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BECE Summer 2009 Edition

Issue Headed to Ohio Ballot in November Would Create "Livestock Care Standards Board"

By David Barrett

Background

Our nation's livestock sector has been under attack lately from groups whose goal is to eliminate animal agriculture. In November 2008, a ballot initiative was passed in California that severely restricts modern agricultural practices. While our firm represents many livestock and poultry producers, along with related trade associations, the battle over agricultural practices affects the entire food chain.

The Ohio Ballot Initiative

A majority coalition of Ohio's agriculture organizations, along with legislators from both parties, recently launched an effort

to place a comprehensive animal care amendment on the November 2009 ballot.

As of the writing of this article, both the Ohio House and Senate have passed resolutions proposing a ballot measure that would create the Ohio Livestock Care Standards Board (the Board), a 13-member state board that would determine and enforce guidelines for the care and well-being of livestock and poultry in Ohio to protect food safety and encourage locally produced food for Ohioans.

"This proposal is an essential step in sustaining the state's livestock and poultry industries

for generations to come," said Sen. Bob Gibbs. "Agriculture is the top contributor to Ohio's economy, and this is an opportune time for Ohio to lead the way in regulating safe food production that respects animals, consumers and our farmers."

"How food is produced in Ohio is a legitimate area of public interest, and we are committed to doing even more than what is expected of us," said Jack Fisher, executive vice president of the Ohio Farm Bureau Federation. "It's time for Ohio to take control of the animal care issue by supporting proactive steps to protect both our food supply and our flocks

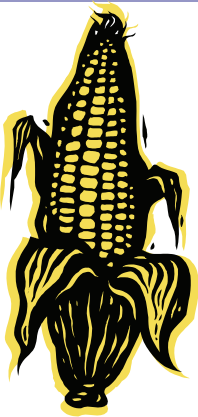
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OFFICE EXPANSION: BECE Welcomes *PARAMOUNT LAND TITLE LLC* and Attorney Francis X. Fullin, Of Counsel

Earlier this year, Attorney Frank Fullin and Office Manager/Title Examiner Linda Bivens joined us in our Dublin office. Frank has more than 23 years of experience as a lawyer. His law practice involves primarily real estate issues and he is the owner and president of *Paramount Land Title LLC*. You may contact Frank directly by phone at (614)210-7222 or email at frank-paramount@att.net

Please see Frank's news article on page 2 to read more about the *"Role of the Title Insurance Agent in Real Estate Transactions"*.



(LIVESTOCK BALLOT ISSUE)

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and herds, while also ensuring we can produce the amount of food necessary to feed Ohio and the world.”

Jack Fisher also pointed out that Ohio farmers have been concerned about out-of-state efforts to ban modern food production and housing methods - efforts that could reduce the availability of food produced in Ohio, increase the risk of animal disease and jeopardize food safety measures - and that a positive common-sense, Ohio-based solution is the right response.

The legislation would give the Board authority to proclaim animal care rules. “This ensures that Ohio decisions af-

fecting livestock and poultry care will be the product of the best thinking of Ohio experts, including farmers, veterinarians and the Department of Agriculture,” said Fisher. Regulations promulgated by the Board for the livestock and poultry industries will give weight to food safety, local availability and affordability and to best farm management practices for animal well-being. Among its responsibilities are the consideration of bio-security on livestock farms, animal disease prevention, food safety and food production volume and price.

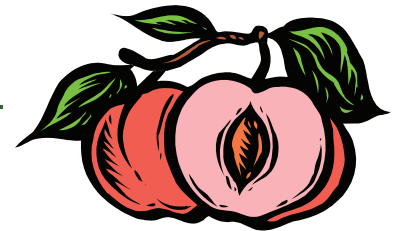
Thirteen members will be appointed to the Board, including 10 by the Governor and one each by the House and Senate. The Ohio Director of Agriculture will serve ex officio as the 13th member and as chair of the Board. The Board will com-

prise a broad base of experts in livestock and poultry care, including three family farmers, two veterinarians (one of whom is the state veterinarian), a food safety expert, a representative of a local humane society, two members from statewide farm organizations, the dean of an Ohio agriculture college and two members representing Ohio consumers.

