From the attorneys of Strauss & Troy — Cincinnati, Ohio and Northern Kentucky

Impact

An Overview of Current Legal Events of Concern and Interest

Summer 2005

In This Issue

STRAUSS & TROY
A Legal Professional Association

Residential Condominium Development

By: Anthony M. Barlow
and Stephanie A. Dill

Anthony M. Barlow

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No area of the Greater Cincinnati real estate market seems to be more active these days than the market for residential condominiums. Open your local paper and you are bound to find a reference to at least one of the many new luxury condominium developments scheduled to hit the market over the next couple of years. The combination of our local governments' focus on urban core development and restoration, together with the demographic groups of aging baby boomers and young professionals, make this market a prime target for savvy real estate developers and investors. Local developer Corporex Companies has even attracted the world-renowned architect and award-winning designer of the new World Trade Center complex, Daniel Libeskind, to create the design for its new luxury riverfront condominium development in Covington. Known as The Ascent at Roebling's Bridge, this exciting development has already achieved national recognition in *The Wall Street Journal.*

According to the National Multi Housing Council in Washington, families with children now account for less than a quarter of the households in the United States, and that proportion continues to decline annually. The trend of expanding families moving to the suburbs is now being overshadowed by the growing population of empty nesters and young professionals without children who are being drawn to the urban core by the conveniences of condominium living. Freedom from yard work and other home maintenance, locations close to work and entertainment, upscale amenities such as swimming pools and fitness centers, luxury living at more affordable prices, and the added security of guards and keyed entry are appealing condominium features for this demographic. For empty nesters, condominiums also offer an opportunity to down-size, and they increasingly provide seasonal living space for retirees. Condominiums in Cincinnati and Northern Kentucky also offer the added prospect of an investment opportunity as city officials push for the revitalization of the riverfront, downtown, and surrounding urban neighborhoods.

While developers and investors flock to participate in the local condominium boom, early consideration should be given to several key aspects of planning condominium developments.

Financing

One aspect of condominium development that requires careful and proactive planning is the choice of a lender. Unlike other commercial ventures, developers should note that a condominium lender may be involved in more than just the acquisition and construction loans. Condominium lenders can also provide a preferred and convenient loan source for unit buyers and assist in reviewing the project for compliance with federal regulations such as those promulgated by HUD and FNMA (Fannie Mae). A developer may be able to obtain more favorable loan terms for its financing in return for providing the lender an "inside track" to market residential loans to buyers. Additionally, compliance issues relative to the federal and secondary loan market are critical since each unit lender will require that the project be certified prior to financing a unit closing.

Marketing

Even in markets of high demand, where concerns of an impending "bust" are evident, marketing is key to the success of a condominium development. Sophisticated developers, such as Corporex, have created innovative focus group models and are beginning to conduct extensive market research of potential buyers prior to finalizing development plans, thus enabling them to understand the demand for a project, pinpoint specific needs and desires of their target markets and adjust development plans accordingly. City Lights Development, the company behind the successful new Bluffs Condominiums at Devou Park, has implemented its own unique programs for analyzing the market, and the results have been very informative and valuable to the developer. High-demand markets are also likely to produce developments with pre-sale contingencies that give the developer the ability to contract for the sale of a substantial portion of the units before commencing construction. Pre-sale contingencies can be tricky, particularly in light of recent changes in Ohio's condominium law and various

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Making Gifts with a "GRAT"

By: Thomas C. Rink

Although the future of the federal Gift and Estate Tax laws is still to be determined by Congress, many clients continue to look for methods to make substantial transfers to their children while minimizing gift tax.

One of the tools we discuss with our clients is the use of a Grantor Retained Annuity Trust ("GRAT"). A GRAT provides a way for the client to give a large gift with little or no gift tax, by splitting the assets into two parts. The first part is an annuity for a term of years, retained by the client; the second part is a remainder interest that passes the remaining trust assets to the client's children at the end of the annuity term. By using government tables and regulations to calculate the value of the annuity, we can substantially reduce the value of the remainder interest (the value of the gift), thereby minimizing or even eliminating gift taxes.

