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Be Prepared When Buying and Selling Your Home in NJ



by Edwin W.
Schmierer, Esq.

The real estate market in central New Jersey is very strong for the sale and purchase of single family homes. Whether you are considering selling your home or purchasing a new one, you should be aware of several important legal requirements which may have to be addressed.

The provisions of the New Jersey Private Well Testing Act, N.J.S.A. 58:12A-26 et seq., require that all private wells be tested to ensure that the property has safe, potable water. The well must be tested at the closing and both the seller and buyer must certify, in writing, that they have received and reviewed the water test results. A certificate must be obtained from the county health department indicating that the well water satisfies current health standards.

Another inspection mandated by law involves the Uniform Fire Safety Act of New Jersey, N.J.S.A. 52:27D-192 et seq. This law requires that all sellers have their properties inspected to be sure that smoke alarms have been installed properly and are functioning as required. A certificate must be obtained from the local fire official indicating that the property complies with the above-referenced law.

Finally, for older homes with oil heat, issues frequently arise

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Timely News and Information from Mason, Griffin & Pierson, P.C.

OBLIGATIONS OF YOUR BOARD OF DIRECTORS/TRUSTEES

by Shawn M. Neufeld, Esq.



All corporations formed under the laws of the State of New Jersey (regardless of whether the company is for-profit or not-for-profit) are managed by a governing board. In the case of a for-profit corporation, the board is called a Board of Directors. In the case of a not-for-profit corporation, the board is called a Board of Trustees. The law imposes certain requirements, limitations and obligations on those who hold the position of director or trustee and, in certain instances, the law imposes mandatory guidelines dictating how many directors or trustees a corporation is required to elect. The constant, however, is that all corporations are required to have a board and it is the board that is charged with the responsibility of managing the corporation.

As managers of a corporation, members of the board have certain legal duties to the corporation. In short, a member of the board must discharge his duties in good faith and with the degree of diligence, care and skill that an ordinarily prudent person in a comparable position would exercise under similar circumstances. This duty is commonly referred to as the "duty of care." In addition to having a duty of care, members of the board have a "duty of loyalty." That means that no director may undertake an act or omission which that person knows or believes to be contrary to the best interest of the corporation or its shareholders in connection with any matter in which the board member has a material conflict of interest.

To the extent that members of boards fail to satisfy the duties owed to the corporation, they may be held personally liable for their conduct. In fact, there are some instances in

which board members will be jointly and severally liable to the extent creditors or shareholders are injured by actions taken by the board. Conversely, when a director has discharged his duty in accordance with his legal obligations, he is protected from personal liability. There are a number of steps that a corporation or board member can take to be better protected from individual liability. First, a company's certificate of incorporation can, in some instances, limit a director's liability. Second, board members have the right to rely in good faith upon opinions of their legal counsel and independent accountants. Third, board members have the right to rely upon the "business judgment rule." The business judgment rule provides a legal presumption that, absent self-interest or bad faith, any decision made by members of a board, if made with due care, is not vulnerable to legal challenge. Fourth, board members may wish to consider obtaining directors' and officers' liability insurance to cover any potential claims against them.

When considering directors' and officers' liability insurance, there are a number of issues which a corporation should review with its insurance carrier. Of particular concern should be whether the policy will be a "claims made policy" or an "occurrence-based policy." A claims made policy means that the policy will only provide coverage if the policy is in effect when the claim is actually made. An occurrence-based policy is one which provides coverage only if it was in effect when the event occurred. By way of example, if an event which subjects a corporation to liability

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occurs in January of 2002 and a law suit is filed in January of 2004, then, in order for any insurance coverage to be effective, the corporation would need to have an occurrence-based policy in effect during January 2002, or a claims made policy in effect in 2004, when the complaint is filed.

In addition, particular attention should be paid to the inclusions and exclusions for coverage contained in any policy for insurance. Many policies for officers' and directors' insurance now exclude a number of coverages which may be added with appropriate endorsements. It is prudent that the directors/officers consult with their legal counsel and insurance carrier to determine what coverages, if any, may be appropriate for their board.

Given the obligations that are imposed by law, members of boards of any corporation, large or small, should take an active role and interest in the decisions that they make for the corporation to ensure that they are discharging their duties appropriately.

Shawn M. Neufeld, Esq. is a director and shareholder of Mason, Griffin & Pierson, P.C. and is the head of the firm's Business & Banking Practice Group. Mr. Neufeld serves on the board of directors of several corporations and foundations. He received his Bachelor of Science degree in Business Administration from American University and his law degree from Widener University School of Law. Mr. Neufeld is admitted to practice law in New Jersey and Pennsylvania. He is a member of the New Jersey State and Pennsylvania Bar Associations, and practices in the areas of business law, banking law, and commercial and residential real estate law. Mr. Neufeld can be reached at 609-436-1203.

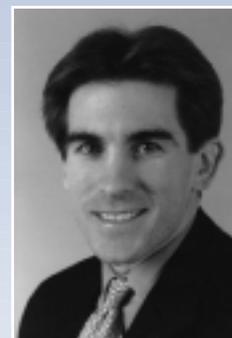
Be Prepared When Buying and Selling *continued from front*

concerning the existence of either active or abandoned underground storage tanks (UST). All purchasers and their lenders will routinely inquire as to whether or not the property is currently serviced or has previously been serviced by a UST. If there is a UST on the property, most buyers and lenders will require that the UST either be removed or capped in compliance with local municipal construction codes. Consequently, if you are the owner of a property with a UST, you are well advised to consider addressing this issue before listing your property for sale. If it is not practical to remove or abandon the tank, then you should inquire, through your fuel dealer, about obtaining insurance against leaks or hazards from the UST.

Anticipating these types of problems and addressing them before deciding to sell or purchase a home, will save you the risk of spending substantial sums of money at your real estate closing. Even in this strong market, sellers and buyers need to be prepared; don't lose the deal!

Edwin W. Schmierer, Esq., a director and shareholder of Mason, Griffin & Pierson, P.C. has been practicing law with the firm for twenty-five years. Mr. Schmierer earned his law degree from Boston College and is Counsel to Princeton Township, Hopewell Township, Pennington Borough Planning Board, East Windsor Municipal Utilities Authority, and West Windsor Township Zoning Board of Adjustment. He is Assistant Counsel for New Jersey State League of Municipalities, in addition to his memberships in the New Jersey Institute of Municipal Attorneys, New Jersey Planning Officials, New Jersey State League of Municipalities, and Mercer County and New Jersey State Bar Associations. Mr. Schmierer practices in the areas of Local Government Law, Land Use Law, Real Estate Law, and Affordable Housing Compliance. Mr. Schmierer can be reached at 609-436-1200.

Kevin P. McManimon, Esq. joins the firm



Mr. McManimon is a member of the firm's Litigation Practice Group and Criminal Law Practice Group. He earned his J.D. from Ralph R. Papitto School of Law at Roger Williams University, where he was Vice President of the Criminal Law Society.

He was clerk to the Honorable Alan J. Pogarsky, J.S.C., and the Honorable David J. Schroth, J.S.C. from 1996 to 1997; and was clerk to the Honorable John J. Hughes, U.S.M.J. from 1997 to 1998. Mr. McManimon served as Assistant Prosecutor of Mercer County from 1998 to 2003, during which time he earned the 2000 Mercer County Prosecutor's Office Assistant Prosecutor Recognition Award. Mr. McManimon is a member of the Mercer County American Inn of Court, and the Mercer County Bar Association. Mr. McManimon can be reached at 609-436-1217.

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