



MATTIONI

COUNSELORS AT LAW

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Do I Need a Lawyer When I Buy Real Estate?

By Dawn Tancredi, Esquire

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If you are inexperienced with real estate transactions and are not familiar with the process, it is a good idea to hire an attorney to represent your interests. An informed buyer is the best possible buyer. Keeping this in mind a buyer should consider retaining an attorney at the earliest stage in the real estate buying process, before signing an agreement of sale, to receive the most benefit and to be in the best position to negotiate a favorable agreement of sale. Without such advice, buyers may make the single largest investment of their life without having anyone protecting their interests. With so much on the line, it seems to make sense to take the time and proceed with caution before entering into an agreement of sale for the purchase of real estate. The old saying, "it's better to be safe than sorry" applies to this most important part of your life.

The agreement of sale or offer to purchase not only indicates the price a buyer is willing to pay for the property, but it also includes important terms affecting the sale. The agreement of sale is a legal contract which

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Social Security Disability

By Regina Parker, Esquire

Social Security Disability is a program of the Federal Government designed to provide monthly payments to disabled individuals meeting certain criteria. Your benefit amount is based on the income you earned while you were working. To qualify for Social Security Disability benefits, you must have earned wages and paid into the Social Security system in at least 20 of the last 40 quarters. Aside from paying into the Social Security system, you must also be totally disabled. Disability under Social Security is based on your inability to work. Congress has defined "disabled" as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of no less than twelve months. You must essentially prove that your physical or mental impairment prevents you from performing any type of work whatsoever.

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sets out the conditions and deadlines for the transaction which may take weeks or months to complete. Many issues which are addressed in the agreement of sale effect the buyer's rights or delegate responsibility to the buyer and seller. An attorney can help identify the issues before the agreement is signed and assist in drafting language which is beneficial to the buyer.

Some of the areas addressed in a real estate transaction whereby a buyer may benefit from an attorney's advice include: inspections, financing provisions, payment terms, type of deed, tax agreements, utility agreements, indemnity agreements, prorations for taxes, insurance, utilities or homeowners assessments, assumptions of agreements, contingencies, transfer taxes, and disclosures.

Other than the agreement of sale which is a legal document, there are other legal documents which arise in preparation for Closing. An attorney can review mortgage documents and title commitment policies for accuracy. An attorney can advise as to how to hold title to a property. Particularly if more than one person or entity will own the property, an attorney can advise as to the best manner to purchase the property whether it is by a tenancy in common, joint tenancy or in the name of an entity. An attorney can also review or identify and resolve potential issues that may come up prior to closing such as tax issues or subdivision issues.

Another instance where an attorney may provide assistance is if you are building your own home. This type of situation includes contracts with construction companies. The contract includes many areas that effect the buyer where the buyer wants to make sure he is protected. The contract should include a description of what is to be built, warranties address changes to the plans, costs or timing of completion of construction.

An attorney may advise a buyer of potential tax considerations. For example, an attorney may explain how the timing of the sale of a primary residence has tax considerations; an attorney can explain when exemptions from capital gains taxes come into play. An attorney may also explain like-kind exchanges to determine whether you may take advantage of deferring capital gains taxes.

This article explores some basic issues that should be considered by anyone contemplating buying real estate. This article is very basic and does not cover all or even most issues confronted by someone contemplating buying real estate. Anyone buying real estate is urged to seek appropriate guidance and counseling from an attorney.

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Social Security Disability from page 1

If there is any job which you are capable of performing and the job is available in the geographic area in which you live, you do not qualify for Social Security Disability benefits. It is a high threshold that must be met in order to qualify for Social Security benefits.

If you are awarded disability benefits, you can receive those benefits until age 65. When you reach age 65, your disability benefits automatically convert to retirement benefits, but the amount remains the same.

Certain members of your family may qualify for benefits on your record. For example, your spouse, child or a disabled widow may qualify for Social Security Disability Benefits on your record. These persons may qualify if they fall within certain guidelines as follows:

- (1) Spouse - Your spouse who is age 62 or older may qualify for benefits on your record. Your spouse may also qualify at any age if he or she is caring for a child of yours who is under age 16 or disabled and also receiving checks.
- (2) Children under 18 - Your unmarried son or daughter, including an adopted child, or, in some cases, a stepchild or grandchild may qualify for benefits on your record. The child must be under age 18 or under age 19 if in high school full time.
- (3) Children 18 or older - Your unmarried son or daughter, age 18 or older, may qualify for benefits on your record if he or she has a disability that started before age 22. These children are considered disabled if they meet the adult definition of disability.
- (4) Disabled widow - Your disabled widow age 50 or older may qualify for benefits on your record. The disability must have started before your death or within seven years after your death.

