Lex Mundi
World Ready

Guide to Doing Business

Rhode Island

Prepared by Lex Mundi member firm, Adler Pollock & Sheehan P.C.

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I. INTRODUCTION

A. Geography

Adler Pollock & Sheehan P.C. is located in Providence, capital of the smallest state in the United States, Rhode Island. This state is just 48 miles from north to south and 37 miles from east to west, yet has over 400 miles of coastline, making it a popular tourist destination. Because of its small size, it is easy to travel around the state and enjoy many different types of landscapes and attractions. From pristine beaches to picturesque country farms to historic neighborhoods that are remarkably well preserved, Rhode Island is ideally located just one hour from Boston, 4 hours from New York City, and 4 hours to ski country to the north. Rhode Island is an example of a cold winter humid continental climate with hot, rainy summers and chilly winters.

Rhode Island has a charm that is hard to beat. Downtown Providence has received nationwide recognition for its ambitious revitalization in recent years with numerous new office and residential buildings, a multi-level shopping mall and entertainment center, and a waterfront that is alive with activity, including the unique art installation, WaterFire, which turns the Providence River into a canvas of sculpture and flames during the summer months. Adding to its charm, Providence enjoys a diverse population as well as some of the best restaurants in the country. Although Rhode Island has the smallest total area of all fifty states, it has the second highest population density in the Union, second only to New Jersey.

B. About Us

Founded in 1960, AP&S is a full-service law firm with a sophisticated corporate and real estate practice and a nationally recognized litigation department. AP&S represents clients throughout New England and across the country from locations in Rhode Island, Massachusetts and New Hampshire. We draw upon the experience of our attorneys across a wide range of practice areas and industry experience to develop the innovative strategies that businesses expect. The firm provides top-notch litigation, general, corporate, transactional, commercial, environmental, and labor and employment advice to a wide range of clients, including Fortune 100 companies, publicly traded companies, privately held companies, REITs, public agencies, quasi-public agencies, public utilities, private associations and high net-worth individuals. As one of the largest law firms in the State of Rhode Island, AP&S has long been recognized for the quality of its legal services, including national recognition as an AV-rated firm by Martindale Hubbell, a reflection of having achieved the highest levels of professional skill and integrity as determined in an unbiased, peer-based ranking. *Chambers USA Directory of Business Attorneys* has ranked the firm's Litigation, Labor and Employment, Corporate and Real Estate practices as among the highest in the State of Rhode Island, and several of our attorneys are ranked leaders in their respective practices on qualities that include legal ability, professional conduct, client service, commercial awareness/astuteness, diligence and commitment. Many of our attorneys have been designated as tops in their areas of practice by *Best Lawyers in America*, and *Super Lawyers* which is published in 50 states

by *Law & Politics Magazine* and published locally by Rhode Island Monthly and Boston Magazine. Additionally, *U.S. News Media Group* and *Best Lawyers* ranks AP&S among the best law firms in Rhode Island in the following practice areas: General Commercial Litigation, Mass Tort Litigation / Class Actions – Defendants, Product Liability Litigation – Defendants, Employment Law – Management, Labor Law – Management, Administrative / Regulatory Law, Criminal Defense: White-Collar, Government Relations, Health Care Law, Land Use & Zoning Law, Real Estate Law, Tax Law and Trust & Estates Law. AP&S has the distinction of having been selected to be a member of three prominent law firm networks: Lex Mundi, State Capital Group and the USLAW Network. Membership is by invitation only to select firms that have demonstrated the highest quality service and industry leadership. These strategic relationships allow AP&S to call upon resources all over the world to serve our clients' needs.

II. RHODE ISLAND BUSINESS ORGANIZATIONS

A. Generally

One of the most significant choices facing someone who wishes to conduct business in the state of Rhode Island is the form of entity through which to operate that business. No single entity represents the best choice for all businesses. A number of factors must be considered, including the goals and objectives of the business, potential exposure to tort and contract liability, tax treatment, efficiency in governance, ability to transfer interests, and requirements for statutory formalities. Each form of business entity has unique advantages and disadvantages.

Rhode Island state law recognizes the traditional forms of business organizations, including corporations (for-profit, nonprofit, and professional corporations), partnerships (general, limited, and limited liability partnerships), and limited liability companies. Specific statutes govern the creation, management, and powers of these different forms of business entities. As a condition of conducting business in the state of Rhode Island, a corporation, limited partnership, or limited liability company organized under the laws in another jurisdiction must apply for registration with the Secretary of State as a foreign entity and obtain a certificate of authority to transact business within the state. Failure to file the necessary application may result in the imposition of fines and other penalties.

This section provides an overview and summary of the formation, operation, and characteristics of these entities. The website of the Rhode Island Secretary of State provides an online business database service, forms for different business entities, and other very helpful information, including all state rules and regulations, at: www.sos.ri.gov.

Rhode Island state statutes are available on the website of the General Assembly at: www.rilin.state.ri.us/Statutes/.

B. Sole Proprietorships

A sole proprietorship is the simplest type of business entity. It has no legal existence apart from its owner and may be formed without any expense or formality. A person who conducts a sole proprietorship is engaged in business for himself or herself. One key advantage is the absence of any required statutory formalities to organize the business. No statute governs its formation. A person engaged in a sole proprietorship under a "trade name" -- that is, a name other than his or her own name -- must file a trade name certificate with the office of the clerk in the city or town in which the business has an office.

Autonomy and administrative simplicity are the other principle advantages to this form of doing business. A sole proprietor is his or her own boss. Unless a sole proprietor delegates authority to another person, no one else has the right to participate in

management. Another advantage is the ease with which a person may transfer his or her business interest.

The principal disadvantage of doing business as a sole proprietor is the proprietor's exposure to unlimited liability. In general, a sole proprietor is personally liable for all of the obligations of the business, including any trade debt and torts committed by his or her employees. That potential liability extends to all of the personal as well as business assets of the sole proprietor, and the sole proprietor has no other person with whom to share that liability. In addition, a sole proprietorship has no continuity of existence, and unless a sole proprietor has transferred his or her interest or designed a proper estate plan, the sole proprietorship ends on the death of the sole proprietor.

C. Partnerships

General Partnership

Rhode Island law defines a partnership as "an association of two or more persons who carry on as co-owners of a business for profit." A partnership is another type of legal entity that requires no statutory formalities for its organization, although Rhode Island law, through the Rhode Island Uniform Partnership Act (R.I. Gen. Laws §§ 7-12-12 through 7-12-60) governs its formation, operation, and dissolution. The partnership is formed immediately upon the association of at least two persons who wish to engage in a business for profit, and no other act is necessary for the creation of its legal existence. That formation may be the result of a written agreement or oral understanding or by implication from the conduct of the parties. The preferable practice is for the partners to enter into a formal written agreement that delineates their rights and responsibilities. In the absence of such an agreement, Rhode Island law defines certain of those rights and responsibilities.

The primary advantage of general partnerships is the flexibility they allow in the allocation of rights, responsibilities, and economic benefits and burdens among the participants. A general partnership is the least restrictive form of business organization for two or more owners. A number of people may combine their resources to engage in a business while maintaining significant flexibility in structuring how they decide to operate their business and distribute its profits and losses. A general partnership can also achieve centralized management of all the participants through the appointment of a managing partner. Subject to any such appointment or other agreement among the partners, each partner has equal rights in the management of the partnership.

A major disadvantage to the form of a general partnership for the operation of a business is the lack of limited liability. Like a sole proprietor, a general partner is jointly and severally liable for all of the debts and other obligations of the general partnership to the full extent of that partner's business and personal assets. General partners are generally unable to transfer their partnership interests without the consent of all of the other partners, and the withdrawal of a partner results in the dissolution of the partnership,

unless the provisions of a partnership agreement may preserve the business's continued existence.

Limited Liability Partnership

A limited liability partnership is, under Rhode Island law, a general partnership that affords limited liability for all of the general partners, and that limited liability protection is the primary advantage to this type of business entity. A general partnership may seek that limited liability protection by following specific statutory requirements delineated in R.I. Gen. Laws §§ 7-12-56 through § 7-12-58. As a result of this "insulation" from liability, a general partner may participate in the management and control of the business without the threat of any vicarious liability such as the misconduct or negligence of another partner. A partner in a limited liability partnership is not personally liable for the obligations of the business, and the protection is not lost in the event of a transfer of another partner's interest. Each partner in a registered limited liability partnership still retains personal responsibility for his or her own actions and those of any individuals under his or her direct supervision and control (other than in an administrative capacity).

The major disadvantages of a limited liability partnership is that the partners must strictly follow the statutory requirements for registration and renewal (on an annual basis), and must obtain particular limits of insurance if the business engages in the rendering of certain professional services (such as the practice of law, accountancy, or medicine).

Joint Venture

A joint venture is not a statutory entity or form of doing business in Rhode Island. Rather, a joint venture is a general partnership that limits its operations to a single business venture. Consequently, the advantages and disadvantages of joint ventures are similar to those of general partnerships. Joint ventures are adaptable to any type of business, such as manufacturing, product distribution, real estate development, or financial services. Rhode Island law permits significant flexibility in the structure and operation of joint ventures. Since a joint venture is essentially a general partnership in which each of the partners will be personally liable for the debts and other obligations of the entity, most participants in a joint venture will wish to form a limited liability entity to serve as the joint venturer in this type of business arrangement.

They are particularly useful to foreign businesses wishing to do business in the United States for the first time. A properly structured joint venture arrangement will enable the foreign business to obtain the assistance, guidance, and experience of a United States operation, as well as to make useful contacts in the business community in the United States.

In a more general use of the term, a joint venture refers to a working relationship between parties that join together in a common enterprise. In this sense of the term, the joint venturers may tailor the business arrangement to the specific goals and objectives of the particular enterprise. A foreign business may contract with a local business to perform

the services required, such as a United States business that will distribute a line of products manufactured oversees by the foreign business. Alternatively, for example, the foreign business may form a United States subsidiary dedicated to the specific purpose of the venture.

Limited Partnership

A limited partnership is a form of partnership in which at least one partner is a general partner responsible for managing the partnership and at least one partner is a limited partner, usually a passive investor. A Rhode Island limited partnership may only be created by agreement, written or oral, of the partners and compliance with certain statutory requirements, including the filing of a certificate of limited partnership with the office of the Secretary of State. The Rhode Island Uniform Limited Partnership Act (R.I. Gen. Laws §§ 7-13-1 though7-13-69) govern the rights and responsibilities of the partners in a limited partnership.

The primary advantage of a limited partnership is that, to some extent, it combines the flexibility of a general partnership with the limited liability protection of a corporation. The general partner or partners have great latitude in managing the business within the parameters of the partnership agreement and the provisions of the Rhode Island Uniform Limited Partnership Act. At the same time, the limited partners enjoy protection from exposure to liability since they are not liable (so long as they do not actively participate in management or are not also general partners) for the debts or other obligations of the partnership beyond the amount of their investments in the partnership. A limited partner still retains liability for his or her own wrongful acts. Contrary to a general partnership, the withdrawal or death of a general or limited partner will not automatically result in the dissolution of the partnership.

The general partner has general liability for the debts and other obligations of the limited partnership to third parties. The general and limited partners may modify, by agreement, the liability of the general partner to the limited partners and the partnership.

The passive nature of an investment in a limited partnership means that limited partners, in general, are restricted from participation in the day-to-day management of the enterprise. By way of protection of their interests, limited partners may require that the partnership agreement limit the right of a general partner to take certain key actions or make certain key decisions, such as the disposition of the major assets of the partnership, without the approval of the limited partners. Limited partnerships are often used as financing vehicles and are most useful when investors are to have no role in management and a simple or flexible governance structure is needed.

The interests of limited partnerships constitute securities, and the offer and sale of the interests of limited partnerships generally fall with the scope of both federal and state securities laws. Consequently, the issuers of such interests must carefully comply with the provisions of those laws.

D. Corporations

Overview

A corporation is an entity that enjoys a legal existence separate and apart from its owners and is created under state law. A for-profit corporation doing business in the state of Rhode Island may be organized under the Rhode Island Business Corporation Act (R.I. Gen. Laws §§ 7-1.2-101 through 7-1.2-1804) or the comparable "corporate" laws of another jurisdiction. In the United States, corporations may be public or private. A "public" corporation is one that offers and sells its shares to the general public. The most common form of business entity in the United States, a "private" corporation has relatively few owners, or shareholders, and such shareholders are sometimes limited in their ability to transfer their interests.

The principal advantage of doing business as either form of corporation is that, in most instances, the shareholders of a corporation are not personally liable for the debts and other obligations of the business. Another key advantage is that a corporation has perpetual existence, and it will not dissolve upon the death or withdrawal of a single shareholder. There is a wealth of statutory law and case law, moreover, governing corporations, and the rights and responsibilities of officers, directors, and shareholders are well developed and interpreted, and therefore, usually predictable.

The formal record-keeping and reporting requirements imposed by typical state statutes are the principal disadvantage to this form of doing business because of the increase in expense and time, and use of other resources. Public corporations have particularly higher administrative costs since they must comply with the complicated statutory scheme of regulations under federal and state securities laws.

For-Profit Corporations

A for-profit corporation in Rhode Island is created pursuant to the Rhode Island Business Corporation Act (R.I. Gen. Laws §§ 7-1.2-101 through 7-1.2-1804), which governs its formation, operation, and dissolution. The shareholders are the owners of the corporation and receive shares of stock in exchange for their capital contributions. Capital contributions may take the form of cash, property, or past services. The Board of Directors typically act as strategic planners and develop and set policies, procedures, and long-term goals and objectives. The officers manage the day-to-day operations of the corporation.

Formation

The Rhode Island Business Corporation Act (the "Business Act") governs the formation, operation, and dissolution of for-profit corporations in Rhode Island. A for-profit corporation is formed when one or more individuals, acting as incorporator(s), prepare, sign, and file articles of incorporation with the Rhode Island Secretary of State. The individual or individuals acting as the

incorporator(s) need not meet any residency or citizenship requirements. According to §202 of the Business Act, the articles of incorporation must contain the following:

(i) a corporate name which is distinguishable from the name of any other entity on file with the Rhode Island Secretary of State and which must contain the word "corporation," "company," "incorporated," or "limited," or an abbreviation of one of such words;

(ii) the total number of shares which the corporation has authority to issue;

(iii) the address of the corporation's initial registered office in the State of Rhode Island, which may be, but need not be, the same as the corporation's place of business;

(iv) the name of the corporation's initial registered agent at the initial registered office (the registered agent may be an individual resident in the State of Rhode Island, an entity formed in the State of Rhode Island, or a foreign entity authorized to transact business in Rhode Island); and

(v) the name and address of the incorporator(s).

In addition, the articles of incorporation may contain other optional provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation. §202 of the Business Act. Permissible optional provisions also include a provision which names the initial directors of the corporation. The official form for articles of incorporation is available online at the website of the Rhode Island Secretary of State at: www.sos.ri.gov/divisions/Business-Portal/Forms.

The incorporator(s) may file the articles of incorporation with the Rhode Island Secretary of State in either paper format or by electronic transmission, and the articles of incorporation must be accompanied by all the required filing fees. The legal existence of the corporation commences when the Secretary of State certifies that the instrument has been filed by endorsing upon the signed instrument the word "filed" and the date and time of its filing. Articles of incorporation will not be accepted for filing unless accompanied by both the filing fee and a license fee based on the number of shares which the corporation is authorized to issue. The formula for calculating the license fee is set forth in §1602(c) of the Business Act.

Management and Control

Except as may be otherwise provided in the Business Act or in the articles of incorporation, the business and affairs of a corporation are managed by the board of directors. The board of directors of a corporation consists of one or more members. The number of directors is fixed by, or in the manner provided in, the articles of incorporation or the bylaws. Directors need not be residents of Rhode Island or shareholders of the corporation unless the articles of incorporation or bylaws require it. The articles of incorporation or bylaws may prescribe other qualifications for directors. Although the directors have broad authority to manage the business and affairs of a corporation, certain actions including the election of directors, mergers, sale of all or substantially all assets of the corporation, and dissolution of the corporation cannot be undertaken without the vote and approval of the shareholders.

After the articles of incorporation are filed, if the initial directors are named in the articles of incorporation, they hold an organizational meeting to complete the organization of the corporation by appointing officers, adopting bylaws, and transacting any other business that is appropriate. If the initial directors are not named in the articles of incorporation, the incorporator(s) hold an organizational meeting either to: (i) elect directors and complete the organization of the corporation; or (ii) elect a board of directors who in turn complete the organization of the corporation.

The bylaws of the corporation may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with the Business Act or the articles of incorporation. In general, the bylaws of a for-profit corporation contain provisions governing: (i) director and officer qualifications, powers, and duties; (ii) voting; (iii) meetings of shareholders, directors and officers; (iv) filling of vacancies; (v) committees; (vi) property holding and transfer; (vii) indemnification of directors and officers; (viii) bank accounts; (ix) fiscal year audits and financial reports; and (x) conflicts of interest. The initial bylaws of a corporation must be adopted by its incorporators or by its board of directors at its organizational meeting. The bylaws may be amended subsequently by the shareholders, or, unless otherwise provided in the articles of incorporation or the bylaws, by the board of directors, but any amendment to the bylaws by the board of directors may be changed by the shareholders.

Initial directors hold office until the first annual meeting of shareholders and until their successors have been elected and qualified. At the first annual meeting of shareholders and at each subsequent annual meeting, the shareholders elect directors to hold office until the next succeeding annual meeting. Each director holds office for the term for which he or she is elected and until his or her successor has been elected and qualified.

The officers of a corporation consist of a president, a secretary and a treasurer, and such other officers as are authorized by the bylaws or the board of directors. The initial slate of officers is chosen by the incorporator(s) or by the initial board of directors. Thereafter, the officers of the corporation are usually elected by the board of directors on an annual basis and serve at the pleasure of the board of directors. The officers have such authority and perform such duties as may be set forth in the bylaws or determined by resolution of the board of directors.

Liability of shareholders, directors, and officers

The Business Act requires that a director shall discharge his or her duties as a director: (i) in good faith; (ii) with the care that a person in a like position would reasonably believe appropriate under similar circumstances; and (iii) in a manner he or she reasonably believes to be in the best interests of the corporation. In discharging his or her duty of care, a director is entitled to rely on information prepared by officers and employees of the corporation or by outside professionals whom the director reasonably believes to be reliable and competent. In addition, directors also owe their corporation a duty of loyalty which requires that a director act in the best interests of the corporation and its shareholders, as distinguished from his or her own personal interest if in conflict with the interests of the corporation and its shareholders. Directors may have liability to the corporation or its shareholders in circumstances where the directors have breached their duties of care and/or loyalty. Under the "business judgment rule," however, a court will usually not impose liability on directors for decisions that in retrospect appear to have been wrong, so long as the decisions were made in good faith for a rational business purpose and so long as the directors discharged the duties of care and loyalty which they owe to the corporation and its shareholders. In this connection, the articles of incorporation of a corporation may contain a provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of the director's duty of care (but not his or her duty of loyalty) save in certain situations delineated in § 202(b)(3) of the Business Act. Officers of the corporation are held to owe to the corporation and its shareholders the same duties of care and loyalty which are owed by the directors.

Subject to the guidelines in § 8.14 of the Business Act, the articles of incorporation and/or bylaws of the corporation will usually contain provisions obligating the corporation to indemnify and hold harmless its officers and directors from and against any liabilities and expenses they may incur or suffer arising out of a breach of their duties owed to the corporation and its shareholders. In addition, corporations often provide "D&O" (directors' and officers') liability insurance to their directors and officers as an extra layer of protection against possible exposure to liability for breach of their fiduciary duties. Directors and officers will often condition their service to the corporation on the availability of strong indemnification provisions in the articles of incorporation and bylaws and, where the corporation can afford it, such "D&O" insurance.

Normally, a shareholder, by reason of his or her shareholder status alone, is not personally liable for the debts and obligations of a corporation. This rule of limited liability is often a primary motivation for the formation of the corporation. By virtue of this "corporate shield," a shareholder's exposure for the debts and obligations of the corporation is limited to his or her investment in the corporation. In rare instances, however, a court may hold a shareholder liable for the debts, actions, or omissions of a corporation under a theory called "piercing the corporate veil."

Raising capital

For-profit corporations (as well as limited liability companies) offer the most flexibility in raising capital, ranging from various kinds of equity (common stock, preferred stock, options, and warrants) to numerous types of debt instruments (convertible notes, subordinated notes, bonds, and commercial paper).

Mergers, acquisitions, and dissolutions

Any two (2) or more legal entities, including a nonprofit and a for-profit corporation, limited partnership, or limited liability company, may merge or consolidate into one of the entities. Domestic corporations may also merge or consolidate with foreign legal entities, if the merger or consolidation is permitted by the laws of the other state. Each corporation must adopt a plan of merger, including the terms and conditions of the merger or consolidation. The shareholders must approve a recommendation by the board of directors to merge or consolidate. Following the approval by the shareholders, the officers must file articles of merger or consolidation with the Rhode Island Secretary of State (together with the appropriate filing fee), and the Rhode Island Secretary of State will then issue a certificate of merger or consolidation.

A for-profit corporation may also dissolve and wind up its affairs. The shareholders must approve a recommendation by the board of directors to dissolve. If there are assets, then the assets are first used to pay the liabilities and obligations of the corporation. Any other assets are distributed in accordance with the provisions of the articles of incorporation or bylaws. In most cases, a plan of distribution is required to be adopted in the same manner as the articles of dissolution. The officers must file articles of dissolution with the Rhode Island Secretary of State (together with the appropriate filing fee), and the Rhode Island Secretary of State then issues a certificate of dissolution. The superior court also has the power to liquidate the assets of a corporation for a number of reasons, such as if the directors are deadlocked in the management of the corporation, and irreparable injury is occurring or likely to occur, or the directors' activities are illegal, oppressive, or fraudulent, or the shareholders are deadlocked, or the corporate assets are being misapplied, or the corporation is not able to carry out its purposes.

