BARRON | SMITH | DAUGERT PLLC

ATTORNEYS AT LAW

BUSINESS AND EMPLOYMENT NEWSLETTER

FOURTH QUARTER, 2007

NEW DISCLOSURE REQUIREMENTS FOR SELLERS OF REAL PROPERTY

By Sallye Quinn

Under Senate Bill ("SB") 5895, effective July 22, 2007, sellers of unimproved real property zoned must now provide prospective buyers with a disclosure statement in the form required by statute. Prior to SB 5895, sellers of unimproved real property were exempt from the statutory disclosure requirements. SB 5895 also made changes to the previously existing disclosure requirements for improved residential real property.

"Unimproved residential real property" means property zoned for residential use and is not improved by residential dwelling units, a residential condominium, a residential timeshare, or a mobile or manufactured home. Accordingly, Sellers who sell unimproved real property that is zoned (all, or in part) residential, must provide the form unless it is waived. The form used for unimproved residential real property is different from the one used for improved real property. According to SB 2595, one of the main focuses in the change to both the improved and unimproved residential real property forms was to address the existence of toxic materials buried or otherwise hidden on the property. Like the disclosure form for improved residential real property, the disclosure form for unimproved residential property can be waived. However, if any answer(s) to the section of the forms titled "Environmental" would be yes, that section of the disclosure forms cannot be waived.

Other pertinent changes effected by SB 5895 are as follows:

- New access rights disclosures: Sellers must disclose whether there is a private road or easement for access to the property;
- New water rights disclosures: Sellers must disclose whether any

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NEW DISCLOSURE REQUIREMENTS FOR SELLERS OF REAL PROPERTY (CONTINUED)

water rights (domestic or irrigation) are associated with the property and if so, whether such rights have been assigned, transferred or changed or if any portion of the water rights have not been used for five or more successive years.

- Lienholder exemption revised: The exemption for lienholders acquiring through foreclosure or deed-in-lieu is now removed. In other words, banks who take back property must now provide such disclosures and, as noted above, if any answer to the section of the forms entitled "Environmental," would be yes, that section of the disclosure forms cannot be waived.

If you have any questions regarding the new residential real property disclosures, please give us a call.

WORKING AT THE INTERSECTION OF IMMIGRATION AND EMPLOYMENT

By Amy Robinson[1]

This time last year we spoke to you about personnel record retention policies, and reminded you that the federal Employment Verification Forms (Form I-9) need to be retained for 3 years after the start date or for one year after termination, whichever is longer, and kept in a separate file from the employee's primary personnel file. Many of you had additional questions, and given some current updates to the Form, we want to offer you some additional information to help keep you in compliance with your obligations under federal immigration laws.

So what is an I-9 Form?

The Immigration Reform and Control Act of 1986 ("IRCA") essentially deputizes *every* employer in the United States as an agent of US Immigration and Customs Enforcement. In that role, Employers are required to verify the identity and work authorization status of every employee by completing and maintaining an I-9 Form on file. Failure to do so can result in significant fines and loss of access to government contracts.

What are my responsibilities as an employer?

The I-9 Form is intended to assist employers with verifying whether individuals are authorized to work in the United States, and must be used for only that specific purpose. You must retain a completed I-9 Form for every new employee, and your specific obligations as an employer are to:

1. Ensure that your employees fill out Section 1 of the I-9 Form no later than the first day they start to work;
2. Review document(s) establishing each employee's identity and eligibility to work;

   Note, you do not have to be able to personally guarantee the accuracy of the documents presented to you, but you cannot refuse to hire a candidate simply because you aren't sure. Instead, your obligation is to examine the documents by physical inspection, and if they reasonably appear to be genuine on their face, you must accept them. If you did otherwise, you could be committing an unfair immigration-related employment practice.

   If, however, the documents do not appear to be genuine, or appear not to relate to the person presenting them, you must not accept them.