If you are denied Social Security Disability benefits, you may request a hearing before an Administrative Law Judge. Your request must be submitted within sixty (60) days from the date of the denial of benefits. The Administrative Law Judge will hear your testimony and review your medical records. The Administrative Law Judge may also hear medical evidence or vocational evidence presented by the Social Security Administration in opposition to your claim. It is recommended that you consult an attorney prior to attending this hearing.

This article is intended to present general information regarding Social Security disability benefits. Specific questions or facts will lead to different answers regarding eligibility for Social Security benefits. Anyone with questions regarding Social Security disability benefits should consult with an attorney or other professional to allow their questions to be properly answered.



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A Shareholder's Worst Nightmare, Piercing the Corporate Veil

By Michael Mattioni, Esquire and Dawn Tancredi, Esquire

One of the principal reasons small business owners incorporate is to protect their personal assets from corporate debt.

Historically, Pennsylvania courts have been reluctant to pierce the corporate veil and hold shareholders personally responsible for the debts of their corporation. A recent Superior Court decision serves as a reminder to shareholders that their worst nightmare could come true. *Fletcher-Harlee's Corporation v. Szymanski*, ___A.2d___ (Pa. Super. 2007) shows that under the right circumstances shareholders may face personal liability for corporate debts.

In *Fletcher-Harlee*, Szymanski was the sole shareholder of Delmarva Concrete, Inc. A dispute arose between Fletcher-Harlee and Delmarva. Fletcher-Harlee filed a claim against Delmarva which Delmarva did not contest. Fletcher-Harlee obtained a judgment for \$313,179.52 against Delmarva. Delmarva filed for bankruptcy. Thereafter, Szymanski formed several other companies which continued in the concrete business in a similar manner as Delmarva.

Fletcher-Harlee brought an action against Szymanski and several other corporations he owned seeking to pierce the corporate veil and to collect on the \$313,179.52 judgment obtained against Delmarva. After the trial court refused to pierce the corporate veil, the Superior Court reversed. The Superior Court acknowledged that there is no bright line test to determine when to pierce a corporate veil. The five factors the court considered in determining whether to pierce the corporate veil stem from a 1995 Pennsylvania Supreme Court case, *Lumax Industries v. Aultman*, 669 A.2d 893 (Pa. 1995) and are as follows:

1. Undercapitalization. The court held that Delmarva was under capitalized because it failed to defend the original Fletcher-Harlee claim.
2. Failure to Adhere to Corporate Formalities. The court held that Delmarva failed to adhere to corporate formalities, such as holding annual meetings and properly preparing minutes of such meetings.
3. Substantial Intermingling of Corporate and Personal Affairs. The court held that while there may have been some intermingling of personal and corporate affairs, there certainly was no substantial intermingling of personal and corporate affairs.
4. Use of the Corporate Form to Perpetuate a Fraud. Here, the court held that there was no knowing misrepresentation by Szymanski that forced Fletcher-Harlee to act; thus, there was no fraud by Szymanski.
5. Other Factors. The court then looked to see whether it should pierce the corporate veil to promote justice or as a matter of public policy. The court then held that justice and equity required Szymanski be personally liable for the Delmarva debt.

The court placed great emphasis on the corporate formalities factor in its decision to pierce the corporate veil. The court recognized that Szymanski failed to adhere to corporate formalities by failing to properly recognize the separate legal existence of his various corporations, and sharing employees amongst different corporations. As a



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matter of public policy the court found that it would be an injustice to Fletcher-Harlee and all others who do properly comply with the responsibility of treating corporations as separate entities to allow Szymanski to escape personal liability in this case.

The lesson for all owners of corporations, especially those who own closely held corporations is that you must properly recognize the existence of the corporation. This means properly capitalizing the corporation; holding appropriate meetings and documenting those meetings; insuring that contracts are entered into in the corporate name; keeping corporate and personal affairs separate; not using the corporation to defraud creditors; and respecting the separate legal status of the corporation. While there may be some short-term cost involved in properly complying with the factors outlined by the court, the cost for failing to do so can be substantial as shown in the *Fletcher-Harlee* case.

One further thought is appropriate. Many commentators have opined about whether the same analysis applies to limited liability companies. At this time there are no decisions discussing when a limited liability company may be disregarded and personal liability imposed upon the members. However, it is not difficult to see a court imposing personal liability upon the members of a limited liability company for company debts if the factors outlined by the *Fletcher-Harlee* court are present in a case involving a limited liability company. The rationale is that a limited liability company has a separate legal existence from its members under state law. If the members fail to adhere to certain formalities, regarding the company, a court could impose personal liability on the members, just as it did upon the shareholders in *Fletcher-Harlee*.

For anyone with questions, please call one of our attorneys to discuss your particular situation.

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