Recordkeeping and state reports

The Business Act requires each corporation to keep correct and complete books and records of account and minutes of the proceedings of its shareholders and board of directors. It also requires each corporation to keep at its registered office or principal place of business, legal counsel's office, or at the office of its transfer agent or registrar, a record of its shareholders with the names and addresses of all shareholders and the number and class of shares held by each of them. Any director or shareholder of the corporation, upon written demand stating the purpose for the demand, has the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, the corporation's relevant books and records of account, minutes, and record of shareholders and to make extracts from such books and records.

The Business Act requires each corporation to file an annual report with the Rhode Island Secretary of State between January 1 and March 1 of each year following the year of incorporation. The form of annual report is available online at the website of the Rhode Island Secretary of State at www.sos.ri.gov/divisions/Business-Portal/Forms and may be filed in paper format or online by electronic transmission, together with the appropriate filing fee.

Nonprofit Corporations

The Rhode Island Nonprofit Corporation Act (R.I. Gen. Laws §§ 7-6-1 through 108) governs the formation, operation, and dissolution of nonprofit corporations in the state of Rhode Island. Pursuant to the Rhode Island Nonprofit Corporation Act (the "Nonprofit Act"), a nonprofit corporation is managed by its board of directors and operated by its officers and employees. Instead of shareholders, a nonprofit corporation may, but is not required to, have members. Nonprofit corporations, of course, are specifically organized not to earn profits. No part of the income or surplus of a Rhode Island nonprofit corporation may be distributed to its members, directors, or officers, although reasonable compensation may be paid for services rendered.

A nonprofit corporation has an existence of its own, independent of the terms of office or employment of members, directors, or officers. Similar to a for-profit corporation, a nonprofit corporation may sue or be sued in its own name and may own real estate in its own name.

Advantages and disadvantages of nonprofit vs. for-profit

The principal advantage of incorporation is that it protects the shareholders or members from personal liability for the obligations and liabilities of the corporation, including unlawful actions of officers, directors, and employees acting on its behalf. In addition, incorporation establishes continuity, corporations are subject to a body of statutes that provide very specific guidance as to their formation and operation, and incorporation brings stature to the organization and implies stability.

Where profit is not a goal, and the enterprise can be funded without the need for access to capital, the nonprofit corporation may be the preferred vehicle for pursuing certain objectives. Although nonprofit corporations are not prohibited from engaging in commercial activities, the directors of a nonprofit corporation are duty-bound to devote primary attention to the promotion of the social mission of the corporation rather than the production of net income.

On the other hand, if outside capital is needed, a for-profit corporation (or limited liability company) is likely to be the preferred option, since nonprofit corporations cannot issue capital stock. The directors of a for-profit corporation, however, owe strict duties to the shareholders to maximize profits and value. Unless the directors and managers can tie the social mission of their for-profit corporation directly to its business purpose, therefore, they can be sued for breach of their duties to shareholders and for misuse of

corporate assets if they focus excessively on the social mission and forego profits. This problem can be avoided where all shareholders agree to pursue a social mission or devote a percentage of revenues to charitable causes, but such agreements may be temporary because a change in control - or a drop in earnings - may lead to amendment or abrogation of shareholder agreements.

Formation

A nonprofit corporation attains its separate legal status through the filing with, and approval by, the Rhode Island Secretary of State of its articles of incorporation. This document is in essence a contract between the state and the nonprofit corporation in which Rhode Island grants individual legal status to the corporation in exchange for the corporation's commitment to follow its rules.

One or more persons (as incorporators), whether or not residents of Rhode Island, may form a nonprofit corporation in Rhode Island by completing, signing, and filing (with the appropriate filing fee) the articles of incorporation (by hard copy or electronically) with the Secretary of State. The articles of incorporation must include the name of the corporation (which must be distinguishable from other entities on record with the Secretary of State), the period of its duration (which can be in perpetuity), the not-for-profit purpose, the registered agent and address, the number of directors (which must be a minimum of three) and their names and addresses, and the names and addresses of the incorporators. The articles of incorporation may also include any other provisions that are not inconsistent with the Nonprofit Act, including provisions that eliminate or limit the personal liability of a director for a breach of his or her duty as a director except for certain specific violations. Amendments to the articles of incorporation must be signed by the president or a vice president and the secretary or an assistant secretary, and filed with the appropriate filing fee, and must include the name of the corporation, the proposed amendment (as recommended by the directors and approved by the members, if any, with the dates of any meetings or consent actions). If the nonprofit corporation intends to obtain exemption from federal and state income taxation, the articles of incorporation must conform with applicable federal and state tax statutes and regulations.

Management and control

Once the nonprofit corporation has been established, the initial board of directors must meet (in person or by consent) to ratify the acts in connection with the initial formation of the corporation and adopt bylaws which set forth the rules and procedures governing the decision-making process of the board of directors and the general operation and management of the corporation consistent with the applicable statutes of Rhode Island and the articles of incorporation.

Typically, the bylaws of a nonprofit corporation contain provisions governing: (i) member, director, and officer qualifications, powers, and duties; (ii) voting; (iii) filling of vacancies; (iv) meetings; (v) property holding and transfer; (vi) indemnification of

directors and officers; (vii) committees; (viii) bank accounts; fiscal year audits and financial reports; (ix) conflicts of interest; and (x) amendment and dissolution procedures.

Liability of members, directors, and officers

The articles of incorporation of a nonprofit corporation may eliminate or limit the personal liability of a director to the corporation or its members for monetary damages for breach of the director's duty as a director, except for:

(i) any breach of the director's duty of loyalty to the corporation or its members;

(ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

(iii) any transaction from which the director derived an improper personal benefit.

A nonprofit corporation has the power to indemnify any person by reason of the fact that the person is or was a director if:

(i) he or she conducted himself or herself in good faith; and

(ii) he or she reasonably believed, in the case of conduct in his or her official capacity, that his or her conduct was in the best interests of the corporation, and in all other cases, unless he or she received an improper personal benefit, that his or her conduct was at least not opposed to its best interests; and

(iii) in the case of criminal proceedings, he or she had no reasonable cause to believe his or her conduct was unlawful.

In addition, any person who serves as a volunteer of a nonprofit corporation is not liable to any other person based solely on his or her conduct in carrying out his or her duties unless such conduct constituted malicious, willful, or wanton misconduct. Rhode Island also specifically exempts directors, officers, employees, agents, and volunteers from liability for bodily injury incurred by a person while participating in any athletic or sports event sponsored by the nonprofit corporation, provided the person or his or her parent or guardian has signed a written waiver of liability and acknowledged the assumption of risk.

A corporation may also indemnify officers, employees, and agents, and advance expenses to them, to the extent provided by the articles of incorporation, bylaws, vote, or contract.

Any director or officer who signs any articles, report, application, or other document filed with the Rhode Island Secretary of State which is known to such director or officer to be false in any material respect is guilty of a misdemeanor and subject to a fine.

Any persons who assume to act as a nonprofit corporation without the authority to do so are jointly and severally liable for all debts and liabilities incurred or arising from such actions.

Mergers, acquisitions, and dissolution

Any two (2) or more legal entities, including a nonprofit and a for-profit corporation, limited partnership, or limited liability company, may merge or consolidate into one of the entities. Domestic nonprofit corporations may also merge or consolidate with foreign legal entities, if the merger or consolidation is permitted by the laws of the other state. Each corporation must adopt a plan of merger, including the terms and conditions of the merger or consolidation. The members, if there are members and they are entitled to vote, must approve a recommendation by the board of directors to merge or consolidate. If there are no members or no members entitled to vote, then the board of directors adopts the plan of merger or consolidation. Following the approval by the members, if any, or the board of directors, the officers must file articles of merger or consolidation with the Rhode Island Secretary of State (together with the appropriate filing fee), and the Rhode Island Secretary of State will then issue a certificate of merger or consolidation.

A nonprofit corporation may also dissolve and wind up its affairs. The members, if there are members and they are entitled to vote, must approve a recommendation by the board of directors to dissolve. If there are no members or no members entitled to vote, then the board of directors must approve the dissolution. If there are assets, then the assets are first used to pay the liabilities and obligations of the corporation. Assets that are received and held by the corporation subject to limitations permitting their use only for charitable, religious, benevolent, educational, or similar purposes, must be conveyed to one or more domestic organizations engaged in substantially similar activities as the dissolving corporation. Any other assets are distributed in accordance with the provisions of the articles of incorporation or bylaws. In most cases, a plan of distribution is required to be adopted in the same manner as the articles of dissolution. The officers must file articles of dissolution with the Rhode Island Secretary of State (together with the appropriate filing fee), and the Rhode Island Secretary of State then issues a certificate of dissolution. The superior court also has the power to liquidate the assets of a nonprofit corporation for a number of reasons, such as if the directors are deadlocked in the management of the corporation, and irreparable injury is occurring or likely to occur, or the directors activities are illegal, oppressive, or fraudulent, or the members are deadlocked, or the corporate assets are being misapplied, or the corporation is not able to carry out its purposes.

Recordkeeping and state reports

A nonprofit corporation must file an annual report with the Rhode Island Secretary of State in June each year with the appropriate filing fee, listing the names and addresses of its officers and directors. Nonprofit corporations must keep correct and complete books and records of account and also minutes of all proceedings of members, if any, boards of directors, and committees having any of the authority of the board of directors. At its principal office in Rhode Island or at its registered office in this state, the nonprofit corporation must maintain a record of the names and addresses of its members (if any) entitled to vote. Any member or his or her agent may inspect the books and records of a nonprofit corporation for any proper purpose at any reasonable time.

Insurance

Nearly every type of activity by a nonprofit corporation can become the target of some kind of a claim by a firm or an individual that alleges damage or injury by the corporation or individuals responsible for it (that is, directors, officers, or employees). Even if the claim is without merit, the costs of defending against the claim can be very substantial.

To encourage qualified individuals to accept positions as directors and officers, many nonprofit corporations purchase "D&O" (directors' and officers') liability insurance to cover director and officer liability. In addition, most responsible nonprofit corporations purchase a basic comprehensive general liability policy that covers liability for accidents in the corporation's offices, at sponsored meetings, and similar events.

Liability insurance for nonprofit corporations is often a very complicated matter. Consultation with an experienced and knowledgeable agent or consultant is essential in order to obtain the right coverage at the lowest premium.

Professional Service Corporations

The Rhode Island "Professional Services Corporation Law" (R.I. Gen. Laws §§ 7-5.1-1 through 12) governs the corporate practice of professions in Rhode Island, such as physicians, dentists, attorneys at law, professional engineers, architects, and certified public accountants. Section 7-5.1-3 requires that every officer, director, and shareholder of a corporation formed for the practice of one of the delineated professions must be "authorized to practice the profession." In addition, each officer, director, and shareholder must be "employed by the corporation in that practice." Section 7-5.1-6 requires that professional corporations may render their professional services "only through employees who are authorized to practice."

Except as otherwise provided in the Professional Services Corporation Law, all provisions of the Rhode Island Business Corporation Act applicable to domestic business corporations are applicable to professional service corporations organized under the Rhode Island Professional Services Corporation Law.

E. Limited Liability Companies

The Rhode Island Limited Liability Company Act (at R.I. Gen. Laws §§ 7-16-1 through 7-16-76) governs the formation, operation, and dissolution of limited liability companies in the state of Rhode Island. Limited liability companies are privately owned legal entities that combine certain advantageous characteristics of both partnerships and corporations. They are formed by following the statutory requirements of the Rhode Island Limited Liability Company Act (the "RI LLC Act"). Limited liability companies differ from for-profit corporations because they are formed and owned by members (one or more) rather than shareholders. A limited liability company may have an unlimited number of members, and those members may be individual investors as well as for-profit corporations and tax-exempt nonprofit corporations.

Limited liability companies are similar to partnerships because the members have broad discretion to allocate profit and loss and management powers among themselves. Members of a limited liability company may actively participate in its management, or they may choose to delegate management of the limited liability company to a manager or two or more managers who may or may not be investors. Alternatively, as with the shareholders of a corporation, a limited liability company may issue multiple classes of ownership interests, each with its own economic rights. In addition, the members enjoy the same insulation from personal liability for the debts and other obligations of the business.

The features of a limited liability company make it an excellent choice of business entity for entrepreneurial as well as for passive investments, including businesses that develop and license technology, venture capital enterprises, real estate investments, and corporate joint ventures where the limited liability of all of the owners is an important objective, and the freedom to plan the distribution and allocation of income and losses is desirable.

Since limited liability companies are a relatively new form of legal entity, there is not the same well developed body of statutory law and case law for them as with corporations. As a result, determining how the courts may interpret certain situations is somewhat less predictable.

Formation

To form and organize a limited liability company under the RI LLC Act, one or more persons must deliver executed articles of organization to the Rhode Island Secretary of State, together with the appropriate filing fee. When the Secretary of State accepts the articles of organization for filing and issues the certificate of organization, the limited liability company is formed under the name and subject to the conditions and provisions stated in its articles of organization. The articles of organization must set forth: (i) the name of the limited liability company; (ii) the name and address of its resident agent in the state of Rhode Island; (iii) a statement whether, under the articles of organization and any written operating agreement the limited liability company is intended to be: (a)

treated as a partnership; (b) treated as a corporation; or (c) disregarded as an entity separate from its member for purposes of federal income taxation; (iv) the address of the principal office of the limited liability company if it is determined at the time of organization; (v) any other provision, not inconsistent with law, which the members elect to set out in the articles of organization, including, but not limited to, any limitation of the purposes or duration for which the limited liability company is formed; and any other provision which may be included in an operating agreement; (vi) a statement of whether the limited liability company is to be managed by its members or by one or more managers, and if the limited liability company has managers at the time of its formation, the name and address of each manager; and (vii) the name and address of the person authorized to sign and who does sign the articles of organization. The person authorized to sign the articles of organization need not be a member of the limited liability company but only authorized to do so by the persons forming the limited liability company. The RI LLC Act requires that each domestic or foreign registered limited liability company have a resident agent for service of process who shall be either: (i) an individual resident of the state of Rhode Island; or (ii) a corporation, limited partnership, or limited liability company, and in each case either domestic or foreign entity authorized to transact business in the state of Rhode Island.

The articles of organization become effective upon the issuance of a certificate from the Rhode Island Secretary of State indicating the document was accepted for filing or at any later date set forth within the articles of organization, but in no event later than thirty (30) days after the filing of such articles of organization.

A limited liability company may engage in any business, including the provision of certain professional services such as the practice of law, accountancy, and medicine, and has perpetual existence until dissolved or terminated in accordance with the RI LLC Act, unless a more limited purpose or duration is set forth in the articles of organization.

Management and control

Although not required by the RI LLC Act, it is preferable for a limited liability company to have an operating agreement to govern the management of its management. A typical operating agreement would contain the following provisions: (i) the duration of the limited liability company; (ii) the purpose of the limited liability company; (iii) a list of members; (iv) the membership interests and capital contributions of the members; (v) a division of profits, losses, and distributions; (vi) the compensation of the members; (vii) the management of the limited liability company either by the members or managers; (viii) insurance; (ix) the death, resignation, expulsion, bankruptcy, or dissolution of a member; (x) the sale, transfer, or assignment of membership interests; (xi) a mechanism to amend, restate, or repeal the operating agreement; (xii) the federal income tax classification and any other applicable provision not inconsistent with Rhode Island law. A limited liability company may have an operating agreement that provides for classes or groups of members having certain rights. The operating agreement may grant to all or certain identified members or classes or groups of members the right to vote, separately or with all or any other class or group of the members or managers, on any matter. The

operating agreement may also provide for the adoption of any action without the vote or approval of any member or class or group of members.

The business of the limited liability company is managed by the members unless the articles of organization or an operating agreement provide for management by one or more managers. If management is vested in the members of the limited liability company: (i) the members are deemed to be managers for purposes of applying the provisions of the RI LLC Act; and (ii) each of the members has the power and authority and is subject to all duties and liabilities of managers. The members of a limited liability company are entitled to vote in proportion to the capital value of the membership interests unless the articles of organization or operating agreement provide otherwise.

A member or a manager of a limited liability company must discharge his or her duties in good faith, with the care that an ordinarily prudent person in a similar position would use under the circumstances, and in the manner the member or the manager reasonably believes to be in the best interests of the business. If the business and affairs of the limited liability company is managed by more than one manager, the managers act by majority vote, with each manager entitled to one vote unless stated otherwise in the operating agreement.

The contribution of a member to a limited liability company must be in the form of a capital contribution, and the profits and losses of a limited liability company are allocated to each member on the basis of the member's capital value, unless stated otherwise in the articles of organization or operating agreement.

Membership interests are assignable under the RI LLC Act, provided the other members unanimously consent to such assignment and except as otherwise provided in an operating agreement. The consent of a member may be evidenced in any manner specified in an operating agreement, but in the absence of specification, consent is evidenced by a written instrument, dated and signed by the member, or evidenced by a vote taken at a meeting of the members called in accordance with the operating agreement and maintained with the records of the limited liability company.

Limited liability of members and managers

Under the RI LLC Act, a member or manager of a limited liability company is not liable for the debts or other obligations of the business solely by reason of the member's status as a member or a manager except as otherwise provided by the RI LLC Act. The RI LLC Act states that a member or a manager must discharge his or her duties in good faith and demonstrate the care that an ordinarily prudent person in a similar position would use under the circumstances. Although an operating agreement may limit the amount of a member's or manager's liability, a member or manager is liable for: (i) a breach of the duty of loyalty to the limited liability company or its members; (ii) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; (iii) wrongful distribution; or (iv) any transaction from which he or she derived an improper personal benefit, unless the transaction was with the informed consent of the members or

a majority of the disinterested managers. In addition, a member or a manager who votes for or assents to a distribution in violation of the operating agreement or of the restrictions on making distributions is personally liable to the limited liability company for the amount of the distribution that exceeds what could have been distributed without violating the operating agreement or of the restrictions on making distributions section (§ 7-16-31) of the RI LLC Act.

Merger, dissolution, and term of existence

The RI LLC Act permits a domestic or foreign limited liability company to merge or consolidate with or into any one or more domestic or foreign Limited liability companies, limited partnerships, or corporations. In order to merge or consolidate, a limited liability company must enter into a written plan of merger or consolidation and file articles of merger or consolidation, together with the appropriate filing fee, with the Rhode Island Secretary of State. Unless the operating agreement of the limited liability company provides otherwise, the limited liability company must have the plan of merger or consolidation approved by the unanimous consent of the members. In addition, the RI LLC Act allows for the conversion of limited liability companies to another entity or the conversion of other business entities to a limited liability company.

The RI LLC Act provides that a limited liability company has perpetual existence unless a specified time is otherwise specified in the operating agreement. The RI LLC Act provides that a limited liability company is dissolved and its affairs wound up upon the happening of the first to occur of: (i) any time specified in the articles of organization; (ii) an event specified in the articles of organization or a written operating agreement to cause dissolution; (iii) by action of members; (iv) on the written consent of a majority of the capital values of the remaining members after the death, withdrawal, expulsion, bankruptcy, or dissolution of a member, or the occurrence of any other event that terminates the continued membership of a member in the limited liability company, unless otherwise provided in the articles of organization or a written operating agreement; or (v) unless otherwise provided in the articles of incorporation or a written operating agreement, on the death, withdrawal, expulsion, bankruptcy, or dissolution of the last remaining member or any other event that terminates the continued membership of the last remaining member, unless within ninety (90) days the successor(s) in interest of the last remaining member and any assignees of the member's interest and of any other member's interest agree in writing to admit at least one member to continue the business of the limited liability company; or (vi) the entry of a decree of judicial dissolution.

Raising capital

A limited liability company offers the same flexibility in raising capital as a for-profit corporation.

Recordkeeping and state reports

A limited liability company must keep certain information at its principal office:

(i) a current list of the name and last known address of each member and manager;

(ii) copies of records that would enable a member to determine the capital values and the relative voting rights of the members;

(iii) a copy of the articles of organization and any restatements of such articles of organization and restatements;

(iv) executed copies of any powers of attorney;

(v) copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the five most recent years;

(vi) a copy of any written operating agreement;

(vii) any written records of proceedings of the members or managers; and

(viii) copies of any financial statements of the limited liability company for the five most recent years.

Each domestic limited liability company and each foreign limited liability company authorized to transact business in the state of Rhode Island must file, between the first day of September and first day of November in each year following the calendar year in which its original articles of organization or application for registration were filed with the Secretary of State, an annual report setting forth: (i) the name and address of the principal office of the limited liability company; (ii) the state or other jurisdiction under the laws of which it is formed; (iii) the name and address of its resident agent; (iv) the current mailing address of the limited liability company and the name or title of a person to whom communications may be directed; (vi) a brief statement of the character of the business in which the limited liability company is actually engaged in Rhode Island; (vi) any additional information required by the Rhode Island Secretary of State; and (vii) if the limited liability company has managers, the name and address of each of its managers. The information in the annual report must be given as of the date of the execution of the report, and it is executed by an authorized person of the limited liability company.

Low-Profit Limited Liability Companies (L3Cs)

The L3C, or Low-Profit Limited Liability Company, is a new type of business entity that is a cross between a nonprofit and a for-profit corporation. L3Cs are not eligible for tax-exempt treatment by the IRS. Rather, they are intended to be profit-generating entities

with charitable and educational (including positive social change) missions as their primary objectives. The RI LLC Act permits the formation of a limited liability company that qualifies as an "L3C" or "low-profit limited liability company." If a limited liability company is formed in Rhode Island and wishes to qualify as an L3C, its name must end with either the words "low-profit limited liability company" or the abbreviation "L3C" or "l3c," and it must also meet the requirements of § 7-16-76.

L3Cs are similar to limited liability companies in that they have the liability protection of a corporation and the flexibility of a partnership, and in addition, membership shares may be sold to raise capital like common stock. Unlike the limited liability company, however, the L3C must be formed for a charitable or educational purpose, it cannot have a significant goal of producing income or capital appreciation, and it may not accomplish political or legislative objectives.

