



Inside

Estate Planning Through Family Limited Liability Corporations 2
Alienation of Affections and Criminal Conversation . . . 2
What To Do When Stopped for a DWI 3
Firm News 4

Attorneys

Estate Planning

Calvin B. Bryant
Ann E. Hanks
Edgar S. "Pat" Levy, III

General Business

William P. Harris
David B. Ashcraft
Charles A. Alt
Christopher M. Kroger
Matthew C. Jobe

Real Estate

Kim W. Gallimore
R. Bruce Laney
David N. Woods

Litigation

Frank Burkhead Wyatt
A. Doyle Early, Jr.
William E. Wheeler
Kim R. Bauman
Frederick G. Sawyer
James R. Hundley
John D. Bryson
Stanley F. Hammer
Scott Fitzgerald Wyatt
Marc R. Tyrey
Arlene M. Wiegner
Jason E. Moss

What To Do When Your Land Is Being Taken For A Public Project

Scott Wyatt, Litigation, swyatt@wehwlaw.com



Scott Wyatt

Is your land, business, or home being taken or damaged due to a government project such as a roadway, airport expansion, water reservoir or housing project? If so, you have important rights

you may not be aware of that can enable you to seek just compensation—or "fair value"—for the property you have worked hard to purchase and maintain.

North Carolina law requires that just compensation be paid to landowners for private land taken for a public purpose. Many landowners and business owners whose land is being taken are unaware of their right to be paid just compensation. But the smart landowner or business owner who is aware of this right and knows what to do will likely receive more favorable results.

What to do when you find out your land is being taken.

When you first receive notice that your land is being taken for a public project, you will probably be less than thrilled. However, do not panic. Instead, find out as much as you can about the nature of the project and exactly what land is being taken from your property. The condemnor (the government entity taking your property) will likely have agents who specialize in these cases come and meet with you. Generally, these individuals are very experienced and know

much more about the process than you do. Be an "information sponge" with this condemnor agent. Ask to see and receive copies of any official maps regarding the taking. Try to get a timetable for the beginning and end of the project. However, it is very important at this stage that you do not say what you think your property is worth. Nor should you say that you have gotten, or will get, appraisals of your property. These steps can be taken at a later time in an appropriate and well-planned way—after all the information relevant to the value of your property is gathered.

What to do next.

After your initial encounter with the condemnor agent, you should contact an attorney experienced in this area of law. As part of this process, it is a good idea to gather any and all correspondence received from the condemnor agent, as well as any and all maps relevant to the taking. Early contact with an attorney may save you from pitfalls that you may be unaware of related to your dealings with the condemnor, its agents or appraisers.

The condemnation process.

A condemnor cannot officially acquire title to the land it seeks to condemn until it files a lawsuit. Before this occurs, the condemnor will likely submit to you a pre-lawsuit written offer to purchase, and/or a notice of intent to take your land. These documents will likely include a written offer of value for the taking of your land. The condemnor wants you to accept this offer, as your acceptance will settle the matter without the condemnor having to file a lawsuit. You are NOT

(Continued inside)

Estate Planning Through Family Limited Liability Companies



Pat Levy

A common estate planning technique for a parent and/or grandparent is to (i) establish a family limited liability company

(FLLC), (ii) transfer assets into the FLLC, and (iii) subsequently gift FLLC interests to children and/or grandchildren.

The primary advantages of this technique are (i) the personal assets of the donor and donees can be shielded from liability arising out of the assets in the FLLC, (ii) the donor can retain a

certain amount of control over the management of the FLLC and its assets, (iii) the donor is entitled to valuation discounts for lack of control and marketability with respect to the interests transferred for gift tax purposes, and (iv) the FLLC provides a structure for the management of family-owned property during and after the donor's lifetime. In addition, the gifts of FLLC interests generally qualify for the \$11,000 per donee annual gift tax exclusion.