Our firm’s website will provide regular updates on the progress of Ohio’s animal care initiative. Check it out at:

www.ohiocounsel.com

How food is produced in Ohio is a legitimate area of public interest



The Role of the Title Insurance Agent in Commercial and Residential Real Estate Transactions

By Frank Fullin

The work done by a title insurance agency is often a mystery to many consumers. “Why do I really need to pay them?” and “What do they do for those fees?” are not uncommon statements made at the closings by individuals who are not experienced in real estate matters. However, the professionals who regularly use and understand the role of the title agency would never consider purchasing a property without a title insurance policy.

Many things can derail a closing, not the least of which are title insurance matters that render the title unmarketable. These are diverse and can include liens not released of record, forged documents, improper execution or drafting of title documents, and unknown heirs or spousal interests. A good title agency will not only discover these matters and advise the parties to the transaction of the issues, but they also are experts at assisting the parties to cure the title issues so that the transaction can ultimately be closed.

Some of the “tools” used by a good title

agent to clear title include quit-claim deeds and waivers signed by the parties in interest, curative statutes and rules, proper application of the title standards for the state, affidavits in aid of title, escrows, subordinations, and final court orders and declaratory judgments. Title companies can also insure over certain title matters eliminating the risk of certain matters and accommodating the lender and purchaser. The title policy itself also insures against forgery and public record error by making the title company liable to pay damages sustained by the parties for these types of claims.

The title agency also is critical in the closing end of the transaction. Not only does it work prior to closing to ensure that all matters of title have been addressed, it also is instrumental in seeing that the closing documentation is accurate and compliant with all state and federal law, including RESPA disclosures, truth-in-lending, privacy acts, and Patriot act requirements.

So in choosing a title agent what should you look for? It should be well established

and have the personnel to handle the complexities of the real estate transaction. An on-staff attorney is a necessity. Good title examiners and strong title underwriting are equally important. Paramount Land Title offers all of these qualities to its clients as well as offering very professional advice and pre-closing communication. That equates to more efficient and accurate closings.

DISCLAIMER: Paramount Land Title LLC is a title agency that provides law-related real estate services. The Ohio Rules of Professional Conduct provide that a lawyer who controls or owns an interest in a business that provides a law-related service shall not require any customer of that business to agree to legal representation by the lawyer as a condition of the engagement of that business. Thus, you are not required to use our Firm’s services if you also are a customer of Paramount Land Title LLC. Nor are you required to use the services of Paramount Land Title LLC as a condition of any engagement for legal services with the Firm.

LLC and Limited Partnership Valuation

By Russell Cunningham

Often, parents establish limited liability companies or limited partnerships to manage real estate or other assets for an extended family. This type of planning also generally creates a side benefit of valuation discounts, which in turn lower gift or estate taxes. If you have such an entity, you should be careful to treat it as a separate company if you want to obtain the valuation discount.

In *Estate of Erma V. Jorgensen et al. v. Commissioner*; T.C. Memo. 2009-66; No. 21936-06 (26 Mar 2009), the Tax Court determined that no valuation discounts are permitted for a family limited partnership (FLP) where the family did not follow certain formalities.

There were seven specific failures in the view of the Tax Court. These are as follows:

1. No partnership books and records other than the checkbook were maintained;
2. The checkbook was never reconciled;
3. There were no formal partnership meetings;
4. There were no minutes at any meetings;
5. Partnership checks were used to pay Mrs. Jorgensen's personal expenses;
6. Partnership funds were commingled with her personal funds; and
7. Partnership assets were used for her personal gifts to children;

Because the decedent retained multiple and significant rights with respect to the liquid assets in the partnerships, the Tax Court determined that Sec. 2036(a)(1) required full estate inclusion of "the value of the assets" in the FLP's.

This case also illustrates the concept that you cannot retain the income from interests you gift to your children or others. If you retain the income, the IRS says the entire value of the gifted property should be included in your taxable estate for estate tax purposes.

This case shows the importance of documenting the business purpose of the company, conducting appropriate meetings, maintaining minutes and other records and keeping personal expenses separate from the business.