L3Cs are intended to be vehicles which can both attract capital investment from for-profit enterprises and investment by foundations. Nontraditional for-profit investors who are willing to sacrifice market-level returns in exchange for social impact are prime candidates to provide capital investments or loans to L3Cs. Similarly, private foundations that wish to provide support in the form of a loan or equity rather than a grant may find an L3C to be attractive because the enabling legislation is written in such a way as to comply with and take advantage of the Internal Revenue Service "program related investment" or "PRI" regulations, eliminating the need for private letter rulings or legal opinions for such investments. PRIs can be attractive to foundations because they count toward its 5% minimum payout requirement, just as if they were grants. But if the investment is successful, the foundation could recapture the full amount of the investment, plus a reasonable rate of return, which it then must pay out again in the form of grants or more PRIs.

Existing nonprofit corporations can utilize the L3C structure in at least two ways. First, if the nonprofit corporation generates enough earned income to qualify as "low profit," it could reincorporate as a stand-alone L3C. Second, it could establish a subsidiary as an L3C to conduct low-profit earned income activities.

III. RHODE ISLAND ANTITRUST AND CONSUMER PROTECTION

Rhode Island's principal commercial regulatory statutes, including those of general applicability covering antitrust, unfair and deceptive trade practices and unfair sales practices as well as more industry specific statutory regulations are found in Title 6 of the Rhode Island General Laws entitled "Commercial Law-General Regulatory Provisions."

In addition to the statutory regulation, the Rhode Island Department of Business regulates and licenses a broad array of businesses, including insurance, banking, securities, liquor, real estate, racing and athletics, and many others. The scope and impact of these regulations is beyond the scope of the Guide, however, business entrants in Rhode Island should consult the Department's website and regulations as appropriate.

A. Rhode Island Antitrust Act

The Rhode Island Antitrust Act, R.I. Gen. Laws §§ 6-36-1 *et seq.*, prohibits concerted action in restraint of trade and monopolistic practices and is designed to complement the federal Sherman Antitrust Act. Tracking 15 U.S.C. § 1 of the Sherman Antitrust Act, R.I. Gen. Laws § 6-36-4 provides: "Every contract, combination, or conspiracy in restraint of, or to monopolize, trade or commerce is unlawful." R.I. Gen. Laws § 6-36-5 similarly tracks 15 U.S.C. § 2 and provides, "The establishment, maintenance, or use of a monopoly, or an attempt to establish a monopoly, of trade or commerce by any person, for the purpose of excluding competition or controlling, fixing, or maintaining prices, is unlawful." This statute does not apply to any activity or activities exempt from the provisions of the antitrust laws of the United States, and R.I. Gen. Laws § 6-36-8 expressly provides that exemptions shall be liberally construed in harmony with federal statutes and ruling federal judicial interpretations.

Except with respect to any particular provision that is expressly contrary to the federal provisions, the Act explicitly requires under R.I. Gen. Laws § 6-36-2 that it be "construed in harmony with judicial interpretations of comparable federal antitrust statutes insofar as practicable..." Rhode Island courts are therefore guided by federal precedent when interpreting the prohibitions against illegal restraints of trade and monopolies.

The attorney general is charged with enforcing the Act on behalf of the state and may seek restraining orders and injunctive relief to stop prohibited practices, as well as fines of up to $50,000 per violation. In Rhode Island, private citizens may also seek injunctive relief from abusive practices, and may be awarded treble damages, reasonable attorney's fees, filing fees, and reasonable costs of the suit.

B. Rhode Island Unfair Trade Practice and Consumer Protection Act

Rhode Island's Unfair Trade Practice and Consumer Protection Act (the "Unfair Trade Practice Act") is codified at R.I. Gen. Laws § 6-13.1 *et seq*. The Unfair Trade Practice Act explicitly requires that "in construing §§ 6-13.1-1 and § 6-13.1-2, due consideration and great weight shall be given to the interpretations of the federal trade commission and

the federal courts relating to § 5(a) of the Federal Trade Commission Act. 15 U.S.C. § 45(a)(1) . . .". R.I. Gen. Laws § 6-13.1-2 tracks the broad prohibition against unfair practices found in the Federal Trade Commission Act, 15 U.S.C. § 45 (a)(1), providing that " Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful."

The term "unfair methods of competition and unfair or deceptive acts or practices" is defined by reference to a list of twenty prohibited practices. These practices range from specific practices, such as "making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reduction" to broader practices, such as "Engaging in any act or practice that is unfair or deceptive to the consumer." The statute applies to such acts committed in the conduct of any trade or commerce, and at R.I. Gen. Laws § 6-13.1-1 defines "trade" and "commerce" to mean "the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situate, and include any trade or commerce directly or indirectly affecting the people of this state."

Pursuant to § 6-13.1-4, actions or transactions permitted under laws administered by the department of business regulation or other regulatory body or officer acting under statutory authority of this state or the United States are exempt from the Unfair Trade Practice Act.

The attorney general's office is charged with enforcing the statute on behalf of the state; in addition, actions may be brought by any private person who suffers any ascertainable loss as the result of an illegal act or practice under the statute.

The attorney general may seek temporary or permanent injunctions to restrain any practice prohibited by the statute. If the superior court finds that the assets of a corporation are in danger of being misapplied or wasted, it may also appoint a receiver or may revoke a company's license to conduct business in Rhode Island.

Under R.I. Gen. Laws § 6-13.1-7, the Attorney General also has the power to make investigative demands seeking information regarding alleged violations from any person who is believed to have relevant information and may issue subpoenas, conduct hearings, and may promulgate any rules and regulations that may be necessary. Compliance with an investigative demand or investigation is required unless a request to modify or set aside the demand is timely made by the recipient and granted by the court. Failure to comply may result in a court order designed to compel compliance. The court may, among other things, annul, revoke or suspend corporate charters or other licenses or permits used to further the allegedly unlawful practice. Any person who intentionally seeks to avoid or prevent compliance with any civil investigative demand may be fined up to five thousand dollars ($5,000).

Private rights of action are authorized pursuant to R.I. Gen. Laws § 6-13.1-5.2, which provides a cause of action to any person who purchases or leases goods or services primarily for personal, family, or household purposes and suffers any ascertainable loss of money or property, as a result of an unlawful practice. The aggrieved private party may recover actual damages, reasonable fees and costs, and the court may, in its discretion, award punitive damages and other equitable relief that it deems necessary or proper. R.I. Gen. Laws § 6-13.1-5.2(b) also authorizes class actions.

C. Unfair Sales Practices

The Unfair Sales Practices Act, R.I. Gen. Laws § 6-13-1 *et seq.*, prohibits below cost pricing of merchandise. Specifically, § 6-13-3 provides in part, "Any retailer, who, with intent to injure competitors or destroy competition, advertises, offers to sell, or sells at retail any item of merchandise at less than cost to the retailer, or any wholesaler who, with intent as previously mentioned, advertises, offers to sell, or sells at wholesale any item of merchandise at less than cost to the wholesaler, shall, if the offender is an individual, be punished by a fine of not more than five hundred dollars ($500) or by imprisonment for not less than one month nor more than one year, or both; or, if the offender is a corporation, by a fine as previously mentioned." Notwithstanding the provisions of this section, as it pertains to a Class A or a Class B distributor of tobacco, any offense of this title shall be punished by a fine of not more than five thousand dollars ($5,000) for a first offense, a fine of not more than ten thousand dollars ($10,000) and a license suspension of not more than fourteen (14) calendar days for a second offense, and a fine of not more than twenty thousand dollars ($20,000) and a license suspension or revocation for a third offense."

In § 6-13-6, the Attorney General is explicitly charged with enforcement of the act, and the Rhode Island Supreme Court has held that private parties may also bring action to enforce the act. *Catalina, Inc. v. P. Zwetchkenbaum & Sons*, 107 R.I. 444 (1970).

D. Regulation of Specific Practices and Industries

In addition to the regulation of unfair and deceptive trade and sales practices as described above, the Rhode Island Unfair Trade Practice and Consumer Protection Act, regulates specific deceptive trade practices in certain industries in sections R.I. Gen. Laws § 6-13.1-12 through § 6-13.1-29. These sections of the statute identify specific acts and practices in various industries that are illegal and should be consulted for applicability before engaging in business in Rhode Island. While a detailed treatment of these statutes is beyond the scope of this Guide, those engaged in any of the industries referenced below should review the R.I. Gen. Laws §§ 6-13.1-12 through § 6-13.1-28 for all applicable statutory regulation.

§ 6-13.1-12 Appliances – Providing parts and manuals

§ 6-13.1-12.1 Appliances – Information concerning used or rebuilt parts

§ 6-13.1-13 Price discrimination prohibited. (Electric and/or gas appliances)

§ 6-13.1-15 Piracy of recordings

§ 6-13.1-16 Disclosure of service contract agreements

§ 6-13.1-17 Contracts – Provision to sell real estate

§ 6-13.1-18 Manufacturers' duties under motor vehicle warranties

§ 6-13.1-19 Motor vehicle dealer's duty when selling used vehicle

§ 6-13.1-21 Credit reports – Notice to individual – Requirements of users of credit reports

§ 6-13.1-22 Access to credit reports

§ 6-13.1-23 Disputed credit report

§ 6-13.1-27 Employment status information. (Credit Bureau)

§ 6-13.1-28 Financing of motor vehicles – Term and rate of interest prominently displayed

§ 6-13.1-29 Furnishing credit reports.

It is important to note that certain industries and practices are regulated by other chapters of the Rhode Island General Laws. A sample list of those chapters follows, however reference should be made to the Rhode Island General Laws to determine the entire scope of applicable regulations to a particular business.

CHAPTER 6-10 Labeling of Thread

CHAPTER 6-11 Gold and Silver Products

CHAPTER 6-11.1 Purchase and Sale of Precious Metals

CHAPTER 6-13.3 Environmental Marketing Act

CHAPTER 6-14 Closing Out Sales

CHAPTER 6-17 Bucket Shops

CHAPTER 6-26.1 Credit Card Lending

CHAPTER 6-27 Truth in Lending and Retail Selling

CHAPTER 6-28 Door to Door Sales

CHAPTER 6-28.1 Unfair Home Improvement Loans to Senior Citizens

CHAPTER 6-29 Referral Selling

CHAPTER 6-30 Distribution of Credit Cards

CHAPTER 6-31 Unit Pricing

CHAPTER 6-32 Lay Away Sales

CHAPTER 6-33 Unsolicited Goods

CHAPTER 6-34 Construction Indemnity Agreements

CHAPTER 6-34.1 Law Applicable to Construction Contracts

CHAPTER 6-35 Highway Accident Agreements

CHAPTER 6-37 Sale of Solid Fuel Burning Stoves, Furnaces, and Similar Appliances

CHAPTER 6-38 Insulation Contracts

CHAPTER 6-39 Title to Dies, Molds, and Forms

CHAPTER 6-40 Mail Order Sales

CHAPTER 6-43 Regulation of the Rental of Video Recordings to Minors

CHAPTER 6-44 Rental Purchase Agreements

CHAPTER 6-45 Consumer Enforcement of Assistive Technology Device Warranties

CHAPTER 6-46 Equipment Dealerships

CHAPTER 6-47 Internet Access and Advertising by Facsimile

CHAPTER 6-48 Consumer Empowerment and Identity Theft Prevention Act of 2006

CHAPTER 6-49 Electronic Mail Fraud

CHAPTER 6-50 The Rhode Island Fair Dealership Act

CHAPTER 6-51 The Rhode Island Automobile Repossession Act

CHAPTER 6-52 Safe Destruction of Documents Containing Personal Information

CHAPTER 6-53 Purchase and Sale of Tools and Electronics

CHAPTER 6-54 General Regulatory Provisions of the Rhode Island Dealership Preservation and Protection Act

CHAPTER 6-55 Military Leases of Motor Vehicles

IV. RHODE ISLAND FRANCHISE LAWS

A. Franchise Investment Act

In order to ensure that all information regarding a franchise that is being offered to a prospective franchisee is disclosed, the Federal Trade Commission promulgated under 16 C.F.R. Part 436 (the "FTC Franchise Regulations") its franchise regulations. Although the FTC Franchise Regulations require complete disclosure of relevant information before selling a franchise, it does not regulate the franchise relationship or require any filing or registration by the seller of the franchise. Because the FTC Franchise Regulations are so limited, they do not preempt state law in those states that do regulate franchises.

The State of Rhode Island is one of such states that do by statute provide for some regulation of franchises sold in the State. The franchise laws in the State of Rhode Island are found under the Franchise Investment Act, which has been codified in Chapter 28.1 of Title 19 of the Rhode Island General Laws. The threshold question involved in any review of a client's business arrangements and transactions in Rhode Island is a determination of whether or not the Franchise Investment Act would apply. The answer will usually depend upon whether the business arrangement or transaction falls within the definition of what is a "franchise". A "franchise" for purposes of the Franchise Investment Act is defined under R.I. Gen. Laws §19-28.1-3(7) to mean either (i) an oral or written agreement, either expressed or implied, which: (a)grants the right to distribute goods or provide services under a marketing plan prescribed or suggested in substantial part by the franchisor; (b) requires payment of a franchise fee in excess of five hundred dollars to a franchisor or its affiliate; and (c) allows the franchise business to be substantially associated with a trademark, service mark, trade name, logotype, advertising, or other commercial symbol of or designating the franchisor or its affiliates; or (ii) a master franchise , which is an agreement express or implied, oral or written, by which a person pays a franchisor for the right to sell or negotiate the sale of franchises.

Pursuant to R.I. Gen. Laws §19-28.1-5, it is unlawful for any person to offer or sell a franchise in the State of Rhode Island unless the offer is registered under the Franchise Investment Act with the Director of the Rhode Island Department of Business Regulation (the "Director") or is exempt from registration pursuant to R.I. Gen. Laws §19-28.1-6. The registration application is to include the disclosure document, the filing fee (currently $600) and a consent to service of process. The registration of a franchise under the Franchise Investment Act expires 120 calendar days after the franchisor's fiscal year following the application date, unless the Director prescribes a different period. A franchise registration may be renewed for one year or a shorter period of designated by the Director by filing an application to renew and paying the filing fee (currently $300) thirty days prior to the expiration of the registration. As noted above, there are a number of exemptions to registration provided for under R.I. Gen. Laws §19-28.1-6, including, without limitation, the following:

1. The offer or sale of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account if the franchisee's entire franchise is sold and the sale is not effected by or through the franchisor.

2. The offer or sale of a franchise to a person who has been for at least two (2) years, an officer, director, partner or affiliate of the franchisor for that person's own account.

3. The offer or sale of a franchise to a purchaser for the purchaser's own account who is essentially an accredited investor for purposes of the federal securities laws and has the knowledge and experience in financial and business matters to be capable of evaluating the merits and risks of the franchise.

4. The offer or sale to an existing franchisee of an additional franchise that is substantially the same as the franchise that the franchisee has operated for at least two (2) years at the time of the offer or sale.

5. The offer or sale of a franchise involving a renewal, extension, modification or amendment of an existing franchise agreement if there is no interruption in the operation of the franchised business and there is no material change in the franchise relationship.

6. The offer or sale of a franchise by an executor, administrator, sheriff, marshal, receiver, trustee, trustee in bankruptcy, guardian or conservator on behalf of a person other than the franchisor or the estate of the franchisor.

7. The offer and sale of a franchise that the Director by rule or order exempts when registration is not necessary or appropriate in the public interest or for the protection of prospective franchisees.

In addition to the registration requirements, the Franchise Investment Act provides in R.I. Gen. Laws §19-28.1-8 that it is unlawful to sell an franchise in the State of Rhode Island without first providing a copy of a disclosure document reflecting all material changes and a copy of all proposed agreements to a prospective franchisee at the earlier of the first business meeting between the prospective franchisee and the franchisor regarding the sale or ten (10) days prior to the execution of an agreement or payment of any consideration for the franchise. The delivery requirements set forth above do not apply to the offer of sale of a franchise that is exempt from the registration requirements under R.I. Gen. Laws §19-28.1-6 as a result of certain events, including, the situations listed above under paragraphs 1, 2 or 5.

Pursuant to R.I. Gen. Laws §19-28.1-12, no person may publish an advertisement in this State offering to sell a franchise required to be registered unless the advertisement has been filed with and the filing fee (currently $10 per item) paid to the Director at least five (5) days prior to publication.

In accordance with R.I. Gen. Laws §19-28.1-13, every franchisor offering or selling a franchise in this State must maintain a complete and accurate set of books and records of the offers and sales of franchises. The books and records are to include disclosure documents, advertising, correspondence with franchisees and prospective franchisees, past and present operations manuals, training records, training manuals, copies of executed agreements and any due diligence records concerning franchisees. Such books and records are to be maintained at an office readily accessible to the franchisor for at least five (5) years.

The Director is provided broad powers under R.I. Gen. Laws §19-28.1-18 enforce the provisions of the Franchise Investment Act, including, without limitation, the right to issue an order directing a franchisor to cease and desist from continuing certain acts or practices or bringing an action in a court of competent jurisdiction to enjoined acts or practices in violation of the Franchise Investment Act and/or recover a penalty in a sum not to exceed $50,000 per violation of the Franchise Investment Act. In addition to the enforcement powers granted the Director, R.I. Gen. Laws §19-28.1-21 provides that a person who violates any provision of the Franchise Investment Act is also liable to the franchisee for damages, costs and attorney and expert fees and a franchisee may, in the case of violation of the registration or disclosure requirements or the use of fraudulent, deceptive or prohibited practices in the offer or sale of a franchise, be sued for rescission. Such a private civil action brought by a franchisee must be commenced not later than the earlier of four (4) years after the act or transaction constituting the violation or ninety (90) days after the receipt by the franchisee of a rescission offer in form approved by the Director.

B. Fair Dealership Act

In order to provide protection to dealers (a person who is granted a dealership) from unfair treatment of grantor (a person who grants a dealership) in connection with the termination of a dealership, in 2007 the Rhode Island Fair Dealership Act ("FDA") was enacted and codified in Chapter 50 of Title 6 of the Rhode Island General Laws. A dealership is defined in R.I. Gen. Laws §6-50-2(3) to mean a contract or agreement, whether expressed or implied, whether oral or written, between two (2) or more persons, by which a person is granted the right to sell or distribute goods or services, or use a trade name, trademark, service mark, logotype, advertising or other commercial symbol, in which there is a community of interest in the business of offering, selling, or distributing goods or services at wholesale, retail, by lease, agreement or otherwise. Although the definition of a dealership under the FDA does not match the definition of a franchise under the Franchise Investment Act, a dealership for purposes of the FDA would appear to overlap substantially with the definition of franchise under the Franchise Investment Act.

The Fair Dealership Act provides under R.I. Gen. Laws §6-50-4 that, notwithstanding the terms or provisions of any agreement to the contrary, a grantor is to provide a dealer 60 days prior written notice of termination, cancellation or nonrenewal of a dealership. The notice is to state the reasons for termination, cancellation or nonrenewal and provide the

dealer with 30 days to cure the claimed deficiency (10 days if the deficiency is nonpayment of sums due), provided that the dealer only has the right to cure 3 times in any 12 month period. The 60 day notice requirement does not apply, and termination, cancellation or nonrenewal may be made effectively immediately upon written notice, if the reason for the termination, cancellation or nonrenewal is because the dealer: (i) voluntarily abandons the dealership relationship, (ii) is convicted of a felony offense related to the business conducted pursuant to the dealership, (iii) engages in any substantial act which tends to materially impair the goodwill of the grantor's trade name, trademark, service mark, logotype or other commercial symbol, (iv) makes a material misrepresentation of fact to the grantor relating to the dealership, (v) attempts to transfer the dealership, or portion thereof, without authorization of the grantor, or (vi) is insolvent, files or suffers to be filed against it any voluntary or involuntary bankruptcy petition, or makes an assignment for the benefit of creditors or similar disposition of assets or the dealership. If the termination, cancellation or nonrenewal is for violation of any law, regulation or standard relating to public health or safety, the dealer shall have the right to receive immediate written notice and shall have only 24 hours to cure such violation.

Pursuant to R.I. Gen. Laws §6-50-5, if the dealership is terminated by the grantor, the grantor, at the option of the dealer, is to repurchase all inventories sold by the grantor to the dealer for resale under the dealership agreement at fair wholesale market value for the merchandise. This requirement, however, only applies to merchandise with a name, trademark, label or other mark on it which identifies the grantor.

The FDA does not apply to liquor dealerships, motor vehicle dealerships, insurance agency relationships, fuel distribution dealerships and door-to-door sales dealerships.

V. RHODE ISLAND TAX LAW

A. Federal Taxation

1. Federal Income Taxation

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 and foreign individuals.

2. Personal Income Taxation

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. citizens, 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. In addition, certain taxpayers' wage and self-employment income may be subject to an additional medicare tax of 0.9% and certain income may be subject to the additional 3.8% tax on "net investment income." A nonresident alien generally is subject to tax on dividends from U.S. corporations, as discussed below.

B. State Taxation

1. Corporation Business Tax. Generally, corporations are subject to the Business Corporation Tax, which is equal to the greater of (1) the regular tax measured by Rhode Island taxable income apportioned to Rhode Island or (2) the minimum tax of $500 (which will drop to $450 in 2016 and $400 in 2017). The determination of the amount of taxable income apportioned to Rhode Island will, in general, be determined using a single factor (sales) formula. In addition, in the case of groups of corporations that are engaged in a unitary business, where at least one member of the group is subject to the Rhode Island Corporation Business Tax, the group will be required to calculate its tax liability on a combined unitary basis. Subchapter S corporations, certain state or federally chartered financial institutions, insurance and surety companies, public service corporations, certain non-profit institutions, entities exempt from tax by charter, and certain entities that manage intangible assets are not subject to the Rhode Island Corporation Business Tax.

Under the applicable state income tax regulations, a foreign corporation is subject to Rhode Island tax if it has sufficient connection or presence in Rhode Island for Rhode Island to have taxing authority. Rhode Island has taxing authority if the corporation has income apportioned to Rhode Island and it conducts business activity in this State, regardless of whether it is authorized to conduct business in this State. Any group of corporations where at least one member satisfies that test will also be subject to tax.

