



### USA, Iowa

Prepared by Lex Mundi member firm,  
The Davis Brown Law Firm

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DOING  
**BUSINESS** IN  
**IOWA**

2014



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A GUIDE TO  
DOING BUSINESS IN IOWA  
2014

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This Guide is not intended as legal advice. The discussion under each heading is intended to provide only general guidance and is not an exhaustive description of all provisions of federal, state and local law with which a business operating in Iowa might be required to comply. The laws described in this Guide are subject to interpretation by courts, may be affected or preempted by federal statutes or regulations and are subject to amendment or repeal. Particular individuals, businesses or industries may be subject to legal requirements not referred to in this Guide.

This information is intended generally to describe certain laws of the State of Iowa in effect on December 31, 2013. It does **not** describe or relate to: (i) federal law, including the laws of the United States of America or any other nation; (ii) the laws of any other state; or (iii) any modification to Iowa law occurring after December 31, 2013.

For these reasons, you should not rely solely upon this Guide when planning the details of a specific transaction or undertaking. The details of any proposed transaction or business project in Iowa, or otherwise involving Iowa law, should be reviewed thoroughly by qualified Iowa counsel.

Internal Revenue Service Required Circular 230 Disclosure. Any statements regarding tax matters made herein cannot be relied upon by any person to avoid tax penalties and are not intended to be used or referred to in any marketing or promotional materials.

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## I. ABOUT IOWA

### A. Population and Geography

Centrally located in the United States, the state of Iowa is characterized by rich agricultural land, with wetlands, woodlands, and prairie throughout. The state shares its border with six other states—including Minnesota to the north, Wisconsin to the northeast, Illinois to the east, Missouri to the south, Nebraska to the west and South Dakota to the northwest.

Bordered by the Mississippi River on the east and the Missouri River on the west, plus access to three main interstate highways (I-80, I-35 and I-29), Iowa has a diversified and robust economy and provides efficient and cost-effective transportation choices.

Iowa's population of approximately three million residents includes a well-educated, highly skilled, motivated and productive workforce. The state consistently ranks as one of the top ten states with the lowest unemployment rates in the nation.

### B. Business Climate

Iowa is the perfect place to expand, relocate or start a business, consistently offering the lowest cost of doing business in the United States.<sup>1</sup> A few of the many advantages of doing in business in Iowa include a central location, convenient transportation, a highly educated and productive workforce, significant government incentive programs, advanced infrastructure and abundant raw materials.

According to the CNBC report<sup>2</sup>, as archived on its website, Iowa's #1 ranking as the state with the lowest cost of doing business was determined by looking at the tax burden, including individual income and property taxes, business taxes and gasoline taxes, utility costs, wages, state workers' compensation insurance, and rental costs for office and industrial space.

More specifically, Iowa's economic climate includes some of the nation's lowest costs for industrial electricity, construction costs and lease rates. In addition, corporate income tax may be reduced or even eliminated by taking advantage of various state tax credit programs. A few of the numerous programs available in Iowa include: Enterprise Zones tax relief, New Jobs Tax Credits, Research and Development Tax Credits, Tax Abatement and Tax Increment Financing.

For any business to be successful, it must have access to a dependable, educated and productive workforce. Iowans are among the most educated in the nation, recently ranking number one in high school graduation rates at nearly 91 percent of the population and consistently ranking number one in the United States for SAT scores.<sup>3</sup> Iowa is also home to three state universities, two of which are rated in the top 50 in the United States.<sup>4</sup> Our successful education systems combined with the Midwestern work ethic lends itself to a thriving and able workforce.

The strength of Iowa's workforce can also be attributed to the livability of the state. Iowa was recently ranked the fifth most livable state, a rating determined by each state's rankings in 44 categories including household income, homeownership, job growth, and educational attainment.<sup>5</sup> The 2012 United States Peace Index named Iowa the 10th safest state in the nation<sup>6</sup> with a state violent crime rate 34 percent lower than the national violent crime rate average.<sup>7</sup> Additionally, the typical Iowan has one of the shortest commutes to work in the nation, around eighteen minutes, which leaves plenty of time to enjoy Iowa's many nature preserves, bicycle trails, lakes, fishing and other recreational activities.<sup>8</sup>

1 [http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/business\\_advantages.pdf](http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/business_advantages.pdf)

2 America's Top States for Business, CNBC, 2011, [http://www.cnbc.com/id/41665883/America039s\\_Top\\_States\\_for\\_Business\\_2011](http://www.cnbc.com/id/41665883/America039s_Top_States_for_Business_2011).

3 <http://www.governing.com/gov-data/high-school-graduation-rates-by-state.html>

4 <http://colleges.usnews.rankingsandreviews.com/best-colleges/rankings/national-universities/top-public>

5 <http://www.infoplease.com/us/states/most-livable-states.html>

6 <http://www.infoplease.com/us/states/most-dangerous-states.html>

7 <http://www.cityrating.com/crime-statistics/iowa/#.USJxWdVOrM>

8 [http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_11\\_5YR\\_DP03](http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_5YR_DP03)

In addition to the general incentives and benefits available to all businesses and industries in Iowa, the State has recently targeted three industries for aggressive development, including: biosciences, advanced manufacturing, and information solutions/financial services. Each of these industries benefits from tremendous government incentives, commitment from Iowa's state-of-the-art research facilities and a variety of State and private development funds.

1. Agribusiness. Each year, agriculture (and its related industries) contributes \$72 billion into Iowa's economy, creating 1 out of every 6 jobs while helping sustain the most affordable and diverse food supply in history. Iowa ranks first in the nation for production of corn, soybeans, pork and eggs; producing more than \$650 billion worth of food products annually. That's one-tenth of the nation's entire food supply.<sup>9</sup> Iowa also leads the country in agricultural innovation producing more ethanol per year than any other state, accounting for 25 percent of the total United States ethanol production.<sup>10</sup>
2. Advanced Manufacturing. Home to some 4,000 manufacturers, operating more than 6,400 factories and employing 200,000 workers, the industry generates more than one-sixth of Iowa's total gross domestic product (GDP). The nearly \$28 billion advanced manufacturing industry is the state's largest single business sector. Advanced manufacturing businesses can expect a high level of support in Iowa including no property tax on manufacturing machinery, equipment or computers. The Iowa Economic Development Authority works extensively with the private sector to conduct collaborative research, share technologies and best practices, and promote the use of advanced technologies, engineering and processes.<sup>11</sup>
3. Biosciences. With roughly 525 bioscience entities and nearly seven percent of the industry's total U.S. workforce, Iowa biosciences are booming. The research from Iowa's two nationally ranked universities encompasses the full scope of plant, animal and human biosciences, and fuels widespread innovation for Iowa companies. These universities have invested nearly 68 percent of R&D funding into life sciences and biotech research.