A GRAT is even more advantageous in this low-interest environment, because of the manner in which the IRS calculates the value of the annuity. As of this writing (July 2005), with current low interest rates, the IRS assumes that assets, no matter what they are, will earn 4.6% per year for purposes of calculating the present value of an annuity. Thus, if the assets are used to fund an annuity with an annual yield substantially in excess of 4.6%, the IRS considers the value of the remainder interest (the amount left at the end of the annuity term) to be very low, because the assets are paying out more than they are earning and appreciating. The advantage of the GRAT arises when the assets used to fund the annuity grow at a rate substantially higher than the assumed earnings rate. If the client owns such an asset, it may be advantageous to consider the use of a GRAT.

For example, we had a client with a group of assets worth over $900,000 that had been growing for several years at an average annual rate of 16.5%. We proposed the use of a GRAT that would pay her an annuity for a term of 10 years. Our calculations demonstrated that: (i) if she placed the highly appreciating assets into a GRAT for ten years; (ii) the GRAT agreed to pay her an annual annuity of approximately $120,000; (iii) the assets continued to grow at 16½% per year; then, the closing balance of the GRAT, to be distributed to her children at the end of the ten-year annuity term, would be over $1.7 million, even though the taxable gift was almost zero.

Of course, if the assets grow at a higher or lower rate than assumed, it will impact the amount in the GRAT at the end of the annuity term.

There are many other important factors to be considered, such as the life expectancy and health of the client, the valuation of the assets placed in the GRAT, the choice of the GRAT trustee, and the liquidity of the GRAT assets for payment of the annuity. This may sound complicated, but we can easily structure the GRAT to comply with IRS regulations.

The use of a GRAT is highly technical and not appropriate for everyone, but if you believe that you would like to make a large transfer of appreciating assets with little or no gift tax cost, a GRAT may be an appropriate estate planning vehicle for you.

As a legal disclosure, IRS regulations require us to state that any advice in this article concerning the tax treatment of an item of income, gain, loss, deduction, or credit, the existence of a taxable transfer of property or the value of property for federal tax purposes, is not intended or written to be used, and cannot be used by any person, for the purpose of avoiding any federal tax penalties that may be imposed on such person.

For more information on GRATs, or for assistance with your estate planning needs, please contact Tom Rink at (513) 621-2120.

Rosser Award

Anderson High School senior Edward Von Hertsenberg is the recipient of Strauss & Troy's 2005 Rosser Award, which was established in memory of Alan "Chip" Rosser, a partner in the firm who died in 2001. Being willing to take on the struggle — doing the tough tasks the right way — was a way of life for Chip for which "basic training" was athletics. Chip believed that through athletics, children can be encouraged to succeed, to develop the will to try their hardest, to learn the most they can, to work together toward a common goal, and to focus on the bigger picture. Strauss & Troy established the Rosser Award to honor a student-athlete who has demonstrated the same attributes of character that Chip Rosser exemplified and to encourage others to follow in those footsteps.

L-R: Claudia Allen, Paul Calico, Rosser Award Winner Eddie Von Hertsenberg, Terri VonHertsenberg, and Ann Gerwin.

Eddie VonHertsenberg was nominated for the Rosser Award by his swim coach, who stated that Eddie was a model for our view of a success: a leader by example, someone who helped team members overcome divisive issues and become a cohesive unit. When younger teammates had a problem getting to early morning practices, he arranged a carpool, taking some of them himself. Throughout his athletic career, Eddie did not have it easy; he did not reap individual glory, but still gave his all to be the best he could be. His strength of character was even more clearly demonstrated in the way he handled the tough workload he faced each day, juggling commitments to work, school, team, and family with grace. We are sure that Eddie will continue his winning ways at Cumberland College where he will study and swim beginning this fall.

News of the Firm


Stephen G. Nesbitt


James G. Heldman


William L. Woods

Strauss & Troy welcomes **Stephen G. Nesbitt**, a new Associate in the firm's Northern Kentucky office. Steve received his B.S. in Business Administration from Miami University and his J.D., *Order of the Curia*, from the Salmon P. Chase College of Law, where he was the Executive Editor of the Northern Kentucky Law Review. Steve will practice in the areas of real estate (commercial and residential), corporate law, and general business law.

