

Employer sanctions law impacts public entities

Part of the comprehensive employer sanctions law enacted by the Arizona State Legislature, and signed by the governor on May 1, 2008, includes provisions that are directed at the employment, licensing and contracting practices of public entities in the state. Here are some key points found in the legislation.

PUBLIC ENTITIES ARE EMPLOYERS

The first thing to note regarding this new law is that the definition of “employer” includes the state and any political subdivision of the state. This means that all the new employee hiring requirements apply to public entity employers. Public entities are 1) prohibited from “knowingly” or “intentionally” hiring or contracting with an “unauthorized alien” or with a company that employs

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ET·Y·MOL·O·GY COR·NER

A RETROSPECTIVE

For more than a decade, Gust Rosenfeld newsletters have included an Etymology Corner where we discuss the origins of a popular word or phrase. Below are some of our favorites from past issues. At the end, we also include a brand new entry that very appropriately dissects the term “Newsletter.”

THE WHOLE NINE YARDS (SPRING 1994)

“The whole nine yards” is an expression from the World War I era, when machine gun ammunition belts were 27

feet, or 9 yards, long. Generally, infantrymen could not fire the entire belt at once because the guns would overheat. In the excitement of battle, however, someone occasionally gave the enemy “the whole nine yards.”

PIG IN A POKE (FALL 1994)

It was customary for farmers in Great Britain to take little pigs to market in bags. The Celtic word *poc* means “bag” or “pouch.” To buy “a pig in a poke” is to buy a pig while still in the bag and has come to

mean entering into an agreement without full knowledge of the facts.

BIG WIGS/TO PULL THE WOOL OVER ONE'S EYES (SUMMER 1997)

For many years before modern times, all men of importance wore wigs. (Hence, the term “big wigs.”) In England, judges wore larger wigs than the other big wigs. The wigs were made of wool. No matter how carefully one wore a wig, it could slip down and block one's vision. Barristers, or “little wigs,” thinking they

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NEW FACES

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Working out of the firm's Tucson office, Matthew's practice in civil litigation spans a variety of issues, including complex contracts, business law, insurance defense, products liability, and personal injury. He has represented manufacturers of motor vehicles, electronics, household appliances, medicines, and other products. Before joining Gust Rosenfeld, he worked at an international trade law firm in Washington, D.C. Matthew received a J.D., *magna cum laude*, from Arizona State University College of Law in 2002.



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Jeremy practices in the areas of creditors' rights, bankruptcy and litigation law. He brings valuable experience in the banking and lending industry, including serving as assistant vice president and relationship manager in the Phoenix Corporate Trust and Escrow Services Group at Wells Fargo Bank. Jeremy received his J.D., with distinction, in 2006 from the Thomas M. Cooley Law School, where he was an associate editor of the Thomas M. Cooley Journal of Practical and Clinical Law.



JEREMY M.
GOODMAN

"The new sanctions law also prohibits a public entity from issuing a license to a person who does not demonstrate that they are authorized to be within the United States under federal law. This can have a serious impact on all public entities because of how the law defines 'license.'"

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or contracts with "unauthorized aliens;" 2) required to verify the employment eligibility of an employee hired after December 31, 2007 via the federal E-Verify program; and 3) prohibited from providing an economic development incentive to an employer who does not demonstrate compliance with the E-Verify participation requirement. The E-Verify program is the employment verification program administered by the United States Department of Homeland Security and the Social Security Administration.

PUBLIC ENTITY LICENSING AND PERMIT REQUIREMENTS

The new sanctions law also prohibits a public entity from issuing a license to a person who does not demonstrate that they are authorized to be within the United States under federal law. This can have a serious impact on all public entities because of how the law defines "license." A "license" is defined as any permit, certificate, approval, registration, charter or "similar form of authorization" that is required by state law and issued by the public entity. This requirement imposes a significant new responsibility on state and local public entities to inquire about the immigration status of all persons seeking a required official approval from the public entity.