Battelle, a world R&D and innovation leader, recently stated "No other location in the country has such a complete suite of capabilities for bioscience development – a suite of capabilities spanning basic plant improvements through to the production of full-scaled biomass products."<sup>12</sup>

4. Information Solutions and Financial Services. Iowa has worked hard to become a state that cultivates success for businesses in the financial services industry. Home to Principal Financial, Wells Fargo Mortgage, John Deere Financial and nearly 6,200 other financial and insurance companies, the financial services industry accounts for nearly 6.8 percent of the state's jobs and 12.6 percent of the total Gross Domestic Product (GDP). Capitalizing on Iowa's one percent insurance premium tax, one of the lowest in the nation, 80 insurance companies now call Iowa home. This has also allowed Iowa's insurance industry to grow by 11 percent during the past 15 years.

Iowa's financial services growth has resulted in the development of numerous supporting industries, including the Information Technology industry, which employs more than 76,000 workers and accounts for \$10.6 billion of the state's GDP. Three communities in Iowa were recently included in the Top 10 cities for data center locations.<sup>13</sup>

9 [http://www.iowafarmbureau.com/public/163/ag\\_in\\_your\\_life/overview](http://www.iowafarmbureau.com/public/163/ag_in_your_life/overview)

10 <http://www.iowaeconomicdevelopment.com/WhyIowa/WhyIowaAgronomicEcosystem>

11 [http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/IEDA\\_AdvMfg\\_102012\\_Tabloid.pdf](http://www.iowaeconomicdevelopment.com/userdocs/documents/ieda/IEDA_AdvMfg_102012_Tabloid.pdf)

12 <http://www.iowaeconomicdevelopment.com/Industries/Biosciences>

13 <http://www.iowaeconomicdevelopment.com/WhyIowa/WhyIowaClusters>

## II. BUSINESS ENTITIES

### A. Corporations Generally—Regulation

Business corporations are governed by the Iowa Business Corporation Act. The Iowa Secretary of State is the official primarily responsible for the chartering of corporations and administration of corporate papers. The Iowa Commerce Department regulates certain kinds of businesses, including vendors of alcoholic beverages, public utilities, insurance companies and banks.

Iowa's Secretary of State and Department of Commerce may be contacted as follows:

Iowa Secretary of State\*  
Lucas Building, First Floor  
321 E. 12th Street  
Des Moines, IA 50319  
(515) 281-5204  
(515) 242-5953 (fax)  
sos@sos.iowa.gov  
<http://sos.iowa.gov>

Iowa Department of Commerce\*  
Internet site: <http://commerce.iowa.gov/>

- Licensing for retail and wholesale sales of alcoholic liquor, wine and beer:\*  
1-866-469-2223 or (515) 281-7400; <http://www.iowaabd.com/>
- Utilities Division:\* 1-877-565-4450 or (515) 725-7321; <http://iub.iowa.gov/>
- Insurance Division:\* (515) 281-5705; <http://www.iid.state.ia.us/>
  - Includes Iowa Securities Bureau:\* <http://www.iid.state.ia.us/securities>
- Professional Licensing:\* (515) 281-7393; <http://www.state.ia.us/government/com/prof/>
- Banking Division:\* (515) 281-4014; <http://www.idob.state.ia.us/>

### B. Domestic Corporations

The Iowa Business Corporation Act found in Chapter 490 of the Iowa Code is modeled after the Model Business Corporation Act. Articles of Incorporation for Iowa business corporations are filed with the Iowa Secretary of State. Unless a delayed effective date or time is specified in the Articles of Incorporation, the corporate existence begins upon filing. An Iowa domestic corporation must continuously maintain a registered office address and registered agent on the records of the Iowa Secretary of State. On even-numbered years, business corporations are required to file a biennial report with the Iowa Secretary of State.

### C. Partnerships

Iowa has adopted the Uniform Partnership Act (1997), which can be found in Chapter 486A of the Iowa Code. The Iowa Secretary of State is the state official empowered to receive and file statements relating to partnership authority and registered agents and offices. Partnerships using a trade name (i.e., not operating under the surnames of the partners) must file a certificate of assumed name with the county recorder of any county where the partnership will do business. Partnerships that elect to be a limited liability partnership must file a "statement of qualification" with the Secretary of State. Status of a partnership as a limited liability partnership is effective on the date of filing, or on a later date specified in the statement.

### D. Limited Partnerships

Iowa has adopted the Uniform Limited Partnership Act (2001). The Iowa act can be found in Chapter 488 of the Iowa Code. A certificate of limited partnership must be filed with the Secretary of State. A limited partnership that elects to be a limited liability limited partnership must expressly state that it is a limited liability limited partnership in its certificate of limited

partnership. On odd-numbered years, limited partnerships are required to file a biennial report with the Iowa Secretary of State.

#### E. Sole Proprietorships

Iowa permits the operation of sole proprietorships (the ownership and operation of a business by a single individual). Like partnerships, sole proprietors that do not operate under the proprietor's true name must file a verified statement of assumed name with the county recorder where the proprietorship does business.

#### F. Limited Liability Companies

Iowa has adopted the Revised Uniform Limited Liability Company Act ("LLC Act"). As of January 1, 2011, the LLC Act, found in Chapter 489 of the Iowa Code, governs the formation and operation of all Iowa organized limited liability companies. The LLC Act authorizes one or more persons to form a limited liability company by signing and delivering to the Secretary of State a certificate of organization. The person(s) filing the statement are referred to as organizers and are not required to be members of the limited liability company after formation has occurred.

The operating agreement, which can be written, oral or implied, governs the relations among the members and between the members and the company. Where there is no operating agreement, or the operating agreement is silent, the default provisions of the LLC Act will control. For this reason, it is important for parties to carefully consider their business arrangement and enter into a written operating agreement.

A limited liability company may be formed for any lawful purpose, regardless of whether for profit. Unless the operating agreement provides for management of a limited liability company by a manager or managers, management of a limited liability company is vested in its members.

Generally, a member of a limited liability company is personally liable under a judgment or for any debt, obligation, or liability of the limited liability company under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of a corporation.

A member does not have the authority to bind the LLC solely by reason of being a member unless otherwise provided in the operating agreement or in a statement of authority filed with the Secretary of State. Limitations on authority are not binding on third parties who lack actual knowledge, except with regards to real estate, in which case such restrictions are binding regardless of actual knowledge if recorded in the office for recording transfers of real property. Unless earlier canceled, an effective statement of authority is canceled by operation of law after five years. On odd-numbered years, limited liability companies are required to file a biennial report with the Iowa Secretary of State.

#### G. Nonprofit Corporations

Iowa has adopted the Revised Model Nonprofit Corporation Act. The Iowa act can be found in Chapter 504 of the Iowa Code. Articles of Incorporation for domestic nonprofit corporations are filed with the Iowa Secretary of State. Unless a delayed effective date or time is specified in the Articles of Incorporation, existence of the entity begins when the Articles of Incorporation are filed. An Iowa domestic nonprofit corporation must continuously maintain a registered office address and registered agent on the records of the Iowa Secretary of State. Nonprofit corporations are required to file a biennial report with the Iowa Secretary of State on odd-numbered years.