The Corporation Business Tax is computed on the basis of the corporation's taxable income, as reported for federal tax purposes (with certain adjustments), that is apportioned to Rhode Island under a statutory apportionment formula. For tax years starting on or after January 1, 2015, in general, taxable income is apportioned to Rhode Island based on a single factor (sales). For tax years commencing on or after January 1, 2015, a corporation's income apportioned to Rhode Island is taxed at a rate of 7%.

Subchapter S corporations are not subject to an income tax in Rhode Island under the Corporation Business Tax. However, Subchapter S corporations are required to file a tax return and pay the annual corporate minimum tax ($500 in 2015, $450 in 2016 and $400 starting in 2017). They are also required to withhold Rhode Island tax on the share of the Rhode Island source income attributable to nonresident shareholders. Similar rules concerning the requirement to file an annual return, to pay the annual corporate minimum tax and to withhold on the Rhode Island source income attributable to nonresident owners applies to other pass-through entities, such as limited partnerships and limited liability companies.

2. Personal Income Tax. Resident and nonresident individuals, estates and trusts are subject to Rhode Island income tax. An individual is a resident of Rhode Island for income tax purposes if the individual is domiciled in Rhode Island or if the individual maintains a permanent place of abode in Rhode Island and spends more than 183 days of the taxable year in Rhode Island. The resident or nonresident status of an estate is based on the residence of the decedent at the date of his or her death. A testamentary trust is generally considered to be a resident trust if the trust was created by the will of a decedent who was a resident of Rhode Island at the time of his or her death. An inter vivos trust is considered to be a resident trust during the lifetime of the settlor and so long as the settlor remains a Rhode Island resident (a) if the trust is irrevocable and the settlor was domiciled in Rhode Island at the time the trust became irrevocable or at the time property was contributed to the trust, or (b) if the trust is revocable and the settlor is domiciled in Rhode Island. A resident trust, following the death of the settler, will continue to be treated as a resident trust to the extent the beneficiaries of the trust are Rhode Island residents.

For Rhode Island income tax purposes, the Rhode Island taxable income of a resident individual, trust or estate for a particular year is equal to the taxpayer's federal taxable income for the year with certain Rhode Island modifications. The Rhode Island taxable income of a nonresident individual is based on the portion of the taxpayer's federal taxable income that comes from Rhode Island sources. Nonresident individuals are taxed on their share of Rhode Island source income, including their share of income from partnerships, S corporations and estates and trusts apportioned or attributed to Rhode Island. The Rhode Island taxable income of a taxpayer is not reduced by any itemized deductions allowed for federal income tax purposes. Taxable income may only be reduced for individuals (but not nonresident aliens) by a standard deduction and by personal exemptions, which are subject to a partial or complete phase out if the taxpayer's Rhode Island taxable income exceeds a designated level. For 2015 that level is $192,700. The Rhode Island income tax is computed by multiplying the applicable Rhode Island taxable income of the taxpayer by the applicable tax rate. In 2015, the

Rhode Island income tax imposed on (i) resident and nonresident individuals is equal to 3.75% of the first $60,550 of Rhode Island taxable income, 4.75% of the Rhode Island taxable income in excess of $60,550 but not over $137,650 and 5.99% of any excess Rhode Island taxable income in excess of $137,650 and (ii) for resident estates and trusts, it is equal to 3.75% of the first $2,450 of Rhode Island taxable income, 4.75% of Rhode Island taxable income in excess of $2,450 but not over $7,7000 and 5.99% of any Rhode Island taxable income in excess of $7,700. The threshold for the phase out of the standard deduction and the personal exemptions and the income levels subject to the various tax rates is subject to periodic adjustment based on increases in the consumer price index.

Pass-through entities having nonresident members or partners are required to withhold Rhode Island tax on the portion of the entity's Rhode Island taxable income attributable to those members or partners. Purchasers of Rhode Island real estate owned in whole or in part by nonresidents are required to withhold Rhode Island tax from the nonresident's share of the sales proceeds or, if the Division of Taxation consents, the nonresident's share of the gain from the sale.

3. Property Tax. Property taxes in Rhode Island are assessed and collected at the town and city level. All real and personal property located within Rhode Island, in general, is subject to tax based on the fair market value of the property. Special provisions, however, may be available to limit the tax, such as provisions that are available (i) for certain nonprofit institutions under their charter or by specific legislation that provide for a complete or partial exemption for their property, (ii) for valuing farm land, forest land, and open space property at less than full value, (iii) providing or allowing the grant of a complete or partial exemption for certain commercial property and (iv) a partial exemption may be available for residential property resided in by veterans, disabled persons or persons sixty-five years of age. The property tax rates are fixed by the local taxing authorities and vary throughout the state.

The local tax assessor determines the assessed values of all taxable property within their city or town. Appeals of an assessment are taken to a local board of assessment appeals and further appeals are to the Superior Court. There are strict rules that may limit or prevent a taxpayer's ability to contest the assessed value determined by the assessor, including a requirement that the taxpayer file a timely annual accounting listing the taxable property in the city or town owned by the taxpayer and its value. Additionally, the full amount of the assessed taxes must be paid to commence a judicial appeal. A city or town's ability to collect any unpaid property tax is also supported by a statutory lien system.

4. Sales and Use Taxes. The Rhode Island sales and use tax is imposed on all retailers for the privilege of selling tangible personal property at retail, the rendering of certain enumerated services for consideration, the leasing or rental of tangible personal property, upon operators of hotels and lodging houses for the occupancy of rooms, and the short term rental by owners of apartments, condominiums and residences or rooms in apartments, condominiums and residences. The Rhode Island Use Tax is applied with respect to the storage, acceptance, consumption or other use in Rhode Island of tangible

personal property or services not subject to the Sales Tax. The current sales and use tax rate is 7%.

Sales and use tax returns are due monthly, although a retailer (i) may request permission to file on quarterly basis if the retailer's tax liability over the prior six months averaged less than $200 per month or (ii) may request to file on a seasonal basis if the business is seasonal.

Exemptions from the sales and use tax exist for various purchases, including purchases (i) by the federal government and governmental entities, (ii) by the State of Rhode Island and its political subdivisions, (iii) by certain charitable, educational and religious organizations, (iv) for resale, (v) of manufacturing equipment and machinery and purchases for manufacturing purposes, (vi) of boats and certain marine vessels, (vii) of precious metal bullion, (viii) of research and development equipment, (ix) of renewable energy products and (x) of medicine, drugs and certain medical equipment and devices, (xi) of air and water pollution control facilities, (xii) of tangible personal property and supplies used in on-site hazardous waste recycling, reuse or treatment and (xiii) of farm equipment. A credit is given for taxes paid to other states or political subdivisions.

VI. RHODE ISLAND EMPLOYMENT LAWS

A. General Issues

At-Will Employment

The conventional relationship between an employer and an employee hired for an indefinite period of time is called "employment at will." Under this arrangement and setting aside the potential applicability of a number of special laws, either the employer or the employee may terminate the employment relationship at any time, with or without cause, and with or without advance notice. In the absence of a written contract or other evidence indicating that an employee may be terminated only "for cause," employment is generally presumed to be at will.

It is important to remember, however, that there are a number of special laws, both federal and state, that limit an employer's unfettered right to terminate traditional "at will" employees. These laws, many of which are identified and discussed below, prevent employers from firing any employee, whether at will or not, for illegal reasons (*e.g.*, discriminatory reasons, whistleblowing, or engaging in certain activities protected by law).

Temporary Employment and Consulting Relationships

In addition to traditional at will employees or contract employees, many employers may use the services of temporary employees, independent contractors, or consultants (and employees of independent contractors or consultants).

When an employer hires an employee for a temporary period or for a season, the temporary employee is still an at will employee of the employer, and the relationship is governed by the same laws as those applicable to at will employees. As with permanent employees, legally mandated benefits, such as workers' compensation insurance and unemployment insurance, must be offered to temporary employees. Optional benefits, such as 401(k) plans, need not be offered to temporary employees.

An independent contractor or consultant is not considered an employee of the employer. Instead, an individual independent contractor is self-employed, and payments made to the independent contractor are considered contract payments rather than wages. The U.S. Internal Revenue Service ("IRS") and other governmental agencies have a variety of tests for determining whether a worker is an employee or an independent contractor, which, despite variations among the tests, tend to share the same primary factors. Essentially, workers who are performing the same job and performing under the same supervision as regular employees are usually deemed to be employees. Additional factors shared by the various tests include: the degree of control the employer exercises over the worker's hours and manner of performance; whether the employer provides the worker's tools and/or employee benefits (e.g., medical insurance, vacation pay); the length of service; and the method of payment (e.g., is the worker paid hourly or on a project basis).

The consequences of incorrectly classifying an employee as an independent contractor can be far-reaching and expensive (e.g., liability for unpaid payroll taxes and penalties, administrative claims for benefits provided to regular employees, liability for unpaid unemployment insurance and workers' compensation premiums, increased exposure to governmental audits, and potential exposure to employment-related civil suits and administrative claims).

Employment Agreements

While it is not required or necessary to enter into an employment agreement with any employee, employers may wish to enter into written employment agreements with one or more key leaders. If an organization chooses to enter into an employment agreement with a particular employee, such agreements typically spell out the term of employment (even if it is "at will"), duties, compensation and circumstances under which the agreement may be terminated by either party. In addition, such agreements often contain provisions requiring key employees to keep information confidential even after they leave employment and barring them from becoming employed by certain competing organizations for a limited period of time following termination. The provisions of these agreements and whether any such agreement should be used should be discussed with an employment attorney before they are presented to an employee or prospective employee.

Non-competition agreements between employers and employees are generally disfavored by Rhode Island courts, but may be enforced if they are narrowly tailored to protect only the employer's legitimate interests. Non-competition provisions signed by Rhode Island physicians on or after July 12, 2016 are now unenforceable pursuant to recent legislation.

B. Employment Policies and Employee Handbooks

Every employer, except perhaps for those with only two or three employees, should have written employment policies. Written policies serve to clarify expectations, reduce risk and, in some cases, comply with statutory requirements such as those in the FMLA. In addition, both state and federal law require that certain laws be posted in an area accessible to all employees. There are several services that provide updated posters containing these notices. Most concern compliance with the FMLA, Title VII, the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), worker's compensation, and the organization's anti-harassment policy.

Policies for any employment manual or handbook should include:

Nondiscrimination

Under federal law, employers are prohibited from discriminating on the basis of race, color, religion, sex, national origin, veteran status, pregnancy, age, or disability. Additionally, under Rhode Island law, employers are prohibited from discriminating on the basis of sexual orientation, gender identity or expression, disability or country of

ancestral origin. The discrimination laws prohibit an employer from making employment related decisions, such as hiring, firing, promotions, pay increases, or conditioning other terms and conditions of employment on a person's protected status. Some local communities may have ordinances that provide for even greater protections, so it is important to check those local laws for any additional requirements.

Failing to comply with discrimination laws can result in expensive lawsuits or administrative investigations. In general, these laws require that all employees be treated equally without regard to their protected status. In addition, employers may not retaliate against employees who seek to further or enforce employment discrimination laws. Employers also should be aware of their obligations to make reasonable accommodations for employees where the employees' disabilities or religious beliefs conflict with employment requirements. These obligations, which exist under both federal and state law, are unlike other equal employment opportunity laws in that treating all employees equally will not satisfy the obligations. Instead, employers must take positive steps to reasonably accommodate employees with disabilities and specific religious practices.

Harassment

Both federal and Rhode Island laws also prohibit harassment in the workplace against any of the classes of employees protected under federal and state discrimination law. Two types of conduct constitute "harassment in the workplace." The most obvious occurs when a supervisor makes a job promotion or benefit dependent on the receipt of sexual favors (often called "quid pro quo" harassment). The other type occurs when an employee has to endure comments, physical contact, physical gestures, or other behavior that creates an offensive atmosphere for that employee (often called "hostile environment" harassment). While sexual harassment is most often thought of, harassment on the basis of race, disability, age, etc. is also prohibited.

An employer is required to take all reasonable steps necessary to prevent the occurrence of either type of harassment, which includes having an appropriate and comprehensive policy against harassment. For this reason, a harassment policy that both expressly prohibits harassment and provides avenues for employees to report harassing behavior are a must in any workplace. Employees should be encouraged to report any harassing behavior to their supervisor and/or a human resources person or senior manager designated to investigate such claims. Reasonable steps to prevent harassment would also include periodic dissemination of the harassment policy, harassment training (particularly for supervisors), investigations of any complaints, and, when harassment occurs, prompt and effective remedial action. As with discrimination, employers cannot retaliate against an employee who complains about harassment.

OSHA Injury and Illness Prevention

The Occupational Safety and Health Act ("OSHA") regulates work place safety for employers in businesses which affect commerce. Under OSHA, employers are required to furnish their employees with a place of employment free from recognized hazards that

are causing, or are likely to cause, them death or serious physical harm. Employers must also comply with occupational safety and health standards which are issued under the Act. "Right to know" regulations issued under OSHA require that employees in certain industries be warned about hazardous materials and chemicals to which they may be exposed. OSHA sets forth a detailed procedure for adopting safety and health standards and provides for inspection, investigation and enforcement. Citations issued for noncompliance can result in civil and criminal penalties, including fines and, for violations causing the death of an employee, imprisonment. States are allowed to develop and enforce their own plans setting and enforcing occupational safety and health standards. Some industries have specific statutes which regulate employee safety and health.

Workplace Violence

Employers should take steps to prevent violence in the workplace. This may include policies against bringing weapons into the workplace, taking prompt and appropriate action against any acts or threats of violence, and creating an environment that will reduce the likelihood of violence in the workplace.

C. Hiring Process

The hiring process involves receiving and reviewing applications, interviewing potential candidates, and selecting the employee. Several federal and Rhode Island laws limit what employers can ask during the process.

Applications

The application process generally includes publishing the open position and accepting applications. Discrimination laws prohibit certain questions on the application, particularly those that elicit information about a person's protected status and are not job related.

Interviewing, Reference Checks and Background Checks

The interviewing process generally involves interviews and reference checks. Federal and Rhode Island discrimination laws prohibit employers from asking certain questions during the hiring process. For example questions regarding a person's age, disability, child bearing decisions or plans, or other questions related to a person's protected status that are not directly related to the qualifications for the job are absolutely prohibited. Every person who interviews candidates and conducts reference checks should have a working knowledge of the laws that govern employment interviews.

Employers who use outside organizations to conduct background checks must comply with the federal and state credit-reporting laws, which require using several specific forms to obtain the applicant's consent.

Federal and Rhode Island disability laws impose certain affirmative obligations on employers to ensure that disabled persons have a fair opportunity to participate in the hiring process. If any pre-employment testing is administered, then reasonable accommodations must be made to those applicants who require them. Further, the use of testing or other criteria not related to the essential functions of the position being filled should not be used as they may tend to have a discriminatory impact on disabled applicants.

If an employer is going to administer a drug test, then it should have a set policy and make sure it is applied across the board. Applicants may be required to disclose the use of prescription drugs to the test administrator, and that information should be kept confidential and only used to determine if the applicant passed or failed the drug test. Such information is not provided to the employer.

Immigration

All employers are required to verify that every new hire is either a U.S. citizen or authorized to work in the U.S. All employees must complete Employment Eligibility Verification (I-9) Forms and produce required documentation within three days of their hire date. Failure to follow the I-9 process can result in penalties and an audit by the United States Citizenship and Immigration Services ("USCIS").

Employers cannot discriminate against employees based on their immigration status. Thus, once an employee has satisfied the employer that he or she is eligible to work in the U.S, the employee's immigration status should not be used in any other employment decisions.

D. Compensation and Benefits

Several different federal and Rhode Island laws regulate various forms of compensation and benefits. Each employer should adopt a compensation scheme that is compatible with the organization's mission and furthers its human resources goals.

Wages

Most employers — regardless of size — are governed by both federal and state wage and hour laws. Federal and state wage and hour laws differ slightly, and employers must follow both. On July 24, 2009, the federal minimum wage was increased to $ 7.25/hr. As of January 1, 2016, the Rhode Island minimum wage is $9.60/hr.

The two major requirements in both federal and Rhode Island wage and hour laws concern: (1) payment of the minimum wage and (2) payment for overtime hours. Under the minimum wage laws, employers must pay employees an amount that is at least the statutory minimum wage multiplied by the number of hours that the employee worked in any given work week. Under the laws governing overtime, employers must pay most employees additional compensation for overtime hours.

Minimum wage and overtime laws are not limited to hourly employees. Employees who are paid in other ways, such as by salary or commission, may also be entitled to minimum wages and overtime pay. The minimum wage laws apply to all employees and the overtime laws apply to all employees except those who fall into one of the "exempt" classifications under federal law. Under Rhode Island law, the penalties for violating these wage requirements are severe. An employer who is found to have violated minimum wage or overtime laws is guilty of a misdemeanor and will be subject to a fine of at least $400 per offense.

Bonuses

Bonuses can improve employee retention and provide extra incentives for reaching certain targets. Employers who provide bonuses (other than gift bonuses like holiday bonuses) should have a written bonus plan to ensure clarity, and to avoid unintended implied contracts. Furthermore, how bonuses are determined and whether they are guaranteed (for example, for hitting certain production goals) or discretionary will also have an effect on calculating an employee's overtime.

Taxes

Employers are required to withhold federal income tax and social security tax from taxable wages paid to employees. Under federal law, funds withheld must be deposited in certain depositories accompanied by a Federal Tax Deposit Coupon (IRS Form 8109) or through the Electronics Federal Tax Payment System ("EFTPS"). An Employer's Quarterly Federal Tax Return (IRS Form 941) must then be filed before the end of the month following each calendar quarter. Willful failure on the part of the employer to collect, account for, and pay withholding taxes will subject the employer to a significant monetary penalty, and in some cases will impose personal liability on those responsible for remitting the withholding taxes.

Employers must file an Employer's Annual Federal Unemployment ("FUTA") Tax Return (IRS Form 940) and pay any balance due on or before January 31 of each year. Details may be found in IRS Circular E, http://www.irs.gov/publications/p15/index.html

Mandatory Benefits

Workers' Compensation

All employers with four or more employees (one or more employees for construction industry employers) must provide worker's compensation insurance for their employees. There are some limited exemptions from this requirement, but the worker's compensation benefits are the only benefits available for an employee injured in an "on the job accident". What this means for employers is that an employee who is injured while performing work for the employer cannot sue the employer for his/her injury, but is compensated through worker's compensation.

Unemployment Insurance

Employers must contribute to an unemployment compensation fund. When an employee is granted unemployment compensation benefits, whether those payments are counted against the employer's account depends on several factors, one of which is how long the employee worked for the employer. Employees terminated within 90 days of hire may receive unemployment benefits, but those payments are traditionally not taxed to the employer.

Other Rhode Island Laws

In addition to payment of minimum wages, Rhode Island law requires payment of accrued vacation time when employment ends. Rhode Island law also requires that employers provide any disability or medical insurance benefits. Rhode Island is one of five jurisdictions that provide short-term disability benefits for non-occupational disabilities. In general, benefits are paid after the seventh consecutive day of disability. However, in Rhode Island, benefits may also be provided for some or all of the first seven days under certain circumstances (such as hospitalization or a disability extending for a specified period of time). Rhode Island provides that benefits must continue for up to 30 weeks.

While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to seventy-five percent (75%) of his or her average weekly spendable base wages, earnings, or salary, as computed pursuant to the provisions of General Law § 28-33-20. The amount may not exceed more than sixty percent (60%) of the state average weekly wage of individuals in covered employment under the provisions of the Rhode Island Employment Security Act. Rhode Island's Temporary Disability Insurance, in addition to salary-based wage replacement benefits, also provides for an additional payment for up to five dependent children under age 18 (and over age 18, if a child is disabled).

Under Rhode Island's Temporary Disability Insurance program, employers are required to provide employees with a minimum of four weeks of leave to care for a seriously ill family member or to bond with a new child. Qualified employees who meet certain income thresholds are entitled to receive salary-based wage replacement benefits during this period of temporary caregiver leave.

If any other benefits are provided, there is no requirement on how they are administered as long as they are not administered in a non-discriminatory fashion. However, if such benefits are provided, the plans may be subject to ERISA, COBRA or HIPAA.

In addition, the Rhode Island Parental and Family Medical Leave Act ("RIPFMLA"), provides eligible employees up to 13 weeks of unpaid leave in any two calendar years. To be eligible for leave under the RIPFMLA, an employee must have worked an average of at least 30 hours per week in the 12-month period preceding the leave (a total of 1560

hours). RIPFMLA leave is generally administered in the same manner as FMLA leave is administered. Also pursuant to the RIPFMLA, eligible employees are entitled to a total of 10 hours of leave during any 12-month period to attend school conferences or other school-related activities for a child of whom the employee is a parent, foster parent, or guardian.

Federally Mandated Benefits

1. The Family Medical Leave Act ("FMLA")

The Family Medical Leave Act ("FMLA") requires that eligible employees working for organizations with 50 or more employees be allowed to take up to 12 weeks of unpaid leave per year for the birth or adoption of a child, for the serious health condition of the employee or spouse, parent or child of the employee, or for a qualifying exigency arising out of the fact that a spouse, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in the support of a contingency operation. A "serious health condition" includes inpatient hospitalization and subsequent treatment therefore and continuing treatment by a health care provider, including pregnancy. To be eligible for FMLA leave, the employee must have worked 12 months or longer, performed at least 1,250 hours of service for the employer in the 12 months prior to the date of leave, and must work at a site within 75 miles of which the employer has 50 or more employees. If the employee's need for leave is foreseeable, the employee must provide his or her employer with 30 days notice before taking leave. When the need for leave is unforeseeable, the employee is required to provide notice as soon as practicable.

An individual who believes his or her FMLA rights have been violated is entitled to file a lawsuit. Remedies include lost compensation, liquidated damages, other out of pocket expenses, equitable relief, and attorneys' fees.

