the Trademark Trial and Appeals Board. An adverse decision by that body can be appealed to federal court.

If the application is approved, the mark is published in an official publication of the Patent and Trademark Office. Opponents of the registration have thirty days after publication, or such additional time as may be granted, to challenge the registration. If no opposition is raised, or if the opponent's claims are rejected, an applicant whose mark is already in use receives a "certificate of registration."

An applicant whose trademark is proposed for registration before actual use receives, upon approval of the application, a "notice of allowance." An application who receives a notice of allowance must within six months of the receipt of the notice furnish evidence of the actual use of the trademark. The applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in rejection of the application.

d. **Post-Certificate Federal Procedures.**

A certificate of trademark registration issued by the Patent and Trademark Office remains in effect for ten years. However, registration expires at the end of six years, unless the registrant furnishes evidence of continued use of the trademark. The initial ten-year term of a certificate of registration can be renewed within the term's last six months for an additional ten-year term by furnishing evidence of continued use of the mark and paying a fee.

After at least five years of continuous use of a trademark following the receipt of a certificate of registration, a registrant can seek to have the status of the trademark elevated from "presumptive" evidence of the registrant's exclusive right to use of the trademark to virtually conclusive evidence of an exclusive right. To do so, the registrant must furnish the Patent and Trademark Office with evidence of continuous use of the trademark for at least five years. Additionally, there must not be any outstanding lawsuit or claim that challenges the registrant's rights to use the mark.

State Considerations

1. Trade Secrets.

The Illinois Trade Secret Act ("ITSA"), 765 ILCS 1065, provides state protection against misappropriation of trade secrets. ITSA explicitly displaces all common law theories of misappropriation within the State. However, Illinois courts continue to look to the large body of common law for guidance on whether information is a trade secret.

Information qualifies as a trade secret under ITSA if three conditions are met: (1) the information is sufficiently secret; (2) the owner of the information is sufficiently secret; and (3) the owner has taken reasonable steps to maintain the information's secrecy. The definition of trade secret in ITSA is substantially the same as the definition in the Uniform Trade Secrets Act ("UTSA"), but there are some differences.

First, the ITSA definition contains a broader list of examples than the UTSA definition. The ITSA definition includes "technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers," while the UTSA definition includes a "formula, pattern, compilation, program, device, method, technique or process." Both lists are viewed as being non-exclusive, but the broader list in ITSA could result in broader protection. Notably, the ITSA definition explicitly includes customer and supplier lists, financial data, and technical or nontechnical data.

Second, the ITSA definition omits language requiring that information "not be[] easily ascertainable by proper means," which is language found in the UTSA definition. The ITSA definition instead requires that information be "sufficiently secret." Despite the difference in language, there does not appear to be any substantive difference in the definitions as a result of this omission. Illinois courts have rejected the argument that the drafters of ITSA intended to eliminate the defense available under UTSA that the information could be lawfully developed through other means. Instead, Illinois courts have viewed the requirement of "sufficiently secret" to encompass how easily information can be developed through proper means.

ITSA provides remedies for misappropriation of trade secrets, which is defined similarly to UTSA. Misappropriation claims under ITSA may be based upon both actual or threatened use or disclosure. Illinois courts also recognize the inevitable disclosure doctrine, but they usually apply it only when the defendant's actions are accompanied by bad faith.

2. Trademarks.

Trademark rights can be obtained under common law in Illinois by adoption and use in commerce. A trademark in use within Illinois can be registered in the State under the Illinois Trademark Registration and Protection Act, 765 ILCS 1036 *et. seq.*, by filing an application with the Illinois Secretary of State, and providing the required information and specimens of use. Among the required information to be provided is a statement that, to the knowledge of the person verifying the application, no other person has registered the mark, either federally or within the state, or has the right to use the mark in the same or confusingly similar manner. The Illinois state requirements for registerability of a mark are similar to those for federal trademark registrations under the Lanham Act.

An Illinois state trademark registration is effective for five (5) years from the date of registration, and may be renewed for successive additional five (5) year terms. A registration is assignable along with the goodwill of the relevant business. Assignments must be made pursuant to the form furnished by the Illinois Secretary of State, and may be recorded with the Secretary of State. An assignment of a registration is void against a subsequent purchaser for valuable consideration without notice, unless the assignment was recorded with the Secretary of State within three (3) months after the date of assignment.

The Illinois Trademark Registration and Protection Act provides remedies for infringement of trademarks registered within the State. However, a registration may not automatically provide statewide protection. At least one Illinois court decision has interpreted language in the Act to limit protection to those geographic areas where a mark is in use. For marks that have become famous in the State, the Act also provides for a separate cause of action for dilution.

3. Patents.

The Illinois Employee Patent Act, 765 ILCS 1060, limits the scope of employee invention assignments by prohibiting employers from requiring employees to assign any invention "for which no equipment, supplies, facilities, or trade secret information of the employer was used and

which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer." 765 ILCS 1060/2. The Employee Patent Act further requires employers who enter into invention assignment agreements with their employees to provide written notice that the invention assignment agreements do not apply to such prohibited inventions. 765 ILCS 1060/2.

Dispute Resolution

Federal Court System

1. Federal Trial Court

The trial courts of the federal court system are the U.S. District Courts. Illinois is divided into three federal districts – the Northern District, the Central District, and the Southern District. The Northern District is further divided into two geographical divisions.

Federal trial courts for the Northern District of Illinois sit in Chicago (eastern division) and Rockford (western division). The eastern division covers Cook County and most of the "collar counties" that surround Chicago. The western division covers the northwest corner of the state.

Federal trial courts for the Central District of Illinois sit in Peoria, Rock Island, Springfield, and Urbana. The Central District covers the middle third of the state, including Sangamon County, where the state capital is located.

Federal trial courts for the Southern District of Illinois sit in East St. Louis and Benton. The Southern District covers the bottom third of the state, including East St. Louis, IL, and the city of Carbondale.

For the location and address of every U.S. district court in Illinois, see Appendix 1.

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

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, both promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are uniform bodies of procedural rules applicable to every federal district court in the U.S.

Each federal district court also establishes its own rules applicable only to that district court. These rules often set forth very specific guidelines for the handling of an action and close attention must be paid to them. Thus, one participating in a suit in federal district court must be

aware of that court's local rules as well as the Federal Rules of Civil Procedure and Criminal Procedure.