However, in a recent case (*Hackl v. Commissioner*), the U.S. Tax Court decided that gifts of closely held FLLC interests failed to qualify for the annual gift tax exclusion. In *Hackl*, the donees could not require that distributions be made from the FLLC, and the donees' ability to transfer or sell their interests was

substantially restricted. In order for a gift to qualify for the annual exclusion it must be a gift of a present interest. The Tax Court reasoned that the control provisions in the *Hackl* FLLC documents were so restrictive that the donees did not truly receive anything of present value.

An FLLC remains an attractive estate-planning tool for many individuals. A donor can retain substantial control over gifted FLLC interests and still qualify for the gift tax annual exclusion—even after *Hackl*—as long as FLLC documents are carefully drafted. Our estate planning experts—Pat Levy, Ann Hanks, and Calvin Bryant—can assist you in establishing a new FLLC or modifying an existing one in light of the recent *Hackl* decision.



Alienation of Affections and Criminal Conversation



Arlene Weigner

Alienation of Affections and Criminal Conversation are two lawsuits that arise when one spouse has sexual relations with someone other than

their spouse. We call them "sister" torts because whoever is sued for one is typically sued for both. Despite the names of these torts, they involve neither Martians nor jailtime; neither the husband nor the wife is the "defendant"—the illicit lover is the one on trial. Alienation of Affections and Criminal Conversation are civil causes of action that if won can result in only a monetary award—though the use of the word "only" is misleading, as there have been several recent awards of hundreds of thousands to millions of dollars.

The hottest questions involving these lawsuits include:

1. Is there is a "safe" period of time during which someone can date and have sexual intercourse with someone other than their spouse before their divorce is finalized?
2. Will these lawsuits still exist this time next year?

The answers to these questions are as follows:

1. There is no "safe" time during a marriage to have an affair. Affairs prior to the date of separation have a definite and significant impact on the issue of alimony. When the affair is conducted after the date of separation, the issue becomes more complicated. Since the statute is unclear, we look to our court system. It has recently said that post-separation and pre-divorce activities will not give rise to alienation of affections if the activities were

solely post-separation. That was in November. In December, our court system said that post-separation and pre-divorce activities would give rise to the tort of criminal conversation. The result is one that leaves the legal community scratching its head—though there clearly is liability for actions prior to divorce and after the date of separation.

2. The answer to the second issue is still in the cards. The General Assembly considered abolishing both of these torts last fall. They came very close, but at the last minute the issue was tabled until the next term. As of now, the causes of legislative action remain very much alive.

If you have any questions regarding these types of lawsuits, please contact Arlene Weigner at 884-4444, extension 227.



Land (Continued)

obligated to take a settlement offer, and likely may be better served by holding out and proceeding with an attorney.

The condemnation action.

North Carolina law requires that a local jury determine at trial how much just compensation you are to receive for your property. In order to prepare the landowner's case for trial, qualified, experienced condemnation appraisers will be retained to investigate and determine the just compensation the landowner seeks to receive. In turn, the condemner will likely retain its own appraisers. Unsurprisingly, their figure will probably be less than the landowner's. During this process, negotiations normally occur between counsel for the landowner and counsel

for the condemner. These negotiations may result in a pre-trial settlement satisfactory to all parties. If negotiations are unsuccessful, then a jury will ultimately determine the just compensation figure.

Although the condemnation process is not appealing, there are important steps you can take to improve your situation and to avoid harmful consequences:

- Don't discuss property value with the condemner, its agents or appraisers.
- Don't indicate you have gotten, or will seek, appraisals of your property.
- Obtain as much information as you can regarding the taking (maps, charts etc.).