#### H. Cooperatives

Articles of Incorporation for domestic cooperatives are filed with the Iowa Secretary of State. Unless a delayed effective date or time is specified in the Articles of Incorporation, existence

of the entity begins when the Articles of Incorporation are filed. An Iowa cooperative must continuously maintain a registered office address and registered agent on the records of the Iowa Secretary of State, and must file a biennial report on odd-numbered years.

I. Foreign Entities Qualifying to Do Business in Iowa

1. Foreign Business and Nonprofit Corporations. Foreign profit and nonprofit corporations may qualify to transact business in Iowa by filing with the Iowa Secretary of State an Application for Certificate of Authority. The effective time and date of the qualification is the later of (i) the time of filing of the Application; or (ii) the time and date specified in the document, which is not later than ninety days after filing. An original Certificate of Existence or similar document, duly authenticated no earlier than ninety days prior to the date of the application, must accompany the application. A foreign corporation must continuously maintain a registered office address and registered agent on the records of the Iowa Secretary of State.
2. Foreign Limited Liability Companies. A foreign limited liability company may apply for a certificate of authority to transact business in Iowa by delivering an application to the secretary of state for filing stating: (a) The name of the company and, if the name does not comply with Iowa law, an alternate name; (b) The name of the jurisdiction under whose law the company is formed; (c) The street and mailing addresses of the company's principal office and, if required by the law of the jurisdiction under which the company is formed, the street and mailing addresses of the required office; and (d) The name and street and mailing addresses of the company's initial registered agent for service of process in this state. The foreign limited liability company must also deliver a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the company's publicly filed records in the other jurisdiction under whose law the company was formed.
3. Foreign Limited Partnerships. A foreign limited partnership may register to transact business in Iowa by filing with the Iowa Secretary of State an Application for Certificate of Authority, signed by a general partner. The effective time and date of the document is the later of (i) the filing of the statement of foreign qualification; or (ii) a date specified in the statement, which shall not be later than ninety days after filing. Upon dissociation or admission of a general partner, an amendment to the Certificate of Authority must be promptly filed. A foreign limited partnership must continuously maintain a registered office address and registered agent on the records of the Iowa Secretary of State.

J. Business Name Registration and Requirements

A business name must be distinguishable upon the records of the Iowa Secretary of State. If a particular name is unavailable for use in Iowa, a foreign entity may adopt a fictitious name for the purpose of transacting business in Iowa; domestic entities also may adopt and use fictitious names. Before a fictitious name may be used in Iowa, a copy of the resolution adopting the name (verified by the corporate secretary, a member of the limited liability company, or a general partner) must be filed with the Secretary of State.

1. Domestic Corporations. The name of an Iowa business corporation must contain the word "Corporation," "Incorporated," "Company" or "Limited," or the abbreviation "Corp.," "Inc.," "Co." or "Ltd."
2. Foreign Corporations. If the corporate name of a foreign corporation does not satisfy the requirements for a domestic corporation, it may add the word "Corporation," "Incorporated," "Company" or "Limited," or the abbreviation "Corp.," "Inc.," "Co." or "Ltd." to its corporate name for use in Iowa.

3. Nonprofit Corporations, Foreign and Domestic. The corporate name for a nonprofit corporation must be distinguishable upon the records of the Iowa Secretary of State and shall not contain language stating or implying it is organized for a purpose other than that permitted by its Articles of Incorporation.
4. Cooperatives. The name of a cooperative organized under Iowa law must contain the word "Cooperative," "Coop" or "Co-op," or the abbreviation "CP."
5. Domestic Limited Liability Companies. A limited liability company name must contain the words "Limited Company" or "Limited Liability Company" or the abbreviation "L.L.C.," "LLC," "L.C.," or "LC." The word "limited" may be abbreviated as "Ltd." and "company" may be abbreviated as "Co." The name should not contain the words "Corporation," "Incorporated," "Limited Partnership" or the abbreviations "Corp.," "Inc." or "L.P."
6. Foreign Limited Liability Companies. If the name of a foreign limited liability company does not satisfy the requirements for a domestic limited liability company, it may add the words "limited liability company" or "limited company" or the abbreviation "L.L.C.," "LLC," "L.C.," or "LC." "Limited" may be abbreviated as "Ltd.," and "company" may be abbreviated as "Co." to its name for use in Iowa.
7. Limited Partnerships, Foreign or Domestic. The name of a limited partnership may contain the name of any partner. The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and it must not contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLL.P." The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLL.P." or "L.L.L.P." and must not contain the abbreviation "L.P." or "LP".
8. Limited Liability Partnerships. The name of a limited liability partnership must end with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP" or "LLP."

### III. TRADE REGULATIONS

#### A. Federal Antitrust Law

The antitrust laws of the United States are primarily reflected in five federal statutes: the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act, and the Hart-Scott-Rodino Act.

1. The Sherman Antitrust Act of 1890. The Sherman Act is divided into two primary sections. Section 1 prohibits contracts, combinations, and conspiracies made in restraint of trade. Section 2 prohibits unilateral and combined conduct that monopolizes or attempts to monopolize trade. Under the Sherman Act, some restraints are "per se" unreasonable (such as price-fixing agreements between competitors) and others are subject to analysis under a "rule of reason" (such as some restrictions placed on a distributor by a manufacturer). Restraints subject to the "per se" rule are never permitted, while those governed by the "rule of reason" test will be evaluated on a case-by-case basis.

2. The Clayton Act of 1914. The Clayton Act prohibits certain specific anticompetitive activities. For example, the Act prohibits some corporate mergers, exclusive dealing contracts, and agreements under which one product is sold subject to the requirement that the purchaser also buy another product from the seller (known as a “tying” arrangement) where these acts substantially lessen competition.
3. The Robinson-Patman Act of 1936. The Robinson-Patman Act prohibits a seller from discriminating (or inducing others to discriminate) among competing purchasers in the price charged for commodities of like grade and quality, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly. While the Act focuses on price discrimination, it has been applied to other concerns such as discriminatory advertising allowances.
4. The Federal Trade Commission Act. The FTC Act establishes the Federal Trade Commission and declares unlawful “unfair methods of competition” and “unfair or deceptive acts or practices.”
5. The Hart-Scott-Rodino Antitrust Improvements Act of 1976. The Hart-Scott-Rodino Act requires that, under certain circumstances, a company proposing to merge with or acquire another company must give prior notice of the proposed acquisition to the Federal Trade Commission and the Justice Department. Failure to report may result in very substantial fines.

**Enforcement:** Private individuals and corporations may bring lawsuits under the Sherman Act, the Clayton Act and the Robinson-Patman Act. Remedies may include injunctive relief, treble damages and attorney fees. The government may enforce the Sherman Act through criminal prosecutions and civil suits. In addition, the government may enforce the Clayton Act and the Robinson-Patman Act through the FTC or the Justice Department. Only the government can enforce the Federal Trade Commission Act and the Hart-Scott-Rodino Act.

