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## 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

## Work 'Em or Not?

**Kim Bauman**, Litigation, [kbauman@wehwlaw.com](mailto:kbauman@wehwlaw.com)



Kim Bauman

Does your business have a temporary or permanent lite-duty return-to-work policy? You should, because it's best if you decide before a worker is injured, rather than after the

worker shows up with a doctor's return-to-work slip.

First and foremost, you should decide whether you even want to provide lite-duty work. There are strong arguments pro and con. Many businesses are opposed to lite-duty work because they don't have lite-duty jobs, because the policy is unfair to other workers, or injured workers create morale problems. Businesses with this view should clearly and consistently state, preferably in a written policy, that they simply do not provide lite-duty work.

On the other hand, many businesses do have lite-duty work, which can provide economic support to workers as they recover. In addition, businesses can stay in touch with workers, help them keep a daily work routine, and reduce the impact of claims on their compensation insurance premiums. Businesses that offer lite-duty work have many options and should adopt such a policy in writing after considering several things:

1. Who is eligible? Only persons injured on the job? Or any worker, including those injured in car wrecks, falls at home, etc.?

2. What jobs are available? Workers' old jobs, any existing open jobs, or newly created jobs?
3. How long will the lite-duty job be available? 30 days? 45 days? 2 months? 6 months? Permanently?
4. Are extensions available?
5. What are workers paid for lite-duty jobs? Their old wages? Or the wages of jobs they are performing?
6. Who keeps up with medical reports and follows workers' progress? The supervisor? Bookkeeper? Personnel manager?

The law does not require in every instance that an employer let workers return for lite-duty work. Nor does the law say employers must create new jobs or positions for workers needing lite-duty work. In almost all cases, the law only requires that workers who are capable should be granted their old jobs with reasonable accommodations, or should be afforded any other open and available jobs for which they are qualified.

In summary, each business should determine its policy before a worker shows up with a return-to-work slip. Whether or not you decide to let them return for work, be absolutely certain you treat EVERY worker equally, regardless of race, sex, nationality, disability, age or religion. Apply your policy even-handedly, without favoritism.

Let me know if I can help tailor a written policy for your business needs.



# It's That Time Again

**Matt Jobe**, General Business, [mjobe@wehwlaw.com](mailto:mjobe@wehwlaw.com)



Matt Jobe

Christmas season and New Year's holiday are now just a memory. Winter is in full force. It can only mean one thing. Tax season is upon us.

With April just around the corner, it's time to sharpen your pencils and get out those tax forms. Before you get too engrossed in those IRS publications from the public library, however, you may want to take a look at the following tax benefits:

## • Section 179 Election

If you have a business, don't forget the immediate benefits of Internal Revenue Code Section 179. The election allows "business owners" to immediately expense purchases of personal property that would otherwise be capitalized and depreciated over a number of years. The total cost of Section 179 property that can be immediately deducted in 2002 is \$24,000. After 2002, the dollar limitation will increase to \$25,000.

## • Accelerated Depreciation on Business Assets

If you are constructing or have purchased residential rental or commercial property, it may be possible to recover the cost of some parts of the property over a shorter recovery period. For instance, certain parts of a building such as removable wall coverings and carpeting, ornamental elements, and certain signs, may be depreciated over shorter recovery periods than the building or house itself.

## • IRA Contributions

For the years 2002 through 2004, the maximum contribution to an Individual Retirement Account (IRA) is

now \$3,000. Congress has also provided for a "catch-up" provision for contributions for taxpayers aged 50 or older. The reason for the "catch-up" laws is to make up for missed retirement savings benefits for certain older taxpayers. If you are at least age 50 after 2001, you may make additional contributions to your traditional or Roth IRA. The maximum annual contribution (\$3,000) for individuals over 50 has been increased by \$500 to \$3,500 for 2002-2005.

## • Timing for IRA Contribution

Although the new year has begun, it's still not too late to make a contribution to your IRA. You have until the due date of your tax return (April 15th) to make contributions. For those who qualify for the deduction related to their IRA contribution, the deduction may be claimed even though the contribution has not been made at the time you file your return. Just remember to make the contribution before the due date of your tax return.

## • Annual Gift Tax Exclusion

While it's too late for 2002, consider taking advantage of the annual gift tax exclusion in 2003. Avoid gift tax and reduce your taxable estate by limiting gifts to \$11,000 per person, per donor, per year. It may be possible to increase your annual gift exclusion to \$22,000 if your spouse joins in the gifting program.

The secret to a good tax year is knowledge, planning, and sound advice. If you are in need of assistance with specific tax questions, please feel free to contact one of our attorneys in our business or estate group. A list of such attorneys can be found on our new web site at [www.wehwlaw.com](http://www.wehwlaw.com).



# Firm News



*Pictured (left to right): Brenda Palmer, Cara Wagoner, Kat Hankins*

## OUR STAFF, YOUR FRIENDS

Please join us in congratulating Kat Hankins, Brenda Palmer and Cara Wagoner for their 25+ years of service with the firm. Many of you have worked with or met these great ladies over the years and count them among your friends – as we do. The success of this law firm is owed in large part to their dedicated and caring service. Special thanks to each of you.