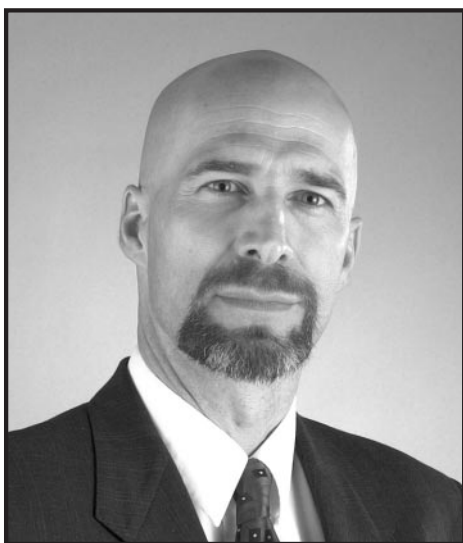
- Contact an attorney thoroughly experienced in condemnations when you first receive notice that your land may be taken.

- Be patient. Good things may happen!

If your land is taken—or will likely be taken—for a government project, and you would like to discuss this matter with an attorney, please call Scott Wyatt at 884-4444.



What To Do When Stopped for a DWI



John Bryson

Under North Carolina law, you can be convicted of driving while impaired based solely on your alcohol concentration, i.e. the amount of alcohol in your blood. In 1993, our legislature reduced the alcohol concentration limit from .10 to .08. While the reduction was done for the laudable purpose of improving highway safety, one side effect is that more individuals are convicted solely on the basis of their alcohol concentration—while their ability to drive a motor vehicle may be unimpaired.

John Bryson, Litigation, jbryson@wehwlaw.com

While there is no doubt that the driving ability of many people may be impaired at a .08 alcohol concentration or less, those with a tolerance for alcohol may be unimpaired at .08. Having visited the breathalyzer room on more than one occasion, I saw a person I thought was grossly impaired who registered a .08 on the Intoxilyzer 5000. Conversely, I saw an individual I believed to be sober who had a reported alcohol concentration of .09.

Accordingly, people who drink even moderate amounts of alcohol and then drive must be extraordinarily cautious—not only while driving, but also in any encounters they may have with law enforcement officers. Here are some rules to follow if you are stopped by a police officer after you have been drinking.

1. Be polite. Produce your driver's license and registration but respectfully decline to answer any questions (including whether or not you have had anything to drink).
2. Respectfully decline to perform any sobriety tests, including any breath testing devices offered at the scene.

3. Do not consent to a search of your car or person.
4. If you are arrested, you will be asked to submit to blood or breath testing, most probably an Intoxilyzer 5000 (breath test). Refusal to take the test will result in suspension of your driving privileges for one year. While most people should take the test, those who have had a prior DWI conviction within seven (7) years, or whose driving has led to an accident involving serious personal injury, may find it advantageous to refuse the test.
5. Ask to speak with an attorney and request a witness to observe the test.
6. If you are given a breath test, request the officer assist you in obtaining a blood test.

For assistance or further information, please call John Bryson at 884-4444 extension 263.



Firm News



Jason E. Moss

Jason E. Moss joined the firm in May 2002. He specializes in Commercial and Probate Litigation. Moss is a native of High Point and attended Wake Forest University, where he earned an undergraduate degree in Politics with a minor in Speech Communication. He earned his law degree from Wake Forest University School of Law. While in law school, he served on the Law Review, and the on Moot Court Board, as well as on the National Trial Team. In addition, Moss studied in Sydney, Australia at the University of New South Wales. Before joining Wyatt Early Harris Wheeler, he enjoyed a one-year

New Attorney: Jason Moss

clerkship with Federal District Court Judge William L. Osteen of Greensboro, and worked with Womble Carlyle Sandridge & Rice in Winston-Salem. What Moss enjoys most about commercial litigation is helping clients solve their problems, thus enabling them to continue their business efforts.



In Brief is published quarterly by Wyatt Early Harris Wheeler LLP. The purpose of this newsletter is to provide general information about legal developments. As the information presented is not a comprehensive treatment of the subject matters covered, readers are encouraged to seek specific legal advice before taking any action.



WYATT EARLY HARRIS WHEELER
ATTORNEYS AND COUNSELLORS AT LAW

1912 Eastchester Drive
High Point, NC 27265

RETURN SERVICE REQUESTED