2. The Federal Employee Retirement Income Security Act of 1974 ("ERISA")

The Federal Employee Retirement Income Security Act of 1974 ("ERISA") regulates employee benefit plans maintained by employers engaged in commerce or in an industry or activity affecting commerce. ERISA contains specific requirements governing the creation, modification, maintenance and reporting of employer pension and retirement plans as well as other plans relating to employee health and welfare benefits. Welfare plans include, for example, plans providing medical, hospital, death or other insurance benefits, vacation and severance benefits. ERISA sets out a detailed regulatory scheme

mandating certain reporting and disclosure requirements, providing exemptions for religious institutions, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA does not prescribe any particular level of severance, insurance, pension or welfare benefits, nor does it require that they be provided at all. This is a matter to be decided by the employer and, if the employer is unionized, to be bargained between the employer and the union. However, if benefits are offered, they must comply with regulations prohibiting discrimination and must be administered fairly under the terms of the benefit plan. ERISA generally preempts state laws governing employee plans and arrangements.

3. The Consolidated Omnibus Budget Reform Act ("COBRA")

The Consolidated Omnibus Budget Reform Act ("COBRA") requires employers with more than 20 employees who provide health and medical benefits to offer continuation of those benefits to former employees and their covered dependents ("qualified beneficiaries") upon the occurrence of certain "qualifying events." COBRA generally provides a maximum continuation period of 18 months. In certain circumstances where a qualified beneficiary is disabled at any time during the first 60 days of COBRA coverage, the period can be extended to 29 months. Also, if certain qualifying events occur during the original 18 months of COBRA coverage, qualified beneficiaries become entitled to receive 36 months of continuation coverage. Employers may require electing qualified beneficiaries to pay the entire premium for COBRA coverage plus a 2% administrative charge. COBRA contains very specific procedures for notifying qualified beneficiaries of their COBRA rights. COBRA applies whether employees leave voluntarily or involuntarily.

Voluntary Benefits

The benefits listed below are not required by law. However, many employers choose to provide employees with such benefits in order to attract and retain the most qualified workers.

An employer is not required to provide employees with retirement benefits, welfare plans, severance pay, or other voluntary benefits. If an employer does establish such plans, however, they are governed by ERISA. Under ERISA, employee benefit plans must comply with numerous and complex procedural requirements.

An employer is not required to provide employees with vacation pay. If an employer elects to provide such benefits, however, they should be uniformly

applied in conformity with a written policy. This will provide protection against claims of discrimination and may be necessary to ensure the employer complies with the pay provisions of the Fair Labor Standards Act ("FLSA") as it relates to "exempt" employees.

Although it is not uncommon to do so, employers are not required to give employees paid holidays. Indeed, except in cases where accommodation of religious holidays might be required, employers are not even required to give employees time off during holidays.

Employees are not required to offer paid sick leave to employees. Traditional sick leave is often limited to time off for dealing with the employee's own illness or possibly to care for a sick child or spouse. Upon termination, the employer has no legal obligation to pay out unused sick leave, which means the employer's written policy will control.

Many employers choose to combine vacation, sick leave, personal days, and floating holidays into a single "paid time off" or "PTO" policy. Paid leaves of absence, such as paid maternity or paternity leave, are not required by law.

E. Termination of Employment

Absent an employment contract that provides otherwise, an employee may ordinarily be terminated with or without cause provided there is no violation of applicable anti-discrimination laws. Prior to termination, employers should thoroughly review all records concerning the employee or employees in question and carefully assess the risks of litigation. Normally, advance notice of termination should be given. In most cases, employment counsel should be consulted before terminating one or more employees.

Pay

All wages earned and unpaid at the time of discharge are due and payable upon the termination of employment and must be paid at the next regular pay date.

Severance Agreements / Releases

Generally, employers are not required to provide severance pay, unless they have agreed to do so. If the employer wants to offer severance to an employee, the employer may ask the employee to sign a release in exchange for the severance, in which the employee waives all legal claims the employee may have against the employer. If an employer seeks a release, the employee must be provided severance or other consideration in addition to any payments the employee was already entitled to receive. Federal law contains specific statutory requirements for waivers of age discrimination claims and prohibits the waiver of certain wage claims.

Unemployment Insurance / Compensation

The purpose of unemployment compensation is to provide benefits to those who are unemployed through no fault of their own. Therefore, to be eligible for payments, an applicant generally must either (1) have quit for good cause attributable to his or her employer or (2) have been terminated for reasons other than serious misconduct connected with his or her work. In addition, an applicant must be available and actively looking for work during the entire period of benefits, and (1) have earned at least $3,400 during a period of at least 18 weeks in the base year; (2) be unemployed for a waiting period of one week; (3) make a claim for benefits for each week of unemployment; (4) have registered to work and continue to report to the employment office; (5) be available and able to work; and (6) actively seek, but be unable to obtain work in four of the last five quarters.

Unemployment benefits are financed through employer contributions. Most employers pay contributions under the experience rating provisions of the law at a rate of 2.7 to 5.4% of their total payroll. The employer's contribution rate depends on its individual benefit ratio (benefits charged to its account for a certain period divided by its total payroll for the same period) as well as the level of funding of the Unemployment Compensation Fund.

To be "unemployed," individuals must perform no services in a given week and receive no remuneration. In situations where individuals receive payments from their employers for periods in which they render no personal services, e.g., back pay awards, holiday and vacation pay, certain severance payments or employer funded disability pay, they are not "unemployed" and are not entitled to unemployment benefits.

COBRA Requirements

The Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") requires employers who provide employee health and medical benefits to provide notification to employees of their COBRA rights at the time of a "qualifying event" such as a resignation or an involuntary termination of employment. COBRA applies to employers with more than 20 employees.

VII. RHODE ISLAND ENVIRONMENTAL LAW

A. General

Although it is the smallest of the 50 states, Rhode Island's environmental regulations are no less complex or comprehensive than even the largest states. Rhode Island and its citizens zealously protect the environment in which they live, work and play. These values are so important to Rhode Island that they have been incorporated into the Rhode Island Constitution. Article I, Section 17 of the state Constitution expressly protects the people's "rights of fishery, and the privileges of the shore" as well as the "rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values" and charges the legislature with taking "all means necessary and proper by law to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration and restoration of the natural environment of the state."

With more than 78 coastal shoreline miles and almost 20 percent of the state's area being comprised of coastal and freshwater wetlands, Rhode Island has developed an extensive array of constantly evolving environmental regulations that are implemented by multiple agencies. The statutes and regulations described below relate to the principal regulatory schemes that individuals or companies may encounter in attempting to build and/or operate a business in Rhode Island. As a result, not all of the state's environmental laws are discussed herein. While the agencies continue to strive for more streamlined regulations and permitting processes, individuals and multi-national corporations alike continue to struggle to identify, evaluate and follow all of the applicable environmental regulations that may apply to a project. It follows that a good team of legal and environmental professionals is a critical element of being able to navigate the environmental arena in Rhode Island in a timely and cost-efficient manner.

Key Environmental Regulatory Agencies and Organizations

The United States Environmental Protection Agency ("EPA") Region I office has oversight of many federal environmental laws that are implemented throughout the Northeast, including Rhode Island. The EPA Region I headquarters are located in Boston. Curt Spaulding, who led the environmental group at Save the Bay in Rhode Island for many years, is the Regional Administrator for Region I.

The Rhode Island Department of Environmental Management ("DEM" or "RIDEM") and Coastal Resources Management Council ("CRMC") are responsible for implementing and enforcing most of Rhode Island's environmental laws and regulations. RIDEM also has responsibility for certain federally-delegated environmental programs such as those under the federal Clean Water Act, 33 U.S.C. §1251 *et seq.* ("CWA"), and the Clean Air Act, 42 U.S.C. §7401 *et seq.* ("CAA"). RIDEM's principal office is located in Providence, Rhode Island. Janet Coit is the appointed Director of RIDEM.

RIDEM is divided into three bureaus – Natural Resources, Administration and Environmental Protection. The Bureau of Environmental Protection includes the major RIDEM programs and offices, including air resources, compliance and inspection, emergency response, technical and customer assistance, waste management and water resources. The Bureau of Natural Resources implements other programs such as agriculture, coastal resources, fish and wildlife, forest environment and parks and recreation. The Bureau of Administration is responsible for human resources, information management and management services. RIDEM also has several other departments including the Administrative Adjudication Division where appeals relating to licensing and enforcement matters are heard and decided by a Hearing Officer.

CRMC, located in Wakefield, Rhode Island, is the state's coastal regulatory agency. By statute, CRMC consists of 16 members, all of whom are appointed. CRMC is charged with planning and managing the state's coastal resources. Through zoning-like regulations, CRMC regulates work both in the coastal waters of the state and on land in the vicinity of the coast. In general, CRMC has jurisdiction over the area 200-feet inland from any coastal feature such as coastal beaches, dunes, barriers, coastal wetlands, cliffs, bluffs, and banks, rocky shores and manmade shorelines. It also has limited or shared authority over certain specific activities further inland that may have statewide impacts. These activities include power-generating plants, petroleum storage facilities, chemical or petroleum processing, minerals extraction, sewage treatment and disposal plants, solid waste disposal facilities and desalination plants. Finally, CRMC shares jurisdiction over freshwater wetlands in the vicinity of the coast with RIDEM. Most of the CRMC regulations are contained within the *Coastal Resources Management Plan* or "Red Book." However, CRMC has several Special Area Management Plans ("SAMP"), which provide an additional layer of regulations for sensitive areas. CRMC recently approved the Ocean SAMP – an ecosystem-based management approach for the development and protection of Rhode Island's ocean resources. This Ocean SAMP was utilized in the permitting for the nation's first offshore wind farm, 3 miles off of the Town of New Shoreham ("Block Island").

The Office of the Attorney General has a unique role in environmental protection. The Environmental Unit investigates complaints regarding environmental matters, enforces state environmental laws and serves as counsel to the state's administrative agencies in cases involving environmental concerns. The Attorney General also employs the state's Environmental Advocate. The Environmental Advocate is, by statute, empowered with authority to oversee and enforce environmental laws by initiating and participating in civil actions, reviewing the state's environmental quality standards, investigating complaints, and taking other actions including lobbying and education on behalf of the public to ensure adherence to environmental standards.

Municipal boards and commissions also have an important role in environmental protection. They implement and enforce local ordinances directed at protecting the environment such as local zoning, planning and health regulations. By state law, the mayor or town administrator may also appoint a local conservation commission to work with residents and the state on environmental problems and issues.

Non-governmental organizations are also active in protecting the environment in Rhode Island. Save The Bay's stated mission is to restore and improve the ecological health of the Narragansett Bay region, including its watershed and adjacent coastal waters, through an ecosystem-based approach to environmental action. Clean Water Action's Rhode Island chapter is also active in protecting the waters of the state. The Conservation Law Foundation participates in an array of environmental issues through its Rhode Island Advocacy Center. Lastly, the Audubon Society of Rhode Island is a leader in environmental conservation, education and advocacy.

Regulation of Hazardous Waste Operations

The federal Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6901 *et seq.* contains a "cradle-to-grave" program for the transportation, storage, treatment and disposal of hazardous waste. Rhode Island has enacted its own Hazardous Waste Management Act, R.I. Gen. Laws §23-19.1-1 *et seq*. ("HWMA"), which is implemented through RIDEM's *Rhode Island Rules and Regulations for Hazardous Waste Management* (the "Hazardous Waste Regulations"). The regulations are designed to minimize environmental hazards associated with the generation, transportation, treatment, storage and disposal of hazardous wastes. In general, the state regulatory scheme tracks the federal RCRA program, but the Rhode Island regulations are stricter in some respects. The RIDEM Hazardous Waste Regulations impose requirements on generators, transporters and storage and disposal facilities. There are requirements for recordkeeping, reporting, preparing and submitting waste manifests and monitoring. Violations are punishable by both civil and criminal penalties.

Hazardous Waste Facility Siting

The Rhode Island Hazardous Waste Management Facilities Act, R.I. Gen. Laws §23-19.7-1 *et seq.*, contains both substantive and procedural requirements for siting hazardous waste facilities. It requires developers to have a siting agreement with the host community and, in some cases, an impact agreement with a neighboring community. The statute sets up a process for establishing a local assessment committee to oversee the citing agreement process, including any public hearings.

Hazardous Waste Labeling

The Hazardous Substances Act, R.I. Gen. Laws §23-24-1 *et seq.* seeks to prohibit the introduction of misbranded or mislabeled hazardous substances into interstate commerce. It also prohibits any person from making false guarantees about any hazardous substance. The Attorney General is authorized under the statute to embargo misbranded or banned hazardous substances. The statute contains provision for both civil and criminal penalties in cases of violations.

Right-to-Know Legislation

The federal Emergency Planning and Community Right-to-Know Act of 1986 sets forth requirements for government and industry regarding emergency planning and reporting on hazardous and toxic chemicals. The program, largely implemented through the states, generally contains requirements for reporting, emergency planning and notification, emergency release notification and toxic chemical release inventory ("TRI") reporting.

Facilities that use or store chemicals must report those chemicals to the local emergency planning committee ("LEPC"), the state Emergency Response Commission ("SERC") and the local fire department. In general, reporting is done by submitting copies of the material safety data sheets or chemical lists. Annually, such facilities must submit an emergency and hazardous chemical inventory form (Tier I or Tier II) to the Rhode Island Department of Labor and Training ("DLT") with copies to the LEPC and the local fire department.

Facilities covered by EPCRA are required to develop and maintain emergency response plans and notify state and local authorities in the event of a release of hazardous substances in excess of regulatory thresholds. The emergency response plans are designed to aid state and local officials in the event of an accident or other emergency at a facility. In the event of certain releases, a facility must notify the LEPC and the State Emergency Response Commission ("SERC"). The facility must provide a follow-up notice in writing and describe the actions taken to respond to the emergency.

There are also requirements for TRI reporting. Qualifying facilities must complete a TRI form annually that addresses releases and other waste management for specified toxic chemicals in the preceding year. The TRI reports provide information to the public and government officials about the nature and volume of chemicals used at a facility and the manner in which waste is handled.

Under the Hazardous Substances Right-to-Know Act, R.I. Gen. Laws § 28-21-1 *et seq.*, employers must keep chemical identification lists and material safety data sheets on file. An updated chemical list must be provided to the DLT each year. Employees, upon request, are entitled to review these chemical lists. The act also contains requirements for employee training and education. Civil and criminal penalties can be imposed for violations.

Rhode Island also has a Hazardous Substances Community Right to Know Act, R.I. Gen. Laws §23-24.4-1 *et seq.* ("HSCRKA"). The HSCRKA is designed to enable residents to gain access to local employers' lists of hazardous substances and material safety data sheets so that they can know about the hazardous substances being used at a facility. These materials are provided by submitting a request through the DLT. Employers who fail to make available the necessary records to the DLT are subject to civil penalties.

Aboveground and Underground Storage Tanks

Underground storage tanks are regulated by RIDEM under its *Rules and Regulations for Underground Storage Facilities Used for Petroleum Products and Hazardous Materials*

("UST Regulations"). The UST Regulations apply to new and existing USTs that store petroleum and/or hazardous materials. The definition of a "UST" covers one or more tanks whose volume (including piping) is 10 percent or more beneath the ground. The UST Regulations do not apply to hydraulic lift tanks, septic tanks, certain basement tanks, propane or LNG tanks, intermittent or "fill and draw" tanks or emergency spill protection and overflow tanks.

The UST Regulations require most USTs to be registered with RIDEM. Home heating oil tanks no greater than 1100 gallons and serving up to a three-family dwelling are exempted. Tank owners are required to file a registration application with RIDEM and obtain a certificate of registration prior to installing a tank. Applicants must meet financial responsibility requirements and the UST Regulations contain specific minimum design requirements. Tanks must be tight tested upon installation and written verification must be provided to RIDEM within 15 days. Once the tanks are operational, owners must meet record-keeping and reporting obligations.

The UST Regulations prohibit the abandonment (removal from service for more than 180 days) of USTs. Commercial tank closures are initiated by filing a closure application with RIDEM. RIDEM personnel will schedule a closure inspection. The tank owner must perform a closure assessment and file a report that must be filed within 30 days of the closure date. If the report is acceptable, RIDEM will issue a Certificate of Closure. If the closure assessment reveals that a release has occurred, RIDEM may require submission of a Site Investigation Report followed by a Corrective Action Plan to be approved by RIDEM through an Order of Approval. Once the cleanup is complete, RIDEM will issue a Certificate of Closure.

The state has established an Underground Storage Tank Financial Responsibility Fund that is administered by the Rhode Island UST Review Board. In the event of a release, tank owners may file a claim for reimbursement with the Rhode Island UST Review Board. In order to receive funds, the applicant must file a compliance application and be found to be in compliance with the law. Thereafter, a tank owner must submit a reimbursement application showing at least $20,000 in eligible investigation and/or remediation costs. The Board votes on applications and can approve up to $1 million in eligible costs and expenses.

Above-ground tanks ("AST"s) containing petroleum products are regulated by RIDEM under its *Oil Pollution Control Regulations*. The regulations apply to ASTs with a combined storage of more than 500 gallons. They contain requirements relating to matters such as tank design, overfill prevention and secondary containment. In some cases, facilities must also have a groundwater monitoring program in place. The regulations also have requirements for monthly, annual and 10-year inspections for tanks of certain sizes. By the end of December each year, owners must submit the monthly reports for that year to RIDEM. ASTs that are taken out of service must satisfy the specific closure requirements in the regulations.

Hazardous Waste Cleanup

The investigation and cleanup of contaminated properties in Rhode Island is governed by the Industrial Property Remediation and Reuse Act, R.I. Gen. Laws §23-19.14-1 *et seq.* ("IRRA") and RIDEM's *Rules and Regulations for the Investigation and Remediation of Hazardous Materials Releases* ("Remediation Regulations"). Under IRRA and the Remediation Regulations, liability is strict joint and several and responsible parties include present owners and operators, former owners and operators, generators and transporters of hazardous material at a site. There are exemptions to liability for (1) acts of God or war; (2)"bona fide prospective purchasers"; (3) non-operators who merely hold a security interest in land; (4) "innocent landowners"; (5) "innocent tenants", (6) state or local government entities who acquire control involuntarily; and (7) contiguous landowners.

RIDEM has authority to compel responsible parties to cleanup a release of hazardous materials. In the first instance, RIDEM may issue a Letter of Responsibility that informs parties of their obligations under the Remediation Regulations to take action to address known or suspected contamination. If these obligations are not met, RIDEM will ordinarily issue a formal Notice of Violation and Immediate Compliance Order or may proceed to seek relief in Superior Court for imminent threats. Notices of violation typically include an administrative penalty. The IRRA provides for significant penalties in cases of non-compliance. RIDEM can file an action to recover its cleanup costs and seek punitive damages of up to three times that amount. In addition, a responsible party who fails to properly clean up a site is potentially liable for up to $25,000 in civil penalties per day. Each day that the violation continues is a separate offense. The state can also place a lien on the subject property as a means of recovering its response costs at a site.

Alternatively, a contaminated site may be cleaned up through RIDEM's Voluntary Cleanup Program. Voluntary cleanups are conducted pursuant to the same *Remediation Regulations*. However, a party doing a voluntary cleanup may enter a Remedial Agreement with RIDEM that includes a covenant not to sue and contribution protection. These agreements are intended to replace the former settlement agreements used by RIDEM.

Regardless of whether the cleanup is done pursuant to an enforcement action or voluntarily, the major steps for the performing party in this process are defined in the Remediation Regulations. Following notification of the release to RIDEM, the performing party must conduct a site investigation and submit a Site Investigation Report ("SIR") which includes the proposed remedy. RIDEM's approval of the remedy is set forth in a Remedial Decision Letter. However, the performing party must prepare a Remedial Action Work Plan ("RAWP") detailing the remedy for RIDEM's approval. Depending on the complexity of the remedy, RIDEM must approve the RAWP through either a Remedial Approval Letter or an Order of Approval. Once the remedy is

complete, a Closure Report must be filed. If applicable, institutional controls (i.e. an environmental land usage restriction) may be recorded on the property. At the point when RIDEM determines that no further action is necessary, RIDEM will issue a Letter of Compliance.

There are special public participation requirements where a site is considered for re-use at a school, child care facility or recreational facility for the public. These additional requirements include notice to abutters, public meetings and a public comment period on the proposed remedy.

There are a variety of financial incentives to incent the cleanup of contaminated properties in Rhode Island. The EPA offers a variety of grants that may be used to address sites contaminated by petroleum and hazardous substances, pollutants or contaminants. The grant options include Brownfields Assessment Grants, Brownfields Revolving Loan Fund ("RLF") Grants and Brownfields Cleanup. In Rhode Island, there is an EPA-funded Brownfields Cleanup Revolving Loan Fund that is jointly administered by RIDEM and the Rhode Island Economic Development Corporation ("RIEDC"). Using federal grant money, the program is designed to offer financial assistance for remediation so that properties may be returned to economically productive use. RIEDC makes loans at low rates to private, public and not-for-profit entities to remediate eligible Brownfields sites. The program uses loan repayments (principal, plus interest and fees) to make new loans for the same authorized purposes.

RIDEM also has authority under the HWMA to take action to prevent the unauthorized transportation, storage or disposal of hazardous waste by filing an action in Superior Court. If the court finds that a person has willfully or knowingly stored, disposed, or transported hazardous wastes, it can award treble damages. Violators are subject to civil and criminal penalties. There is also a statutorily created Environmental Response Fund that can be used to enable RIDEM to perform response actions, investigations and cleanup activities.

Finally, Rhode Island has enacted the Hazardous Waste Cleanup Good Samaritan Act, R.I. Gen. Laws §23-19.8-1 *et seq.* The statute provides liability protection for those who assist in mitigating the effects of a release of hazardous materials or in preventing, cleaning up or disposing of the discharge at the request of the government or another party. The exemption does not apply to parties that are under a legal duty to respond to the release or receive payment for the services provided.