## FIRM LAUNCHES NEW WEBSITE

Now you can learn more about our attorneys and areas of practice by visiting [www.wehwlaw.com](http://www.wehwlaw.com). In addition to general information, you can find previous editions of In Brief at this address. We definitely want to do whatever we can to serve better; so let us know what you think about this web site.

Special thanks to our agency, Tatum Toomey Whicker, for helping us develop and launch this valuable communication tool.



# Commercial Real Estate Contracts: Get it in Writing

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Whether it's labeled an offer to purchase and contract, a purchase and sale agreement or simply a contract, the basic understanding between a buyer and a seller in a real estate transaction should always be memorialized in writing. In fact, the statute of frauds (a foundational rule from the law of contracts), requires that any contract for the purchase and sale of real property be in writing in order to be enforceable. Because residential real estate transactions often involve uniform terms, similarly situated parties and properties intended for a single (residential) use only, these transactions more easily lend themselves to the use of standardized form contracts. For the protection of all involved, however, commercial transactions should always begin with a contract tailored to fit the specific property and parties to the transaction.

The North Carolina Bar Association, which has approved a standardized form for use in residential transactions, has not developed such a contract form

to be used exclusively in commercial transactions. There is no standard commercial form because commercial real estate contracts are often as varied as the particular parties and properties involved in those transactions.

Among many critical issues addressed by tailor-made contracts for the buyer or the seller are the following: an exact legal description of the subject real property; identification and description of improvements; fixtures and tangible personal property included in the sales price; financing terms and conditions; seller's representations and warranties to the buyer; and buyer's representations and warranties to the seller.

Typically included is a series of conditions precedent to closing. These normally would include protective provisions: the buyer's opportunity to engage in due diligence to ensure that the title to the property is marketable and insurable; assuring that the environmental condition of the property is acceptable

and that the property's zoning classification will permit the buyer's intended use. Furthermore, the commercial contract will not only identify the date of closing, but the buyer's and seller's responsibilities to each other at closing will be enumerated, to include items subject to proration (rents, utilities, taxes, etc.).

Because each commercial real estate transaction is unique, it is essential that both the buyer and the seller be represented by legal counsel. This protection is especially true since courts will hold any ambiguity in a contract against the party who drafted it.

Therefore, whether clients want to have a commercial real estate contract negotiated, or drafted to suit a given transaction, or simply reviewed by experienced counsel, the real estate practice section of WEHW is fully prepared and available to assist.



## Car Accident? Some Helpful Tips

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**Stanley Hammer, Litigation, [shammer@wehwlaw.com](mailto:shammer@wehwlaw.com)**

We certainly hope that anyone reading this is never involved in an automobile mishap. But if you or someone close to you has an accident, there are some fundamental rules to follow:

- Do not leave the scene of the accident until the police have been notified and an officer has obtained information about the accident. If possible, find out the officer's name.
- Do not admit liability to the other driver, passengers or to the police. You should provide factual details to the police about how the accident happened, but liability is a legal matter not always quickly determined.
- Get as much information as possible about others involved in the accident. If possible, take photographs to document the accident scene, including skid marks and damage to all vehicles.
- Get as much information as possible from witnesses and secure the name, address and telephone number of any witness.
- If you think you might have been injured, see a physician (even if you are only sore). Frequently, problems don't manifest themselves for several days; yet it's generally useful to seek examination as soon as possible after an accident. Depending on the policy, your automobile insurance may reimburse you for medical expenses.
- Any medical treatment should be claimed on your health insurance. If the other party is at fault, he is not relieved of responsibility for your medical bills simply because you

had the foresight to buy health insurance. And your health insurer is not relieved of responsibility simply because you were injured by a careless driver, who may not have adequate insurance.

- Take photographs of all wounds at the time of the accident and at each stage in the healing process.
- Consult an attorney before making any statement to the other driver's insurance company. Remember that the faulty driver's insurance company representative is not paid to act in your best interest.

For more information or assistance with your claims, please call Stan Hammer at 884-1000, ext. 233.



# We Have the Answers to Your Business Legal Questions

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Attention business owners who are considering the formation of a business entity! Do you know the difference between a C corporation and an S corporation? What about the differences between a corporation and a limited liability company? Do you know the possible tax implications of choosing one type of entity over another?

If you own a business or are thinking of buying a business, you very likely have questions about employee compensation. Or maybe you're thinking about selling your business or acquiring a competitor's business.

All of these situations and others involve specific legal issues that

require experience and expertise. We are confident, with our track record in business law, we can help you make the right strategic business decisions.

During the year, the business attorneys of WEHW will address important legal issues related to most businesses, including: selecting a business entity; labor and employment matters; employee compensation; shareholder agreements; and acquiring and divesting of business interests. We will present this information in a series of articles that will appear in this newsletter. These articles will be written in simple, straightforward language, of benefit to potential business owners, as

well as current business owners.

Meanwhile, if you have legal business questions or concerns, please contact one of our business attorneys. We will be happy to assist you.



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*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.

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**WYATT EARLY HARRIS WHEELER**  
ATTORNEYS AND COUNSELLORS AT LAW

1912 Eastchester Drive  
High Point, NC 27265

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