It is also important to do your planning before you have a serious illness. In *Estate of Valeria M. Miller v. Commissioner*; T.C. Memo. 2009-119; No. 5207-07 (27 May 2009), the Tax Court determined that discounts would be permitted for initial contributions, but would be denied for deathbed additions.

This was also a significant victory for the estate. The key benefit to planners with this decision is the affirmation of discounts for a plan that does follow best practices listed above. In this case, the FLP was in existence for a reasonable period of time, it did have an active investment strategy, and the parent retained sufficient assets outside the FLP for her personal needs. If FLPs follow these general rules, lack of marketability discounts should be affirmed.

Did you know:

Sales Tax :

Businesses that file sales tax on a semi-annual basis must begin filing electronically for the June 2009 return, which is DUE BY July 23, 2009.

Estate Planning

The Internet version of the Estate Planning Fact Sheet Series has been updated for 2009. See:

<http://ohioline.osu.edu/ep-fact/index.html>

Does Timber Land Qualify for CAUV Property Tax Treatment in Ohio?

By Jeff Easterday

Two Ohio Supreme Court cases involving current agricultural use valuation (CAUV) eligibility of timberland have been decided since 2006. The decisions illustrate the difference in eligibility between commercial timber and noncommercial timber. Interestingly, both cases involve property in Greene County. In each case the total acreage of the parcel at issue was in excess of 10 acres. And in each case, the amount of tillable or pasture land was less than 10 acres. The Supreme Court found that noncommercial timber land is eligible for CAUV only if it is contiguous to or part of a parcel where the remaining part of the parcel (not including the noncommercial timber) would be eligible on its own. The Court found that the use of land for commercial timber production is an eligible agricultural use and can be counted as part of the agricultural acres for CAUV eligibility.

The 2006 case, *Dirksen v. Greene Cty. Bd. Of Revision*, 109 Ohio St.3d 470, 2006-Ohio-2990, involved a 26.25 acre parcel of land comprised of 5 acres of cropland (which was rented for about \$300 per year) with the balance of the land being noncommercial timber. The Ohio Supreme Court decided that the parcel was not eligible for CAUV. The Court had to construe the statute that defines "Land Devoted Exclusively to Agricultural Use", Ohio Revised Code Section 5713.30(A)(1). The Court held that noncommercial timber qualified for CAUV only if it was contiguous to or part of a parcel that otherwise qualified for CAUV consideration. The parcel

(without including the noncommercial timber) must include 10 or more acres devoted to the agricultural uses specified in the statute (commercial animal or poultry husbandry.. field crops..., etc), or less than 10 acres provided that at least \$2,500 yearly gross agricultural income is produced. Since the noncommercial timber was part of a parcel with only 5 acres of cropland (which did not produce \$2,500 annually), the parcel was not eligible for CAUV.

The 2008 case, *Fife v. Greene Cty. Bd. Of Revision*, 2008-Ohio-6786, involved two parcels containing 18.7 acres. The parcels included 1 acre used for the house and grounds, 3 acres of pasture used to graze cattle, and 14.2 acres woodland. The property owners insisted that the woodland was devoted to the commercial production of timber (and was not noncommercial timber). The dispute focused on whether the woodland was in fact used for commercial timber production rather than noncommercial timber. The record showed that the property had been acquired from the owner's father in 2003 and 2004. The owner testified that his grandfather and father had used the wooded acreage for timber production for several decades with the most recent timber harvest being 85 trees in 1998 with a value of \$8,000. The owners detailed extensive activity to maintain access to the trees, to cull timber, and

to girdle undesirable trees. They met with a state forester and received a forestry plan specifically for the property. The forestry plan cited a purpose of "commercial production of the timber resources." The County raised several arguments, including an argument that the fact that the last timber harvest was in 1998 with an expected 19 year gap between harvests should result in CAUV disqualification, that the noncommercial timber rules should be applied, and that the owner should have been required to prove agricultural use for the prior three years as well. However, The Court did not buy the County's arguments and decided that the use of the woodland was for commercial timber production (commercial timber production is defined in the CAUV statute as a qualifying agricultural use) and found that the property qualifies for CAUV.



