

## IN THIS ISSUE:

- P1** IS LIABILITY REALLY LIMITED?
- P2** LEGAL ADMINISTRATORS VISIT VA MEDICAL CENTER
- P3** INCOME TAX ALERT
- P3** EMPLOYMENT LAW Q & A

Vol. 31, Issue 1



I am excited to share that we are coming up on the 50th anniversary of our firm. We have spent the last five decades helping clients take preventative measures to protect themselves personally and professionally. In the same tradition, we try to provide you with the most relevant legal news and information. In this issue, we address liability concerns that face landowners and employers. Property owners may be surprised to learn that their second homes and rentals may not be properly insured when Jason Seaver and Kate Ringler discuss the pitfalls in homeowner insurance coverage. An Employment Law Q & A by Mark Filipp helps employers protect themselves from discrimination claims. Cynthia Umphrey directs landlords' attention to a new tax benefit.

Looking back, my colleagues and I take pride in the businesses we have guided and the people we have helped. Looking forward, we intend to perpetuate our commitment to excellence. We will continue sharing updates from the legal world and making sure you have the best information when planning and protecting your own future and family.

Best Wishes,

## Your Property is Owned by an LLC: Is Liability Really Limited?

JASON P. SEAVER & KATE L. RINGLER



The use of an LLC is a common estate planning technique for gifting, creditor protection, and management purposes. In Michigan, many people transfer their second home into an LLC for just these purposes. Absent a phone call to your insurance provider, that transfer could be costly if someone is injured or there

is damage to the property. In 2018, the Michigan Court of Appeals in *Thompson v Fremont Insurance Co.* held that even if insurance premiums are paid, if the insured party is not the actual owner of the property, you may not be covered. While that case specifically talked about personal representatives of estates and trustees of trusts, the rationale could likely hold true for owners of a business.

Another matter to consider when contacting your insurance company is the need to obtain a commercial policy. Because property in an LLC is technically owned by a business,

you may not be able to keep the lower insurance rates that come with individual insurance policies. In order to maintain adequate coverage, a commercial policy may be required. On the positive side, a commercial policy should make less work for any personal representative or trustee that must ultimately manage the property after death.

Care should also be taken to be sure that adequate insurance coverage is in place for any real estate that you offer for lease, on a short or long-term basis. Placing your vacation home on Airbnb or another short-term rental website may be a nice

additional revenue stream, but you may be placing you, and your property, at risk.

A traditional homeowner's policy is unlikely to provide coverage in the event of damage done during the occupancy of a tenant, however brief their stay. An inquiry to nine insurance companies determined that only one of the nine would allow rentals under a traditional

homeowner policy, and that particular one only allowed for 31 days of occupancy by a renter in a given year. It is possible to obtain coverage, but under a landlord policy, which means significantly higher premiums.

An instance of short-term renting that is often overlooked is post-closing occupancy after the sale of a residence. Quite often sellers need

additional time after the closing to get all of their possessions moved out of the home and the parties agree that they may retain occupancy for a certain period of days. If the sellers continue to reside in the property after ownership changed hands at the closing, they have become tenants and the buyers have become landlords.

If those same buyers only have their traditional homeowner's policy, and the seller backs their car into the wall of the garage, has a grease fire in the kitchen, leaves a candle lit overnight that catches the curtains on fire or any other number of housing disasters... there is no insurance coverage.



jason.seaver@kkue.com  
kate.ringler@kkue.com

## Client Success Story

### Attorneys Sinai and Nixon Win FINRA Arbitration

Two of our attorneys, Stuart Sinai and Ron Nixon, aided by administrative assistant Leslie Tanghe, were retained to resolve eight matters for an investment advisor, one involving a state regulatory matter, and seven erroneous customer complaints that had been filed with the Financial Industry Regulatory Authority ("FINRA"). All the matters were resolved in our client's favor after several years of effort.

## Legal Administrators Visit VA Medical Center

SUSAN J. YORK



In November, the Metropolitan Detroit Chapter of the Association of Legal Administrators visited the veterans at Veteran's Hospital in Detroit to drop off boxes of journals donated to veterans suffering from post-traumatic stress disorder. Journaling is recommended as good therapy for those affected by PTSD. The legal administrator from Kemp Klein, Susan York, participated in the project and was able to meet some of the men who have been diagnosed with PTSD. Sue is pictured in the back row, third from left.