Federal district court judges are appointed by the President of the United States for life terms upon approval by the U.S. Senate. There are currently 47 federal district court judges in Illinois, the majority of whom sit in the Northern District. In addition to adjudicating cases, federal district court judges may appoint federal magistrate judges to assist with case management.

Federal magistrate judges typically oversee pre-trial matters, such as discovery in civil cases, or the issuing of warrants and evidentiary hearings on motions to suppress in criminal cases. Federal magistrates are generally not allowed to issue orders that completely dispose of the case without prior consent from the parties. Federal magistrates generally serve eight year terms, although they can be reappointed or recalled indefinitely. There are currently 19 federal magistrate judges in Illinois, 12 of whom sit in the Northern District.

The federal district courts have exclusive jurisdiction over bankruptcy matters, meaning they cannot be filed in state court. The federal district courts usually refer bankruptcy matters to the district's bankruptcy courts. Each federal district has multiple bankruptcy courts. The Federal Rules of Bankruptcy Procedure ("FRBP") govern procedure in the bankruptcy courts. Federal bankruptcy judges are appointed for a term of 14 years by the judges of the federal circuit in which the bankruptcy court sits.

The federal bankruptcy courts for the Northern District of Illinois sit in Chicago and Rockford. The federal bankruptcy courts for the Central District of Illinois sit in Peoria, Springfield, and Urbana. The federal bankruptcy courts for the Southern District of Illinois sit in East St. Louis and Benton.

Some federal agencies have the power to adjudicate administrative claims in an administrative hearing. These hearings resemble trials in that both sides usually have a right to counsel, to present evidence, and to cross examine their opponent. The hearings are presided over by administrative law judges, who are attorneys appointed by the agency. Examples of federal agencies in Illinois that conduct administrative hearings include: the Small Business Administration, the Equal Employment Opportunity Commission, and the Commodity Futures Trading Commission.

Appeals from decisions by federal bankruptcy judges or federal administrative law judges go to the federal district court. Appeals from the federal district courts of Illinois go to the Seventh Circuit Court of Appeals.

2. Federal Appellate Courts

The courts of first appeal in the federal court system are the U.S. Courts of Appeals. The courts are divided among 13 national judicial circuits. Illinois sits in the Seventh Circuit. The Court of Appeals for the Seventh Circuit sits in Chicago. For the court's address, see Appendix 1.

The federal courts of appeals have appellate jurisdiction over the federal districts within their circuit. The federal courts of appeals determine whether or not the law was applied correctly in the trial court. They may also hear appeals from federal administrative agency decisions. An opinion by the federal circuit court creates binding precedent for all lower courts within the circuit. An appeal from the federal court of appeals goes to the U.S. Supreme Court.

The workings of the U.S. Courts of Appeals are governed by the Federal Rules of Appellate Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal court of appeals.

Each U.S. Court of Appeals also establishes its own circuit rules applicable only to that circuit. These rules often set forth very specific guidelines for the handling of an appeal and close attention must be paid to them. Thus, one appealing a decision in the Seventh Circuit must be aware of both the Seventh Circuit Rules and the Federal Rules of Appellate Procedure.

Judges for the federal courts of appeals are appointed by the President of the United States for life terms upon approval by the U.S. Senate. There are currently 12 judges on the Seventh Circuit.

State Court System

1. State Trial Courts

The trial courts of the Illinois court system are the Illinois Circuit Courts. Illinois is divided into 24 judicial circuits. Six of the circuits contain one county, while the other 18 circuits contain between two and twelve counties. All six circuits that contain one county sit near or within the Chicago metropolitan area (Cook, Kane, Will, DuPage, Lake, and McHenry). The Cook County Circuit Court is the largest judicial circuit in the state.

The Illinois Circuit Courts are courts of general jurisdiction. There are few limits to the types of cases they may hear, criminal or civil. Their cases generally arise under Illinois statutes, although some federal statutes provide a cause of action that plaintiffs may bring in state court. With the exception of Cook County, Illinois Circuit Courts use a single civil division for commercial disputes.

For the location and address of every Illinois circuit court, see Appendix 1.

The Cook County Circuit Court is divided into multiple departments and divisions, with six courthouses across the Chicago metropolitan area. Two departments handle most commercial disputes – the County and Municipal Departments. The County Department contains eight divisions, including:

- Chancery Division, which hears matters involving injunctions, declaratory judgments, and other equitable relief;
- County Division, which hears matters involving real estate taxes and municipal organizations;

- Criminal Division, which hears serious criminal matters including economic crimes; and
- Law Division, which hears civil suits involving damages greater than $30,000, as well as most administrative agency reviews.

In addition to the County Department, there are six Municipal Departments, which hear civil suits involving damages less than $30,000. In suburban courthouses, civil suits involving damages $100,000 or less are heard in the Municipal Department, and suits involving damages greater than $100,000 are heard by the Law Division. Appeals from the Illinois Circuit Courts go to the Illinois Appellate Court.

The workings of the Illinois Circuit Courts are governed by the Illinois Code of Civil Procedure and the Illinois Code of Criminal Procedure, both codified by the Illinois General Assembly. These rules are applicable to every circuit court in Illinois. The Illinois Supreme Court also puts forth rules that govern the workings of the Illinois Court System. The Illinois Supreme Court Rules include frequently invoked provisions for discovery in civil litigation, as well as other important procedural requirements. Finally, each Illinois circuit establishes its own rules applicable only within that circuit. One participating in a suit in Illinois Circuit Court must be aware of all three rule sets.

There are two kinds of judges on the Illinois Circuit Courts. Circuit judges are initially elected by the public, either from the circuit, county, or sub-circuit where they reside, for a six year term. Circuit judges may then be retained by popular vote for additional six year terms. They can hear any case. Associate judges are appointed to four year terms by the circuit judges. Associate judges can hear any case, except criminal cases punishable by a prison term of one year or more (felonies).

2. Arbitration

For civil disputes, a party may be able to seek a faster and more economical resolution through arbitration, a dispute resolution process that occurs independent of the Illinois Circuit Courts. Some Illinois Circuit Courts mandate that certain types of disputes undergo arbitration. If a party's case qualifies, the circuit judge will order the parties to begin arbitration, and unless the parties contest the outcome, the circuit judge will never hear arguments on the merits of the case.