James G. Heldman, on behalf of Strauss & Troy, will again participate in the 10th Annual Mercedes-Benz Pro Am Round Robin with ATP touring tennis professionals in conjunction with the Western & Southern Financial Group Tennis Master Series. The event benefits Inner City Youth Opportunities for which Jim serves on the Board of Trustees.

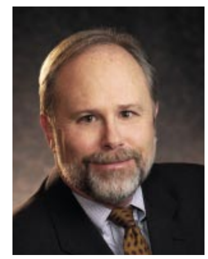
William L. Woods has been appointed as Cincinnati's representative to the International Legal Technology Association, which has over 4,250 active members who are interested in exchanging ideas and having access to the latest information about technology products and support services for the legal profession. Bill started the Business Technology Meeting luncheons that are held in Strauss & Troy's offices on a monthly basis. ILTA is the only education and networking group of its kind in the legal industry.

Michael A. Ruh, Jr. has been awarded an **AV® Peer Review Rating** by LexisNexis Martindale-Hubbell. This rating, the result of a confidential review process by other local attorneys, identifies Mr. Ruh as a lawyer with very high to preeminent legal ability reflecting his expertise, experience, integrity, and overall professional excellence.

Strauss & Troy is pleased to announce that **Mark H. Berliant, Daniel H. Demmerle, Thomas C. Rink, Andrew M. Shott**, and **Richard S. Wayne** have been selected by their peers to be included in the 2005-2006 edition of *The Best Lawyers in America®*. *Best Lawyers* has come to be regarded – by both the legal profession and the public – as the definitive guide to legal excellence in the United States. Based on an exhaustive peer-review survey in which 16,000 leading attorneys throughout the country cast more than half a million votes on the legal abilities of other lawyers in their specialties, inclusion in *Best Lawyers* is considered a singular honor.


Michael A. Ruh, Jr.


Mark H. Berliant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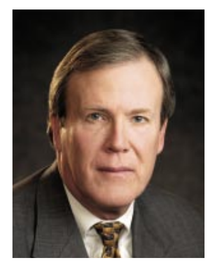
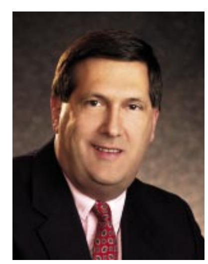

Thomas C. Rink


Andrew M. Shott


Richard S. Wayne

Sponsorships

"Your Community ~ Our Commitment"

Strauss & Troy proudly continues its history of giving generously to others in Greater Cincinnati and Northern Kentucky. In the past three months, we have fulfilled our community commitment by supporting the following organizations, programs, and events:

- Amelia Knothole Baseball
- American Diabetes Association Tour de Cure
- Appalachia Service Project – *Anderson Hills UMC*
- Arsenal Challenge Cup
- Arthritis Foundation
- Chabad Jewish Center
- City of Loveland
- Concert in the Park Series
- Diocesan Catholic Children's Home
- Inner City Youth Opportunities
- Israel Policy Forum
- Jewish National Fund
- Leadership Northern Kentucky Foundation
- Legal Aid Society of Greater Cincinnati
- Lighthouse Youth Services
- M.R.B.S., Inc.
- NAIOP
- National Multiple Sclerosis Society – *MS 150*
- Northern Kentucky Chamber of Commerce
- SMI New Home Solutions, LLC
- Tour de Loveland
- Volunteer Lawyers for the Poor Foundation
- WNKU 98.7 FM
- Wyoming Youth Services Bureau

Client Spotlight

Mt. Adams-based Empower MediaMarketing offers media planning, research, consulting and buying services to a variety of advertising clients. In today's rapidly changing media world, with myriad new options and much more consumer control provided by technology, Empower helps advertisers understand and exploit new media "lifestyles."

