

IN BRIEF

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MALPRACTICE AVOIDANCE NEWSLETTER FOR OREGON LAWYERS

TIPS, TRAPS, & RESOURCES

UPDATED PLF PRACTICE AIDS: The PLF has recently revised all its practice aids to comply with legislative changes made by the 2005 Oregon Legislature. The PLF maintains 230 practice aids in the following categories: Adoption; Bankruptcy; Business; Client Relations; Closing Your Law Office; Conflicts of Interest; Construction Liens; Criminal; Departing a Firm; Disaster Recovery; Disclosure of Potential Malpractice; Docketing & Calendaring; Domestic Relations; Engagement, Disengagement, Nonengagement Letters; Entity Formation; File Management; Financial Management; Guardianships and Conservatorships; Litigation; Office Manuals; Office Systems Audit; Opening or Moving a Law Office; Partnership and Office Sharing; Probate and Estate Planning; Real Property; Staff; and Workers' Compensation. To access any of the practice aids, go to www.osbplf.org and select Practice Aids and Forms under Loss Prevention. If you do not have Internet access, call Danae Weber at the PLF at 503-639-6911 or 800-452-1639.

REAL ESTATE AND TAX LAW – GLB PRIVACY NOTICE DOES NOT APPLY TO LAWYERS:

On December 6, 2005, the Court of Appeals for the District of Columbia Circuit held that the Gramm-Leach-Bliley (GLB) privacy law directed at financial institutions does not apply to the legal profession. The opinion is available on the ABA's Web site at www.abanet.org/poladv/glbfactsheet.html. Scroll to the bottom of the page and click on the link to the decision in the *ABA v. FTC* case. This ruling means that lawyers are not required to send the privacy notices required by the Act. For background information, go to www.osbplf.org, select *In Brief* newsletter, then October 2004, then Tips, Traps, and Resources.

FEDERAL TAX – CIRCULAR 230: You may not consider yourself a "tax lawyer," but whether you give tax advice daily, or only once a year, recent revisions to IRS Circular 230 will change the way you give federal tax advice. If you are giving oral or written federal tax advice (whether income, gift, or estate), Circular 230 now contains specific rules about what your advice must and must not contain. As a general rule, the more "risky" the promised tax benefits are to your client, the more Circular 230 controls the substance and form of your tax advice. The revised Circular 230 became effective June 21, 2005, and can be found at www.irs.gov/pub/irs-pdf/pcir230.pdf.

DOMESTIC RELATIONS LAW AND THE NEW BANKRUPTCY ACT: Visit www.osbplf.org and download "What Every Family Law Practitioner Should Know About the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," by Hon. Elizabeth L. Perris and Juliet M. Kaestner. From the home page, select News, then the link to the article. If you do not have Internet access and would like a copy, call Danae Weber at the PLF at 503-639-6911 or 800-452-1639.

BANKRUPTCY LAW: Visit www.osbplf.org and download "What Bankruptcy Attor-

DISCLAIMER

THIS NEWSLETTER INCLUDES CLAIM PREVENTION TECHNIQUES THAT ARE DESIGNED TO MINIMIZE THE LIKELIHOOD OF BEING SUED FOR LEGAL MALPRACTICE. THE MATERIAL PRESENTED DOES NOT ESTABLISH, REPORT, OR CREATE THE STANDARD OF CARE FOR ATTORNEYS. THE ARTICLES DO NOT REPRESENT A COMPLETE ANALYSIS OF THE TOPICS PRESENTED, AND READERS SHOULD CONDUCT THEIR OWN APPROPRIATE LEGAL RESEARCH.

neys Need to Know About the New Bankruptcy Rules & Forms,” by Teresa H. Pearson; “Creditor’s Counsel Can’t Ignore the Bankruptcy Bill,” by Brandy A. Sargent; and the article on domestic relations law and the new bankruptcy act, referred to in the tip above. Select News, then the links to the articles. You can also find a bankruptcy checklist by selecting Practice Aids and Forms under Loss Prevention on the home page, then Bankruptcy.

EMPLOYMENT LAW – FINAL USERRA REGS: The Department of Labor’s USERRA regulations are in final form and took effect January 18, 2006. USERRA stands for Uniformed Services Employment and Reemployment Rights Act. The new rules include individual liability for managers and supervisors who have control over hiring and firing. In addition, volunteers to the National Disaster Medical System coordinated by the Federal Emergency Management Agency (FEMA) are considered to be serving in the uniformed services for purposes of USERRA. You can find the regulations at 20 CFR Part 1002. They were posted in the Federal Register on December 19, 2005, and are posted at www.dol.gov (follow the link to USERRA Regulations).