## B. Regulation of International Trade and Investment

Foreign investment in the U.S. and other international commercial activities involving U.S. entities are subject to a number of U.S. statutes and related regulations. The following discussion outlines some of the more important aspects of these laws which might be relevant to someone investing in or trading with entities located in the U.S.

1. Restrictions on Foreign Investment. Under a statutory provision commonly referred to as the Exon-Florio Amendment (Section 721 of Title VII of the Defense Production Act of 1950, as added by Section 5021 of the Omnibus Trade and Competitiveness Act of 1988), the President has broad authority to investigate and prohibit any merger, acquisition or takeover by or with foreign persons which could result in foreign control of persons engaged in interstate commerce if the President determines that such merger, acquisition or takeover constitutes a threat to the national security of the U.S. Congress has indicated that the term “national security” is to be interpreted broadly and that the application of the Exon-Florio Amendment should not be limited to any particular industry.

The statute sets out a timetable for investigations of transactions which can take up to 90 days to complete. The President or his designee has 30 days from the date of receipt of written notification of a proposed (or completed) transaction to decide whether to undertake a full-scale investigation of the transaction. The President has delegated the authority



to make investigations pursuant to the Exon-Florio Amendment to the Committee on Foreign Investment in the U.S. (“CFIUS”), an interagency committee made up of representatives of various executive branch agencies. Notifications of transactions are not mandatory and may be made by one or more parties to a transaction or by any CFIUS member agency.

If at the end of the initial 30-day period after notification of a transaction, CFIUS decides that a full-scale investigation is warranted, it then has an additional 45 days to complete an investigation and make a recommendation to the President with respect to the transaction. The President then has 15 days in which to decide whether there is credible evidence that leads the President to believe that the foreign interest exercising control might take action to impair the national security. If the President makes such a determination, Exon-Florio empowers the President to take any action which the President deems appropriate to suspend or prohibit the transaction, including requiring divestment by the foreign entity if the transaction has already been consummated.

U.S. law also places certain restrictions on acquisitions of businesses which require a facility security clearance in order to perform contracts involving classified information. Under Department of Defense regulations, foreign ownership may cause the Department to revoke a security clearance unless certain steps are taken to reduce the risk that a foreign owner will obtain access to classified information (DOD5220.22-R). Assuming that a foreign owner will be in a position to “effectively control or have a dominant influence over the business management of the U.S. firm,” the Department of Defense may require, as a condition to continuation of the security clearance, that the foreign owner establish a voting trust agreement, a proxy agreement or a “special security agreement” approved by the Department of Defense and designed to preclude the disclosure of classified information to the foreign owner or other foreign interests.

2. Reporting Requirements for Foreign Direct Investment. All foreign investments in a U.S. business enterprise which result in a foreign person owning a 10% or more voting interest (or the equivalent) in that enterprise are required to be reported to the Bureau of Economic Analysis, a part of the U.S. Department of Commerce. Pursuant to the International Investment and Trade in Services Survey Act (22 U.S.C. 3101-3108) and the regulations promulgated thereunder (15 C.F.R. 806), such reports must be made within 45 days after the investment transaction. Depending on the site of the entity involved, quarterly, annual and quintennial reports may be required thereafter.
3. The International Investment and Trade in Services Survey Act. The International Investment and Trade in Services Act (“IISA” or the “Act”), passed in 1976, authorizes the President to collect information and conduct surveys concerning the nature and amount of international investment in the U.S. The IISA’s primary function is to provide the federal government with the information necessary to formulate an informed national policy on foreign investments in the U.S. It is not intended to regulate or dissuade foreign investment but is merely a tool used to obtain the data necessary to analyze the impact of such investments on U.S. interests.

Under the IISA, international investments are divided into two classifications – direct investments and portfolio investments. Congress has delegated its authority to collect information on both types of international investments to the President. In turn, the President has

delegated the power to collect data on direct investments to the Bureau of Economic Analysis ("BEA"), a part of the Department of Commerce, and on portfolio investments to the Department of the Treasury.

A "foreign person" is any person who resides outside of the U.S. or is subject to the jurisdiction of a country other than the U.S. A "direct investment" is defined as the ownership or control, directly or indirectly, by one person of 10% or more of the voting interests in any incorporated U.S. business enterprise or an equivalent interest in an unincorporated business enterprise. Because the IISA further defines "business enterprise" to include any ownership in real estate, any foreign investor's direct or indirect ownership of U.S. real estate constitutes a "direct investment" and falls within the requirement that reports be filed with the BEA.

Unless an exemption applies, a report on Form BE-13 must be filed with the BEA within 45 days of the date on which a direct investment is made. The form collects certain financial and operating data about the investment, the identity of the acquiring entity and certain information about the ultimate beneficial owner. In addition, a Form BE-14 must be filed by any U.S. person assisting in a transaction which is reportable under Form BE-13. The purpose is, obviously, to ensure that those required to file a Form BE-13 do so.

4. The Agricultural Foreign Investment Disclosure Act of 1978. The Agricultural Foreign Investment Disclosure Act ("AFIDA" or the "Act") of 1978 requires all foreign individuals, corporations and other entities to report holdings, acquisitions and dispositions of U.S. agricultural land occurring on or after February 1, 1979. The Act contains no restrictions on foreign investment in U.S. agricultural land and is aimed only at gathering reliable data from reports filed with the Secretary of Agriculture to determine the nature and magnitude of this foreign investment. Unlike the reports filed under the International Investment Security Act of 1976, reports filed under AFIDA are not confidential but are available for public inspection.

For the purposes of the Act, a "foreign person" is (i) any individual who is not a citizen or national of the U.S. and who is not lawfully admitted to the U.S.; (ii) a corporation or other legal entity organized under the laws of a foreign country; and (iii) a corporation or other legal entity organized in the U.S. in which a foreign entity, either directly or indirectly, holds 5% or more of an interest. The definition of "agricultural land" is any land in the U.S. which is used for agricultural, forestry or timber production. AFIDA requires a foreign person to submit a report on Form ASCS-153 to the Secretary of Agriculture any time he holds, acquires or transfers any interest, other than a security interest, in agricultural land. The report requires rather detailed information concerning such matters as the identity and country of organization of the owning entity, the nature of the interest held, the details of a purchase or transfer and the agricultural purposes for which the foreign person intendsto use the land. In addition, the Secretary of Agriculture may require the identification of each foreign person holding more than a 5% interest in the ownership entity.

5. Export Controls. In general, U.S. export controls are more stringent and restrict a wider array of items than the export controls of most other countries. (See the Export Administration Act of 1979, as amended, 50 U.S.C. App. 2401-2420 and the regulations promulgated thereunder, 15 C.F.R. 730-799.) Except for exports to U.S. territories and possessions, and in most cases, Canada, all exports from the U.S. are subject to an

export "license." An export license is an authorization which allows the export of particular goods or technical information. Two basic types of licenses exist, general licenses and individual validated licenses.

