



Inside

Firm News 2
Real Estate Lawyers: NOT
An Endangered Species . . 3

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. Reardon
Jason E. Moss

Going It Alone Is Risky Business

Bill Harris, General Business, wharris@wehwlaw.com



Bill Harris

More often these days we encounter individuals who start new businesses without ever seeking legal counsel.

"Going it alone" is extremely risky and can lead to tragic consequences in the long run for a business venture.

A common problem with uncounseled business owners is selecting the wrong form of business entity. Three key factors must be carefully considered and balanced: (i) owner liability, (ii) management, and (iii) taxation.

Many forms of legal entities exist to limit owner liability. However, not all legal entities are managed or taxed the same. Proper selection of a business entity allows management to be tailored to the needs of the owners. Furthermore, unintended tax consequences can be avoided with the proper entity. For example, the tax consequences of compensating an employee-owner may be more favorable in one form of entity rather than another. In addition, the distribution of property to owners can be taxed differently depending on the entity selected.

Another common situation is business owners who fail to fully complete the organization of the business entity. "Do-it-yourself" business owners often take the initial step of filing Articles of Incorporation or Articles of Organization with the North Carolina Secretary of State to establish their business entity. However, after the initial filing, the legal formalities tend to end. Corporate bylaws, stock certificates and operating agreements go forgotten or improperly executed. Such agreements are critical to evidencing ownership and governing the relationship of business owners. Without such agreements, owners find themselves in legally ambiguous situations or subject to inflexible state statutory laws, all of which could have been easily avoided with the assistance of good legal counsel.

Business licenses and tax filings are another problem area. Today's regulatory climate often subjects businesses to multiple licensing requirements among federal, state, county, and municipal governments. Failure to obtain the appropriate licenses can be expensive in the long run in terms of fines, penalties, and compliance costs. Also, the failure to make all of the necessary tax filings can subject a newly formed business to state and federal audits.

During the formation process, some of the greatest value provided by a business attorney comes in the form of advice on how to structure owner relationships throughout the life of the

(continued inside)

Firm News

DID YOU MISS SOMETHING?

Don't forget—you can review archived copies of earlier editions of *In Brief* by visiting our website: www.wehwlaw.com. Some of the informative articles on file include: "What To Do When Your Land Is Being Taken For A Public Project," "What To Do When Stopped For A DWI," "Non-Compete Agreements: Avoid Pitfalls From Departing Employees," and "Car Accident? Some Helpful Tips."

In addition, our website contains information about each of our attorneys and a brief description of the various types of legal services we offer our clients. If you have not yet visited our website, please do so today.

OUR ATTORNEYS AMONG THE STATE'S LEGAL ELITE

Recently, two of our attorneys were selected by their peers from across the state as being among North Carolina's Legal Elite. Both Bill Wheeler and Kim Bauman were recognized in the January 2003 edition of *Business North Carolina* for excellence in their respective fields. Bill Wheeler was honored as one of the top 30 civil litigators and Kim Bauman was honored as one of the top 30 employment attorneys. This annual recognition is bestowed on only 300 of North Carolina's more than 10,000 attorneys. Our firm is committed to providing each of our clients with high quality, comprehensive legal services. To accomplish that commitment, each of our attorneys continually work to develop the knowledge and skills necessary to keep them at the "top of their game."

OUR ATTORNEYS SUPPORT OUR COMMUNITY

Our attorneys have a strong tradition of participating in various civic groups, including serving on governing boards

of charitable, community, and professional organizations. Each of our lawyers, by their personal choice and with the firm's support, participate in various bar associations, public, educational, cultural, religious, charitable, and government advisory groups. Please visit our website at www.wehwlaw.com for a listing of some of the current organizations which our lawyers enjoy serving.

BILL HARRIS HONORED BY HIGH POINT BAR

Recently the High Point Bar Association, along with the North Carolina Bar Association, awarded its Centennial Award to Bill Harris for his many years of outstanding service to the High Point community. This prestigious award is given annually to a local attorney by his/her peers for professional dedication and extensive civic involvement. Among his many contributions to our community, Bill has been actively involved during the past few years with Habitat for Humanity, the High Point Bar Association, First United Methodist Church, the High Point Civitan Club, and Camp Cheerio.

CHUCK ALT HONORED BY HIGH POINT UNIVERSITY

High Point University recently honored Chuck Alt by presenting him with their annual Community Leader award for his work as a non-profit volunteer. This award is sponsored by the University's Non-Profit Management Institute. Mr. Alt was nominated by The ARC of High Point for his outstanding service to that organization and the community at large. In addition to his service with The ARC, Chuck has served the United Way of Greater High Point, the Community Clinic of High Point, the Piedmont Environmental Center, the High Point Library Board, and the High Point Museum.



Risky Business, Continued

business. Do-it-yourself business owners tend to miss this critical advice. Owners must contemplate how the business will continue and function in the event of the death, disability, or the voluntary sale by one owner of his interest to an unknown third party. Business planning should begin during the formation process and good advice can make all the difference in avoiding a costly lawsuit over ownership and management issues.