PUBLIC ENTITY PROCUREMENT AND CONTRACTING REQUIREMENTS

Included within the employer sanctions law are changes to government procurement and contracting requirements. Beginning October 1, 2008, a government entity is prohibited from awarding a contract to a contractor or subcontractor that fails to comply with the E-Verify requirements of the employer sanctions law. The new law also requires that a government entity "ensure" that all of its contractors and subcontractors comply with federal immigration laws and regulations as well as the E-Verify requirements. All government contracts must include a provision that requires that the contractor or subcontractor "warrant" their compliance with the federal immigration law and E-Verify requirements. A government entity must also establish procedures to conduct random verification of the employment records of contractors and subcontractors with whom the government entity contracts.

Public entity officials should review their procurement procedures and form contracts to make sure that they are in compliance with these new requirements as they go into effect. To review sample language to consider adding to your contracts, please visit www.gustlaw.com, select News & Events and click on "Employer Sanctions - Sample Contract Language."

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9 TIPS

for safe online shopping this holiday season



1. UPDATE YOUR PROTECTIONS

Assuming you already have security software, make sure everything is up-to-date before you do your online shopping. This includes anti-virus software, anti-spyware software, and firewalls, all of which will make your computer less susceptible to fraudulent activities.

2. STICK WITH WELL-KNOWN COMPANIES

If you want to maximize your online safety, you should only shop from stores whose name and reputation are familiar to you. This often equates to big-name companies, which may not always offer the best deals.

3. PRIVACY POLICY, PLEASE

Before you begin shopping, check out each site's privacy policy. Make sure that your personal information stays private and that your contact details such as email and phone number are not sold or rented to third-party sources. Seek out seals from privacy enforcement organizations like TRUSTe or BBBOnline.

4. PAY WITH A CREDIT CARD

Experts agree that credit cards are the safest method for online purchases. Credit cards have greater built-in protections; you can dispute the charges, and funds do not come directly out of your bank account as is the case with debit cards. According to the Federal Trade Commission, federal law limits your personal liability to \$50 in charges if someone uses your credit card fraudulently.

5. LOOK FOR SAFETY ICONS

Check to see if a shopping site displays certain safety icons and/or features before making a purchase with your credit card. In most web browsers, safety icons will appear as a closed lock or unbroken key at the top or bottom of the window. An online store may also indicate the site uses SSL security technology, which means that your credit card information is transmitted securely through encryption. In addition, you may also want to simply look at the web address line (a.k.a., URL): a secure connection will begin "https://" instead of "http://".

6. AVOID POP-UP SCREENS

Never enter personal information into a pop-up screen. Unauthorized pop-up screens can be created by hackers hoping

to steal your identity. Legitimate companies will not ask you to enter personal or financial information into a pop-up screen.

7. IGNORE EMAILS REQUESTING CONFIRMATION

Never respond to emails asking you to "confirm" recent transactions after you shop. These are most likely phishing scams, which are designed to trick you into providing your personal or financial information to someone posing as a business or organization you have an existing relationship with such as a bank, online payment service or government agency. Legitimate companies will never send you an email asking you to re-enter your personal information.

8. AVOID SHARED COMPUTERS

Do not use shared computers, such as the ones available to multiple strangers at computer centers or internet cafes. Hackers have been known to insert a keylogger into the back of a computer's keyboard, a device that looks like a harmless adapter. This monitoring device then captures everything you type before it is encrypted, giving this person access to your credit card information and other personal details.

9. CLOSE YOUR BROWSER AND CLEAR YOUR CACHE

Always close your browser window after making purchases online and/or accessing private financial accounts. Otherwise, an unscrupulous person might be able to get at your personal and financial information by using the "Back" button. For greater protection, be sure to clear your computer's cache (i.e., your computer's memory of all the web pages and images you've viewed recently) after every online purchase. You can delete your online trail by simply going to the "Preferences" folder in your browser and clicking on the "Empty Cache" button. In Internet Explorer, go to "Internet Options" from the "Tools" menu and click on "Clear History."

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had fooled a judge might brag about having “pulled the wool over the judge’s eyes.” Today, the phrase is used to describe any attempt at a successful deception.

