



GARRETT HEMANN ROBERTSON P.C.

IN THIS ISSUE:

- New Requirements for Contractors
- Proposed Modifications to Family Abuse Prevention Act
- How the FDIC Insures Accounts

Business Counsel

OCTOBER 2008

OREGON INDEPENDENT CONTRACTORS: NEW REQUIREMENTS TO MATCH MODERN BUSINESS PRACTICES

by Anthony R. Kreitzberg, Attorney, and William Weidner, Law Clerk

The new independent contractor requirements as of 2007 under ORS 670.600 incorporate the federal independent rules that require an independent contractor to be “free from the direction and control” of the employer (ORS 670.600 (2) (a)), with a more rigorous test showing that the contractor is “engaged in an independently established business” (ORS 670.600(2)(b)). The purpose for the changes was to bring the requirements up to date to more accurately reflect the realities of modern business such as working out of a home office or using cellular phones for primary communication.*

Under the previous statute, the contractor had to meet four out of six factors to qualify being engaged in an independently established business. These factors, such as acquiring tools, business telephone numbers, yellow pages advertising, business cards and labor forces, focused heavily on traditional brick and mortar type businesses.

In addition to a person being “free from the direction and control” of the manager, the new version of the statute requires that an independent contractor is “engaged in an independently established business” by meeting three out of five following factors that accommodate more modern methods of doing business (see ORS 670.600(3)):

continued inside...

OREGON STATE BAR FAMILY LAW COMMITTEE PROPOSES MODIFICATION TO THE FAMILY ABUSE PREVENTION ACT

By Julia Smith, Attorney, and Shannon Hall, Law Clerk

The treatment of domestic violence in the courts has dramatically changed in the past century. Oregon enacted the Oregon Family Abuse Prevention Act in 1977 in an effort to put protections in place for victims, and the federal government also took action in the 1990s with the passage of the Brady Bill and the Violence Against Women Act. The country has united to raise awareness and promote prevention against domestic violence.

Victims of domestic violence can obtain a Family Abuse Prevention Act (“Act”) restraining order against their abuser if they:

1. Have been abused within 180 days prior to filing a petition for the restraining order;
2. Are in imminent danger of further abuse from the abuser; and
3. Represent a credible threat to the victim’s physical safety or the safety of the victim’s children.

The restraining order will set out in detail the acceptable methods of contact the parties can have with each other, and can also provide for temporary parenting time (visitation) and custody of children involved if it is in the children’s best interest. Unless victims request that the restraining order be extended, dismissed or modified, it will remain in effect for one year.

Although the Act shows recognition for the need to provide domestic violence victims with statutory protection, Oregon’s public policy still requires that children have frequent and continuing contact of both parents, and also requires that the parents consider the best interests of their children in developing a parenting plan.

In order to best serve the children, the parties need to be able to communicate with each other through services such as mediation and counseling, and to interact with their children at extracurricular activities without the consequences of violating the restraining order.



The OSB has also identified other potential situations where a restraining order may need to be modified:

- To permit mediation in a parallel domestic relations proceeding
- To permit change of a party's contact information
- To permit attendance at children's school or church events
- To permit communication between the parties regarding children by email
- To permit counseling with a pastor
- To permit services of process
- To permit drop off and pick up of children pursuant to a parenting plan that did not exist at the time of the restraining order

Thus, a problem arises: under the current version of the Act, a party can only request changes to the custody and parenting time provisions of the restraining order—not the provisions regarding contact between the parties.

Some courts have overlooked the lack of statutory authority and allowed these types of modifications, but not all courts are willing to do so.

In an effort to protect victims while continuing meaningful parenting time, the Oregon State Bar Family Law Legislative Standing Committee ("OSB") has proposed changes to the Act for the 2009 legislative session. If the OSB proposal is accepted, the Act will allow changes to restraining orders for good cause shown. This means that if the party to a restraining order has a legitimate reason for wanting to change the restraining order, the courts may make the change.