Eleven judicial circuits in Illinois mandate arbitration for certain civil claims. For those circuits, the Illinois Supreme Court has established a range of damages for claims that are subject to mandatory arbitration. Only claims that *solely seek* monetary damages are subject to mandatory arbitration. If there are claims for injunctive relief in addition to monetary damages, the claims are not subject to mandatory arbitration. In Cook County, all claims for less than $30,000 are subject to mandatory arbitration. In the ten other judicial circuits, all claims for less than $50,000 are subject to mandatory arbitration. In some counties, claims for less than $5,000 or $10,000 are assigned to a small claims subdivision within the circuit courts' civil divisions, while others will send small claims to arbitration.

The following Illinois counties, as part of their judicial circuit, use mandatory arbitration: Boone, Cook, DeKalb, DuPage, Ford, Henry, Kane, Kendall, Lake, Madison, McHenry, McLean, Mercer, Monroe, Perry, Randolph, Rock Island, St. Clair, Washington, Whiteside, Will, and Winnebago.

At arbitration, parties present their case as they would at trial. Instead of a judge, however, the parties present to a panel of three arbitrators. The panel is chosen at random from a pool of arbitrators who have been certified by the judicial circuit. The Illinois Supreme Court requires that each panel be chaired by a member of the bar who has practiced law for at least three years, and each circuit usually requires that all panelists be members of the bar and have completed an arbitrator training program.

Parties are entitled to discovery prior to arbitration. However, the panel will often set considerably shorter timelines than in routine civil litigation and significantly limit the number of interrogatories and depositions each party may seek. The panels generally require the parties to disclose evidence that they anticipate using at the hearing between 30 and 120 days after the first responsive pleadings.

Illinois Supreme Court Rules 86 through 95 govern mandatory arbitration. Rule 86 states that the Illinois Code of Civil Procedure applies to all mandatory arbitration hearings. Rule 86 also allows for each judicial circuit to establish its own local rules for arbitration hearings. Most circuits imply a presumption of admissibility for evidence that would normally be inadmissible at trial, such as hearsay. Most circuits also limit the length of hearings to two to four hours.

An arbitration award (in place of a judgment) is not binding on the parties. However, there are limited grounds on which the parties may challenge the award. A party wishing to challenge must file a rejection of the award with the clerk of the court within 30 days of when the panel files the award. If a party timely files a rejection, the circuit court will hear arguments on the award, and may affirm, deny, or remand the award for further proceedings. If a party does not timely file a rejection within 30 days, the court will enter the award and the party will be barred from challenging it.

3. State Appellate Courts

a. Illinois Appellate Court

The court of first appeal in Illinois is the Illinois Appellate Court. There are five appellate court districts in the state, but the Illinois court system is unified, meaning an appellate court ruling in one district applies to the entire state. The First District, which covers Cook County, has six subdivisions, which are also part of the unified system.

The First District Illinois Appellate Court sits in Chicago. The Second District Illinois Appellate Court sits in Elgin. The Third District Illinois Appellate Court sits in Ottawa. The Fourth District Illinois Appellate Court sits in Springfield. The Fifth District Illinois Appellate Court sits in Mt. Vernon.

For the location and address of every Illinois appellate court, see Appendix 1.

The Illinois Appellate Court has appellate jurisdiction over final judgments entered in the Illinois Circuit Courts, as well circuit court orders that the Illinois Supreme Court has authorized the appellate court to hear, such as a grant or denial of a party's motion for a more convenient forum, or a party's motion to dismiss for lack of jurisdiction. Appeals from an Illinois Appellate Court decision go to the Illinois Supreme Court.

The workings of the Illinois Appellate Court are governed by Article III of the Illinois Supreme Court Rules. Each appellate court district also puts forth local procedural rules that only apply to appeals within the district. One must keep in mind both rule sets when pursuing an appeal.

There are currently 54 judges on the Illinois Appellate Court. Twenty-four sit in the First District, nine in the Second, and seven in the other three districts. The judges serve 10 year terms and may seek additional terms in a non-partisan retention election, wherein voters vote to retain or not retain the judge. When a seat is vacant, candidates compete in partisan elections with a primary and a general election.

b. Illinois Supreme Court

The court of final appeal in Illinois is the Illinois Supreme Court. The justices are elected from five judicial appellate districts across the state, but the court sits as a whole in Springfield. For the court's address, see Appendix 1.

The Illinois Supreme Court has original jurisdiction over cases relating to revenue, mandamus, prohibition or habeas corpus. The court has mandatory appellate jurisdiction over cases where the constitutionality of a law has been called into question, and discretionary appellate jurisdiction over all other Illinois Appellate court decisions. The workings of the Illinois Supreme Court are governed by the Illinois Supreme Court Rules.

There are currently seven justices on the Illinois Supreme Court. The justices serve 10 year terms and may seek additional terms in a non-partisan retention election, wherein voters vote whether to retain or not retain the justice. When a vacancy arises, a partisan election is held in the district from which the departing justice was elected. The First District elects three justices, while the other four districts elect a single justice each.

4. State Tax Court System.

a. Administrative Pre-Payment.

The Illinois Independent Tax Tribunal ("Tax Tribunal") has jurisdiction over determinations made by the Illinois Department of Revenue ("IDOR") under twenty-two tax statutes, through the issuance of Notices of: Deficiency; Tax Liability; Claim Denial; or Penalty Liability where the aggregate amount of tax liability for a tax period exceeds $15,000 (exclusive of penalties and interest). When only penalties and/or interest are assessed, the Tax Tribunal has jurisdiction if the total of interest and penalties exceeds $15,000. The Illinois Supreme Court Rules,

Code of Civil Procedure and Tax Tribunal Rules apply to all proceedings before the Tax Tribunal. Appeal is made directly to the Illinois Appeals Court.

For all matters outside the Tax Tribunal's jurisdiction, pre-payment administrative review is available through protest and request for hearing to the IDOR. Appeal is made to the Circuit Court, and thereafter to the Illinois Appeals Court.

b. Payment Under Protest--Protest Monies Act.

The Protest Monies Act allows judicial determination of a disputed tax liability without exhausting administrative remedies. The disputed tax is paid under protest into a state protest fund, with suit required to be commenced in the Circuit Court within 30 days from payment. Appeal is made to the Illinois Appellate Court.