There are many types of general licenses. These are authorizations which are generally available and for which it is not necessary to submit a formal application. They cover all exports which are not subject to a validated license requirement. Most exports can be made under one of these general classifications.

In contrast, individual validated licenses are required for those items for which the U.S. specifically controls the export for reasons of national security, foreign policy or short supply. If the export of a specific product to a specific destination is subject to an individual validated license requirement, it is necessary to apply for and obtain such a license from the Office of Export Administration, an office within the U.S. Department of Commerce, prior to the export. Certain commodities cannot be exported to any country without an individual validated license, while certain other commodities may require a validated license only for shipment to specified countries.

For purposes of the U.S. export control regulations, an export of technical information occurs when the information is disclosed to a foreign national even if such disclosure occurs in the U.S. Thus, if disclosure of information is subject to a validated license requirement, the disclosure may not be made to a foreign national without first obtaining the necessary validated license, whether or not the disclosure is to occur outside the U.S.

6. Foreign Trade Zones. Foreign trade zones are areas in or adjacent to ports of entry which are treated as outside the customs territory of the U.S. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to the customs laws of the U.S. until the goods are ready to be imported into the U.S. or exported. These foreign trade zones are isolated, enclosed and policed areas which contain facilities for the handling, storing, manufacturing, exhibiting and reshipment of merchandise. Foreign trade zones are created pursuant to the Foreign Trade Zones Act (19 U.S.C. 81a-u) and are operated as public utilities under the supervision of the Foreign Trade Zones Board. Under the Foreign Trade Zones Act, the Board is authorized to grant to public or private corporations the privilege of establishing a zone. Regulations covering the establishment and operation of foreign trade zones are issued by the Foreign Trade Zones Board, while U.S. Customs Service regulations cover the customs requirements applicable to the entry of goods into and the removal of goods from these zones.
7. Anti-dumping Law. The U.S. anti-dumping law (19 U.S.C. 1671-1677) provides that if a foreign manufacturer sells goods in the U.S. at less than fair value and such sales cause or threaten material injury to a U.S. industry, or materially retard the establishment of a U.S. industry, an additional duty in an amount equal to the "dumping margin" is to be imposed upon the imports of that product from the foreign country where such goods originated. Under the statute, sales are deemed to be made at less than fair value if they are sold at a price which is less than their "foreign market value" (which generally is equivalent to the amount charged for the goods in the home market). The dumping margin is equal to the amount by which the foreign market value exceeds the U.S. price.

The Secretary of Commerce is charged with determining whether

merchandise is being sold at less than fair value in the U.S. The International Trade Commission makes the determination of whether such sales cause or threaten material injury to a U.S. industry.

C. State Considerations

1. State Antitrust Law. Iowa's antitrust statute, known as the Iowa Competition Law, Iowa Code § 553.1 et seq, is to be construed to complement and be harmonized with federal laws that have the same or similar purpose. Like the Sherman Act, the Iowa Competition Law prohibits "a contact, combination, or conspiracy between two or more persons" that restrains or monopolizes trade or commerce in a relevant market. Iowa Code § 553.4. Iowa law also provides that a person "shall not attempt to establish, maintain or use a monopoly of trade or commerce in a relevant market for the purpose of excluding competition or of controlling, fixing or maintaining prices." Iowa Code § 553.5.
  - a. Exemptions. The Iowa Competition Law contains exemptions for labor organizations, certain activities of agricultural or horticultural organizations or associations, activities or arrangements that are expressly approved or regulated by governmental regulatory bodies or offices, and activities of governmental organizations within their home rule powers. Iowa Code § 553.6. The "state-action" exemption applies to private anticompetitive conduct if "(1) the conduct is undertaken pursuant to a clearly articulated and affirmatively expressed state policy and (2) the policy is actively supervised by the state itself." Mueller v. Wellmark, Inc., 818 N.W.2d 244 (Iowa 2012).
  - b. Enforcement. The Iowa Attorney General has the power to investigate possible violations of the statute and to enforce the statute by bringing an action in the name of the state. Iowa Code §§ 553.9, 12. There is also a private cause of action. Persons who are injured or threatened with injury may bring suit to prevent or restrain prohibited conduct, recover actual damages, recover costs and attorney fees, and recover exemplary damages in an amount not to exceed twice the actual damages if the prohibited conduct is willful or flagrant. Iowa Code § 553.12. The state may not recover exemplary damages or attorney fees. The state may, however, bring suit to assess a civil penalty for prohibited conduct in an amount that cannot exceed \$150,000. Criminal penalties are also available, but the state cannot bring an action for both a civil penalty and a criminal penalty. Iowa Code § 553.15. Conviction under this chapter will prevent an entity from bidding on government contracts for one year unless specifically allowed by the relevant agency after notice of the conviction. Iowa Code § 553.18. The statute of limitations for actions under this chapter is generally four years. Iowa Code § 553.16.
  - c. Price Discrimination. Iowa also has a statutory prohibition of unfair price discrimination "for the purpose of destroying the business of a competitor in any locality or creating a monopoly." See Iowa Code § 551.1 et seq. Discrimination is prohibited between different sections, localities, communities or cities, after taking into consideration differences in grade or quality or transportation costs. However, prices made to meet competition do not violate the statute. Violation of this statute constitutes a serious misdemeanor, and contracts that violate these sections are void. The Attorney General enforces this chapter.
  - d. Indirect Purchases. The Iowa Supreme Court recently allowed indirect purchaser suits. Comes v. Microsoft, 646 N.W.2d 440 (Iowa 2002). However, "derivative" claims under Iowa's Competition Law may still

be barred as too remote. Southard v. Visa U.S.A. Inc., 734 N.W.2d 192 (Iowa 2007).

2. Franchises. Iowa does not have a franchise registration statute, but the state has adopted two statutes that apply to franchise relationships. Franchise agreements executed (or renewed) after July 1, 2000 are governed by Iowa Code Section 537A.10 (the "2000 Act"). Franchise agreements executed (or renewed) prior to July 1, 2000 and after July 1, 1992 are governed by Iowa Code Chapter 523H (the "1992 Act"). Neither franchise statute is applicable to agreements executed (or renewed) prior to July 1, 1992.

Both acts are to be construed liberally to effectuate their purposes. Iowa courts have interpreted those purposes to be: providing greater protection for franchisees by leveling bargaining power between franchisees and franchisors, promoting good faith business practices and fair dealing in franchise relationships, and protecting franchisees from fraud actions and overreaching on the part of franchisors.

- a. Choice of Law/Forum. Both acts prohibit franchise agreement provisions restricting jurisdiction to locations outside Iowa with respect to claims otherwise arising under the franchise statute. They provide that actions arising under the statute may be brought where jurisdiction would not otherwise exist.
- b. Termination. The termination of a franchise by the franchisor prior to the expiration of the franchise term is unlawful, unless the termination is for good cause. "Good cause" is cause based upon a legitimate business reason, including failure of the franchisee to comply with any material lawful requirement of the franchise agreement. However, the franchisor's actions cannot be arbitrary or capricious.