Domestic violence is a serious issue. If you have any questions regarding the proposed legislation or other family law matters, please consult with the experienced family law attorneys at Garrett Hemann Robertson P.C.

NEW REQUIREMENTS FOR CONTRACTORS, continued

1. **Business Location.** Not all businesses activities need to take place at that location, and if the location is in a person's residence, it must be in some portion of the residence that is used primarily, although not exclusively, for business purposes.
2. **Risk of Loss.** The person bears the risk of loss related to the business or the provision of services as shown by the presence of such factors as the person entering into the fixed price contracts, the person is required to correct defective work, the person warrants the services provided, or the person negotiates indemnification agreements or purchases liability insurance.
3. **Multiple Customers.** The person provides contracted services for two or more different persons within a twelve month period, or the person engages in marketing efforts calculated to obtain new contracts.
4. **Significant Investment.** The person purchases tools or equipment, pays for the premises or facilities, pays for the licenses, certificates or specialized training.
5. **Authority to Hire and Fire.** The person has the authority to either hire or fire people who assist in providing the services of the business.

ARE YOUR BANK ACCOUNTS ADEQUATELY INSURED?

by J. Wesley Raborn, Attorney

With recent bank failures, many individuals, corporations, and partnerships have wondered how much of their money the FDIC insures.

Most people know the general rule that has been longstanding, which is that the FDIC insures up to \$100,000 for accounts opened with the same bank, including all branches of the same bank. However, effective October 3, 2008, Congress temporarily increased in the FDIC limit from \$100,000 to \$250,000 per account through December 31, 2009.

Generally, the FDIC will add all accounts at the same bank together and insure up to the FDIC limit. However, the FDIC insures accounts opened at different federally insured banks separately. Also, if two separately insured banks are owned by the same holding company, then each bank will be treated separately for purposes of the FDIC limit.

What you may not know is that there are special regulations that apply to different categories of accounts. For purposes of this article, we will focus on business accounts, joint accounts, and trust accounts.

Business Accounts

Deposits made by a corporation or partnership are added together and insured up to \$100,000 [\$250,000 from October 3, 2008-December 31, 2009]. This includes units or divisions of a corporation. However, the FDIC insures all individually owned accounts separately from business accounts. For example, if Allen and Sue form a partnership and open a partnership account with Bank A and Allen also has an individual account with Bank A, the FDIC will insure any funds in Allen's individual account separately from Allen and Sue's partnership

Business Counsel

HOW THE FDIC INSURES ACCOUNTS, continued

account. However, deposits owned by a sole proprietorship are insured as the single ownership deposits of the person who owns the business and therefore an account in your individual name and your sole proprietorship will be added to together into the FDIC limit.

Joint Accounts

The FDIC insures all qualified joint accounts separately from individually owned accounts up to the FDIC limit of \$100,000 [\$250,000 from October 3, 2008-December 31, 2009]. Joint accounts must be in individuals' names, as legal entities such as corporations, trusts, estates, or partnerships are not eligible for joint account coverage.

If both named persons on a joint account have an equal right to the money, then each joint owner's shares of all joint accounts at the same insured bank are added together for the FDIC limit. However, if you have a joint savings account and a joint checking account with the same co-owner at the same FDIC insured bank, each co-owner's shares of the two accounts are added together and are presumably insured up to \$100,000 limit [\$250,000 from October 3, 2008-December 31, 2009] providing up to \$200,000 [\$500,000 from October 3, 2008-December 31, 2009] in coverage for the couple's joint accounts. Unless it's stated otherwise in the bank's records, the FDIC has the right to presume equal ownership on joint accounts for purposes of determining coverage.

If you have an individual account and a joint account at the same bank, the FDIC will insure each account for up to \$100,000 [\$250,000 from October 3, 2008-December 31, 2009]. Additionally, if you are a co-owner of multiple joint accounts at the same bank, the FDIC will add your interest in each account together and insure up to \$100,000 [\$250,000 from October 3, 2008-December 31, 2009].