Hazardous Waste Reduction

The Hazardous Waste Reduction, Recycling and treatment Research and Demonstration Act of 1986, R.I. Gen. Laws §23-19.10-1 *et seq.*, declares it to be state policy to reduce or eliminate the generation of hazardous waste and to recycle, treat or dispose of any waste that is generated so as to minimize threats to human health and the environment. To that end, generators are required to submit bi-annual reports to RIDEM showing the reductions in the volume and toxicity of waste generated by the facility over the course of

the reporting period. One of the main features of the statute is that it seeks to encourage research, development and demonstration projects related to hazardous waste reduction, recycling and treatment through the establishment of the Hazardous Waste Technology, Research, Development and Demonstration program. The program, through RIDEM, offers grants to cities, towns and private organizations to research waste reduction, recycling and treatment technologies.

Asbestos

The Rhode Island Department of Health ("DOH") oversees the implementation of the Rhode Island Asbestos Abatement Act, R.I. Gen. Laws §23-24.5-1 *et seq.* ("ABA"). The ABA, through the *Rules and Regulations for Asbestos Control*, sets forth a comprehensive regulatory scheme. Among other things, the DOH oversees asbestos contractor training and licensing and is in charge of receiving, reviewing and approving asbestos abatement plans. The regulations also contain specific work practices and standards for performing asbestos abatement projects. DOH has set indoor non-occupational air exposure standards for asbestos. There are also very specific requirements for and limitations on the disposal of asbestos materials. Notably, the ABA also requires physicians who render a diagnosis of mesothelioma, asbestosis or any illness suspected of being related to asbestos exposure, to notify the DOH and send a letter to the patient or his or her next of kin regarding the suspected role of asbestos.

Solid Waste Facility Regulation

The Refuse Disposal Act, R.I. Gen. Laws §23-18.9-1 *et seq.* and the *Rules and Regulations for Composting Facilities and Solid Waste Management Facilities* ("Solid Waste Regulations") control the construction and operation of solid waste management facilities, including landfills, transfer stations, incinerators and resource recovery facilities, waste tire storage and facilities, petroleum-contaminated soil processing facilities, composting facilities and construction and demolition debris processing facilities. Under the Solid Waste Regulations, a RIDEM license is required to construct and operate such facilities and there are detailed operating standards in the regulations. Special requirements apply for facilities that are to be located within the area known as the Environmental Management District.

Certain solid waste management facilities must also receive approval from the Statewide Planning Council. The Council prohibits the construction of landfills, incinerators and resource recovery facilities in certain sensitive areas. For those facilities not otherwise prohibited, the Council has a certification process through which facilities must pass.

In Rhode Island, the majority of the state's solid waste is deposited at the Central Landfill in Johnston, Rhode Island. The landfill is run by the Rhode Island Resource Recovery Corporation, which is a statutorily created public corporation. Pursuant to R.I. Gen. Laws §23-19-13.1, it is unlawful to deposit solid waste that is generated or collected out-of-state at the Central Landfill and violations are punishable by imprisonment of up to three years and/or a fine not to exceed $50,000.

Rhode Island recently reinstated its Commercial Solid Waste Recycling Program. Companies with over fifty (50) employees must comply with recycling regulations that set schedules for recycling, submit source reduction plans and report source reductions. Failure to comply is subject to penalties pursuant to R.I. Gen. Laws § 42-17.6. Rhode Island also recently amended its regulations on composting facilities and the recycling of food waste, in response to the Food Waste Ban Statute, R.I. Gen. Laws 23-18.9-17.

Air Regulations

Regulation of air quality is exceedingly complex and involves overlapping federal and state schemes. RIDEM, through its Office of Air Resources, is charged with overseeing the state's compliance with the federal CAA as well as the state's own CAA, R.I. Gen. Laws §23-23-1 *et seq.* The state act gives RIDEM authority to regulate the prevention, control, and abatement of new or existing pollution of the air resources of this state. Rhode Island also has an Air Pollution Episode Control Act, R.I. Gen. Laws § 23-21-1 *et seq*., which empowers the Governor to take certain emergency measures during episodic events.

In furtherance of the federal and state air pollution control laws, RIDEM has promulgated a complex array of air pollution control regulations. Under the federal CAA, each state must provide EPA with a State Implementation Plan ("SIP") to define what actions a state will take to improve the air quality in areas that do not meet established ambient air quality standards. Rhode Island is located within such a non-attainment area. The Rhode Island air pollution control regulations comprise the state SIP, which has been approved by EPA.

The RIDEM air regulations cover a myriad of air pollution topics such as visible and particulate emissions from industrial processes; open fires; fugitive dust; opacity monitors; emissions of contaminants detrimental to persons or property; sulfur content of fuel; air pollution control permits; air pollution episodes; petroleum liquids marketing and storage; incinerators; particulate emissions from fossil fuel fired steam or hot water generating units; recordkeeping and reporting; control of organic solvent emissions; operation of air pollution control systems; odors; control of volatile organic chemicals ("VOC") from surface coating operations; burning of alternative fuels; control of VOC emissions from printing operations; air toxics; control of PERC emissions from dry cleaning operations; removal of lead-based paint from exterior surfaces; control of organic solvent emissions from manufacturers of pharmaceutical products; control of nitrous oxide ("NOx") emissions; operating permits and fees; control of VOCs from cutback and emulsified asphalt, automotive refinishing, commercial and consumer products, marine vessel loading, architectural and industrial maintenance coatings, wood products manufacturing operations and adhesives/sealants; and emissions from organic solvent cleaning. There are also air regulations relating to automobiles and climate change, including Rhode Island's low emissions vehicle program, the NOx budget trading program; heavy duty diesel engine standards; general permits for small-scale

electric generation facilities; the Rhode Island diesel engine ant-idling program; and the CO2 budget trading program.

Most of the RIDEM air regulations are enforced by RIDEM through issuance of operating permits for new or modified stationary sources. RIDEM reviews applications to ensure that the proposed emissions from a source meet the applicable pollution control requirements and that the best available control technology is being used. Air Pollution Control Regulation No. 9 governs preconstruction permits, while Air Pollution Control Regulation No. 29 covers operating permits. Specific requirements for air toxics registrations and operating permits are contained in Air Pollution Control Regulation No. 22.

In recent years, Rhode Island has focused on protecting air quality through reductions in mobile source emissions. Pursuant to R.I. Gen. Laws §31-47.1-1 *et seq.* and RIDEM's Air Pollution Control Regulation No. 34, Rhode Island has developed a Motor Vehicle Inspection/Maintenance program through which standards and criteria for motor vehicle emissions inspections are set. These regulations are designed to reduce emissions to those levels necessary to achieve and maintain federal and state ambient air quality standards and protect both human health and the environment.

Rhode Island has also taken an active role is the climate change debate. Rhode Island is a member of the Regional Greenhouse Gas Initiative ("RGGI"), a consortium of Northeastern and Mid-Atlantic states convened to reduce carbon dioxide ("CO_2") emissions from large fossil fuel-fired electric power plants to help address climate change. The crux of the program is a multi-state cap-and-trade program with a market-based emissions trading system. Under RGGI, electric power generators in participating states are required to reduce CO_2 emissions. Pursuant to R.I. Gen. Laws. §23-82-1 *et seq*., RIDEM has promulgated regulations (Air Pollution Control Regulation Nos. 46 and 47) for the cap-and-trade program in Rhode Island. Rhode Island also convened a greenhouse gas stakeholder group and developed a Greenhouse Gas Action Plan in 2002.

Similarly, the Rhode Island Climate Risk Reduction Act of 2010, R.I. Gen. Laws §23-84-1 *et seq.* was enacted in 2010 in response to the increasing evidence of the harmful effects of climate change. The statute creates a 28-member Rhode Island Climate Change Commission to "study the projected impacts of climate change on Rhode Island, to identify and report methods of adapting to these climate change impacts in order to reduce likely harm and increase economic and ecosystem sustainability, and to identify potential mechanisms to mainstream climate adaptation into existing state and municipal programs including, but not limited to, policies plans, infrastructure development and maintenance."

More recently (in 2014), Rhode Island enacted the Resilient Rhode Island Act. The statute creates a climate change coordinating council that will, among other duties, prepare a plan to develop strategies, programs and actions to meet targets for greenhouse gas emissions reductions as follows: 10% below 1990 levels by 2020; 45% below 1990 levels by 2025; and 80% below 1990 levels by 2050. The plan is expected by December

31, 2016. Rhode Island has also been active in climate change efforts on a national level. The state often joins with other states in federal lawsuits geared toward reducing CO_2 emissions from power plants in 20 states.

B. Water Pollution Laws

Groundwater Quality

RIDEM's Office of Water Resources Groundwater Classification and Standards Program leads the state's efforts to prevent groundwater pollution. Under the Rhode Island Groundwater Protection Act of 1985, R.I. Gen. Laws §46-13-1, and the *Rules and Regulations for Groundwater Quality* ("Groundwater Quality Regulations"), the state's groundwater resources are divided into four classes, and groundwater quality standards are assigned for each class. The four classes are designated GAA, GA, GB and GC, with GAA being the most protected class. In contrast, groundwater classified GB and GC is known or presumed to be unsuitable for drinking water use without treatment. The Groundwater Quality Regulations use a combination of numerical standards, narrative standards and Preventative Action Limits to protect groundwater from activities that would be detrimental. Activities or facilities that have the potential to adversely impact groundwater must obtain a groundwater quality certification from RIDEM. The Groundwater Quality Regulations also contain provisions for remediation of contaminated groundwater.

Onsite Wastewater Treatment Systems

The onsite wastewater treatment system program is another component of the state's efforts to protect groundwater. Formerly referred to as "ISDS" systems, on-site wastewater treatment systems are regulated by RIDEM under its *Rules Establishing Minimum Standards Relating to Location, Design, Construction and Maintenance of Onsite Wastewater Treatment Systems*. RIDEM oversees the site-suitability, design review and construction inspection stages. Site-suitability is a preliminary stage which assesses the suitability of a parcel of property for on-site sewage disposal. For new systems and some alterations, an applicant must have a soil evaluation performed to determine the nature of the soils at the site and the seasonal high groundwater level. The soil evaluation must be witnessed by a RIDEM employee unless waived by the agency. The evaluation is then submitted to RIDEM for acceptance.

Design review entails evaluating a design's compliance with the applicable standards, rules and regulations, including setbacks to drinking water wells and sensitive water bodies. Applicants must submit an OWTS application with detailed design information and receive a permit before undertaking any construction. Large OWTSs (treating 5,000 gallons per day or more) are subject to special permitting requirements such as public notice to local officials and certain abutters. Similarly, systems in environmentally sensitive resource areas are subject to additional design requirements. It is noteworthy that RIDEM will consider alternative or experimental technologies and keeps a list of approved alternative systems.

System installations must be witnessed by a licensed designer. RIDEM also conducts construction inspections during installation. A Certificate of Construction signed by a licensed designer must be completed and submitted to RIDEM following installation. Thereafter, the applicant must obtain a Certificate of Conformance from RIDEM before using the OWTS.

In cases where there are overlapping regulatory requirements, RIDEM has attempted to help streamline the permitting. For those applications that also require a RIDEM wetlands permit, RIDEM allows simultaneous applications for the OWTS and freshwater wetlands permit. Depending upon the location of the OWTS, it may require both RIDEM and CRMC approval. If the OWTS is going to be located within CRMC's jurisdiction and will have a design flow greater than 2,000 gallons per day, RIDEM requires at least a Preliminary Determination from CRMC first before it will accept an OWTS application.

Rhode Island has strict licensing requirements for those who design, construct, alter and repair OWTSs. As a result of 1997 revisions to the onsite wastewater treatment systems legislation, RIDEM has implemented a licensing program that includes training and license examination requirements for private-sector professional designers and installers.

In 2007, Rhode Island passed the Cesspool Phase-Out Act, R.I. Gen. Laws §23-19.15-1 *et seq*. The Act applies to all cesspools within 200 feet of (1) the inland edge of a coastal shoreline feature bordering a tidal water area (CRMC's jurisdiction); (2) a public well; or (3) a drinking water supply. These cesspools must be abandoned and upgraded with an OWTS or hooked up to a municipal sewer. Failed cesspools and cesspools that serve commercial facilities or multi-family dwellings, regardless of their location, also trigger the replacement requirements. If a cesspool in one of these areas is found to have failed, it must be replaced within one year. All other cesspools within these 200-foot areas have to be replaced no later than January 1, 2013. The 2007 law was amended in 2014 to require that cesspools must be removed and replaced upon the transfer of the property under the circumstances described in the 2014 amendments. R.I. Gen. Laws § 23-19.15-12.

Selling a piece of property that falls within one of the above 200-foot areas may also trigger an obligation to replace a cesspool. In areas where there is a public sewer, the property must be hooked up to municipal sewers within one year of the sale. Sellers must provide buyers with a standard notice regarding the replacement requirements.

Municipalities may also regulate cesspools and local ordinances should be consulted. If the local ordinance has a stricter replacement program, an owner may be exempt from the state law requirements.

Underground Injection Control Systems

Another RIDEM program designed to protect groundwater is the Underground Injection Control Program ("UIC") that is implemented through the *Underground Injection*

Control Program Rules and Regulations ("UIC Regulations"). The UIC Regulations endeavor to protect groundwater from contamination by discharge from injection wells and other subsurface waste disposal. They apply to injection wells, subsurface disposal systems of a non-domestic nature and multiple dwelling, community or regional systems for the injection of domestic wastes. Generally, RIDEM must issue an Order of Approval for any injection well or other subsurface disposal system used to dispose of waste of a non-domestic nature. The UIC Program personnel also oversee voluntary and involuntary closures of injection wells and conduct compliance inspections at permitted facilities.

Wetlands Protection

Rhode Island has been a leader in the wetlands protection arena. It was one of the first states to enact legislation on the state level to protect wetlands. Rhode Island's Freshwater Wetlands Act, R.I. Gen. Laws §2-1-18 *et seq.*, declares that it is the policy of the state to preserve the purity and integrity of the state's freshwater wetlands in order to protect the health, welfare and general well-being of the public.

RIDEM has authority to regulate activities in and near the majority of the state's freshwater wetlands. RIDEM's Office of Water Resources and the Office of Compliance and Inspection both administer and enforce the Freshwater Wetlands Act and the *Rules and Regulations Governing the Administration and Enforcement of the Fresh Water Wetlands Act* ("Wetlands Regulations"). Under the Wetlands Regulations, RIDEM approval is required for any activity that may alter the character of any freshwater wetland. The Wetlands Regulations require impact avoidance and minimization and prohibit any random, unnecessary, or undesirable alteration to wetlands. In limited cases, RIDEM may allow some form of wetlands mitigation.

Certain projects are exempt from the permitting requirements in the Wetlands Regulations. For example, certain changes to existing residential structures are allowed, provided that the work is done within previously cleared areas and located a sufficient distance from the wetlands. If a freshwater wetlands permit is required, an applicant must file one of two main types of applications depending upon the extent of the alteration or impacts. On the one hand, an applicant proposing a minimal alteration may submit a *Request for a Preliminary Determination*. RIDEM will review it to determine if the proposed project represents an "insignificant alteration" of a wetland. An "insignificant alteration" permit is the least formal and most expeditious type of wetlands permit. There are no public notice requirements for this application type. By statute, RIDEM must make a decision on an "insignificant alteration" permit within 30 days of receiving a complete application. However, the average decision time for this type of application is longer.

If the proposed project involves a significant alteration of wetlands, an applicant must file for a formal wetlands permit (an application to alter). These applications are more complicated and lengthy and entail public notice and a 45-day comment period. If a substantive objection is received during the public notice period, RIDEM will schedule a public hearing. It is important to be aware that, if a city or town objects to an application,

RIDEM is required to deny the application. The average decision time for a formal wetlands application can approximate one year. Applicants can check on the status of their wetlands permits on RIDEM's on-line wetlands permit database.

RIDEM and CRMC are working on new regulations that will drastically reduce the power of municipalities to regulate wetlands. The new regulations, when completed, will establish new statewide setbacks and buffer zones. However, municipalities will be able to both weigh in on permit applications and petition the new statewide setback regulations. New buffer zones will be designated based on the locations of the site and the site's characteristics. Municipalities will need to amend their zoning ordinances to confirm to the state setbacks when promulgated. R.I. Gen. Laws § 45.24.30

CRMC also has authority over coastal wetlands as well as freshwater wetlands near the coastline. Indeed, it has exclusive authority to regulate freshwater wetlands in the vicinity of the coast. RIDEM and CRMC have created jurisdictional maps that delineate each agency's areas of authority. In general, areas seaward of Route 1 are within CRMC's jurisdiction. Pursuant to its authority, CRMC has promulgated *Rules and Regulations Governing the Protection and Management of Freshwater Wetlands in the Vicinity of the Coast*. These regulations are similar in large part to RIDEM's Wetlands Regulations. CRMC's *Coastal Resources Management Plan* also contains sections pertaining to wetlands. It is noteworthy that, pursuant to CRMC's "no net loss" policy for wetlands, CRMC may require mitigation or replacement of altered wetlands on a 2:1 ratio. Finally, applicants should consult the CRMC SAMPs to determine whether a particular property lies within a SAMP boundary in which case additional wetlands requirements may apply.

RIDEM, CRMC and the Army Corps of Engineers coordinate their review of certain state permits through an inter-agency process. There is a Programmatic General Permit ("PGP") in effect for Rhode Island under which permits are characterized as Category I or II. The Corps does not review Category I applications. Only the more significant Category II projects get reviewed at the monthly PGP screening meetings between the agencies.

Rhode Island Pollution Discharge Elimination System ("RIPDES")

The EPA has delegated responsibility to Rhode Island under the CWA to implement the federal National Pollutant Discharge Elimination System ("NPDES") program. Through its *Regulations for the Rhode Island Pollutant Discharge Elimination System* ("RIPDES Regulations"), RIDEM's Office of Water Resources administers the program. The RIPDES Regulations regulate "point source discharges" of pollutants into the waters of the state through a system of permits. They cover municipal and industrial wastewater, stormwater, combined sewer overflows discharged directly to the waters of the state, as well as industrial wastewaters discharged to municipally-owned treatment facilities. Under the regulations, it is illegal to discharge any pollutant from point sources into navigable waters without a permit or discharge waste in violation of the terms or conditions of any valid permit.

To more precisely regulate and control any discharges into navigable waters, Total Maximum Daily Loads ("TMDLs") are specified on the RIPDES permit. The TMDLs represent the maximum amount of a pollutant that could be discharged to the water on a daily basis that would not cause the water quality to drop below the applicable water quality standard that corresponds to the use category. Waters with a water quality that is below the water quality standard that corresponds to the water's beneficial use must eventually achieve the proper water quality standard for their classified use.

RIDEM also regulates stormwater through the RIPDES program. Under Phase I of the NPDES program, discharges from large construction sites (equal to or greater than five acres), certain industrial activities and operators of "medium" or "large" municipal separate storm sewer systems ("MS4s") (serving 100,000 or more people) require a permit and a storm water management program plan ("SWMPP").

In 1999, EPA implemented Phase II of the program through regulations that extended the program to small construction sites (between one and five acres) and stormwater discharges from small MS4s in urbanized areas. In 2002 and 2003, RIDEM amended its RIPDES regulations to include the Phase II requirements. The Phase II program is designed to promote pollution prevention through non-structural best management practices ("BMP"). Under the Phase II Rule, an operator of a regulated small MS4 must apply for a RIPDES permit and the application must include a SWMPP that describes the BMPs designed to reduce or eliminate pollutants in stormwater discharges and ensure compliance with the permit. RIDEM may impose additional permit requirements based on the recommendations of a Total Maximum Daily Load ("TMDL").

There are a variety of permitting options under the RIPDES program. Under the RIPDES program, certain facilities may need a site-specific individual permit. However, in many cases, applicants can seek coverage under a general permit by filing a Notice of Intent and developing and implementing a SWMPP.

Oil Pollution Control Act

Several state laws are directed at the prevention of oil pollution. Under the Oil Pollution Control Act, R.I. Gen. Laws §46-12.5.1-1 *et seq.*, it is unlawful to discharge or allow the discharge of oil into, or upon the waters or land without a permit. Similarly, the Water Pollution Act, R.I. Gen. Laws §46-12-1 *et seq.* , prohibits the placement of any pollutant in a location where it is likely to enter the waters and the unpermitted discharge any pollutant into the waters except as in compliance with a permit.

RIDEM has promulgated *Oil Pollution Control Regulations* ("Oil Regulations") that are designed to "prevent the discharge, escape or release of oil into the waters of the state and to preserve and protect the quality of the waters of the State." The Oil Regulations prohibit the discharge of oil or pollutants into state waters through restrictions on both water and land-based activities. Owners and operators of vessels are obligated to comply

with oil and waste transfers between vessels and ballasting. As set forth above, the regulations also govern the design, operation and closure of ASTs.

Where there is a release of oil, the Oil Regulations require notification to RIDEM and other appropriate officials. Thereafter, RIDEM may require monitoring, remedial and cleanup action. These actions may include removal of oil from surface waters, placement of containment devices, water quality sampling, installation of groundwater monitoring recovery and/or treatment systems, restoration of areas impacted by the release and removal of all oil contaminated soil and debris.

In 1996, the legislature has created an "oil spill prevention, administration, and response fund" pursuant to R.I. Gen. Laws §46-12.7-1 *et seq.*. The fund is financed in part through fees imposed on petroleum products and money recovered from violators. Uses of the fund include payment for the costs of response, containment and cleanup of oil spills. One who has suffered damages or losses as a result of an oil spill may apply to the fund for compensation.

VIII. RHODE ISLAND INTELLECTUAL PROPERTY LAWS

A. Overview

Every organization should carefully consider the importance of its intellectual property to the success of its mission in order to select the proper level and method of protection for these assets. To assist in this assessment, the following provides an overview of Rhode Island state laws protecting trademarks, trade names and trade secrets. Matters relating to copyright and patents are governed by federal law, which is beyond the scope of this document.

B. Trademarks and Service Marks

A trademark may be any word, name, symbol, design or device or any combination thereof used by a party to identify its goods or services and to distinguish them from those of other providers. Trademarks and service marks are essentially identical, except that trademarks are used to identify the source of goods sold, and service marks are used to identify the source of services offered. Ownership of a mark begins when it is used in commerce in connection with goods and services so that consumers begin to associate or identify it with a particular source. Trademarks and service marks can generally be enforced in a court of law without a registration as to the common law rights of such trademarks and service marks in the geographic area where the trademark or service mark is used in commerce.