Tax News: Required Minimum Retirement Distributions Suspended for 2009

The 2008 Recovery Act temporarily suspends the penalty for failure to take a required minimum distribution from a retirement plan. The suspension means that retirees and IRA owners may choose to forego all or part of their required distribution for 2009 without penalty, creating an opportunity to reduce their taxable income for 2009. In addition, the suspension helps retirees and IRA owners avoid having to liquidate investments in a down market.

NO ESCAPE FROM THE GAME WARDEN

By Troy Callicot

If you believe hunting on private land provides protection from the game warden, a recent Ohio Supreme Court decision may cause you to reconsider that notion. In its recent decision of *Ohio v. Coburn*, the Ohio Supreme Court ruled a state wildlife officer may enter private land without good cause when he or she is acting in the normal, peaceful, and lawful pursuit of the enforcement of game and fish laws. The circumstances of the case involved a county game warden who observed defendants hunting for mourning doves on private property. The land belonged to a member of the hunting party. The warden approached the group to check their hunting licenses and to determine if they were complying with the applicable bag limit.

During the encounter, the warden noticed seed scattered around on the ground and suspected the group was baiting migratory birds in violation of Ohio law. The officer left the property and returned a short time later with another warden to complete the investigation. Additional piles of seed were found on other parts of the property. The Defendants were charged with hunting migratory game birds over a baited area, a fourth degree misdemeanor. The case was initially dismissed at the trial court level because the officer did not enter onto the private land for the purpose of investigating the matter for which the charges were filed. Specifically, the officer entered the property to check hunting licenses and bag

limits, not to investigate possible baiting. As such, the trial court ruled the warden did not have good cause and dismissed the charges.

The court of appeals reversed the decision and ruled that, once the warden witnessed defendants engaged in hunting, he had authority to enter private land in execution of his duties and good cause was no longer an issue. Defendants appealed and the Ohio Supreme Court upheld the appellate decision stating that, as long as the warden was acting in accordance with his law enforcement powers, the good cause requirement was not a requirement under Ohio law. In this case, since the warden entered private property only after he observed the group hunting and wanted to check licensure status, he was exercising his law enforcement powers and did not need good cause in respect to the baiting citation.

... as long as a game warden is executing his or her duties, they do not need good cause to enter private property.

The important aspect of the decision is that, as long as a game warden is executing his or her duties, he or she does not need good cause to enter private property. Since the warden was checking hunting licenses, he was executing those duties in accordance with Ohio law. Any other violations the warden came across would still be citable offenses and good cause was not an issue. It is an important decision to keep in mind while you are out hunting this fall on private property in Ohio. Private property or good cause are no longer barriers to the local game warden.



Commercial Activity Tax (CAT)

The Ohio Department of Taxation is offering a voluntary disclosure program for taxpayers to come forward and disclose outstanding CAT liabilities and thereby avoid penalties for failure to file and pay. For more information, please see :

http://www.tax.ohio.gov/divisions/communications/information_releases/CAT/cat200801.stm



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BECE

Our law firm provides a wide range of individual and business-related legal services, including a special emphasis on serving the needs of agricultural producers and agribusiness clients. Areas of emphasis include agricultural legal issues, business and estate planning, agricultural finance, commodities law, commercial transactions, environmental law, estate/probate administration, federal farm program issues, government regulation, land use planning and valuation, real estate, like-kind exchanges, income and estate tax law, litigation and dispute resolution.

We are located in Dublin, Ohio, a northwest suburb of Columbus.

See us on the web at:

<http://www.ohiocounsel.com> or www.farmlawyers.com

2009 SPEAKING ENGAGEMENTS

Over the past few months, attorney David Barrett traveled to speak at several Agriculture and Grain conferences in Florida, Louisiana, Michigan, Montana, Texas, North Dakota and South Dakota. Some of these presentations can be accessed from our firm's website.

On August 12, 2009 David C. Barrett will give a presentation on *"Managing Contract & Counterparty Risk"* at the Ohio Agri-Business Association Grain Day at the Findlay Inn, Findlay, Ohio.

Attorney Russell Cunningham will be speaking at The Ohio State University Retirees Association, *Coping With Change XII Conference* on September 24, 2009. He is giving a presentation entitled *"Trusts - as a Vehicle in Estate Planning"*. Russell is an Ohio State Bar Association Board Certified Specialist in Estate Planning, Trust and Probate Law.