Client Trust Accounts

A client trust account is an account used, often by law firms, escrow agents or depository institutions, to hold money on behalf of a client. When a corporation or partnership deposits funds into a client trust account, the FDIC will look at that situation as if the client made a deposit into their individual account. This means that the FDIC will not count the funds against the corporation's \$100,000 limit [\$250,000 from October 3, 2008-December 31, 2009], subject to two requirements: (1) the funds must be traceable to the individual for whom the corporation is holding the funds; and (2) the corporation must disclose the relationship in the deposit records. However, be aware that if you are an individual with funds being held in a trust account and also have an individual account at the same bank, the FDIC will add the funds in the trust account to your individual account and insure up to \$100,000 [\$250,000 from October 3, 2008-December 31, 2009].

Special Rules for Retirement Accounts

Retirement accounts (such as IRAs, SEPs, 401k and deferred compensation plans) and employee benefit plans are insured up to \$250,000. For certain multi-beneficiary plans, such as a 401k, the \$250,000 limit applies to each beneficiary. FDIC coverage does not apply to most stocks, bonds, mutual fund shares, life insurance, or annuities offered by your bank. The \$250,000 cap on retirement accounts was not increased by the October 3, 2008 Congressional bailout.

Practical Solution

If you are an individual or own a business that has over \$100,000 [\$250,000 from October 3, 2008-December 31, 2009] in one federally insured bank, then you should consider ways to maximize your FDIC insurance coverage. For example, you could open accounts at different banks and maintain each account at \$100,000 [\$250,000 from October 3, 2008-December 31, 2009]. You could also open an individual account, multiple joint accounts with your spouse, in addition to a business account and maintain each account at \$100,000 [\$250,000 from October 3, 2008-December 31, 2009]. If you know you have \$100,000 [\$250,000 from October 3, 2008-December 31, 2009] in a client trust account being held for you at one bank, you may want to consider maintaining your personal accounts in a separate federally insured bank. Further, if you hire an agent to set up a CD, make sure you know what bank the agent plans to use. If you already have \$100,000 [\$250,000 from October 3, 2008-December 31, 2009] in an account at one bank, you should consider asking your agent to set up the CD at a different federally insured bank.

This article is only a brief summary of some accounts governed by FDIC regulations. Special rules apply to the various other types of accounts that can be opened with a bank, such as irrevocable trust, retirement, employee benefit plan, annuity and public entity accounts. If you have questions or would like to discuss how to structure your accounts to maximize FDIC insurance coverage, please contact us at (503) 581-1501.

ANNOUNCING GHR'S BUSINESS COUNSEL E-NEWSLETTER

We are pleased to announce that our *Business Counsel* newsletter is available in an electronic PDF format. If you would like to receive notification of GHR's legal updates and insights via email, please visit our website at www.ghrlawyers.com, click on the "Subscribe" link at the bottom of the page, and provide your name and email address. Your information will be used solely for the distribution of the *Business Counsel* newsletter.



GARRETT HEMANN ROBERTSON P.C.

P. O. Box 749
Salem, Oregon 97308



NOTEWORTHY

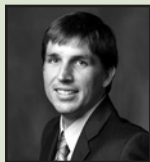
The shareholders and associates of Garrett Hemann Robertson P.C. are pleased to welcome these attorneys to our firm:



Vivian M. Lee
Business & Tax Law



Julia C. Smith
Family & Divorce Law



Richard Montgomery
*Civil Litigation, Professional
Malpractice Defense*

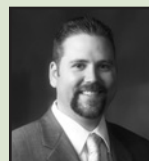


John C. Young
*Worker's Compensation
Defense, Civil Litigation*



Paul A. Dakopolos
School Law

Ryan P. Hunt has been selected as an Oregon Super Lawyers "Rising Star" for 2008. He joined the firm as an associate in 2007.



Ryan P. Hunt
*Construction Law, Real Estate
Transactions & Development*