   Since you may not be familiar with what each of the various documents looks like, we recommend that you refer to the newly available M- 274, Handbook for Employers, Instructions for Completing the Form I-9, (http://www.uscis.gov/files/nativedocuments/m-274.pdf) which includes samples of the various acceptable documents.

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[1] **Source: Much of this information was taken from the Handbook for Employers, published by the Department of Homeland Security on November 1, 2007, available at http://www.uscis.gov/files/nativedocuments/m-274.pdf.

WORKING AT THE INTERSECTION OF IMMIGRATION AND EMPLOYMENT (CONTINUED)

3. Properly complete Section 2 of the Form I-9 so that the document is complete no later than the close of business on the third day of the individual's employment;
4. Retain the Form I-9 for three (3) years after the date the person begins work or one (1) year after the person's employment is terminated, whichever is later; and
5. Upon request, provide Forms I-9 to authorized officers of the Department of Homeland Security (DHS), the U.S. Department of Labor (DOL), or the Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) for inspection.

What about the new I-9 Form?

As many of you may already know, the U.S. Citizenship & Immigration Services ("USCIS"), a division of DHS, announced on November 7, 2007 that it has released a new version of Form I-9 which employers are required to use as of Wednesday, December 26, 2007. If you don't already have the updated form, you can download a copy at http://www.uscis.gov/files/form/i-9.pdf.

While it may not look any different at first glance, the new Form incorporates a revised List A—the List of Acceptable Documents that employees can present to establish both identity and employment eligibility. The following documents are no longer acceptable:

- Certificate of Citizenship (Form N 560 or N 561)
- Certificate of Naturalization (Form N 550 or N 570)
- Form I-151 (a long outdated version of the Alien Registration Receipt Card ("greencard") Note, however, an unexpired Permanent Resident Card or Alien Registration Receipt Card is still an acceptable document.
- Unexpired Re-entry Permit (Form I-327)
- Unexpired Refuge Travel Document (Form I-571)

In addition, the amended Form I-9 modifies the requirements for when a foreign passport is acceptable, replacing the previously acceptable "unexpired foreign passport with an attached Form I-94 indicating unexpired employment authorization" with "an unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer."

What should we be doing now as employers to keep up with best practices?

Given the updates to the Form I-9, and the current enforcement activities going on, this would be a good time to perform an audit of your I-9 records. Make sure you have the proper information on file for every employee, and if you have any I-9 Forms on file which relied on information/documents which are no longer accepted, update the form.

We also recommend that you review the newly available Employers Handbook (see above), and perhaps download a copy to retain for your own reference.

What if, despite my best efforts to comply, the DHS later discovers that my employee is not actually authorized to work?

You probably will not be charged with a verification violation if you undertook best efforts to comply. You will also have a good faith defense against the imposition of employer sanctions penalties for knowingly hiring an unauthorized alien, unless the government can show you had knowledge of the unauthorized status of the employee, so long as you have performed all the obligations required of you as an employer, as set forth above.

You should be aware, however, that federal enforcement efforts have ramped up and the Social Security Administration now sends "No Match" letters to employers, notifying them that the information supplied by the employee does not match the information that the Social Security Administration has on file, usually via the annual earning reports (W-2's).

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WORKING AT THE INTERSECTION OF IMMIGRATION AND EMPLOYMENT (CONTINUED)

Please do not assume just because you get this letter that the person is working illegally or has otherwise done anything wrong. Instead, it could have a perfectly benign and reparable explanation:

- Spelling errors in the individuals name;
- Use of multiple surnames;
- Errors made listing the documents reference numbers;
- Incomplete information on the Form W-2; and
- Government error.

In the event, however, that you are unknowingly employing an unauthorized worker, failure to properly respond to a No-Match Letter can result in liability for the employer. This may include reviewing your own records to confirm that the proper information was supplied, contacting the employee to confirm that they believe the information supplied was correct, obtain alternate employment verification documents from the employer, and/or promptly remit any corrected information to the Department.[2]

Please be aware that in no event should you terminate the employee unless and until the appropriate review process is completed, or unless you obtain actual knowledge (i.e. through an admission by the employee) that the employee is not eligible for employment in the United States. To do so could run you afoul of the anti-discrimination provision of IRCA, which prohibits: (1) citizenship or immigration status discrimination; (2) national origin discrimination; (3) unfair documentary practices during the Form I-9 process (document abuse); and (4) retaliation.

