



Law Office of Drew Petersen

Newsletter

Fall 2020

What's New at the Firm

Many things have changed over the last quarter. Courts began reopening and trying to address the backlog of cases; clients successfully started and pivoted their businesses to focus on online services; telecommuting became the expectation for many businesses for at least the remainder of the year. The new consensus is things will not be back to "normal" for another year.

Some changes have been positive and productive. I spent a significant amount of time helping new businesses improve their online presence and operations, helping clients establish new businesses, and navigating the changing litigation deadlines as Courts gradually reopened and resumed operations remotely.

Changes have been happening with the practice as well. My wife, Jen, spent several weeks assisting me with the firm's filing and record retention. She also helped develop some marketing material including the newsletter format and taking my new headshots. However, I lost Jen's help to when she accepted a new job in August. It was no coincidence I hired Vanessa Garcia to join me as a paralegal in September.

Personally, Jen and I are happy to announce she started a new job working for Brandman University as a UX Designer. Additionally, we expect to restart actively looking to purchase our first home after pausing our search in March when COVID-19 started. We've also adopted a new normal of supporting local restaurants with take-out taco Tuesdays and feeding sushi and poke cravings on especially hot days.

I celebrated a semi-significant birthday in Big Bear in September and enjoyed a meal dining in the restaurant's converted parking lot. While it was an enjoyable celebration mixed with a much-needed reprieve to takeout, it made Jen and I miss the ability to enjoy restaurant meals. We are both anxiously awaiting the day when we can watch a movie in a movie theater, travel to another city to visit museums, and enjoy a meal inside a restaurant. Until then, we are looking forward to resuming our ballroom dance lessons and making the way through our streaming queues.

Finally, while I have been more focused on providing value and services to my clients during the pandemic, I determined my hourly rate is no longer appropriate given my years of experience and the increased value the firm provides. Therefore, starting in January 2021, I will be raising my hourly rates on all new matters. I will continue to honor the rates of all prior matters, so if there is anything you have been putting off, arrange a meeting or teleconference with me before December so we can discuss how I can help.

Wishing everyone a happy holiday season and a well-deserved end to 2020! Here's to a better 2021!!



Business Law Outlook

The Importance of Including or Excluding Attorney Fees in Contracts

When a new client contacts me about a business dispute, one of the first things I ask to see are any agreements or documents they have supporting their claim. When I begin reviewing any contract that is the subject of a dispute, I am always looking to determine whether there is a clause which provides for attorney fees in the event of a dispute, and if there are any conditions either side must meet, such as attending mediation.

Continuation of Attorney Fees

The United States generally follows the “American rule” regarding attorney fees. Under this system, each party is responsible for their own attorney fees, irrespective of the outcome. To avoid this rule, a statute or contract must specifically allow for the recovery of attorney fees. This can be good or bad for the parties involved.

In litigation over smaller sums, attorney fees can surpass and even dwarf the amount of money in dispute. In a lawsuit over \$30,000, it would not be uncommon for both sides to spend \$40,000 or more until a judgment is reached. The economics make even less sense if the dispute involves \$20,000 or less.

Attorney fee clauses can incentivize settlement. Typically, a defendant does not want to spend tens of thousands of dollars on their lawyer when they can resolve the entire case for a similar amount money. Similarly, a plaintiff usually does not want to spend large sums on their attorney which they may never be reimbursed. However, attorney fee clauses can also be an impediment when one side demands any settlement include payment of their incurred attorney fees.

Alternatively, the omission of attorney fee language can be beneficial to settling depending on the nature of the claim. If a plaintiff has a viable claim for \$15,000, it would be in the defendant’s best interest for no attorney fees to be included, limiting any liability and reducing the likelihood the plaintiff will find competent counsel. Residential leases are increasingly eliminating or limiting attorney fees to \$1,000 or less to avoid exposure to significant tenant lawsuits.

Attorney fees clauses are one of the first things lawyers look for when reviewing contracts. Its presence can significantly boost any potential judgment. However, their omission can limit liability and mean the parties have to pay their attorneys out of their own pocket. Before adding or removing such terms from a contract, it is best to get legal advice to determine how it will impact your business.

PPP Forgiveness

As a brief follow-up to last quarter’s topic, PPP loans and forgiveness are still in the news as congress considers a second round of funding and the SBA streamlined the forgiveness application for loans up to \$50,000.

If your business obtained a PPP loan, it is in your best interest to apply for forgiveness as soon as you are able. No one wants to wait to the last minute to be told the application is missing information or only partial forgiveness was approved.

Apply for forgiveness as soon as your loan processor allows.