Financing Investments

Tax-Exempt Financing

1. Industrial Revenue Bonds.

The Illinois Finance Authority ("IFA") and home rule municipalities in the State of Illinois issue tax-exempt Industrial Development Revenue Bonds ("IRBs") on behalf of manufacturing companies to finance the acquisition of fixed assets including land, buildings and equipment. Bond proceeds may be used for either new construction or renovation, and may be used to purchase new equipment. Long-term financing at interest rates lower than conventional financing, usually below prime, are available on either a fixed or variable rate basis. Financing is available up to 100% of project cost (subject to credit approval and underwriting standards of the borrower's bank). Interest to bondholders on IFA or municipal IRB's is exempt from federal income taxation but is not exempt from (and is subject to) State of Illinois income taxation.

Because of significant up-front costs of issuance, prospective Industrial Revenue Bond financings of less than $1.5 million generally are not cost effective. Smaller fixed asset projects may be eligible for financing through other IFA and municipal loan programs. For most companies, bank participation is necessary. The borrower's bank will make the credit decision, structure terms and set collateral requirements. Banks can either (1) guarantee the bonds by providing a direct pay letter of credit or (2) purchase bonds directly to hold as an investment in their portfolio. Under either structure, the bank will be a secured lender.

Qualified IRB projects include facilities that are primarily used to manufacture or process tangible products. The Internal Revenue Code defines all IRB eligibility requirements. Final determination of project eligibility is subject to a legal opinion from a recognized municipal bond attorney or bond counsel. For more information visit the IFA's website.

Under federal law, the amount of certain tax-exempt bonds that each state may issue is limited to the amount of volume cap allocated to it. Currently the tax-exempt issuances that require an allocation of volume cap include industrial revenue bonds, housing bonds, beginning farmer bonds, water and gas distribution bonds, waste disposal revenue bonds, and pollution control bonds, whether issued by the IFA or a municipality.

2. Tax Increment Financing.

Tax Increment Financing ("TIF") allows the use of increased property tax revenue to secure the issuance of TIF bonds, the proceeds of which are used for construction of infrastructure, interest expense, planning, architectural, engineering, legal and other services related to a public or private project, employee training, and business relocation costs or for repaying the developer for absorbing those costs.

The governing municipality in which the property is located must define TIF areas in which projects eligible for TIF may be constructed. These areas are by criteria established by law

economically disadvantaged areas. About 1,000 TIF districts have been established in Chicago and in 400 communities throughout the State of Illinois.

The enabling law for TIF is the Illinois Tax Increment Allocation Redevelopment Act ("TIF Act") that was adopted by the Illinois General Assembly in 1977. Comprehensive amendments to the TIF Act were enacted in 1999, including amendments related to eligibility definitions, housing displacement and relocation assistance, administration and reporting, and impacts to taxing districts.

3. **Other Government Subsidized Financing.**

Illinois has a number of laws and agencies that provide tax incentives, subsidies, guarantees and other forms of assistance to encourage business, assist with low income housing, encourage development in economically disadvantaged areas, create jobs, or attract businesses to Illinois. The IFA's website lists several dozen of these programs. www.il-fa.com. The Illinois Housing Development Authority's website should be consulted for financing assistance for subsidized housing projects. www.ihda.org. Different municipalities in Illinois also offer incentives to businesses to locate in or relocate to them.

Commercial Banking

Illinois has a robust intrastate banking system, having more state-chartered banks than any other state in the United States. Illinois also ranks among the top three states in the amount of total banking assets, total trust assets and number of foreign bank offices. Most major national banks maintain a presence in Illinois. Illinois banking institutions offer a full suite of financing opportunities, including real estate loans, constructions loans, agricultural loans, commercial loans, and Small Business Administration loans. In Illinois' financial hub, Chicago, the five largest banks are:

- Northern Trust Corporation;
- BMO Harris Bank, NA;
- PrivateBank & Trust Co.;
- MB Financial Bank, NA; and
- First Midwest Bank.

Commercial Banking in Illinois is regulated by the Division of Banking ("DOB") of the Illinois Department of Financial and Professional Regulation ("IDFPR"). The IDFPR is organized into four divisions: (i) the Division of Real Estate; (ii) the Division of Professional Regulation; (iii) the Division of Financial Institutions; and (iv) the DOB. The DOB regulates and supervises mortgage banks and mortgage loan originators through the Bureau of Residential Finance, and charters, authorizes, and supervises state-chartered commercial banks, state-chartered savings banks, foreign bank offices, electronic funds transfer systems, corporate fiduciaries, and their

information systems through the Bureau of Banks, Trust Companies and Saving Institutions. The DOB also registers pawnbrokers, check printers, and registered non-bank ATMs.

The Illinois Banking Act ("Act") allows state-chartered banks to be formed for the purposes of discount and deposit, and for buying and selling exchange and general banking business, except for the issuing of bills to circulate as money. State-charted banks can loan money on personal and real estate security, and accept and execute trusts upon obtaining a certificate of authority under the Corporate Fiduciary Act. The Act also provides state-charted banks with all of the powers granted to national banks and insured savings associations. If a state-charted bank intends to engage in an activity or investment that is not permissible for national banks, it should contact the Federal Deposit Insurance Corporation to determine whether federal regulations permit such activity or investment.

State-charted banks are also permitted to acquire a minority ownership interest in a corporation, limited liability company or partnership (any of the foregoing, an "entity") if certain conditions are met, including the following: the entity's activities are limited to activities that are part of, or incidental to, the general banking business; the investing bank is in a position (by contract, organizing document or otherwise) to prevent the entity from engaging in activities that go beyond the general business of banking; the investing bank's loss exposure is limited (by contract, organizing document or otherwise), and the investing bank does not have open-ended liability for the obligations of the entity; and the investment must be convenient or useful to the investing bank in carrying out its business and not a mere passive investment unrelated to such bank's business.

The Illinois Savings Bank Act allows any foreign savings bank with main banking premises outside of Illinois to establish Illinois branches if certain conditions are met, including the following: the laws of the state where such foreign bank's main banking premises are located permit the establishment of a branch in Illinois; the foreign bank has its main banking premises in a state that allows Illinois savings banks to establish a branch in such state pursuant to the terms and conditions that are deemed to be reciprocal with provisions of the Illinois Savings Bank Act; and the foreign bank obtains a certificate of authority for, or provides proper notice to, the Secretary of Financial and Professional Regulation (the "Commissioner"). Once a foreign savings bank lawfully establishes an Illinois branch, it may establish and maintain additional branches in Illinois to the same extent as an Illinois state savings bank. The foreign savings bank must provide written notice to the Commissioner of its intent to establish additional branches in Illinois within 30 days after receiving approval from its chartering authority or other appropriate regulatory agency to establish additional branches.