New business owners also need guidance on how to minimize business risk once operations begin. While a legal entity can limit owner liability, the success or failure of the business may depend on minimizing business risk. Business attorneys can help clients during the formation of a legal entity to minimize business risk through recommendations regarding contracts and insurance. For example, a new business can be immediately subject to state workers' compensation laws. Under such circumstances, an immediate need exists to minimize the potential damage from worker claims due to on the job injuries.

The proper formation of a business can be tricky. Numerous decisions exist and regulatory compliance can be burdensome without assistance. Our business attorneys are experienced in navigating through the maze of available choices as well as raising and resolving issues that would otherwise go unnoticed.



Real Estate Lawyers: Not An Endangered Species

Kim Gallimore, Real Estate, kgallimore@wehwlaw.com



Kim Gallimore

Some media sources have recently reported that lawyer involvement is no longer required for real estate closing transactions in North Carolina. If the reports are true, then the death of real estate transactional lawyers is near. Fortunately, for the real estate lawyers in our firm and our state, the reports of our imminent death are greatly exaggerated. But much more importantly, real estate lawyers, including the three (3) of us at Wyatt Early Harris Wheeler, will continue to be involved in closings for the financial protection of North Carolina consumers.

In response to a Federal Trade Commission (FTC) challenge about how real estate closings are done in North Carolina, the North Carolina State Bar was asked to interpret the North Carolina unauthorized practice of law statutes as they apply to residential real estate transactions. The FTC challenge was for an evaluation of the residential real estate closings practice in North Carolina to determine if non-lawyers could conduct all or any part of closings. The FTC's push for the evaluation was based on the assumption that residential real estate closings handled by non-lawyers would be less expensive for

consumers than closings handled by lawyers. Interestingly, however, the data to support this assumption is thin since the last nationwide survey comparing the costs of residential real estate closings in each state showed only one state was less expensive than North Carolina in overall closing costs.

North Carolina law prohibits the unauthorized practice of law. The unauthorized practice laws try to keep non-lawyers from providing legal advice, preparing legal documents and handling legal transactions which require the legal knowledge and expertise of a licensed lawyer. Licensed lawyers, including all of the lawyers in our firm, have met legal educational standards, passed bar admissions examinations, and continue to meet continuing legal education requirements, among other requirements for licensure. The unauthorized practice laws are in place to protect unsuspecting consumers from relying on unqualified and unaccountable people who hold themselves out as being qualified to provide legal help.

In January of this year, after careful consideration and investigation, the North Carolina State Bar issued an authorized practice of law advisory opinion interpreting the unauthorized practice of law statutes as they apply to residential real estate transactions. The advisory opinion provides that a non-lawyer may not handle a residential real estate closing. However, the opinion further provides that a non-lawyer who is acting under the supervision of a lawyer licensed in North Carolina may present and identify documents necessary to complete a North Carolina residential real estate

closing, direct the parties where to sign the documents, ensure that the parties have properly executed documents, and receive and disburse the closing funds.

The opinion recognizes that a residential real estate transaction typically involves several phases including title examination; application for title insurance policies; preparation of legal documents; explanation of documents, including parties' legal rights, obligations and options; resolutions of possible title problems and issues concerning the legal rights of parties to the transaction; execution and acknowledgment of documents in compliance with legal requirements; recordation and cancellation of documents in accordance with North Carolina law; and disbursement of proceeds after legally-recognized funds are available. The North Carolina General Assembly has determined specifically that only persons who are licensed to practice law in this state may handle many of these functions.

Evidence considered by the State Bar with respect to the advisory opinion indicates that, at the time documents are presented to the parties for execution, a lawyer who is present may identify or be asked about important issues affecting the legal rights or obligations of the parties. A lawyer may provide important legal guidance about such issues, but a non-lawyer is not permitted to do so. Moreover, a consumer's retention of a licensed North Carolina lawyer provides financial protection to the consumer. The North Carolina Rules of Professional Conduct require a lawyer to properly handle all residential real estate closing proceeds. In the event a lawyer

(continued on back)

Endangered Species, Continued

mishandles the proceeds, the lawyer is subject to professional discipline, and the State Bar client security fund may provide financial assistance for a person injured by the lawyer's improper application of funds. On the whole, the evidence considered by the State Bar indicates that it is in the best interest of the consumer to be represented by a lawyer with respect to all aspects of a residential real estate transaction. The evidence the State Bar has considered suggests, however, that performing administrative or ministerial activities in connection with the execution of residential real estate closing documents and the receipt and disbursement of the closing proceeds

does not necessarily require the expertise of legal judgment or the giving of legal advice or opinions.

Although the FTC challenge about how residential real estate closings are done here was a fair challenge, the greatest potential danger in movements towards greater non-lawyer involvement in closings is not the death of real estate lawyers, but serious injury to consumers who are uninformed and unprotected. In the judgment of the real estate lawyers in our firm, the North Carolina State Bar advisory opinion which prohibits non-lawyers from handling residential real estate closings is a good outcome to the

FTC challenge – not primarily for the preservation of North Carolina real estate lawyers, but for the protection of North Carolina consumers.

**Kim Gallimore is a member of the Real Property Section Council of the North Carolina Bar Association. The RPS Council played an important role in the publication of the advisory opinion interpreting the unauthorized practice of law and dialogue with the FTC.*



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