Under both acts, the franchisor must provide the franchisee reasonable notice and opportunity to cure defaults under the franchise agreement prior to termination for good cause. Reasonable notice is defined as no less than thirty days and no more than ninety days. However, if the termination is due to nonpayment of money under the franchise, the notice period need not be greater than thirty days.

Under certain circumstances specified in the statutes, the franchisor may terminate the franchise without the need to provide notice and an opportunity to cure.

- c. Non-renewal. Iowa law limits the circumstances under which a franchisor may refuse to renew a franchise agreement. The franchisor must provide at least six months' notice of the franchisor's intent not to renew a franchise agreement. The franchisor may refuse to renew only when: (1) good cause exists, provided the refusal is not arbitrary or capricious; (2) the franchisor and franchisee agree not to renew the franchise agreement; or (3) the franchisor completely withdraws from directly or indirectly distributing its products or services in the geographic market served by the franchisee, if the franchisor agrees not to enforce any covenant not to compete. The franchisor may condition renewal upon the franchisee complying with the franchisor's then current requirements for franchises and execution of a new franchise agreement incorporating then current terms and fees for new franchisees.
- d. Remedies for Wrongful Non-renewal or Termination. Franchisees are granted a private right of action for damages caused by the franchisor's wrongful non-renewal or termination, including but not limited to

costs and reasonable attorneys' and experts' fees; other appropriate remedies, including injunctive and other equitable remedies, are also granted.

- e. Transfers. Both acts regulate the transfer of franchises by the franchisee. A franchisee may transfer a franchised business and the franchise to a transferee, provided that the transferee meets the reasonable qualifications of the franchisor for new franchisees. Reasonable qualifications are those for which a legitimate business purpose exists or the refusal is not arbitrary or capricious. Certain transfers, including some kinds of transfers to heirs, do not require the consent of the franchisor.
  - f. Encroachment. Franchisees are granted a cause of action for encroachment against a franchisor when the franchisor develops or grants the right to develop a new franchise, if the new franchise hurts the operations of the existing franchisee. Under the 2000 Act, the new franchise must not be unreasonably close to the existing franchisee. Both acts provide exceptions to the encroachment restrictions.
  - g. Duty of Good Faith. A duty of good faith is imposed upon the parties in performance and enforcement of the franchise agreement. "Good faith" is defined as "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." The 2000 Act also provides that the duty of good faith is "imposed in situations including, but not limited to, where the franchisor opens a new outlet or location that has an adverse impact on an existing franchisee." A determination as to whether the duty of good faith has been met is made based upon the provisions, standards and procedures contained in the encroachment provision of the 2000 Act.
  - h. Other Restrictions on Franchisors. A franchisee may not waive the protections provided by statute. A franchisor may not restrict franchisees from associating with one another or from participating in trade associations, and may not retaliate against franchisees for participating in such activities. Franchisors may not require that products be purchased exclusively from the franchisor, if products of comparable quality are available elsewhere. However, the prohibition does not apply to items protected as trade secrets.
3. Business Opportunities. Iowa requires that business opportunity sellers file an irrevocable consent with the Iowa Secretary of State. Franchise sellers need not file such a consent, however, so long as the franchisor provides the franchisee a franchise disclosure document (FDD) complying with the Federal Trade Commission's (FTC) Franchise Rule or the North American Securities Administrator's Association's (NASAA) Franchise Registration and Disclosure Guidelines at the earlier of (1) the first personal meeting or (2) fourteen days prior to execution of binding legal documents or payment of consideration in connection with the sale of the franchise. No filing with the state is required to qualify for this exemption; however, the franchisor can confirm its exemption by filing an exemption request with the Iowa Commissioner of Insurance, with the required filing fee.

In addition to filing an irrevocable consent with the Iowa Secretary of State, business opportunity sellers (excluding franchise sellers that comply with the exemption described above) must deliver a written disclosure document to the purchaser at least ten business days prior to the earlier of the purchaser's execution of a contract or payment of any fees in connection with the sale of the business opportunity. The disclosure document may be in the form provided by the FTC, the NASAA or Iowa Code Section 551A.3.

Regardless of the form of the disclosure document, the disclosure document must also contain the additional contract provisions set forth in Iowa Code Section 551A, concerning, among other things, cancellation rights.

4. Dealerships. Iowa does not have a dealership statute of general applicability, although several special industry laws have been passed in Iowa. These special industry laws typically require a showing of good cause for termination or non-renewal of a contract, a right of family succession to a qualified family member at the time a dealer dies and/or an inventory repurchase at the time a contract terminates. These special industry laws cover, among others, motor fuel and special fuels, motor vehicles, motorcycles, snowmobiles, farm implements, all-terrain vehicles and agricultural, outdoor, construction and industrial equipment.

#### IV. TAXATION

##### A. Federal Taxation

1. Federal Income Taxation. Federal income taxes are not affected by where a business chooses to locate in the U.S. There are various methods of controlling the amount of the U.S. income tax-payable for domestic corporations and certain foreign owned businesses. The U.S. has several tax treaties in place which affect U.S. income tax-payable.
2. Personal Income Tax. Individuals are subject to U.S. income tax on their worldwide income if they are U.S. citizens or resident aliens. Resident alien status is determined under a set of complex rules. Any individual who is not a U.S. citizen, and who does not wish to be taxed as such, and who plans to spend a substantial amount of time in the U.S., should pay careful attention to these rules. Currently, the highest marginal U.S. individual income tax rate is 39.6% for ordinary income and 28% for capital gains and dividends. A nonresident alien generally is subject to tax on dividends from U.S. corporations, however, tax treaties affect the U.S. withholding rate.

##### B. State Taxation

1. Personal Income Taxation. Iowa imposes a personal income tax on resident and certain nonresident individuals, trusts and estates.

In the case of individuals, Iowa taxable income begins with federal adjusted gross income before the net operating loss deduction. Numerous Iowa adjustments are made, as provided in Iowa Code § 422.7, and certain additional deductions are allowed as provided in Iowa Code § 422.9. Taxpayers may claim the Iowa standard deduction or the sum of certain specified itemized deductions. Federal income tax paid is deductible for Iowa income tax purposes. Married individuals may file separately on a combined return even though they may file a joint return for federal income tax purposes.

For estates and trusts, Iowa uses the items of income reported in federal taxable income as the starting point in determining Iowa taxable income, with required adjustments for Iowa tax purposes.

Tax rates for individuals, estates and trusts are graduated, ranging from 0.36% to 8.98%, and tax brackets are adjusted annually for inflation. An alternative minimum tax applies to the extent that the minimum tax exceeds the taxpayer's regular income tax liability. Various tax credits are allowed to qualified taxpayers, including an out-of-state credit for taxes paid to other



states or countries by resident lowans.