State Securities Issues

All securities offered or sold in Illinois must be registered prior to the offer or sale, unless exempt by law. The National Securities Markets Improvement Act of 1996 ("NSMIA") defines which securities require state registration. In general, all national offerings listed on the major exchanges and all mutual funds, as well as securities sold to qualified purchasers (as defined by the SEC) fall solely under the jurisdiction of the SEC. NSMIA preempts state registration

requirements. That said, States may continue to require notice filings and payment of fees and preserve state anti-fraud authority.

Securities that require registration before sale include notes, stocks, bonds, debentures, certificates of interest or participations in any profit-sharing agreements, fractional undivided interests, limited partnership interests or, in general, any interest or instrument commonly known as a security. Completion and filing with the Secretary of State of the Uniform Application to Register Securities (Form U-1) is required to register securities. In addition to Form U-1, registrants must also file a prospectus or offering document along with the filing fee. The prospectus or offering document must contain audited financial statements and provide the following information:

- Details about the issuer;
- Information about the securities being offered for sale;
- How the issuer will use the proceeds from the sale of the securities; and
- Method of selling the securities.

Any material changes to the information contained in the prospectus or offering document must be reported to the Illinois Secretary of State within two business days after the occurrence of the event that caused the material change. The reporting should include an amendment or supplement to the prospectus or offering document.

A registered securities dealer or registered salesperson should conduct the sale of the securities on the issuer's behalf. Alternatively, officers of the issuer may offer or sell the securities provided no commission or other compensation is paid in connection with the sale of the securities.

The registration requirements contain an exemption, allowing private placement of securities that are offered for sale to Illinois residents provided that the offering is to fewer than 35 persons or less than $1,000,000 in aggregate sales. In addition to the number or monetary restriction, the exemption requires that there be no general advertising or general solicitation in Illinois and that no commission, discount or other remuneration exceeding 20 percent of the sale price of the security be paid for the sale.

If taking advantage of the private placement exemption, the issuer must still file a Report of Sale (Illinois Form 4G or Form D) with the Secretary of State within twelve months of the first sale to an Illinois resident. The disclosure should contain the name and address of the issuer and the dealer, a description of the securities sold, the date of the first sale to an Illinois resident, the total dollar amount sold, and a representation that there was no general advertising or general solicitation.

Real Estate

Acquisition/Disposition of Commercial Property

There are three primary stages of a transaction involving the acquisition or disposition of Illinois commercial real estate. The first is negotiating the contract. The second is the due diligence period and arranging for financing, and the third and final step is acquiring title.

1. Negotiation.

When a property owner decides to put a commercial property on the market, the property owner will likely engage the services of a broker. A broker will market the property to prospective buyers and will solicit bids. The broker's commission is typically paid by the seller and generally ranges from 2-6% of the sales price. When a prospective buyer makes a bid, the buyer will submit a written offer to purchase, or a letter of intent. The letter of intent sets forth the principal terms of the deal between buyer and seller, such as the purchase price, the amount of earnest money to be deposited, the length of the due diligence period, and the way in which prorations will be handled. The letter of intent will typically contain non-binding language (i.e., unless and until a purchase agreement is fully-executed the parties are not bound). If the seller wishes to accept purchaser's offer, seller will countersign the letter.

Counsel for the parties will then negotiate the purchase and sale agreement (with seller's counsel generally preparing the initial draft), the terms of which will, upon its execution, govern the transaction. The contract will describe the property to be sold and will expound on the basic terms of the deal as set forth in the letter of intent. While each purchase and sale agreement is different, it will also likely set forth the length of the due diligence period, how environmental reports are treated, how tenants' rents, if any, are prorated, what closing deliveries are required from each party, how closing costs are allocated, and the remedies for a default on the part of either party.

When the seller and buyer have agreed on an acceptable contract, they will sign the contract, which obligates buyer to purchase the property unless one of the contingencies to seller's or buyer's obligations to perform its obligation to sell or purchase the property, as applicable, does not occur. Generally, upon execution of the contract, buyer puts an earnest money deposit in escrow with the agreed upon title company, and the due diligence period begins.

2. Due Diligence.

During the due diligence period, seller delivers to buyer information regarding the property for sale. The buyer will usually have the opportunity to visit the property to determine its condition. Depending on the terms of the contract, the buyer may obtain a Phase I or Phase II Environmental Site Assessment ("ESA"), though whether purchaser is permitted to perform a Phase II ESA on the property is generally heavily negotiated, as the test is invasive.

The buyer will also have the opportunity to examine any of the seller's leases with tenants (and to interview tenants) and other records relating to the property, together with the title

commitment and survey for the property. The buyer will be looking at title and survey to determine whether or not there are encumbrances on the property that would prevent buyer's intended use of the property, or if there are any problematic encroachments on the property. A diligent buyer will also review the zoning requirements related to the property to ensure that its current and intended use are permitted. At the conclusion of the due diligence period, buyer must decide whether to continue with the purchase of the property. If buyer decides not to do so, the contract often provides that the buyer may terminate the contract on or prior to the end of the due diligence period with no penalty and receive a return of its earnest money. However, if buyer decides to proceed with the purchase of the property, its earnest money then becomes non-refundable except in the event of a default by seller.

3. Bulk Sales.

In Illinois, if a taxpayer, outside of the usual course of its business, sells or transfers a major part of the real property of a business, the purchaser may require that seller file a notice of the sale or transfer prior to 10 days before the sale with the Illinois Department of Revenue, and, in some cases, the applicable county and city revenue departments. In the City of Chicago, for instance, the bulk sales notice must be filed with the City 45 days prior to the sale or transfer of (i) the business or activity; a major part of the assets of the business or activity; or other than in the ordinary and usual course of business, in each case that requires filing of a return or remittance a tax or be licensed by the City, or (ii) a major part of any one or more of the following assets: the stock of goods or inventory of the person, furniture or fixtures, machinery or equipment, or real property of the business. Each of these departments will determine whether the seller owes any taxes to the State of Illinois or county and city, as applicable. If the applicable revenue department determines that taxes are owed, the Department will issue a stop order, requiring the purchaser to withhold a portion of the funds from the closing disbursement. If the applicable revenue department determines that taxes are not owed, it will issue a release and all funds will be disbursed at closing. If the parties fail to comply with these requirements, the purchaser may be liable for any taxes owed by the seller (up to the value of the property). One alternative to obtaining a release of the stop order is an indemnity or guarantee from seller agreeing to pay any such taxes.