Advantages of Trademark Registration

The principal method of establishing rights in a trademark is actual use of the mark. "Registration" of a trademark under federal and state law is not legally required but can be advantageous.

Federal registration of a mark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use the mark in interstate commerce in all fifty states, thus strengthening the registrant's ability to prevail in any infringement action.

Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also less tangible advantages of registration, such as the goodwill arising out of the implied government approval of the trademark.

While the advantages of state registration are not as extensive as federal registration, there may be some cases where it is advisable. For example, in situations where sales or services will occur only within a particular state, it would make sense to register at the state level.

State Law & State Registration Process

Rhode Island is among the states that statutorily provide for the registration and protection of trademarks. Rhode Island General Laws, Chapter 2 of Title 6 provides the regulations governing the state registration of trademarks, and the remedies available for registered trademark infringement.

The Rhode Island trademark statute authorizes the registration of trademarks and service marks. It defines "trademark" as "any work, name, symbol, or device, or any combination thereof, adopted and used by a person to identify goods made or sold by him or her, and to distinguish them from goods made or sold by others." R.I. Gen. Laws § 6-2-1. Furthermore, "service mark" is defined under R.I. Gen. Laws § 6-2-1 as "a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others." Rhode Island does not provide for the registration of trade names.

The Rhode Island statute only authorizes the registration of trademarks and service marks that have been adopted and used by the applicant, which differs from its federal counterpart since it also permits applications based on a bona fide intent to use the mark.

The first step in the Rhode Island registration process is the filing of an application with the Secretary of State of Rhode Island. The application must include the name and address of the applicant, the goods or services with which the mark is used, the mode or manner of use, the class of goods or services, the date when the mark was first used by the applicant anywhere and also in the state, and a statement of ownership in and exclusive use of the trademark. In addition, the application must be accompanied by

three copies of a specimen of the trademark and a fifty dollar ($50.00) filing fee. R.I. Gen. Law § 6-2-2.

No trademark or service mark may be registered in Rhode Island if the mark is likely to be confused with another Rhode Island registered mark or one used in the state and not abandoned. The statute forbids the registration of a trademark or service mark consisting of any simulation of the flag or other insignia of the United States, any state or foreign country. Also, a mark cannot be registered in Rhode Island if it is deceptively mis-descriptive or "merely descriptive" with respect to the goods or services to which the mark relates, consists of words which are primarily surnames, consists of the name, signature, or portrait of any living person without the permission of that person, and matters which may falsely connect the product with, disparage, or brings into disrepute any "persons, living or dead, institutions, beliefs, or national symbols." R.I. Gen. Laws. § 6-2-3. The Trademark Act contains similar restrictions on the federal regulation of trademarks. 15 U.S.C. § 1052.

If the statutory requirements are met, the Secretary of State will issue the applicant a Certificate of Registration which will place all parties on constructive notice of the registrant's claim of ownership in the trademark or service mark. The certificate raises the rebuttable presumption that the registrant has the exclusive right in the state to use the trademark with respect to the goods and services specified in the application. Although not specifically addressed by the Rhode Island trademark statute, rights under a state trademark registration statute generally has no effect beyond the borders of the state. State registration trademark statutes do generally provide additional protection within the state against trademark infringement and unfair practices. Similar to federal registration, state registration, or lack thereof, has no effect on common law trademark rights or remedies. In fact, the Rhode Island statute specifically provides that the statute shall not adversely affect any trademark rights acquired at common law. R.I. Gen. Laws § 6-2-14.

State registration is valid for ten (10) years and is renewable within six (6) months of expiration for additional ten (10) year periods. The application for renewal must contain a statement that the trademark or service mark is still being used in the state, and must be accompanied by a fifty dollar ($50.00) renewal fee.

The Rhode Island statute provides for the cancellation of the registration if, among other things, it is abandoned, fraudulently obtained, or improperly granted. R.I. Gen. Laws § 6-2-8(3). Any party obtaining a registration in a fraudulent manner is liable for any damages resulting from said fraudulent acts. R.I. Gen. Laws § 6-2-10. State registration may also be canceled if the registrant requests cancellation, the registrant is not the true owner of the trademark, the registration is not properly renewed, the superior court orders the mark canceled, or the state registered mark is likely to be confused with a previously federally registered trademark or service mark owned by another party. R.I. Gen. Laws § 6-2-8.

Any party using, without the permission of the registrant, an imitation of a Rhode Island registered trademark or service mark in connection with the sale or advertising of any

goods or services or in such a manner as to cause confusion as to the origin of the goods or services, has infringed upon that trademark or service mark, and is subject to the equitable and legal remedies set forth in the stature. R.I. Gen. Laws § 6-2-11. The registrant may bring suit to enjoin the improper use of the trademark or service mark and may be granted damages suffered as a result of said use. R.I. Gen. Laws § 6-2-13. In addition, the superior court may order under R.I. Gen. Laws § 6-2-13 the destruction of any remaining imitations.

C. Trade Names

A trade name is distinguishable from a trademark in that a trade name may identify not only goods and services, but also the business of and/or goodwill in an enterprise as a whole.

The protection of trade names is governed by state law and is not covered by federal statutes.

Under state law, trade names are sometimes referred to as "DBAs" (doing business as) or "fictitious business names." Persons conducting business under a "fictitious business name" typically must make a filing with the state in which they are doing business.

In Rhode Island, the Office of the Secretary of the State essentially acts as a central registry of trade names since it has on record the legal names of all domestic entities which have filed formation documents and of all foreign entities operating in Rhode Island who have filed an application for authority to transact business in Rhode Island. Furthermore, to the extent a corporation or limited liability company desires to use a fictitious name in Rhode Island, it must first register that fictitious business name with the Rhode Island Secretary of State by filing a fictitious business name statement prior to the use of such name. See R.I. Gen. Laws § 7-1.2-402 and R.I. Gen Laws § 7-16-9. The Rhode Island Secretary of State is mandated by statute not, except in certain limited circumstances, to accept any formation documents or fictitious name filings with respect to a corporation if the name is not distinguishable upon the records of the Rhode Island Secretary of State from the name of any entity, whether a corporation, limited partnership, limited liability partnership or limited liability company, that has been filed, reserved or registered with the Rhode Island Secretary of State in accordance applicable law. R.I. Gen. Laws § 7-1.2-401.

To the extent any person shall carry on or conduct or transact business in Rhode Island under any assumed name, or under any designation, name or style, corporate or otherwise, such person must file in the office of the town or city clerk in the town or city in which the person or persons conduct or transact, or intend to conduct or transact, business, a certificate stating the name under which the business is, or is to be, conducted or transacted, and the true or real full name or names, both the first name and surname, of the person or persons transacting the business, with the post office address or addresses of the person or persons. R.I. Gen. Laws § 6-1-1 et. seq.

Trade names differ from trademarks or service marks in that trade names may not be federally registered under the Federal Trademark Act of 1946, as amended, nor under R.I. Gen. Laws § 6-2-1 et. seq. However, established trade names are generally protected under very similar common law principles as trademarks.

D. Trade Secrets

The protection of trade secrets is a distinctly state-controlled area and is not covered by any federal statutory grant of rights. A trade secret owner is not required to make continuous use of a trade secret in order to receive protection. Trade secret protection exists for as long as the secrecy of the trade secret is maintained.

Rhode Island has adopted the Uniform Trade Secret Act, R.I. Gen. Laws § 6-41-1 et. seq. ("RITSA"). The RITSA provides a statutory basis for protecting trade secrets, as well as providing a right of action and defined remedies.

The key elements of the RITSA are to show the existence of a "trade secret" that has been the subject of a "misappropriation". Each of these terms are defined in Section 6-41-1 of the RITSA.

Definition of a Trade Secret

The term "trade secret" is defined in Section 6-41-1 of the RITSA as follows:

> (D) "Trade Secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:
>
> (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
>
> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Based upon the definition of a trade secret, virtually any type of information can qualify as a trade secret. A trade secret can include a business formula, compilation, pattern, program, device, method, technique, or process which, though neither copyrighted nor patented, is used in the conduct of the owner's business, is not disclosed to the public, and provides the owner with some competitive advantage.

The following factors will likely be considered in determining whether a trade secret exists:

- The extent to which the information is known outside the owner's business;

- The extent to which it is known by employees and others involved in the business;

- The extent of measures taken by the owner to guard the secrecy of the information (e.g., labeling the information "Trade Secret" or "Confidential," advising employees of the existence of a trade secret, limiting access to the information within the company on a "need-to-know basis," and controlling company access);

- The economic value of the information to the owner and the owner's competitors;

- The amount of effort or money expended by the owner in developing the information; and

- The ease or difficulty with which the information could be properly acquired or duplicated by others.

The most critical element to proving the existence of a trade secret is not establishing what particular category the information falls under in the definition of a trade secret but establishing that the information is not known generally or capable of being ascertained by proper means. Although some courts have held that the means of acquisition is more important than whether the information can in fact be determined from the public domain, the definition requires that the information not be capable of discovery by independent means (e.g., reverse engineering or research). For example, a sales list is not likely to be deemed a trade secret if someone, through diligent research, could put together a comparable list of customers.

The owner of a trade secret must also show that reasonable efforts were employed to maintain this secrecy. Generally, courts will look to such things as limited dissemination of the information within an organization, the existence of trade secrecy agreements with employees who have access to the information, and efforts to enforce restrictions where violations have occurred.

As a general principle, the more difficult the information is to obtain and the more time and resources expended by the employer in gathering it, the more likely it is that a court will find such information to be a "trade secret" under the Uniform Trade Secrets Act.

Misappropriation of Trade Secrets

Assuming that information is determined to be a trade secret, the next element is to show that there has been a misappropriation. The term "misappropriation" is defined in Section 6-41-1 of the RITSA as follows:

(B) "Misappropriation" means:

(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(2) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(a) Used improper means to acquire knowledge of the trade secret; or

(b) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(c) Before a material change of his or her position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Misappropriation can be shown by either an acquisition or a disclosure. As a result, a RITSA case can be brought against not just, for example, the employee which takes the information, but also his new employer as well if that new employer knows that the information was acquired improperly.

Various types of misappropriation are defined with reference to "improper means", which is defined under Section 6-41-1 of the RITSA as follows:

(A) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a

duty to maintain secrecy, or espionage through electronic or other means.

The most common type of "improper means" is the situation where there is a breach of a duty to maintain secrecy, which can be shown to have occurred under an express contract or implied obligations and duties owed by employees to their employers.

A trade secret is not protected against discovery by fair and honest means, such as independent invention, accidental disclosure, or reverse engineering.

Pursuant to the Uniform Trade Secrets Act, misappropriation is not limited to the initial act of improperly acquiring trade secrets. The use and continuing use of the trade secrets is also misappropriation. It is noteworthy that the Uniform Trade Secrets Act does not require that the defendant gain any advantage from disclosure of the trade secret in order for misappropriation to occur. It is sufficient to show "use" by disclosure of the trade secret with actual or constructive knowledge that the secret was disclosed under circumstances giving rise to a duty to maintain its secrecy.

It is important for businesses to take significant steps to keep the information secret; a business may not claim misappropriation of a trade secret if there was no effort taken to treat the information as secret. Some practical means by which a company can help avoid misappropriation of its secrets include reminding employees about confidential communications, asking employees to sign confidentiality agreements, and marking sensitive communications with the word "secret" or "confidential."

Remedies Available

If all elements for showing a RITSA claim are satisfied, a number of remedies are available, including injunctive relief, damages, and, potentially, exemplary damages and attorneys' fees.

With respect to injunctive relief, actual or threatened misappropriation may be enjoined. Section 6-41-2. If the trade secret aspects have not yet been lost, the injunction can continue for so long as the information continues to be a trade secret. If the trade secret has already been destroyed by becoming a matter of public knowledge, the injunction may run for an additional reasonable period of time to eliminate any commercial advantage the misappropriator would otherwise receive. Damages for misappropriation may include "both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that has not been taken into account in computing actual loss." Section 6-41-3. As an alternative, a royalty payment may be ordered with respect to a person who will be allowed to use the trade secret.

Exemplary damages may be awarded where the misappropriation was shown to be "willful and malicious. "Section 6-41-3(b). In such circumstances, an award of attorneys' fees may also be awarded by the court. However, attorneys' fees may also be awarded to a defendant as a prevailing party if it can show that to the claim of misappropriation, or

opposition to dissolving an injunction order, was made by the plaintiff in bad faith. Section 6-41-4.

RITSA claims are subject to a three year statute of limitation. Section 6-41-6. In litigating such claims, the court shall preserve secrecy by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in camera hearings, sealing records after the action, and ordering any person involved in the litigation not to disclose an alleged trade secret with prior court approval. Section 6-41-5.

The RITSA "displaces" conflicting tort, restitutionary, and other law of the State of Rhode Island providing civil remedies from misappropriation of a trade secret. Section 6-41-7. However, it does not affect contractual remedies of any type, whether or not based upon misappropriation of a trade secret, nor does it displace civil or criminal remedies for claims not based upon misappropriation of a trade secret.

IX. DISPUTE RESOLUTIONS/STATE COURTS

The Rhode Island Superior Court has a formal arbitration program wherein all civil actions filed in the Superior Court in which there is a claim or there are claims for monetary relief not exceeding $100,000 total, exclusive of interest, costs and attorney's fees, and certain District Court appeals are subject to court-annexed arbitration subject to certain exempt actions. The court maintains a list of qualified arbitrators to hear the matters and issue a written award. Any party who is dissatisfied with an arbitrator's award may have a trial as of right upon filing a written rejection of the award. A trial shall then be conducted as if there had been no arbitration proceeding. In addition, the Rhode Island Superior Court holds a settlement week one week in December of each year. Any case that has been assigned to the trial calendar is eligible for settlement week, which historically has a high settlement rate. Finally, the Rhode Island Supreme Court has an Appellate Mediation Program for eligible civil appeals mediated by designated retired Justices of the Supreme Court, retired Justices or Judges of the trial courts, other Judges or persons who may, from time to time, be designated by the Chief Justice of the Rhode Island Supreme Court in a particular proceeding. All records related to such mediation sessions are confidential.

X. COMMERCIAL BANKING

Although there are hundreds of national commercial banks doing business in Rhode Island, the commercial lending field is dominated by only a few: Citizens Bank N.A., Bank of America, The Washington Trust Company, Santander Bank, Bank Rhode Island and Bank Newport. In addition, there are 20 credit unions, having 357,745 members and 5.2 billion dollars in assets. While the credit unions tend to specialize in home mortgage loans and car loans, the commercial banks offer a panoply of credit facilities including term loans, revolving credit facilities, letters of credit and construction loans, all on both secured and an unsecured basis. Unique to Rhode Island is a law that prohibits a lending institution making a loan in Rhode Island from requiring a borrower's attorney to render a legal opinion that the loan documents are valid, binding and enforceable. This is always a surprise to out of state lenders. In practice, the issue is resolved by having the bank's attorney give this opinion.

Commercial loans bear interest on a fixed or a floating basis, the floating facilities measured by prime or LIBOR plus a percentage. Often floating rate loans are subject to a "SWAP" agreement which is an exchange of a floating rate for a fixed payment. Principal amortization schedules are subject to negotiation between borrower and lender and can vary from "interest only" arrangements to rapid repayment of principal provisions.

Secured commercial loans are governed by the Uniform Commercial Code as adopted in Rhode Island Asset based loans may limit the amount that can be borrowed to a formula based a percentage of a borrower's inventory and/or accounts receivable. Larger commercial lenders often have industry sectors focusing on a particular borrower type such as precious metals, healthcare, telecommunications or real estate development. Most lenders boast of a small business lending practice and many write SBA loans.

XI. PUBLIC FINANCE

Rhode Island has established a variety of financing programs to support the growth and expansion of existing businesses and promote new businesses in Rhode Island. The main conduit for these programs is the Rhode Island Commerce Corporation (RICC), a quasi-public organization formerly known as the Rhode Island Economic Development Corporation. In addition, there are industry specific financing opportunities available, including those available for non-profit educational and health organizations and for certain private water supplier and treatment facilities. Also, there are opportunities for property development financing on the town and city level through tax incremental financing programs. The RICC administers a variety of financing programs for businesses in all phases of development and also publishes information regarding the public financing options and business tax incentives available to Rhode Island businesses. For more information, including information regarding the application process visit the RICC website at *www.commerceri.com/business-services/*.

program is on small water suppliers and disadvantaged systems. Borrowers certified as eligible participants by the Rhode Island Department of Health may qualify for low cost financing for projects related to the planning, design and construction of safe drinking water supply, treatment and transmission infrastructure. The interest rate for borrowers is generally 25 percent lower than their market rate of borrowing. The Bank, in cooperation with its advisors, determines the borrower's current market rate of borrowing. However, the interest rate for small privately organized community water suppliers, serving fewer than 10,000 persons may be set by the Bank at three percent for loans up to $300,000. In June 2015, the RI General Assembly enacted legislation that expanded the programs administered by the Bank, including commercial and residential Property Assessed Clean Energy (PACE) programs. Other programs include the development of the Efficient Building Fund, which provides low-cost financing for energy efficiency and renewable energy projects in public buildings in Rhode Island. For information on these and other financing programs available through the Bank, visit www.riinfrastructurebank.com.

A. Additional Venture and Loan Opportunities

Small Business Loan Fund

The Small Business Loan Fund can provide up to $500,000 in direct loans on flexible repayment terms for qualified small manufacturing, processing and selected service businesses. On average the fund provides 25 percent of the total project cost and the funds can be used for acquisition and improvements of land, buildings and equipment, new construction, and working capital. Manufacturers seeking financing to be used for the acquisition of land, buildings and equipment may qualify for loans in excess of $500,000. Funds cannot be used to refinance existing debt.

The Slater Technology Fund

The Slater Technology Fund is a state-backed venture capital fund that invests in new companies committed to basing and building their businesses in Rhode Island. Slater typically invests at the inception stage in the development of a new venture, often based upon ideas and technologies originating in academic institutions and/or government research laboratories located within the region. In most cases, investments are premised upon the possibility of raising substantial follow-on financing from venture capital investors or from strategic partners, with a view toward accelerating the generation of significant numbers of high-value, high-wage jobs over the intermediate to longer-term. For more information, visit *www.slaterfund.com.*

Renewable Energy Fund

The RICC manages the state's Renewable Energy Fund and provides grants, loans and other financing for renewable energy projects, including private commercial projects that produce electricity in a cleaner, more sustainable manner and stimulate job growth in Rhode Island. For more information, visit *www.commerceri.com/finance-business/renewable-energy-fund/.*

Energy Revolving Loan Fund

The Energy Revolving Loan Fund is administered by RICC and provides low interest loans for RI businesses to pursue energy savings investments. Loans can be provided to install renewable energy projects, make facilities more energy efficient or purchase new energy saving equipment. The repayment terms vary between 5-10 years with interest rates ranging from 1-3% depending on project specifics.

Business Development Company of Rhode Island

The Business Development Company is a non-bank lender that provides primary and secondary financing to qualified undercapitalized smaller businesses that want to grow their companies and expand employment in Rhode Island. Target loan candidates include: manufacturers, distributors, and service providers in a variety of industries, including software, medical technology, and other high-tech businesses. For more information, visit *www.bdcri.com*.

Tax Increment Financing

Rhode Island cities and towns are authorized pursuant to Chapter 33.2 of Title 45 of the Rhode Island General Laws, to issue special obligation tax-exempt bonds and notes in order to assist individuals, private enterprises, non-profit organizations or governmental or quasi-governmental entities to finance qualifying projects in designated redevelopment areas. Qualifying projects include those related to commercial and industrial development and revitalization, and the funds may be used to pay the cost of land acquisition, and the construction or rehabilitation and equipping of industrial or

commercial facilities within the project area. The municipal bonds or notes are payable solely from the related project revenues and are not supported by the faith and credit of the state or municipalities, however, the city or town may pledge anticipated tax increments related to the improvements made in connection with the project to the payment of debt service on the bonds or notes.

In addition to tax incremental financing through cities and towns, Chapter 64.21 of Title 42 of the Rhode Island General Laws, which is known as the "Rhode Island Tax Increment Financing Act," provides capital for eligible projects by rebating the new state tax revenue generated by the project. An eligible project must demonstrate need through a "financing gap." The tax revenue rebate may not exceed 30% of total project costs (exemption for public infrastructure/utilities) or 75% of incremental revenue generated. The RICC is authorized under the Rhode Island Tax Incremental Financing Act to enter into tax incremental financing agreements with a developer of a qualified development project until December 31, 2018.

Statutory Tax Incentives

The RICC publishes a summary of state and local business incentives, including tax incentives, as an information tool for the business community. For a list of the available tax incentives visit the RICC website at: *www.commerceri.com/ services/taxes-incentives/*.

Related Links

www.commerceri.com/our-services/

www.areadevelopment.com/stateresources/rhodeIsland/RhodeIsland-Direct-Financial-Incentives-2014-895467.shtml

XII. RAISING CAPITAL UNDER THE FEDERAL AND RHODE ISLAND SECURITIES LAWS

A. Dual Regulation by Federal and State Securities Laws

The issuance and sale of debt and equity securities is one of the principal means by which companies (whether corporations, limited liability companies or partnerships) raise the capital needed to sustain their operations and fuel their expansion. Securities are issued to raise capital in many different contexts, including: (i) upon the organization of a private, closely-held business, (ii) when an emerging company has exhausted the resources of its founders and looks to raise money from outside angel investors, (iii) when a company obtains venture capital financing, (iv) when a company makes an initial public offering and (v) when a public company issues more shares to raise additional capital. All of these transactions are subject to dual regulation by federal and state securities laws.