Final returns and payments generally are due on or before April 30 following the tax year for calendar-year taxpayers and on or before the last day of the fourth month after the tax year for fiscal-year taxpayers. Certain taxpayers must make estimated tax installment payments.

Iowa school districts and counties are authorized to levy individual income surtaxes. These surtaxes, which collectively cannot exceed twenty percent of the state tax (i.e., 1.796% of taxable income at the highest state rate) are administered and enforced by the Iowa Department of Revenue. They are reported, paid and collected with the state personal income tax.

- a. Special Capital Gains Provisions. Generally, capital gains are taxed, for Iowa income tax purposes, at the same rates as ordinary income. However, Iowa provides a special one hundred percent deduction for certain qualifying capital gains recognized during the year. Qualifying capital gains include gains from the sale of (1) real property used in a qualifying business in which the taxpayer materially participated and for which the ten-year holding period requirement is satisfied; (2) a business in which the taxpayer was employed or materially participated for ten years; (3) qualifying cattle and horses; (4) other qualifying livestock; and (5) qualifying timber. Details of special capital gain treatment are set forth in Iowa Admin. Code § 701-40.38.
- b. Income of Nonresidents: Allocation and Apportionment. Net income received by a nonresident from a business, trade, profession or occupation in Iowa must be reported on an Iowa income tax return if it satisfies certain income thresholds listed in Iowa Administrative Code § 701-39.1(2)-(3). See also Iowa Administrative Code § 701-40.16.
  - i. Income from the Sale of Property Located in Iowa. Income from the sale of property located in Iowa, including property used in connection with the trade, profession, business or occupation of the nonresident, is taxable by Iowa even though the sale is consummated outside of Iowa, and provided that the property was sold before subsequent use outside of Iowa. Any income from the property prior to its sale is also Iowa taxable income. In some instances withholding of Iowa income tax is required for nonresident sellers.
  - ii. Trusts and Estates. Income received from a trust or an estate, where the income is from Iowa sources, is taxable, regardless of the situs of the estate or trust. Dividends received in lieu of, or in partial or full payment of, an amount of wages or salary due for services performed in Iowa by a nonresident shall be considered taxable Iowa income. Annuities, interest on bank deposits and interest-bearing obligations, and dividends are not allocated to Iowa except to the extent to which they are derived from a business, trade, profession or occupation carried on within the state of Iowa by the nonresident. In some instances withholding of Iowa income tax by the fiduciary is required for nonresident beneficiaries.
  - iii. Installment Contracts. Interest received from the sale of property on an installment contract is not allocable to Iowa if the property is not part of the nonresident's trade, profession, business or occupation, even though the gain from the sale of the property is subject to Iowa taxation.



- iv. Personal Services. The Iowa income of a nonresident includes compensation for personal services rendered within the state of Iowa. The salary or other compensation of an employee or corporate officer who performs services related to businesses located in Iowa, or has an office in Iowa, are not subject to Iowa tax, if the services are performed while the taxpayer is outside of Iowa. However, the salary earned while the nonresident employee or officer is located within the state of Iowa would be subject to Iowa taxation. The Iowa taxable income of the nonresident includes that portion of the total compensation received from the employer for personal services for the tax year which the total number of working days that the individual was employed within the state of Iowa bears to the total number of working days within and outside the state of Iowa.

Compensation paid by an Iowa employer for services performed wholly outside of Iowa by a nonresident is not subject to Iowa tax. However, all services performed within Iowa, either part-time or full-time, would be taxable to the nonresident and must be reported to Iowa.

- v. Commissions. Income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made and whose compensation depends directly on the volume of business transacted by the nonresident will include that proportion of the compensation received which the volume of business transacted by the employee within the state of Iowa bears to the total volume of business transacted by the employee within and without the state. Allowable deductions are apportioned on the same basis. However, where separate accounting records are maintained by a nonresident or the employer of the business transacted in Iowa, then the amount of Iowa compensation can be reported based upon the separate accounting.
- vi. Performance Income. Nonresident actors, singers, performers, entertainers, wrestlers, boxers and similar performers must include as Iowa income the gross amount received for performances within this state. Nonresident attorneys, physicians, engineers, architects and similar professionals, even though not regularly employed in Iowa, must include as Iowa income the entire amount of fees or compensation received for services performed in this state.
- vii. Periodic Time Intervals in Employment. If nonresidents are employed in Iowa at intervals throughout the year, such as those employed in operating trains, planes, motor buses, trucks and similar modes of transportation, between Iowa and other states and foreign countries, and who are paid on a daily, weekly or monthly basis, the gross income from sources within Iowa is that portion of the total compensation for personal services which the total number of working days employed within the state bears to the total number of working days both within and without the state. If paid on a mileage basis, the gross income from sources within Iowa is that portion of the total compensation for services which the number of miles traveled in Iowa bears to the total number of miles traveled both within and without the state. If paid on some other basis, the total compensation for personal services must be apportioned between Iowa and other states and foreign countries in such a manner as to allocate to Iowa that

portion of the total compensation which is reasonably attributable to personal services performed in Iowa. Any alternative method of allocation is subject to review and change by the Director of the Department of Revenue.

- viii. Income from Business Sources Inside and Outside Iowa. When income is derived from any business, trade, profession or occupation carried on partly inside and partly outside Iowa, only the income fairly and equitably attributable to that portion of the business, trade, profession or occupation carried on in Iowa, or to services rendered within Iowa, shall be included in the gross income of a nonresident taxpayer.
- ix. Apportionment of Business Income from Business Carried on Both Within and Without Iowa. If a nonresident, or a partnership or trust with a nonresident owner, transacts business both inside and outside Iowa, the net income must be apportioned so as to allocate to Iowa a portion of the income on a fair and equitable basis, in accordance with approved methods of accounting.

The amount of net income attributable to the manufacture or sale of tangible personal property is that portion which the gross sales made in Iowa bears to the total gross sales. The gross sales of tangible personal property are treated as Iowa sales if the property is delivered or shipped to a purchaser within Iowa, regardless of the F.O.B. point or other conditions of the sale.

Income derived from business other than the manufacture or sale of tangible personal property is attributed to Iowa in that portion which the Iowa gross receipts bear to the total gross receipts. Gross receipts are attributable to Iowa in the portion which the income-producing activity which gave rise to the receipts is performed within Iowa.

If the taxpayer believes that the gross sales or gross receipts method subjects the taxpayer to taxation on a greater portion of net income than is reasonably attributable to the business within Iowa, the taxpayer may request the use of separate accounting or another alternative method which the taxpayer believes to be proper under the circumstances. In any event, the entire income received by the taxpayer and the basis for a special method of allocation must be disclosed in the taxpayer's return.

- x. Income from Intangible Personal Property. Business income of nonresidents from rentals or royalties for the use of, or the privilege of using in Iowa, patents, copyrights, secret processes and formulas, goodwill, trademarks, franchises and similar property is Iowa source income.