As you can see this can be a challenging and legally complex issue to navigate, so we recommend that if and when you receive a No-Match Letter you confer with counsel for guidance.

Are there any other resources to help me maintain compliance as an Employer?

A new resource named E-Verify provides an automated link to federal databases to help employers determine the employment eligibility of new hires. Employers who participate in the E-Verify Program complete the Form I-9 for each newly hired employee online. Enrollment in the program also requires employers using E-Verify to follow certain rules and procedures designed to protect employees from unfair employment actions, including: (1) no selective verification, all new hires must be verified using E-Verify, both U.S. citizens and non-citizens; (2) no prescreening of employment applicants, verification of applicants already hired prior to E-Verify enrollment, or reverification of employees who provided temporary work authorization; and (3) no termination or other adverse action against employees based on a tentative nonconfirmation.

If you are interested in learning more about E-Verify or to enroll in the program, visit the U.S. Customs and Immigration Services website at www.uscis.gov.

We hope that you have found this information helpful. As always please feel free to call or email if you have any questions or require additional information on this or any other topic addressed in the newsletter.

[2] See 72 Fed. Reg. 157, 45611 (August 15, 2007), Safe-Harbor Procedures for Employers Who Receive a No-Match Letter. This rule, known as the Safe Harbor Rule, is not officially in effect as of the time of this publication due to pending legal action, but best practice would be to comply with the guidelines, at a minimum, in the interim. We will keep you updated when we learn the outcome of this situation.

To read past issues of our Newsletter—visit our website at: www.barronsmithlaw.com (click on Links and Resources).

RECENT WASHINGTON CASES HIGHLIGHT POTENTIAL DANGERS OF LLC DISSOLUTION

By Sallye Quinn

For reasons ranging from pass through tax status to ease of corporate management, limited liability companies (LLCs) have long been the preferred corporate form for real estate development. In the past, many have believed that dissolution and the subsequent filing of a Certificate of Cancellation barred claims against an LLC. However, in a recent trio of cases handed down by Division I of the Washington Court of Appeals on June 18, 2007, three (3) real estate development LLCs faced disastrous consequences from dissolution. In *Chadwick Farm Owners Association vs. FHC, LLC*, 139 Wn.App. 300 (2007) ("*Chadwick*"), *Emily Lane Homeowners Association vs. Colonial Development, LLC*, 139 Wn.App. 315 (2007) ("*Emily Lane*") and *Maple Court Seattle Condominium Association vs. Roosevelt, LLC*, 139 Wn.App. 257 (2007) ("*Maple Court*"), the Washington Court of Appeals held that suits can be brought against LLCs within three (3) years after dissolution[1] of a LLC, even if a Certificate of Cancellation has been filed, but that an LLC that has been dissolved and, either voluntarily or involuntarily filed a Certificate of Cancellation, cannot bring affirmative claims during the same three (3) year period.

In all three cases, a Certificate of Cancellation had been filed, which means that the entities no longer exist. RCW 25.15.080. In one instance the certificate was filed voluntarily by the LLC and in the other two cases the certificate was filed involuntarily by the Secretary of State pursuant to RCW 25.15.290(4), which provides that if an administratively dissolved LLC does not apply for reinstatement within two years after the administrative dissolution, the secretary of state shall cancel the LLC's certificate of formation. An administratively dissolved LLC can apply for reinstatement at any time during the two years prior to the Certificate of Cancellation being filed by the Secretary of State and upon reinstatement can continue on as though dissolution had not occurred. RCW 25.15.290. In instances of voluntary dissolution, a certificate of cancellation is required to be filed upon the completion of the winding up of the LLC. RCW 25.15.080.