No security (whether shares of stock, bonds, notes or other instruments) can be offered or sold unless both: (A) it has been registered with the U.S. Securities and Exchange Commission ("SEC") or, in the alternative, the security, or the transaction in which it will be issued, is exempt from registration; and (B) in every state in which the security will be offered and sold, it has been registered with the securities division of that state or, in the alternative, the security, or the transaction in which it will be issued, is exempt from registration in that state.

The federal and state securities laws apply not only to the initial issuance of securities by a company but also to subsequent resale transactions. Thus no person who has acquired securities from a company can resell them without registration or establishing an exemption therefrom at both the federal and state level.

B. The Federal Scheme

The Registration Requirement

In the absence of an available exemption, Section 5 of the Securities Act of 1933 (the "1933 Act") prohibits the offer to sell a security unless a registration statement meeting the requirements of the 1933 Act has been filed with the SEC; and it prohibits the actual sale of a security unless the registration statement has been declared effective by the SEC and the purchaser has received a prospectus meeting the requirements of the 1933 Act.

The purpose of the registration and prospectus delivery requirements, which are very costly and time consuming to implement, is to ensure that investors receive full disclosure of all material facts so that they can make an informed investment decision.

Exempt Securities

The securities identified in Section 3 of the 1933 Act (so-called "exempt securities") are exempt from the registration requirement of Section 5 of the 1933 Act. These include, among others, most government securities and short-term commercial paper.

Exempt Transactions

Also exempted from the registration requirement are securities issued in the types of transactions described in Section 4 of the 1933 Act (the so-called "transactional exemptions"). Among these are:

- Section 4(1) (the "ordinary trading exemption") which exempts most day-to-day trades of publicly traded securities occurring on the exchanges and in the over-the-counter market; and

- Section 4(2) (the "private placement exemption") which is crucial to the ability of small companies to raise capital without incurring the substantial expense of registration.

Because the parameters of Section 4(2)'s private placement exemption proved to be unclear in practice, the SEC promulgated Regulation D to facilitate the efficient raising of capital by small business without registration. Rule 506 of Regulation D is a safe harbor under Section 4(2) of the 1933 Act and is the transactional exemption most widely used for the raising of capital by small business. It permits a company to sell an unlimited dollar amount of securities without registration in a transaction as long as: (i) there are no more than 35 purchasers who are not "accredited investors" (there is no limit on the number of purchasers who are accredited investors), (ii) certain disclosures and information are furnished to any purchasers who are not accredited investors, (iii) there is no general solicitation or general advertising, (iv) resale of the securities is restricted, (v) the issuer reasonably believes that any purchasers who are not accredited investors are financially sophisticated and (vi) the issuer files a Form D with the SEC within 15 days after the first sale is made. For this purpose, "accredited investors" include, among other persons, banks and individuals meeting certain net worth/income tests.

Sanctions for Failure to Register

If securities are sold without registration where there is no available exemption, the SEC can enjoin the transaction, and any purchasers have a right of rescission under Section 12 of 1933 Act.

The Antifraud Rules

It should borne in mind that the sale of securities without registration (where permissible) is nevertheless subject to the antifraud rules of the federal securities laws, most notably Rule 10b-5 under the Securities Exchange Act of 1934.

The JOBS Act

The federal securities laws are amended from time to time in an effort to simplify the capital raising process. Significant changes were most recently made by the Jumpstart Our Business Startups Act (the "JOBS Act") enacted on April 5, 2012. Among other things, the JOBS Act: (1) simplified the offering/registration process for "emerging growth companies", (2) repealed the ban on general solicitation and general advertising in Regulation D Rule 506 exempt offerings where sales are made only to "accredited investors" and (3) created a new small offering exemption for "crowdfunding", allowing issuers to sell securities over the internet, without registration, to a potentially large group of investors putting up relatively small amounts provided that (i) all sales by the issuer in the preceding 12 months (including sales made pursuant to the exemption and otherwise) do not exceed $1,000,000, (ii) the transaction is conducted through an SEC-registered broker-dealer or funding portal using an internet-based platform, (iii) sales to any investor do not exceed prescribed dollar limits, and (iv) the issuer makes limited financial and other information available to offerees.

C. The Rhode Island Scheme

Rhode Island Uniform Securities Act

Most states have adopted one form or another of the Uniform Securities Act. State securities laws are commonly referred to as "blue sky laws." In 1990, Rhode Island adopted the Revised Uniform Securities Act of 1985, as now codified in Chapter 11 of Title 7 of the General Laws of 1956, as reenacted in 1999, Sections 7-11-101 et seq. (hereinafter the "RIUSA").

The Registration Requirement

RIUSA Section 301 prohibits the offer or sale of a security unless (1) the security is registered with the Director of the Department of Business Regulation (the "Director"), (2) the security or transaction in which it is sold is exempt or (3) the security is a "federal covered security" (discussed below). The Rhode Island registration requirement, likes its federal counterpart, is designed to ensure that investors receive full disclosure of all material facts before they make an investment decision. However, in contrast to the federal scheme where sales are permitted as long as full disclosure is made, the RIUSA, like most state statutes, has a "merit review" feature which empowers the Director to deny the effectiveness of a registration statement where the Director concludes it is not in the public interest.

Exempt Securities

RIUSA Section 401 specifies certain types of securities that are exempt from the registration requirement. Among these are (i) securities listed or approved for listing on national securities exchanges and securities designated or approved for designation as

national market system securities, (ii) most government securities, and (iii) securities issued by insured depository institutions.

Exempt Transactions

Also exempted from the registration requirement are securities issued in the transactions identified in RIUSA Section 402. Among these exempt transactions are:

(1) An isolated non-issuer transaction;

(2) An offer to sell or sale of a security to a financial or institutional investor or to a broker dealer;

(3) **Rhode Island's small offering exemption**: A transaction pursuant to an offer directed by the offeror to no more than 25 purchasers in Rhode Island (other than financial or institutional investors or broker dealers) during any 12 consecutive months; where no general solicitation or general advertising is used in connection with the offer to sell or sale of the securities; and no commission or other similar compensation is paid or given, directly or indirectly, to a person, other than a broker dealer licensed or not required to be licensed in Rhode Island, for soliciting a prospective purchaser in Rhode Island; and either: (i) the seller reasonably believes that all the purchasers in Rhode Island (other than financial or institutional investors or broker dealers) are purchasing for investment; or (ii) immediately before and immediately after the transaction, the issuer reasonably believes that the securities of the issuer are held by 50 or fewer beneficial owners (other than financial or institutional investors or broker-dealers) and the transactions is part of an aggregate offering that does not exceed $1 million during any 12 consecutive months. This is Rhode Island's version of the so-called "small offering exemption" which is self-executing and which virtually all states have in one form or another. It was conceived as a way for small, closely-held businesses to raise capital without incurring the significant expense and delays associated with registration.

(4) **Rhode Island's ULOE**: Any offer or sale of securities made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D under the 1933 Act; provided that: (i) no commission or other remuneration may be paid or given directly or indirectly to any person for soliciting or selling to any person in Rhode Island in reliance on this exemption, except to persons registered in Rhode Island as broker dealers or investment advisers; and (ii) not later than ten days, or a shorter period that may be permitted by order of the Director, prior to the first sale of securities in reliance on this exemption, there is filed with the Director: (A) a uniform consent to service of process (Form U-2); (B) a notice of original filing on Form D; and (C) a fee of $300. This exemption is not available for the securities for any issuer where certain persons associated with that issuer have been the subject of certain "bad boy" disqualifying transactions. This exemption is Rhode Island's version of the so-called Uniform Limited Offering Exemption ("ULOE") which has been adopted in many states in one form or another. ULOE was conceived by the North American Securities Administrators Association as a new, uniform small offering exemption, coordinated with federal

Regulation D, that might be adopted by all states in replacement of their various and disparate pre-existing small offering exemptions, thereby streamlining the capital raising process. Unfortunately, although a majority of states have adopted ULOE, the variations are many, and the goal of uniformity remained elusive until 1996 when Congress passed the National Securities Markets Improvement Act (discussed below).

Federal Preemption: National Securities Markets Improvement Act of 1996

Although the dual federal and state securities regimes co-existed for many years, over time, the SEC and the securities industry came to feel that the dual regulatory scheme constituted an unnecessary drag on capital formation. As a result, in 1996, Congress passed the National Securities Markets Improvement Act ("NSMIA") which substantially preempted the authority of the states to regulate the offer and sale of securities. Specifically, NSMIA amended Section 18 of the 1933 Act to preempt all state blue sky laws in three different ways, but only where "covered securities" are involved. NSMIA provides that, in the case of "covered securities" (defined below):

(1) State registration requirements no longer apply;

(2) States cannot regulate the form and content of any prospectus or other offering document used by the issuer in connection with the offer and sale of securities; and

(3) States cannot police or dictate the substantive terms and conditions of a securities offering in order to protect the public interest.

The "covered securities" in respect of which the states are now preempted include certain securities without regard to the type of transaction in which they are sold and other kinds of securities if they are sold in certain kinds of transactions only. Specifically, "covered securities" include: (i) listed or exchange-traded securities, (ii) securities issued by investment companies, (iii) securities sold to "qualified purchasers", (iv) securities of SEC reporting companies that are sold in resale transactions that are exempt from federal registration, (v) securities sold in unsolicited brokers' transactions, (vi) most exempt securities as defined in Section 3(a) of the 1933 Act, (vii) any securities offered and sold in a transaction that is exempt from registration under Rule 506 of federal Regulation D and (viii) any securities offered and sold in a transaction that meets the requirements of the "crowdfunding" exemption created by the JOBS Act.

With respect to securities that are not "covered securities", the states retain all of their historical powers to compel registration, to regulate the content of offering documents and to engage in merit regulation.

Even where "covered securities" are involved, however, NSMIA did not strip the states of their powers entirely. The states have retained two important powers:

(1) First, NSMIA makes it clear that the states retain jurisdiction to investigate and bring enforcement actions with respect to fraud or deceit, or unlawful conduct by a broker or dealer, in connection with securities or securities transactions; and

(2) Second, even where state registration requirements are preempted because covered securities are involved, NSMIA makes it clear that the states retain the right to require certain notice filings and collect certain fees.

The aspect of NSMIA most welcomed by small business was the inclusion, in the definition of "covered securities", of any securities issued in private placement transactions that are exempt on the federal level under Rule 506 of Regulation D. Thus, if a small, closely-held company wishes to raise money by issuing stock to a limited number of purchasers in a private placement meeting the requirements of Rule 506, then state registration requirements are preempted entirely and there is no need for the issuer to consult the blue sky laws of the various states in which offers are being made in order to verify that the transaction fits within the peculiar small offering exemptions available in those states or within their respective versions of ULOE. In this respect, NSMIA has dramatically simplified the capital raising process for small business. However, even with respect to these transactions, the states still retain the right to require the filing of SEC Form D and payment of a filing fee.

Rhode Island's Response to NSMIA

Like most states, Rhode Island responded to NSMIA by amending its blue sky law. Effective July 1, 1997, RIUSA was amended as follows:

- a definition of "federal covered security" was added to RIUSA Section 101. This definition of "federal covered security" is coterminous with the definition of "covered securities" as defined by NSMIA.

- The registration requirement of RIUSA Section 301 was amended to make it inapplicable to "federal covered securities".

- RIUSA Section 404 was amended to provide that the Director may no longer require the filing of sales and advertising literature relating to "federal covered securities".

- New RIUSA Section 307 was added, empowering the Director to require certain notice filings and to collect certain fees with respect to "federal covered securities". In the case of any security that is a "federal covered security" because it is issued in a transaction exempt federally under Rule 506 of Regulation D, unless the security is exempted by RIUSA Section 7-11-401 or is sold in an exempt transaction under RIUSA Section 7-11-402, the Director now requires the issuer to file with the Director a notice on SEC Form D no later than 15 days after the first sale in Rhode Island,

together with a consent to service of process on Form U-2 and a non-refundable filing fee of $300.

Enforcement of RIUSA

The RIUSA is enforced by the Director of the Department of Business Regulation. The Director has broad enforcement powers, including the power to investigate alleged violations and issue stop orders and cease and desist orders. Upon a proper showing by the Director, the Superior Court is empowered to grant or impose injunctions and orders for declaratory judgment, civil penalties, restitution to investors and the appointment of receivers. In addition, the Director can refer matters to the attorney general for criminal prosecution.

Antifraud Rule

RIUSA Section 501, an antifraud rule analogous to federal Rule 10b-5, provides that: "In connection with the offer to sell, sale, offer to purchase, or purchase of a security, a person may not, directly or indirectly: (1) employ a device, scheme or artifice to defraud; (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading; or (3) engage in an act, practice or course of business that operates or would operate as a fraud or deceit on a person".

Civil Penalties

RIUSA Section 605 provides that, where securities are sold in violation of Section 501's antifraud rule or in violation of Section 301's registration requirement, the purchaser has a right of rescission or, if he no longer owns the security, a right to recover damages. However, a person who offers or sells a security in violation of Section 501's antifraud rule is not liable if (1) the purchaser knew of the untrue statement of a material fact or omission of a statement of a material fact; or (2) the seller did not know and in the exercise of reasonable care could not have known of the untrue statement or misleading omission.

XIII. REAL ESTATE

A. Ownership

Individuals and business entities may hold title in Rhode Island. An individual need not be a resident of the state in order to hold title to real estate. Both domestic and foreign business entities may own property in Rhode Island. It is advised that entities formed in a state other than Rhode Island qualify to do business in Rhode Island in order to take advantage of judicial notice provisions and access to judicial process. Advantages of utilizing partnerships and limited liability companies to own real estate in Rhode Island include limiting liability to assets invested in such entities, maintaining privacy with respect to owners of the ownership entity and various procedural advantages including partnership tax advantages and disregarded entity tax advantages.

B. Concurrent Ownership

Rhode Island follows typical concurrent ownership principles including tenancy-in-common, joint tenancy and tenancy by the entirety. Tenancy-in-common allows for the splitting of undivided interest in real property by co-owners without a right of survivorship. Joint tenancy provides for a right of survivorship among co-owners. Tenancy by the entirety provides for creditor protection for surviving spouses and may be used in Rhode Island only by married couples.

C. Purchase and Sale of Property

Rhode Island follows the customary practice in the northeastern United States of residential purchase and sale agreements being prepared predominantly by real estate brokers and reviewed by counsel, and commercial purchase and sale agreements being drafted either by seller's counsel or buyer's counsel depending on the circumstances. Purchase and sale agreements should include traditional and basic terms of the transaction including the parties, a legally adequate description of the property to be conveyed, purchase price, representations and warranties, inspection rights and contingencies to sale, closing deliverables, title covenants, environmental covenants, insurance covenants and other matters related to the specific circumstances of the transaction.

Rhode Island collects a real estate conveyance transfer tax of $4.60 per thousand dollars of sale price, which customarily is paid by the seller at the closing. Real estate taxes are pro-rated between buyer and seller as of the date of the closing (typically including the date of the closing as seller's).

Closings in Rhode Island are typical of those in the northeastern United States. Sellers traditionally prepare the deed, bill of sale and assignment of leases for buyer's review. Lenders customarily provide the forms of notes and mortgages for their borrower's review. Borrower's and buyer's counsel typically provide a draft of the settlement statement for review by seller.

Deeds in Rhode Island must include granting or conveying language with a legally adequate description of the conveyed parcel. Rhode Island utilizes three (3) types of statutory title covenants: warranty covenants that warrant clear title from the beginning of time; quit-claim covenants that warrant grantor's title; and bargain and sale deeds which do not make any title covenants, representations or warranties.

D. Easements

Rhode Island recognizes a variety of real estate easements. Easements may be appurtenant to a specific benefitted property, or may be broader in its grant for public or private use. Easements must be in writing pursuant to Rhode Island's statute of frauds. Rhode Island recognizes common law limitations in the burdens of an easement (i.e., the easement should be reasonably limited to the burden intended upon the burdened estate at the time of the granting of the easement). Rhode Island recognizes easements by necessity and easements by prescription. Easements by necessity must be limited to where there is a division of commonly owned land. Easements by prescription are based upon the same legal principles as title by adverse possession (i.e., actual use, open and notorious, continuous, uninterrupted and adverse). Interestingly, due to the extensive seashore uses of Rhode Island real estate, Rhode Island courts have determined that seasonal uses may be continuous.

E. Leases

Rhode Island has enacted the Rhode Island Residential Landlord and Tenant Act which governs residential leases. Landlords are prohibited from collecting more than one month of rent for a security deposit, however, denominated. Security deposits held by landlords in Rhode Island do not need to be held in a separate segregated escrow account. Landlords may collect pet damage deposits. The Rhode Island Residential Landlord and Tenant Act provides for specific eviction procedures for non-payment of rent (accelerated) and eviction for breach for other than non-payment of rent (traditional complaint in civil court).

Commercial leasing in Rhode Island is less regulated than residential leasing. Landlords and tenants generally are allowed to delineate the terms and conditions of their respective positions in written leases. Rhode Island does have a commercial leasing statute that sets forth that unless otherwise expressed in writing, periodic tenancies shall be determined by the period by which payments are made (e.g., monthly shall be a month-to-month tenant, yearly shall be a year-to-year tenant, etc.). Self-help by landlords is expressly prohibited.

F. Rhode Island Planning and Zoning

Rhode Island has comprehensive land use planning, subdivision and zoning acts which enable each of Rhode Island's 39 cities and towns to adopt their own planning, subdivision and zoning ordinances. Each city and town has a comprehensive plan to which each zoning and planning ordinance must adhere. Rhode Island cities and towns each are required to set forth a list of permitted uses in districts within each city and

town. Rhode Island grants relief from the ordinances both administratively if relief is limited to dimensional aspects of ordinances not exceeding ten percent (10%) of the permitted dimensional regulations, or by variances granted by zoning boards of review established by each city and town.

The creation of new lots and roadways as determined by planning and subdivision regulations adopted by each city and town and approved by planning boards established in each city and town.

XIV. STATE GOVERNMENT RELATIONS/LOBBYING

A. Introduction

Rhode Island has a series of statutes which govern persons who seek to influence the legislative process or decisions made by the executive branch or by public corporations. In addition, Rhode Island has a constitutional ethics provision which creates a State Ethics Commission which prohibits certain activities for both elected and senior appointed officials. Lastly, Rhode Island has laws which govern contributions to public officials and candidates for public office.

B. Lobbying

"Lobbying" means acting directly or soliciting others to act for the purpose of promoting, opposing, amending, or influencing any action or inaction by any member of the executive or legislative branch of state government or any public corporation. "Lobbyist" means any of the following: (i) a "contract lobbyist" means any person who engages in lobbying as the appointed or engaged representative of another person; (ii) an "in-house lobbyist" means any employee, officer, director, or agent of a corporation, partnership, or other business entity or organization whose job responsibilities include lobbying; and (iii) a "governmental lobbyist" means any employee of any federal, state, or local government office or agency or any public corporation who engages in lobbying. "Person" means an individual, firm, business, corporation, association, partnership, or other group.

Persons engaged in lobbying or persons engaging lobbyists or lobbying firms must register with the office of the Secretary of State. Lobbyists must conspicuously display an identification badge issued by the Secretary of State while engaged in any lobbying activity in a state government building. The mandated reporting includes all compensation received by lobbyists, all compensation paid to lobbyists by persons engaging lobbyists or lobbying firms, and all money or anything of value provided or promised to any legislative or executive branch official which in the aggregate exceeds $250 in the current calendar year.

Violations of the Act are enforced by the Secretary of State, who may deny any lobbyist, or any person who engages the services of lobbyists or lobbying firms, the ability to register until they are in full compliance with the Act. The Secretary may also impose a civil penalty up to $5,000 per violation and may revoke the applicable registration for a period up to three years. These penalties may be appealed to the Rhode Island Superior Court.

C. Campaign Contributions

In Rhode Island only individuals or Political Action Committees (“PACs”) may contribute to elected officials or candidates for elected officials on a state and municipal level. Consequently, no profit or non-profit corporations, labor unions, partnerships, limited liability companies, or any other business entity may make a contribution. There

is an annual limit of $1,000 to any candidate or PAC. In addition, there is an aggregate annual limit of $10,000 to all candidates or PAC's. The duty to report contributions is placed on the public official or candidate and all contributions in excess of $100 must be reported. In addition, all public officials and candidates must report an itemization for all expenses. PAC's have the same contribution limits as individuals and the same reporting requirements as public officials or candidates. Vendors doing more than $5,000 in business with the state are required to file affidavits with the Board of Elections to report any political contributions made in excess of $250 in the aggregate to any candidate or political party.

It should be noted that the Rhode Island Board of Elections has issued Advisory Opinion 15-01 in response to the U.S. Supreme Court's 2014 ruling in McCutcheon v. Federal Election Commission, 134 S. Ct. 1434 (2014), which struck down the aggregate limits in the federal campaign finance laws that restricted the amount an individual may contribute to all candidates, parties, and political action committees during an election cycle. It states: "In light of the McCutcheon decision and its recognition of a First Amendment violation relating to aggregate limits, the Board shall not enforce the $10,000 aggregate limit set forth within R.I. Gen. Laws § 17-25-10.1 …. Consequently, any contributions that conform to all other applicable campaign finance laws, but exceed the aggregate limit of $10,000 in a calendar year, shall not be subject to any enforcement process, or challenge, by the Board. … Finally, in the event there are any changes or subsequent developments in the law that governs this Opinion, the conclusions set forth above may be subject to modification." As the Rhode Island General Assembly entered its 2017 legislative session, the aggregate limits provisions have not been amended or repealed.

D. Ethics

Elected and senior appointed state, municipal and public corporation officials are all subject to a statutory Code of Ethics and a series of rules promulgated and enforced by a constitutionally created Ethics Commission. While most of the provisions of the ethics law apply principally to the official, any lobbyist and others interacting with officials should be aware of these provisions.

E. Municipalities

Various municipalities have more stringent campaign contribution limits for lobbyists as well as having local Codes of Ethics which may be more restrictive than the State code.

F. Open Government

The State of Rhode Island has an Open Meeting Act which deals with the requirement that all meetings of state and municipal bodies be conducted in open session with adequate notice to the public. In addition, the State has an open records law which identifies which documents are available for public inspection.