

September 21, 1998

Current Developments in Business Law

I. Business Corporations

1. Consent. The state legislature has relaxed several rules regarding corporations, including allowing less than unanimous written consent if the corporation is not a public company and the corporation's Articles of Incorporations provide for less than unanimous consent.
2. Faster Filing. The legislature made it easier to go into business by coordinating the several state departments that participate in the Master Business License program. For example, new businesses can now apply for a Master Business License and Federal Employee Identification Number at the same time as filing Articles of Incorporation with the Secretary of State. Likewise, the Secretary of State is now authorized to accept and file facsimile transmissions of documents authorized or required to be filed with the Secretary of State pursuant to the Business Corporation Act.

II. Partnerships

1. RUPA. The legislature recently adopted the Revised Uniform Partnership Act (RUPA). Under RUPA, a general partnership is a separate legal entity; a general partnership can be converted into a limited partnership; and partnerships may merge with other partnerships, limited partnerships, and limited liability companies or corporations.

III. Financial Institutions

1. Mortgage Insurance. The new statute tightens the rules for lenders on disclosure to borrowers regarding the right to cancel mortgage insurance in the future. Moreover, borrowers in a residential mortgage transaction in which the principal amount of the loan is less than 80% of the fair market value of the property shall not be required to obtain mortgage insurance, except for transactions involving institutional third parties such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.
2. Conditional Promise to Pay. In a Court of Appeals case, the Court held that a promise to pay "when able" is a conditional promise, and the obligation to pay accrues when the debtor acquires the ability to pay. The creditor has the burden of monitoring the debtor's financial status.

IX. Real Estate

1. Deed of Trust. The legislature adopted numerous amendments to the Deed of Trust Act. The amendments provide for guarantor liability for deficiency after nonjudicial foreclosure, in commercial loans. Other aspects of the act define when real property is used for "agricultural purposes," preclude attempts to enforce assignment of rents, and appointment of receivers.
2. Adverse Possession of Forest Land. The legislature also made it more difficult to adversely possess forest land, by requiring substantial improvements to the land and continuous use of the improvements for at least ten years. Substantial improvements require a permanent or semi-permanent structure or enclosure with the cost of construction exceeding \$50,000.00. The legislation does not apply to adverse claimants who relied in good faith on stakes or markers set by a registered surveyor, or a holder of record title of less than 20 acres of forest land.