HUE AND CRY (WINTER 1999)

“Hue and cry” is an English idiom derived from the French verb *crier* (“to cry out”) and *huer* (“to shout”). During the Middle Ages in England, assisting the sheriff while he was hot on the trail of a criminal was not voluntary, but mandatory. Upon hearing the sheriff cry “hu e cri,” all citizens were obligated to drop their work and join in the chase. Hue and cry statutes existed until the 19th century. Today, a hue and cry means any loud outcry or clamor.

NO MAN’S LAND (FALL/WINTER 1996-1997)

By 1000 A.D., London had become a major city. Justice was severe. Death was often the penalty for minor offenses as well as major crimes. It was customary to take condemned men outside the north wall to behead or hang them. Frequently, the bodies were left on display as a grim warning to potential lawbreakers. This method of punishment went on for many years. During that time, cultivated fields were established around the execution sites. Eventually, land titles were registered and real estate came to be recognized as a source of wealth. However, no one wished to claim the land where the executions were held, and this sentiment continued even long after the gallows were moved into the city. Still, the old execution sites lay in waste. Because no one wanted to own this property, it was referred to as “no man’s land.” From this early usage, the term has come to denote any desolate or dangerous place.

NEWSLETTER (FALL 2008)

“New” has many derivations going back to the Greek “neos,” Old English “neowe” and German “nue” – all meaning “new” as an adjective and “new thing” as a noun. Today, the noun form is generally the plural “news.” When combined with “letter” from the Latin “littera” for “letters of the alphabet,” in its plural form “litterae” meaning “a written document or literature,” we have a writing about new things. Enjoy your new things!

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Are you using the right deed?

PART III

Part I of this 3-part series discussed beneficiary deeds, which transfer property to another person upon death of the owner. And then as discussed in Part II, a general warranty deed is ideal for a buyer because it affords the buyer the greatest protection of any deed. But if you are a seller, the quitclaim deed—the third and final part of this series—may be the ideal choice, as it protects the seller from any liability to the buyer.

WHAT IS A QUITCLAIM DEED?

A quitclaim deed—often mistakenly referred to as a quick-claim deed—is used to disclaim any interest one person (the grantor or seller) might have in property and passes that interest to another (the grantee or buyer). A quitclaim deed neither warrants nor professes that the seller’s claim of right, ownership or possession of the property is actually valid, and no warranties are made about the validity of the title. Of the different types of deeds, the quitclaim has the least assurance that the person receiving it will actually get any rights to the property.

WHEN SHOULD A QUITCLAIM DEED BE USED?

A quitclaim deed is often used for transfers between family members, gifts, to eliminate clouds on title, or in other special or unusual circumstances. A quitclaim deed does not release the seller from his or her obligations under any mortgage or other lien secured by the property. An additional act is required to release the seller, such as the buyer refinancing the property in his or her own name.

WHAT ARE THE RISKS OF USING A QUITCLAIM DEED?

If used in a sale of real property, a quitclaim deed poses significant risks to the buyer of the property while affording protection to the seller. The buyer risks that the seller has no interest to convey. Also, a quitclaim deed does not guarantee that the property is free of debt. If a problem regarding the title arises or a forgotten lien holder emerges, the buyer has no legal recourse against the seller. Moreover, title insurance companies may be unwilling to issue title insurance based on a quitclaim deed because of the lack of warranty.

If you are considering using a quitclaim deed—or any other type of deed—you should consult your attorney or a real estate professional to determine which deed is right for your situation.

Editor’s Note: To view Part I and Part II of this series, please visit our website at www.gustlaw.com and click on “News and Events” then “Archive.” Part I can be found in the Spring 2007 issue, and Part II is in the Fall 2007 issue.

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PERSONAL NOTES

Kent Cammack and Chris McNichol, in association with the State Bar of Arizona, presented the “Ins and Outs of Foreclosure” in July to a group of more than 120 people.

On April 22, 2008, Tom Chauncey was honored by the National Academy of Television Arts and Sciences for more than 25 years of service to the broadcasting industry. The Committee acknowledged Tom’s pioneering efforts in helping establish the Arizona First Amendment Coalition, convincing Arizona Courts to allow cameras in the courtroom, and helping establish ASU’s Walter Cronkite School of Journalism and Mass Communication.