In *Chadwick, Emily Lane* and *Maple Court*, the rulings meant that homeowner's associations could maintain claims against the real estate development LLCs for construction defects, but that the real estate development LLCs could not bring claims against their contractors and subcontractors to indemnify them for such liability. The Court further confirmed that the common law and statutory remedy of piercing the corporate veil is alive and well in the LLC context and allows for personal liability of members and mangers if they fail to properly wind up an LLC. *Emily Lane*, 139 Wn.App. at 320.

In coming to its rulings, the Court of Appeals first analyzed a 2006 amendment to the Washington Limited Liability Company Act (the

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[1]Dissolution occurs upon one of the following: (i) the termination date set forth in the certificate of formation; (ii) the happening of events specified in the operating agreement; (iii) the written consent of all members; (iv) ninety days after the dissolution of the last member; (v) the entry of a judicial decree of dissolution; (vi) two years after an administrative dissolution of the Secretary of State.

RECENT WASHINGTON CASES HIGHLIGHT POTENTIAL DANGERS OF LLC DISSOLUTION (CONTINUED)

"Act") in which the Washington Legislature provided for a three-year period after dissolution within which to commence actions against a dissolved LLC[2] and determined that the amendment was remedial or curative and thus could be applied retroactively to the cases in front of it. Based on that amendment, the Court held that the respective homeowner's associations could bring their claims because the claims were brought within three years after the effective date of dissolution of the respective LLCs. The Court's decision to apply the statute retroactively was harmful to the LLCs. However, the most disastrous ruling was the Court's determination that the survival statute applied only to actions brought *against* LLCs, but not to actions brought *by* the LLCs. Accordingly, in two of the cases the developer LLCs had brought third party claims against their general contractors and subcontractors presumably for breach of contract and indemnification. The Court held that once the certificate of formations had been cancelled, the LLCs lacked standing to bring the third party claims. *Chadwick*, 139 Wn.App. at 312; *Maple Court*, 139 Wn.App. at 264.

As previously noted, the Court also confirmed the viability of personal liability for members and managers of an LLC, specifically in the context of failing to properly wind up an LLC after dissolution. *Emily Lane*, 139 Wn. App. at 320. The *Emily Lane* case was the only case of the three where the LLC was voluntarily dissolved. Indeed, the LLC was dissolved and two weeks later filed a certificate of cancellation. *Id.* at 318. The provisions of the Act require that upon dissolution, whether voluntary or involuntary, the affairs of the LLC are to be wound up. RCW 25.15.270. In winding up, provisions must be made for creditors.

A limited liability company which has dissolved shall pay or make reasonable provision to pay all claims and obligations, including all contingent, conditional, or unmatured claims and obligations, known to the limited liability company and all claims and obligations which are known to the limited liability company but for which the identity of the claimant is unknown.

RCW 25.15.300. Without deciding whether the LLC had been properly wound up to make provisions for creditors, such as the homeowner's association, the Court made it clear that personal liability would exist if the LLC had not been properly wound up based on RCW 25.15.300, which provides that "[a]ny person winding up a limited liability company's affairs who has complied with this section is not personally liable to the claimants of the dissolved limited liability company by reason of such person's actions in winding up the limited liability company." The Court held that the converse of that provision would be true, i.e. that one who does not comply with the provisions of the Act with regard to winding up can be personally

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[2]RCW 25.15.303 provides as follows:

> The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the effective date of dissolution. Such an action or proceeding against the limited liability company may be defended by the limited liability company in its own name.

The legislative history of the enactment of the LLC survival statute and a similar amendment made to the Washington Business Corporation Act make it clear that the survival statutes were passed to reverse the result of *Ballard Square Condominium Owners Ass'n v. Dynasty Construction Co.*, 126 Wn.App. 285 (2005) where the Court of Appeals held that absent a survival statute, claims against a corporation arising after the dissolution of the corporate abate. *Chadwick*, 139 Wn.App. at 307.