A New Advertising Paradigm

Media strategists like those at Empower are increasingly driving the advertising process. As recently as the early 1980s, 90% of the U.S. public watched primetime TV and read a handful of consumer magazines. To reach consumers, advertisers needed only to choose from three networks and half-dozen mass-market publications.

Now there are many more ways to connect with consumers: from the hundreds of cable stations, to the Internet, to video games, iPods, mobile phones and blackberries. With a deep understanding of new forms of media, Empower expertly guides clients through this splintered landscape.

Heritage of Independence and Innovation

Founded in 1985, Empower was one of the first firms in the United States to understand the rising importance of media strategy and offer free-standing media planning and buying services. Media consulting had traditionally existed as a departmental function within creative ad agencies – and was often looked down upon by those who created the ads. Empower helped to start a new trend, called media unbundling, which has been accepted by advertisers as a more efficient and effective way of doing business.

Today, Empower continues its tradition of fierce independence and innovation. Unlike its primary competitors, which are appendages of huge advertising conglomerates, Empower is privately-held and answers to the ROI of clients, not stockholders. Empower assigns senior strategists, skilled in every form of media, to every account. Empower is also firmly committed to innovating and applying more effective media strategies.

Growth and Recognition

Empower's combination of winning people and winning ideas has positioned it to grow rapidly. Over the past fiscal year, the company generated a media/billings increase of 10%. In just the past month, Empower added three major accounts.

The company provides strategic media planning and buying to some of the largest names in consumer products and services. Clients include Bush Brothers & Co., Cincinnati Bell, Clopay Building Products, Dick's Sporting Goods, Honeybaked Ham, Hollywood Video, Long John Silver's, 1-800-CONTACTS, Paramount's Kings Island, Stanley Steemer and U.S. Bank.

In addition to clients in the marketplace, Empower has also been recognized by outside human resource and management consultants. The company was recently ranked number four on the "Best Small Companies to Work for in America" list compiled by the Great Place to Work® Institute, Inc. (GPTW) and the Society for Human Resource Management (SHRM). These are the same organizations that produce *Fortune's* "100 Best Large Companies to Work For." The award recognizes small and medium-sized companies that have used smart people management strategies to develop successful organizations.

For more information about Empower MediaMarketing, visit www.empowermm.com.

Residential Condominium Development *continued*

disclosure and documentation requirements in both Ohio and Kentucky. In some circumstances, however, a pre-sale requirement can limit the developer's exposure on the back-end of a project.

Condominium Documentation

For developers and prospective buyers alike, condominium documentation is a critical planning component affecting the marketability of the condominium units as well as the ongoing operation of the project. Depending on the state, condominium documents typically consist of a Prospectus/Disclosure Statement describing the project, a Condominium Declaration/Master Deed defining the condominium units and common areas and the responsibilities for use and maintenance, Articles of Incorporation and Bylaws governing the operation of the condominium owners' association, and Rules and Regulations governing the use of condominium units and common areas. Prospective purchasers primarily look to these documents for protection against exorbitant homeowners' association dues and for reasonable measures to preserve the value of their investment and prevent or resolve the nuisances commonly associated with multi-family housing. While developers should adequately address the interests of their prospective market, a fine balance must be struck between protecting these interests and preserving the marketability of the units. Condominium documents that are too restrictive might deter rather than attract purchasers.

The condominium documents also provide an opportunity for developers to protect their own interests and limit their liability. During the initial marketing of a condominium project, developers often desire to weed out the speculators who can negatively impact a developer's ability to sell its remaining units in a project. For this reason, condominium documents often include certain restrictions on a prospective purchaser's ability to assign its contract rights or re-sell its condominium unit for a profit without developer's consent during the initial marketing of the project by developer. Moreover, developers commonly retain control of the homeowners' association and the corresponding ability to make certain changes to the development and/or operation of the project until such time as developer has sold a substantial portion of the project.

Condominium development involves a complex array of federal, state, and local legal issues. Strauss & Troy has a team of attorneys with extensive experience in all legal aspects of condominium planning, financing, development and the ongoing operation of condominium homeowners' associations in both Ohio and Kentucky. For more information, please feel free to call Tony Barlow or Stephanie Dill at (513) 621-2120.