# Income Tax Alert for Landlords

CYNTHIA L. UMPHREY

If you own rental real estate, you may need to act now in order to take advantage of significant income tax deductions under the new Section 199A. The IRS has just issued proposed Final Regulations and a Special Notice. The Notice establishes a safe harbor test for rental real estate. If your real estate rental business passes the safe harbor test, it is deemed an “active

trade or business” for purposes of qualifying for the 199A deduction. Of note is that “triple net leases,” which are very commonly used, and pursuant to which the landlord has few obligations regarding repair, maintenance, property tax payments and the like, will not pass the new safe harbor test. This does not mean that a triple net landlord cannot otherwise

qualify as a trade or business, but the safe harbor will not be available. In short, if you are a landlord and want to obtain the tax benefits of Section 199A, you may want to change current lease and management activity.

248.619.2591

cynthia.umphrey@kkue.com

---

## Employment Law Q & A

MARK R. FILIPP

*The following Q & A has been selected from Employment Law Answer Book, co-authored by Mark R. Filipp.*

### Q 1:38 Is discrimination based on gender identity or transgendered status prohibited under civil rights employment law?

Like sexual orientation, gender identity, and transgendered status are not specifically listed as protected categories under federal civil rights laws. In 2014, the court in *Eure v. Sage Corp.* [2014 WL 6611997 (W.D. Tex. Nov. 19, 2014)], held that although a Title VII discrimination claim can be maintained against an employer that takes adverse action against an employee because the employee fails to adhere to sexual stereotypes, claims based on discrimination because of transgendered status alone are not actionable. However, the EEOC, in collaboration with the Justice Department has declared that discrimination based on gender identity or transgender status is sex discrimination, as part of the EEOC’s Strategic Enforcement Plan, and the EEOC has filed recent lawsuits alleging transgender discrimination under Title VII. [“Justice Department Files Lawsuit Alleging that Southeastern Oklahoma State University Discriminated Against Transgender Woman,” EEOC Press Release, Mar. 30, 2015, <http://www.eeoc.gov>] This follows the Commission’s ruling that held discrimination based on transgendered status is sex discrimination under Title VII. [Macy v. Dep’t of Justice, EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 20, 2012)] in *EEOC v. R.G. & G.R. Harris Funeral Homes, Inc.* [2015 WL 1808308 (E.D. Mich. Apr. 23, 2015)], the court denied an employer’s motion to dismiss a sex discrimination claim under Title VII based on termination of a transgender employee. In *Fabian v. Hospital of Central Connecticut* [2016 WL 1089178 (D. Conn. Mar. 18, 2016)], the court held that discrimination on the basis of transgendered status is discrimination because of sex under Title VII. In *Roberts v. Clark County School District* [2016 WL 5843046 (D. Nev. Oct. 4, 2016)], the court, after reviewing precedent from other jurisdictions, concluded that discrimination against a person based on transgender status is, in and of itself, discrimination because of sex under Title VII.

*This text originally appeared in Employment Law Answer Book, Ninth Edition (Wolters Kluwer, 2016). Reprinted with permission.*

248.619.2580

mark.filipp@kkue.com



Employment Law  
Answer Book  
Ninth Edition

Mark R. Filipp  
James Onofre Costagnaro

Wolters Kluwer



201 W. Big Beaver Rd. Ste. 600, Troy, MI 48084

ADDRESS SERVICE REQUESTED

## Proudly Celebrating Fifty Years

Kemp Klein Law Firm is turning 50 this May. Our firm was founded by attorneys Earle E. Endelman, John B. Kemp and Sanford A. Klein and now employs over 70 individuals specializing in a variety of practice areas. Over the last five decades, we have helped small business owners, counseled large corporations, settled personal disputes and worked with families through difficult life decisions. We take pride in looking out for our clients' best interests and intend to carry the same level of commitment and dedication into the next 50 years. It has been an honor to serve our clients, friends and colleagues and it is you who we thank for our continued success.



## Firm News

### Attorney George W. Gregory Joins Kemp Klein

Kemp Klein Law Firm welcomes George W. Gregory as a shareholder this February. Mr. Gregory brings over 30 years of experience in the areas of estate planning, tax and business law. Prior to practicing law, Mr. Gregory was a Revenue Agent with the IRS. He has also taught tax courses at the undergraduate and graduate level at Wayne State University School of Business Administration. George's years of practice both with the IRS and in private practice uniquely qualifies him to represent clients in tax controversies as well as estate planning and business planning for individuals.