4. Transfer Taxes.

In Illinois, a transfer tax is a tax imposed for passing title to property from one person or entity to another. The rate of the state transfer tax is $0.50 per every $500 of the purchase price. Thus, a property that is sold for $100,000 would have a transfer tax of $100. In addition to state transfer taxes, some counties and municipalities also have a transfer tax. For example, for a sale of real property situated in the City of Chicago, payment of Illinois transfer taxes, Cook County transfer taxes, and City of Chicago transfer taxes is required. Cook County has a transfer tax rate of $0.25 per $500. Chicago has a transfer tax of $3.75 per $500, which is paid by the buyer and $1.50 per $500, which is paid by the seller. The required state form is the PTAX-203, or PTAX-203A if the sale price is over $1 million. If the real property is in the City of Chicago, however, the transfer tax forms can be filled out online through MyDec (http://tax.illinois.gov/localgovernment/propertytax/MyDec/), which will automatically complete the appropriate City, County and State forms and populate the amount of transfer tax owed.

5. Closing.

Prior to closing, seller's counsel will prepare the closing documents. The documents required for closing will depend on the specific transaction. Some commonly required documents include: a deed, a bill of sale, an assignment of leases, an assignment of service contracts, an assignment of intangibles, a closing certificate, and a foreign investment in real property tax act disclosure. In order to issue a title insurance policy, the title company will also likely require the delivery of certain organizational and authority documents from each party.

The seller and buyer will often sign the closing documents prior to closing and send them to the title company, as escrow agent. At closing, the seller and buyer will authorize the escrow agent to release buyer's funds and to compile the signatures to create final, executed documents. Once this is completed, title is transferred to the buyer and the title company will issue a title insurance policy.

6. Financing.

In order to give a loan to a borrower to purchase or improve a property, a lender may conduct certain due diligence on the property, similar to that conducted by the borrower in connection with its purchase of the property. A lender will likely review title and survey, environmental reports, zoning reports and appraisals.

In Illinois, the document securing the buyer's obligation to pay the loan will be a mortgage. Thus, if the borrower fails to timely re-pay the loan, the lender can foreclose on its interest in the property. In Illinois, the lender must take the borrower to court in order to do so since power of sale foreclosures are not permitted in Illinois. If the court issues a final judgment of foreclosure, then the property is sold during a public sale held by the sheriff or a judge. On a residential property, a borrower has 90 days following its receipt of service of the foreclosure complaint to reinstate the loan by paying to the lender all past-due amounts. A residential borrower also has a 7 month right of redemption from the time the complaint is filed, and a right to redeem the property by payment of the full balance of the loan for 3 months after the final judgment. After these time periods expire and the sale has occurred, the sale is final. There is no post-sale right of redemption in Illinois. If the property is sold for less than the amount of the loan remaining to be paid, then the borrower is liable for the deficiency. In Illinois, a borrower can offer a deed in lieu of foreclosure which transfers the property to the lender. When this occurs, there can be no deficiency judgment against the borrower.

7. Leasing.

If a business does not wish to purchase property, it may also enter into a lease. The lease gives the business, as tenant, the right to use the property, and gives the owner of the property a right to receive payment for such use. The lease will set forth specific negotiated terms, such as the rental rate, any extension or early termination options, how the property may be used, which party pays for maintenance, repairs, insurance and real estate taxes, and any other rights or entitlements of the tenant, such as rights of first offer or rooftop rights. The lease will also provide

that the tenant’s failure to perform certain of its obligations under the lease constitutes an event of default and will set forth landlord’s remedies in such event.

Miscellaneous

Filing of Business Entity Charter

Domestic business entities listed below are required to file charter documents and register with the Illinois Secretary of State in order to legally transact business within Illinois.

- For Profit Corporations
- Not-For-Profit Corporations
- Limited Liability Companies
- Limited Liability Partnerships
- Professional Service Corporations

General partnerships are not currently required to file charter documents and register with the Illinois Secretary of State, however, if you plan to use a name that is anything other than the surnames of the individual partners you will need to use a fictitious business name. A fictitious business name must be distinguishable from the name of any other company currently on record with the Secretary of State. To check whether a name conflict exists, run a search in the following Illinois Secretary of State databases:

- http://www.ilsos.gov/corporatellc/
- http://www.ilsos.gov/lprpsearch/
- An email request for corporation name availability may be made using the following link: https://www.ilsos.gov/ContactFormsWeb/corpform.html or by calling (217) 782-1832 ext. 7734.

Illinois Secretary of State

Department of Business Services ("DBS") of the Illinois Secretary of State

Springfield Office:	Chicago Office
Michael J. Howlett Bldg. 501 S. Second St., Rm. 350 Springfield, IL 62756 (217) 782-6961 Hours: Mon.-Fri., 8:00 a.m. – 4:30 p.m.	69 W. Washington St., Ste. 1240 Chicago, IL 60602 (312) 793-3380 Hours: Mon.-Fri., 8:00 a.m. – 4:30 p.m. (**Walk-ins for document processing.)** 4:30 p.m. – 5:00 p.m. (**Walk-ins ONLY for document drop-offs or pickups**.)

Web site (Includes company file detail reports including good standing status, incorporation date, registered agent information and officer information, state UCC filing numbers and dates sorted by debtor name or file number and form documents for various business entities.

http://www.cyberdriveillinois.com/

Document Submission and Ordering Documents for Illinois Business Entities

Facsimile signature is acceptable on most documents for filing, but DBS will reject a document which is not easily readable. All efforts should be made to present DBS with as clear an image as possible to prevent rejection.

Filings may be submitted on a routine basis or one level of expedite service. All filings except filings related to partnerships may be expedited. There is currently no provision for expedited filings under the Illinois Uniform Partnership Act. The turnaround time is as follows:

Level of Expedite	Additional Fee	Turnaround Time
Routine filing (non-expedited)		4-6 weeks
Expedited	$100	24-48 hours

Expedited service is only available for filings that are walked-in to the DBS office in Springfield by 2:30 p.m. Documents submitted via U.S. Postal Service and any overnight delivery services should be delivered to:

Illinois Secretary of State
Department of Business Services
501 S. Second St., Rm. 350
Springfield, IL 62756.