Peter Collins, Jr. and Chas Wirken served as faculty members of the Arizona College of Trial Advocacy. Peter, as Chair of the State Bar Trial Practice Section, and Chas, as State Bar President, revived the College four years ago and since then the program has been an ongoing success.

Steve Guttell accepted a grant from the Nina Mason Puliam Charitable Trust on behalf of the Arizona Foundation for Eye Health to help fund the organization’s new mobile eye center. Steve serves on the Board of Directors and as Vice-Chair of the Executive Committee for the foundation.

Mingyi Kang and Jennifer Larson were selected to participate in the 2008-2009 Arizona Bar Leadership Institute (BLI), a one-year program that aims to help Arizona attorneys grow professionally and develop leadership skills.

Brandon Kavanagh was elected Chair of the Executive Council of the State Bar of Arizona’s Business Law Section.

In August, Chris McNichol participated in the Boys & Girls Club Shopping Spree, where 100 deserving children shopped (for free!) at JC Penney for clothing, shoes, backpacks and school supplies.

Christina Noyes’ popular article “Positioning Your Business for Franchising,” was reprinted in *KD & Beyond*, the Kappa Delta Foundation’s online publication. In June, she gave a presentation about business structures to employees at the Arizona State Credit Union.

Magdalena Osborn and Peter Collins, Jr. volunteered to be judges at the Fourth Annual Desert Classic Mock Trial National Tournament last spring at the Pima County Superior Courthouse.

Steve Rendell was elected to the Board of Directors of Aid to Adoption of Special Kids (AASK), an Arizona-based agency dedicated to placing children with special needs into permanent, loving homes.

Margaret Robertson is a member of the Executive Council of the State Bar of Arizona’s Real Property Section.

Christopher Schmaltz will serve as Chair of the Valley Forward Association for 2009, the association’s 40th anniversary. Valley Forward is a business group advocating a balance between sustainable growth and environmental protection in the Valley.

Tim Watson joined the Defense Research Institute, the national organization of defense trial lawyers and corporate counsel.

Chas Wirken was appointed to serve as one of five trustees of the State Bar’s Client Protection Fund. In addition, Chas has been elected to membership on the Board of Directors of the Law College Association of the University of Arizona College of Law.

Michael Woodlock is a member of the Executive Council of the State Bar of Arizona’s Construction Law Section.

Gust Rosenfeld backs program to stop gun violence in South Phoenix



Gust Rosenfeld contributed \$5,000 toward the “Take Back Your Neighborhood” campaign, a month-long initiative focusing on four of the most dangerous neighborhoods in Phoenix spearheaded by Arizonans for Gun Safety and endorsed by Phoenix Mayor Phil Gordon. Spanning the month of July, the campaign included a “no questions asked” gun buy-back program, two job fairs, a neighborhood cleanup event, and a community walk.



Guarantees by married couples in Arizona

Under Arizona's community property laws, there are essentially three categories of marital assets: one spouse's separate property, the marital community property, and the other spouse's separate property. All property acquired by either spouse during the marriage, except that acquired by gift or inheritance, is presumptively community property. While premarital and other types of agreements between spouses may affect the normal presumptions, this means that, in practical effect, most couples hold most of their assets as community property.

Spouses have equal management, control and disposition rights over almost all community property and have equal power to bind the community. Put another way, one spouse alone can contract to sell community property or make a debt for which the couple will be liable and the community property will be a source of recovery by the creditor.

Arizona has, however, a unique statute that creates a couple of broad exceptions to an individual spouse's power over community property. One of those categories is *guarantees*.

The "joinder" of both spouses is needed in any transaction relating to a guaranty (or suretyship) in order to impact the community property. In other words, if only one spouse signs a guaranty, only that spouse's separate property, if any, will be liable for payment. The response to this law is that lenders usually require both spouses' signatures on guarantees in order to bind all the assets of the couple to repayment of the guarantee obligations.

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