Real Property Corner



California’s Rent Control & The CDC Moratorium

Since my last newsletter, California’s rental landscape changed significantly. While the Judicial Council removed its de facto moratorium on all evictions, California expanded protections for renters and the Centers for Disease Control (CDC) enacted a moratorium covering most tenants through the end of the year. The changing laws and regulations make being a landlord increasingly difficult.

After the Judicial Council announced evictions would resume in September, the state legislature enacted a variety of reforms to delay a flood of eviction lawsuits. Most significantly, it is much more difficult to remove a residential tenant who is not paying their rent on time. Now, so long as the tenant makes an adequate written representation and pays at least 25% of the rent owed between September and December 31, 2020, they cannot be evicted for non-payment of rent. Courts are also focusing on whether an eviction is “for cause, no-fault”

or “for cause, at-fault” which can be difficult to determine.

Moreover, the CDC enacted a nationwide moratorium on residential evictions to combat COVID-19 so long as tenants make written declarations of their income, their inability to pay, and that they are attempting to pay a portion of the rent, among other matters. The moratorium prevents tenants from being evicted before January 2021 due to the nonpayment of rent. This has effectively stalled all but very few residential evictions in California based on the failure to pay rent.

A tenant’s non-payment of rent used to be the quickest and most surefire way for a landlord to prevail in an eviction matter. Now, a tenant’s eviction due to failure to pay rent is almost guaranteed to not be resolved until 2021. Therefore, landlords needing to evict tenants are focused on finding any other legal basis—a complete reversal from the standard practice.

I have never seen such a significant and widespread change of law enacted so quickly. It is important for any landlord to be current on the latest procedural and legal requirements because there are significant penalties for violating the provisions.

Get good legal advice before taking any action involving rental property. It could save you months of time and a significant amount of money from fines and counter-claims.

Trust Administration & Probate Perspective



California's Increase to the Small Estate Limit

In January of 2020, California law increased the amount of money a person could possess without having to go through a formal probate – referred to as “small estates.” While the increase from \$150,000 to \$166,250 will help some avoid probate, it is not significant enough to ignore the need for estate planning.

When establishing a trust, individuals typically retitle all their current assets, including their home, so they can avoid the time and expense of probate. However, circumstances can change over time and it is not unusual for a person to leave some property outside of their trust.

Additionally, a significant number of people pass away without a trust or will in place. Typically, these people do not own real estate, live reasonably comfortably on a social security, a pension, annuity, or other retirement account, and/or have already distributed the majority of their assets to others. However, there is almost always some property for the heirs to deal with—cars, savings bonds, financial accounts without named beneficiaries, etc. The small estate procedures were designed to help these people avoid the significant costs and delay of probate.

Small estates have unique rules, but typically allow for a decedent's heirs to collect property and money after death by using a simple affidavit. Under current California law, heirs can use this method so long as the decedent did not own more than \$166,250 at the time of death. This process saves a significant amount of time, costs, and legal fees for the smaller estates. However, if the decedent has one dollar more than the limit, a formal probate is required which can take years and cost tens of thousands of dollars.

While the increased small estate limit is a good thing for those with modest estates, it should not be a substitute for effective estate planning to avoid formal probate.

Our New Team Member



This quarter I welcomed Vanessa Garcia to the firm as a paralegal. Vanessa and I met while at UCLA and have remained friends and colleagues since.

Vanessa is an experienced litigation paralegal with over 11 years' experience. She is a strong legal professional and earned an ABA Paralegal Certificate from UCLA's Extension program.

While Vanessa will largely assist with the firm's operations, developing work product, and trial preparation, she may have interactions with clients on a case-by-case basis. If you have any dialogue with her, I trust you will find her thorough, capable, and friendly.

Legal Humor

A Hindu, rabbi, and lawyer are traveling together when their car breaks down next to a farm. They walk to the farmhouse to ask for help, but the farmer says it is too late for a tow truck. The farmer offers them his spare room but says he only has two beds; someone will have to sleep in the barn. The Hindu says, “I'm humble, I'll sleep in the barn” and leaves his companions. Minutes later he returns, knocks on the door, and says, “There is a cow in the barn. I believe cows are sacred animals and I will not sleep in the same building as one.” The rabbi says, “It is okay, I'll sleep in the barn” and treks outside. Soon, the rabbi is knocking on the farmhouse door, saying, “There is a pig in the barn. I believe pigs to be prohibited and not kosher so I will not sleep in the same building as one.” So, the lawyer is forced to sleep in the barn. After 2 minutes, there is another knock on the door and the farmer answers it.

It's the pig and the cow.

Let's talk if we haven't spoken recently. I am curious to know about your new normal.