All checks should be made payable to the Illinois Secretary of State and should be no more than 90 days old.

Foreign Corporation

Foreign corporations can apply to transact business in Illinois under §13.15 of the Illinois Business Corporation Act. In order to apply, a foreign corporation is required to file with the Secretary of State an Application for Authority to Transact Business in Illinois (Form BCA 13.15). Foreign corporations are also required to submit a recent (within last 90 days) certified copy of the foreign corporation's Articles of Incorporation. Certification means that the official charged with approving incorporations in the foreign corporation's domestic jurisdiction must copy all corporate charter documents in their possession and attach them to attach said official's seal stating that the copy is true, correct or complete. A certificate of good standing will not satisfy this requirement. In addition, the foreign corporation is required to complete BCA 13.15 with the following information:

- Name of the corporation;
- Assumed corporate name (if any);
- State or country of incorporation;
- Date of incorporation;
- Period of duration;
- Address of the principal office, wherever located;
- Address of principal office in Illinois;
- Name and address of Illinois registered agent for service of process within Illinois;
- States and countries in which corporation is qualified to transact business;
- Names and addresses of offices and directors;
- Purpose(s) for which the corporation was organized and which proposes to pursue in the transaction of business in Illinois;
- Stock class, series, par value, number of shares authorized and issued;
- Paid-in Capital amount;
- Estimate of total value of all property of the corporation;
- Estimate of total value of all property of the corporation located in Illinois;
- Estimate of total business of the corporation transacted everywhere; and
- Estimate of total business of the corporation transacted in Illinois.

The minimum amount for a foreign corporation to file the application for authority to transact business in Illinois is $175. The filing fees vary depending upon the foreign corporation's paid-in capital and using an allocation factor that is calculated based on the proportion of business and property transacted in Illinois. Please note that there is a penalty for any foreign corporation that transacts business in Illinois prior to applying and receiving authority to do so from DBS. The penalty is $200, plus $5 per month, or 10 percent of fees and taxes, whichever is greater. Additionally, a late payment interest of 2 percent per month accrues against the company until they have properly registered.

Appendix 1 – Illinois Courthouses

Seventh Circuit Court of Appeals
219 S. Dearborn St.
Chicago, IL 60604

Northern District of Illinois
219 S. Dearborn St.
Chicago, IL 60604

327 S. Church St.
Rockford, IL 61101

Northern District of Illinois - Bankruptcy
219 S. Dearborn St.
Chicago, IL 60604

327 S. Church St.
Rockford, IL 61101

Central District of Illinois
100 N.E. Monroe St.
Peoria, IL 61602

211 19th St.
Rock Island, IL 61201

600 E. Monroe St.
Springfield, IL 62701

201 S. Vine St.
Urbana, IL 61802

Central District of Illinois – Bankruptcy
100 N.E. Monroe St.
Peoria, IL 61602

600 E. Monroe St.
Springfield, IL 62701

201 S. Vine St.
Urbana, IL 61802

Southern District of Illinois
750 Missouri Ave.
East St. Louis, IL 62201

301 W. Main St.
Benton, IL 62812

Southern District of Illinois - Bankruptcy
750 Missouri Ave.
East St. Louis, IL 62201

301 W. Main St.
Benton, IL 62812

Illinois Supreme Court
200 E. Capitol Ave.
Springfield, IL 62701

Illinois Appellate Court
1st District
160 N. LaSalle St.
Chicago, IL 60601

2nd District
55 Symphony Way
Elgin, IL 60120

3rd District
1004 Columbus St.
Ottawa, IL 61350

4th District
201 W. Monroe St.
Springfield, IL 62794

5th District
14th & Main Street
Mt. Vernon, IL 62864

Illinois Circuit Courts (County)
Cook County Circuit
50 W. Washington St.
Chicago, IL 60602

Cook County Circuit – Criminal Division
2650 S. California Ave.
Chicago, IL 60623