RECENT WASHINGTON CASES HIGHLIGHT POTENTIAL DANGERS OF LLC DISSOLUTION (CONTINUED)

liable for failing to do so. *Emily Lane*, 139 Wn.App at 320.[3]

Based on the *Chadwick* line of cases, members and managers of LLCs must now seriously consider whether dissolution is a prudent business risk. Clearly, the nature of the LLC's business will play an important role in this decision. An LLC formed for a short-lived small business that incurred little to no actual or contingent liability does not face the same risk as a real estate development LLC facing potential claims from homeowner's associations or even individual homeowners for construction defects. One thing is clear, however, if the decision to dissolve is made, members and managers must properly wind up the business of the LLC or face personal liability. Winding up includes making reasonable provisions for contingent, conditional or unmatured claims. At this point, little guidance exists as to what "reasonable provisions" constitute, but could likely include procuring insurance or having a set aside for potential claims. Whatever provisions the LLC makes, we suggest that it be documented through a written document – whether a written consent in lieu of a meeting or in minutes from the meeting at which the "reasonable provisions" are made.

If the risk is great, however, the best course of action does appear to be to <u>not</u> dissolve. Until dissolution occurs, there is no obligation to wind up and thus no obligation to make provision for creditors, beyond the already existing obligations relating to piercing the corporate veil. At this point, if no winding up occurs, there is no potential for personal liability of members and managers who fail to properly wind up. Not dissolving also means that if the LLC is sued, it has the ability to bring suits against third parties who may have indemnification obligations to it. In the *Chadwick* line of cases, the inability to bring suit was clearly the most disastrous effect on the LLCs.

[3]The Court appeared to be particularly bothered by the LLC's possible attempt to avoid liability by dissolving and filing a certificate of formation and cited the following letter from the LLC's bookkeeper to its carrier regarding a potential claim against the LLC:

> The Notice of Claim to the insurance company may be a moot point. The LLC was dissolved effective 1/21/05 and therefore there is nothing to sue! We did not receive the Notice of Claim prior to the dissolution so we should be clear according to our attorney.
> Rejoice! Pat

ENTIRE AGREEMENT, AMENDMENTS, HEADINGS AND CONSTRUCTION PROVISIONS

By Bethany Allen and Kirsten Barron

We are tackling four different types of "boiler plate" clauses that relate to contract interpretation. The enforceability of a contract is highly dependent on its construction. There are several clauses it is good practice to include in a well drafted agreement. These clauses can provide clarity and guidance in construing or interpreting a contact in the event a question or dispute arises between the parties. Those clauses are:

- **entire agreement or integration clause**
- **amendments or modification**
- **headings**
- **construction**

<u>Entire Agreement</u>

An entire agreement clause (also called an integration clause) specifies that the agreement represents all of the agreements between the parties and other side agreements, notes, oral discussions and the like are not a part of the

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ENTIRE AGREEMENT, AMENDMENTS, HEADINGS AND CONSTRUCTION PROVISIONS (CONTINUED)

agreement. As we lawyers say – everything the parties have agreed to is within the "four corners" of the contract – referring to the four corners of the pages themselves. While there are certain limited circumstances where information outside the contract can become relevant, this is usually not the case. An entire agreement clause provides clarity that the contract represents the entire agreement, and - even though you may have quoted a better price or delivery terms in a prior proposal – those terms are not included in the final document. An example of an entire agreement clause is, *"[t]his Agreement constitutes the entire and exclusive agreement of the parties with respect to its subject matter and supersedes all prior communications, representations, understandings, commitments, and agreements, oral or written, between the parties hereto."*

Amendments/Modifications

No matter how good the relationship may be between the parties, it is imperative that any modifications or side agreements be recorded in a signed writing. This is so because in the event of a dispute between the parties, the parties may be held to the written terms of the contract, even if the parties had an oral understanding that modified or changed the terms of the written agreement. The contracting parties can include an amendments/modification clause in the contract to set out the requirements for changes and additions to the agreement. This clause may stipulate that changes and additions be made in writing, signed by the authorized representatives of all the parties to the original agreement. The inclusion of such a clause will (1) make it clear that the written contract alone will be binding in the event of any misunderstanding over the performance of the agreement or, (2) if appropriate, will provide concrete evidence of the amendment or modification the parties desire to make to the agreement. An example of an amendments/modification clause is, "[n]*o change, addition, amendment or modification of the terms of this Agreement shall be effective unless reduced to writing and executed by both parties*."