LITIGATION: If you are suing a “construction design professional” (defined as an architect, registered architect, professional engineer, or professional land surveyor), be aware of ORS 31.300, which provides that a claim against a construction design professional can not be filed unless the claimant’s attorney certifies that the attorney has consulted a licensed construction design professional. The certification must also state that a licensed construction design professional (who is qualified to testify to the applicable standard of care) is available and willing to testify that the conduct of the construction design professional failed to meet the standard of professional care in the circumstances alleged, and that the conduct was a cause of the claimed damages, losses, or other harm. The certification must be filed with or made part of the original complaint, or the court must dismiss the case on the defendant’s motion. Although the ORS 31.300 limits its applicability to certain plaintiffs, two recent decisions from the Multnomah County Circuit Court interpreted this statute differently. In *Matson v. Oregon Arena Corporation, et al.*, Case No. 0412-12333, the court ruled that the statute applied to personal injury claimants and dismissed the case because the certification was not filed. In *Ater v. Tri-Met, et al.* Case No. 0502-01939, the court examined the legislative history, ruled that a personal injury claimant was not a “person for whose benefit the construction design professional performed services,” and held that the certification was not required. Until the law on this point is clarified, an attorney with a personal injury claim against a construction design professional can file the certification to avoid the possibility of a dismissed claim.

DISCOUNT ON WORDPERFECT SOFTWARE: Through a special arrangement between the PLF and Corel, Oregon lawyers can purchase two WordPerfect software products at a discounted price: WordPerfect Office X3 (which is replacing WordPerfect Office 12 Standard) and WordPerfect Office 12 Small Business Edition. This offer is available through two Corel resellers, SHI and Softmart. To order from SHI, go to www.shi.com/expresslogon.asp?username=bar_association&password=shi, or call 888-394-5181. To order from Softmart, go to www.softmart.com/bar, or call 800-545-1294.

OSB REFERRAL AND INFORMATION SERVICES: Let the OSB Referral and Information Services Department assist you in your practice. The *Lawyer to Lawyer* program is a free service that connects OSB members working in an unfamiliar practice area with experienced attorneys willing to offer informal advice at no charge. Get useful tips, strategies, and substantive advice. Call 503-620-0222 or 800-452-8260 (toll-free in Oregon), ext. 408. The *Lawyer Referral Service* (LRS) is an OSB service that refers clients to lawyers who have signed up for the referrals. LRS receives approximately 80,000 calls per year from Oregonians seeking legal help. Registration forms are available online at www.osbar.org/resources/lawyerservices.html, or call 503-620-0222 or 800-452-8260 (toll-free in Oregon), ext. 408.

LISTSERV ETIQUETTE: When posting a question or comment on a Listserv that involves a contested case or confidential matter, be careful not to reveal case-specific information. Even if you omit the names of the parties and opposing counsel, other attorneys who practice in your area of law may be able to decipher which case is involved and who posted the inquiry. If opposing counsel is reading the Listserv, he or

she may be able to figure out your strategy or the weak link in your case from the nature of your question. When posting information or comments, never use client names. A safe practice is to assume that your Listserv posting could appear on the news or in the newspaper. If the information you post isn't something you want broadly and publicly announced – don't post it on the Listserv.

LODGING TAX ON VACATION RENTALS: The 2005 Oregon Legislature passed HB 2197, which modified the definition of “transient lodging” and expanded the list of who must pay the quarterly state lodging tax. Effective January 1, 2006, if you own a vacation home that you rent out for 30 days or more in a calendar year, you must register with the Oregon Department of Revenue. Registration forms and instructions will be available online in March at www.oregon.gov/DOR/BUS/lodging.shtml. You must also collect the lodging tax – which is 1% of gross lodging sales – from your customers when they pay you the vacation rental fee. Lodgers who spend at least 30 consecutive days at the same facility are exempt from the tax.

GUARDIANSHIP AND CONSERVATORSHIP FORMS: The Oregon Law Institute (OLI) has updated its guardianship and conservatorship forms and procedures. You can download an order form from the OLI's Web site. Go to www.lclark.edu/org/oli and click on Product Catalog. Or call the OLI at 503-768-6580 or 800-222-8213.

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