1st Circuit (Alexander)
2000 Washington Ave.
Cairo, IL 62914

1st Circuit (Jackson)
1001 Walnut St.
Murphysboro, IL 62966

1st Circuit (Johnson)
401 Court St.
Vienna, IL 62995

1st Circuit (Massac)
101 W. 8th St.
Metropolis, IL 62960

1st Circuit (Pope)
310 E. Main St.
Golconda, IL 62938

1st Circuit (Pulaski)
500 Illinois Ave.
Mound City, IL 62963

1st Circuit (Saline)
10 E. Poplar St.
Harrisburg, IL 62946

1st Circuit (Union)
309 W. Market St.
Jonesboro, IL 62952

1st Circuit (Williamson)
200 West Jefferson St.
Marion, IL 62959

2nd Circuit (Crawford)
1 Court St.
Robinson, IL 62454

2nd Circuit (Edwards)
50 E. Main St.
Albion, IL 62806

2nd Circuit (Franklin)
100 Public Square
Benton, IL 62812

2nd Circuit (Gallatin)
484 Lincoln Blvd.
Shawneetown, IL 62984

2nd Circuit (Hamilton)
100 S. Jackson St.
McLeansboro, IL 62859

2nd Circuit (Hardin)
1 Main St.
Elizabethtown, IL 62931

2nd Circuit (Jefferson)
100 S. 10th St.
Mt. Vernon, IL 62864

2nd Circuit (Lawrence)
1100 State St.
Lawrenceville, IL 62439

2nd Circuit (Richland)
103 W. Main St.
Olney, IL 62450

2nd Circuit (Wabash)
401 N. Market St.
Mt. Carmel, IL 62863

2nd Circuit (Wayne)
301 E. Main St.
Fairfield, IL 62837

2nd Circuit (White)
301 E. Main St.
Carmi, IL 62821

3rd Circuit (Bond)
200 W. College Ave.
Greenville, IL 62246

3rd Circuit (Madison)
155 N. Main St.
Edwardsville, IL 62025

4th Circuit (Christian)
101 S. Main St.
Taylorville, IL 62568

4th Circuit (Clay)
111 Chestnut St.
Louisville, IL 62858

4th Circuit (Clinton)
850 Fairfax St.
Carlyle, IL 62231

4th Circuit (Effingham)
120 W. Jefferson Ave.
Effingham, IL 62401

4th Circuit (Fayette)
221 S. 7th St.
Vandalia, IL 62471

4th Circuit (Jasper)
100 W. Jourdan St.
Newton, IL 62448

4th Circuit (Marion)
100 E. Main St.
Salem, IL 62881

4th Circuit (Montgomery)
120 N. Main St.
Hillsboro, IL 62049

4th Circuit (Shelby)
301 E. Main St.
Shelbyville, IL 62565

5th Circuit (Clark)
501 Archer Ave.
Marshall, IL 62441

5th Circuit (Coles)
651 Jackson Ave.
Charleston, IL 61920

5th Circuit (Cumberland)
1 Courthouse Square
Toledo, IL 62468

5th Circuit (Edgar)
115 W. Court St.
Paris, IL 61944

5th Circuit (Vermillion)
7 N. Vermilion St.
Danville, IL 61832

6th Circuit (Champaign)
101 E. Main St.
Urbana, IL 61801

6th Circuit (Dewitt)
201 W. Washington St.
Clinton, IL 61727

6th Circuit (Douglas)
401 S Center St.
Tuscola, IL 61953

6th Circuit (Macon)
253 E. Wood St.
Decatur, IL 62523

6th Circuit (Moultrie)
10 S. Main St.
Sullivan, IL 61951

6th Circuit (Piatt)
101 W. Washington St.
Monticello, IL 61856

7th Circuit (Greene)
519 N. Main St.
Carrollton, IL 62016

7th Circuit (Jersey)
201 W. Pearl St.
Jerseyville, IL 62052

7th Circuit (Macoupin)
201 E. Main St.
Carlinville, IL 62626

7th Circuit (Morgan)
300 W. State St.
Jacksonville, IL 62650

7th Circuit (Sangamon)
200 S. 9th St.
Springfield, IL 62701

7th Circuit (Scott)
35 E. Market St.
Winchester, IL 62694

8th Circuit (Adams)
521 Vermont St.
Quincy, IL 62301

8th Circuit (Brown)
200 Court St.
Mt. Sterling, IL 62353

8th Circuit (Calhoun)
101 N. County Rd
Hardin, IL 62047

8th Circuit (Cass)
100 E. Springfield St.
Virginia, IL 62691

8th Circuit (Mason)
125 N. Plum St.
Havana, IL 62644

8th Circuit (Menard)
102 S. 7th St.
Petersburg, IL 62675

8th Circuit (Pike)
100 E. Washington St.
Pittsfield, IL 62363

8th Circuit (Schuyler)
102 S. Congress St.
Rushville, IL 62681

9th Circuit (Fulton)
100 N. Main St.
Lewistown, IL 61542

9th Circuit (Hancock)
500 Main St.
Carthage, IL 62321

9th Circuit (Henderson)
307 Warren St.
Oquawka, IL 61469

9th Circuit (Knox)
200 S. Cherry St.
Galesburg, IL 61401

9th Circuit (McDonough)
1 Courthouse Square
Macomb, IL 61455

9th Circuit (Warren)
100 W. Broadway
Monmouth, IL 61462

10th Circuit (Marshall)
122 N. Prairie St.
Lacon, IL 61540

10th Circuit (Peoria)
324 Main St.
Peoria, IL 61602

10th Circuit (Putnam)
120 N. 4th St.
Hennepin, IL 61327

10th Circuit (Stark)
130 W. Main St.
Toulon, IL 61483

10th Circuit (Tazewell)
342 Court St.
Pekin, IL 61554

11th Circuit (Ford)
200 W. State St.
Paxton, IL 60957

11th Circuit (Livingston)
110 N. Main St.
Pontiac, IL 61764

11th Circuit (Logan)
601 Broadway St.
Lincoln, IL 62656

11th Circuit (McLean)
104 W. Front St.
Bloomington, IL 61702

11th Circuit (Woodford)
115 N. Main St.
Eureka, IL 61530

12th Circuit (Will)
14 W. Jefferson St.
Joliet, IL 60432

13th Circuit (Bureau)
700 S. Main St.
Princeton, IL 61356

13th Circuit (Grundy)
111 E. Washington St.
Morris, IL 60450

13th Circuit (LaSalle)
119 W. Madison St.
Ottawa, IL 61350

14th Circuit (Henry)
307 W. Center St.
Cambridge, IL 61238

14th Circuit (Mercer)
100 Southeast 3rd St.
Aledo, IL 61231

14th Circuit (Rock Island)
1504 Third Ave.
Rock Island, IL 61201

14th Circuit (Whiteside)
200 E. Knox St.
Morrison, IL 61270

15th Circuit (*Carroll)*
301 N. Main St.
Mt. Carroll, IL 61053

15th Circuit (*Jo Daviess)*
330 N. Bench St.
Galena, IL 61036

15th Circuit (*Lee)*
309 S. Galena Ave.
Dixon, IL 61021

15th Circuit (*Ogle)*
106 S. 5th St.
Oregon, IL 61061

15th Circuit (*Stephenson)*
15 North Galena Ave.
Freeport, IL 61032

16th Circuit (*Kane)*
540 S. Randall Rd.
St. Charles, IL 60174

17th Circuit (*Boone)*
601 N. Main St.
Belvidere, IL 61008

17th Circuit (*Winnebago)*
400 W. State St.
Rockford, IL 61101

18th Circuit (*DuPage)*
505 N. County Farm Rd
Wheaton, IL 60187

19th Circuit (*Lake)*
18 N. County St.
Waukegan, IL 60085

20th Circuit (*Monroe)*
100 S. Main St.
Waterloo, IL 62298

20th Circuit (*Perry)*
1 Public Square
Pinckneyville, IL 62274

20th Circuit (*Randolph)*
1 Taylor St.
Chester, IL 62233

20th Circuit (*St. Clair)*
10 Public Square
Belleville, IL 62220

20th Circuit (*Washington)*
125 E. Elm St.
Nashville, IL 62263

21st Circuit (Iroquois)
550 S. 10th St.
Watseka, IL 60970

21st Circuit (Kankakee)
450 E. Court St.
Kankakee, IL 60901

22nd Circuit (McHenry)
2200 N. Seminary Ave.
Woodstock, IL 60098

23rd Circuit (DeKalb)
133 W. State St.
Sycamore, IL 60178

23rd Circuit (Kendall)
807 W. John St.
Yorkville, IL 60560