Headings

A good agreement will often have "captions," titles or headings at the beginning of each paragraph to guide the reader in locating certain provisions. A headings provision merely says that the titles for certain paragraphs are not to be used to interpret the contract, rather, headings are merely an organizational tool. A headings clause may read, *"[s]ection headings are for reference only and shall not in any way affect the construction or interpretation of this Agreement."*

Construction

A construction of agreement clause is another common contractual provision that can provide clarification when a contract is being interpreted by the court. The general rule in contract interpretation is that any ambiguity in a contract should be construed against the party who drafted the agreement. In other words, if you wrote the contract and it is unclear in some respect, and the other party reasonably believes it says something other than what you meant, since your imprecise drafting caused the confusion, the court will interpret the agreement against you and in favor of the "innocent" person who relied on what you wrote. The construction of agreement clause is designed to avoid one party being saddled with all the responsibility for the agreement's clarity. This clause usually says that the agreement will be considered drafted by both parties and/or it will not be construed against any one side because he/she (or his/her attorneys) drafted it. An example of a construction clause is *"[t]he parties are independent contracting parties and this Agreement shall not be construed to create any relationship of principal and agent or any other type of relationship, except as specifically set forth herein."*

If you would prefer to receive this Newsletter by email, please call us at 360-733-0212.

WHAT IS A REGISTERED AGENT?

By Debbie Nelson

Washington law requires that all Corporations, LLCs, and registered Limited Partnerships doing business in Washington must have a Registered Agent with a Washington State address. RCW 23B.05.010. The Registered Agent is required to be available *at all times* during normal business hours to receive documents and tax notices from the state and service of process from any legal proceedings. The Registered Agent may be an individual or any other organization qualified by the Secretary of State to do business in Washington. Those who choose to use a registered agent service do so because of its convenience as well as the peace of mind in knowing that a trained professional receives and evaluates correspondence so that nothing is overlooked.

BD SERVICES CORPORATION

Barron Smith Daugert offers a registered agent service to our clients through an entity called BD Services Corporation. BD Services Corporation ("BD Services") was formed seventeen years ago, as a convenience to our clients.

What BD Services provides as Registered Agent:

1. Acceptance of Service. If a lawsuit is commenced against your corporation, limited liability company, or limited liability partnership, a summons and complaint may be served on BD Services. When BD Services accepts service of process on behalf of your company, one of its agents will immediately attempt to contact the company, first by fax communication, and then by mail.
2. Remitting License Renewal Notices. The Washington Secretary of State requires that the company's Business License be renewed annually. Normally, an Annual Report Form is sent to BD Services approximately three weeks before the annual renewal is due. BD Services will contact the company to inquire about changes to the company, if any, and then proceed to file the Report online.
3. Remitting Notices from the Secretary of State. From time to time, the Secretary of State may send notices to the company through the registered agent. These notices will be forwarded by BD Services via mail to the company at its last known address.
4. Corporate Records. BD Services maintains a duplicate record book for the companies it represents. All correspondence received on behalf of the company is copied and placed in the duplicate record book and then forwarded to the client the very same day. This allows your company to have a complete set of documents, off premises, for safekeeping.
5. Annual Maintenance (Optional). If you engage BD Services for this service, it will provide annual meeting minutes, or consent in lieu of meeting, as you wish, ratifying the acts of the shareholders and directors of the Company during the previous year, and electing Directors and Officers. If the Company requires more extensive corporate maintenance services, such as additional shareholders or directors consents, stock transfers or amendments to its Articles, these may be handled by either your company's corporate counsel or the business practice group at Barron Smith Daugert at the standard hourly rates.