The 2005 Bankruptcy Reform Act – Boon or Bane to Businesses?

By: Philomena S. Ashdown

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 becomes effective on October 17. Most of the recent public attention has focused on the Act's restrictions on consumer use of Chapter 7 and other consumer-related changes to the current bankruptcy system. This article highlights the four major changes affecting the *business* world, *i.e.,* restrictions in a debtor's use of Chapter 11 and improvements in certain creditors' rights, specifically lessors and vendors.[1] The following chart highlights those changes.

	OLD LAW	NEW LAW
Filing a Plan	A Debtor could receive unlimited time to file a Chapter 11 plan.	A Debtor now has only 18 months to file exclusively.
Leases	A Debtor had to assume a non-residential commercial real estate lease within 60 days of the petition, which time could be extended indefinitely by the court, even up to plan confirmation.	A Debtor now has 120 days to assume a non-residential commercial lease, which cannot be extended beyond 210 days without the lessor's written consent.
Executive Bonuses	Generous bonuses or retention pay agreements were awarded at a court's discretion.	Bonus and retention pay agreements are capped at ten times the average amount offered to non-management employees and only upon proof that the executive has another job offer.
Credits for Vendors	Suppliers who shipped goods just before bankruptcy were limited to the value of the goods received by the debtor within ten days of the filing and had to wait until confirmation to get paid.	Vendors have a priority claim, which can be paid before confirmation, for the value of goods shipped within 20 days of the filing and can reclaim unpaid goods shipped within 45 days of the filing.

[1] You should contact a professional for more detailed information on additional changes affecting businesses, including health care businesses, tax and fraud claims, and other matters beyond the scope of this article.

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The 2005 Bankruptcy Reform Act – Boon or Bane to Businesses? *continued*

Will the above changes benefit your business? Not if you are a debtor. These changes force Chapter 11 debtors to make decisions faster, pay back more of their debts, and severely restrict generous retention bonuses to key executives. Business debtors seeking to avoid these new rules by filing for Bankruptcy before the effective date of the Act may still not benefit if they intend to seek generous retention bonuses. Such awards are within the court's discretion, and courts have already begun to limit retention pay and executive bonuses.

The new law has changed the balance of Chapter 11 in favor of creditors. Creditors will not have to cool their heels for an indefinite time while executives receive lavish bonuses; commercial real estate lessors will not have to wait around, missing out on viable new tenants because the debtor refuses to make a decision on the lease; and vendors will have significantly improved rights to payment for goods shipped just before the bankruptcy petition is filed.

Congress also provided for further changes to streamline small-business Chapter 11 filings (for companies with no more than $2 million of debt). The Act improves the preference statute by creating a *de minimis* exception — creditors cannot be sued for preferences less than $5,000 — and removing a restriction on the ordinary-course-of-business defense. The Act also requires actions relating to debts of less than $10,000 against "non-insiders" to be brought where the defendant resides.

These and other changes should help creditors and limit the ability of businesses to unnecessarily delay the Chapter 11 bankruptcy process.

We're MAD About Our MAD Team!!!

For the 13th year in a row, the Strauss & Troy "MAD Team" (Make A Difference Team) sponsored a week-long summer camp experience for underprivilged children at Camp Ernst in Northern Kentucky. The Team once again worked with Inner City Youth Opportunities to provide 21 children with sleeping bags, backpacks full of personal care items, and even money to spend in the Camp store. At the end of the memorable week, each child received a Camp Ernst mascot, T-shirt, and cabin photo.

During the month of August, the MAD Team will be working on the "Push for Pencils" campaign in conjunction with the Crayons to Computers organization. The campaign provides back-to-school supplies to underprivileged children. At locations in Strauss & Troy's offices, the Team is collecting pens, pencils, notebooks, glue, crayons, paper and other needed school supplies.

Never short on ideas for helping those in need, the MAD Team is working on an exciting literacy project with the Cincinnati Public Schools.

The Team expresses it appreciation to all at Strauss & Troy who provide monetary support through "Dress Down Friday" and other donations!

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