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WHAT IS A REGISTERED AGENT? (CONTINUED)

What BD Services does <u>not</u> do:

1. BD Services does not serve as the business address of the company. Therefore, it is important that all customers, clients and governmental authorities have a current business mailing address for the company.
2. BD Services does not respond to summons and complaints for which it accepts service on behalf of the Company. Instead, BD Services uses reasonable diligence to assure that the Company is made aware of the service of process in a timely manner. It is then the entities responsibility to seek guidance of counsel and/or respond on their own. Of course, if Barron Smith Daugert can assist you in any way, please do not hesitate to contact our office.

Responsibilities of the Company:

The company must keep BD Services informed of the current mailing address, telephone and fax numbers of the Company and of each of its officers and directors.

BD Services has a long standing relationship with the Secretary of State's office and has knowledge on all aspects of corporate requirements and maintenance. If you have further questions regarding our registered agent service, or would like to use BD Services as your registered agent, please contact Debbie Nelson at 360-733-0212. Debbie manages and maintains all of BD Services' client records and has extensive experience in corporate legal services.

BRIEF UPDATE FOR EMPLOYERS REGARDING PAID FAMILY LEAVE

By Amy Robinson

As you may have heard, earlier this year Governor Gregoire signed into law a Family Leave Insurance Law making Washington the second state in the nation to create a family leave insurance program to allow parents to take time off to bond with a newborn or newly placed child. (Senate Bill 5659-S2). The law is not scheduled to go into effect until October 1, 2009, so that the details of how such a program will work can be worked out, including most notably how to fund and administer such a large program.

What we know at this point is that the law will require that Washington employers with 25 or more employees provide up to 5 weeks of paid leave to employees for the birth or placement of a child. It also would provide certain employees with reemployment rights after taking such leave.

What we don't know yet is how such a program will be funded and administered. Senate Bill 5696 created a task force to work on the details of funding and administration of this new leave. The task force is exploring a tax on wages, much like the current Labor and Industries tax, or a tax on items such as candy, gum and soda. We suspect that the task force will recommend a state-administered program, much like the industrial insurance (i.e. workers compensation) program and that the program will be funded through a wage tax, but that is just supposition at this time.

Given the significant impact this will have on Washington employment, we plan to keep you up to date with the latest on this issue as things develop. We hope to provide you with a more detailed discussion of this law and the debates surrounding it in our next newsletter.

A PERSONAL NOTE FROM THE DEPARTMENT:

By Kirsten Barron

This is a wonderfully busy time of year. I especially love this time of year because it is full of rituals, both business and personal – closing the year end, updating corporate records, finishing transactions, holiday parties and whose turn it is to be the Santa, cookies and ginger bread. Great stuff!

Some of our newsletters contain more esoteric discussions and some are more practical. This newsletter is the later. We thought that the end of the year is a time for practical rather than esoteric thinking. We hope that each of you finds something useful and relevant to your business and your lives in this issue of the newsletter.

I also want to take a moment to mention the end of the year with its opportunity for reflection and the new year with its opportunity to set goals for yourself and your business. Many of you are small business owners with lots of autonomy over your life/work life – even if it sometimes does not feel that way. The folks at Barron Smith Daugert will be doing some year-end reflecting and new year goal setting. We are following the example set by many of our clients who we have seen experience better business and life results with reflection and planning.

We wish you a meaningful holiday season and new year. We continue to be grateful for our relationships with you and the opportunities you give us to work with you through the joys and challenges of your business and lives.

CONTRIBUTORS AND EDITORS TO THIS PUBLICATION

Sallye Quinn is a senior associate in the firm's business department and focuses her practice on business and real estate transactions and creditor's rights.

Amy Robinson brings employment and human resource experience to the firm and is invaluable to our department and the Litigation team in solving a myriad of complex legal issues. Her practice is focused on employment and civil litigation.

Debbie Nelson is a paralegal in the firm's business department and has extensive experience in corporate legal services.

Bethany Allen was a Rule 9 Intern with our firm over the summer. She has returned to Gonzaga University School of Law for her last year of law school and plans to practice in Bellingham once she graduates.