Income of nonresidents from intangible personal property such as shares of stock in corporations, bonds, notes, bank deposits and other indebtedness is not taxable as income from sources within Iowa except where such income is derived from a business, trade, profession or occupation carried on within Iowa by the nonresident. If a nonresident buys or sells stocks, bonds or other such property, so regularly, systematically and continuously as to constitute doing business in Iowa, the profit or gain derived from such activity is taxable as income from a business carried on within Iowa.

- xi. Distributive Shares of Nonresident Partners. When a partnership derives income from sources within Iowa as determined by Iowa's allocation and apportionment rules, nonresident partners are taxed only upon that portion of their distributive share of the partnership income derived from sources within Iowa. However, to the extent a non-resident limited partner received a distributive share of investment income from an Iowa partnership, the non-resident limited partner has no Iowa reporting requirements and will not be subject to Iowa tax. To the extent a limited partner received an allocation of investment income derived from real property located in Iowa, that income will be subject to Iowa reporting and tax.
- xii. Gains or Losses from Sales or Exchanges of Real Property and Tangible Personal Property by a Nonresident. If a nonresident realizes any gains or losses from sales or exchanges of real property or tangible personal property within Iowa, such gains or losses are subject to the Iowa income tax and must be reported to Iowa by the nonresident. Gains or losses from sales or exchanges of real property located in Iowa are allocable to Iowa. Capital gains and losses from sales or exchanges of tangible personal property are allocable to Iowa if the property had a situs in Iowa at the time of the sale. In determining whether a short-term or long-term capital gain or a capital loss is involved in a sale or exchange, and determining the amount of a gain from the sale of real or tangible property in Iowa, the provisions of the Internal Revenue Code are followed.
- xiii. Capital Gains from Sales or Exchanges of Stock in C Corporations and S Corporations. When a nonresident of Iowa sells or exchanges stock in a C corporation or an S corporation, any recognized capital gain is not subject to Iowa tax unless the stock attains an independent business situs apart from the personal domicile of the individual who sold the capital stock. The stock may acquire an independent business situs in Iowa if the stock had been used as an integral part of some business activity occurring in Iowa in the year in which the sale or exchange of the stock had taken place. Whether the stock has attained an independent business situs is determined on a factual basis.

Assuming that the gain from the sale or exchange of stock is attributable to Iowa, the next step is to determine how much of the gain is attributable to Iowa. This is computed on the basis of the Iowa allocation and apportionment rules applicable to the separate business the stock has become an integral part of for the year in which the sale or exchange occurred. For example, if the business was subject to Iowa income tax on forty percent of its income in the year of the sale or exchange, then forty percent of the capital gain would be attributable or subject to tax by Iowa.

- xiv. Capital Gains from Sales or Exchanges of Partnership Interests. A partner's interest in a partnership is deemed to be localized or "sourced" at the situs of the partnership's activities as a matter of law. Therefore, if a partnership conducts all of its business in Iowa, one hundred percent of the gain on the sale or exchange of a partnership interest would be attributable to Iowa. On the other hand, if the partnership conducts one hundred percent of its business outside of Iowa, none of the gain would be attributable to Iowa for purposes of the Iowa income tax. In the situation where a partnership conducts business both in and out of Iowa,

the capital gain from the sale or exchange of an interest in the partnership would be allocated or apportioned in and out of Iowa based upon the partnership's activities in and out of Iowa in the year of the sale or exchange.

- xv. Capital Gains from Sales or Exchanges of Sole Proprietorships. When a nonresident sells or exchanges the individual's interest in a sole proprietorship, the nonresident is actually selling or exchanging tangible and intangible personal property used in this business because the sole proprietor is the legal and equitable owner of all such assets. Therefore, the general source or situs rules governing the gain from the sale or exchange of tangible property and intangible property by a nonresident individual control. Thus, if the sole proprietorship is located in Iowa, the gain from the sale or exchange of the proprietorship by a nonresident would be subject to tax by Iowa.
- xvi. Capital Gains from Sales or Exchanges of Interests in Limited Liability Companies. If a limited liability company is treated as a partnership for federal tax purposes, a capital gain from the sale or exchange of an ownership interest in the limited liability company by a nonresident member of the company would be taxable to Iowa to the same extent as if the individual were selling a similar interest in a partnership as described above. However, if the limited liability company properly elected or would have been required to be treated as an association taxable as a corporation for federal income tax purposes, a nonresident member who sells or exchanges an ownership interest in the limited liability company would be treated the same as if the nonresident were selling a similar interest in a corporation as described above.
- xvii. Capital Losses Realized by a Nonresident of Iowa from the Sale or Exchange of an Ownership Interest in an Iowa Business Entity. In a situation where a nonresident of Iowa sells the ownership interest in an Iowa business entity and has a capital loss from the transaction, the nonresident can claim the loss on the Iowa income tax return under the same circumstances that a capital gain would have been reported as described above. The federal income tax provisions for netting Iowa source capital gains and losses are applicable as well as the federal provisions for limiting the net capital loss in the tax year to \$3,000, with the carryover of net capital losses that exceed \$3,000.
- xviii. Capital Gains and Losses from Sales or Exchanges of Intangible Personal Property Other than Ownership Interests in Business Entities. Capital gains and losses realized by a nonresident of Iowa from the sale or exchange of intangible personal property (other than interests in business entities) are taxable to Iowa if the intangible property was an integral part of some business activity occurring regularly in Iowa prior to the sale or exchange. In the case of an intangible asset which was an integral part of a business activity of a business entity occurring regularly within and without Iowa, a capital gain or loss from the sale or exchange of the intangible asset by a nonresident of Iowa would be reported to Iowa in the ratio of the Iowa business activity to the total business activity for the year of the sale.

#### C. Income Taxation of Partnerships and Limited Liability Companies

Partnerships are not subject to the Iowa personal income tax, but all partnerships having

places of business in Iowa must file informational returns on Form IA 1065. The partnership return is due by the following April 30th for calendar-year partnerships and by the last day of the fourth month after the tax year for fiscal-year partnerships. Form IA 1065 requires a reporting of the net income and capital gains or losses reported on the federal return, the names and addresses of the partners and each partner's distributable share of each income or loss item.

Iowa resident partners are liable for the Iowa personal income tax, in their separate or individual capacities, on their distributive share of the partnership's net income, whether distributed or not, even if the partnership is doing business outside of Iowa. Nonresident partners of a partnership doing business in Iowa are liable for the Iowa personal income tax on their portion of their distributive share that is attributable to its Iowa business activity, whether distributed or not. However, to the extent a non-resident limited partner received a distributive share of investment income from an Iowa partnership, the non-resident limited partner has no Iowa reporting requirements and will not be subject to Iowa tax. To the extent a limited partner received an allocation of investment income derived from real property located in Iowa, that income will be subject to Iowa reporting and tax.

Limited liability companies treated as partnerships for federal tax purposes are subject to treatment as partnerships as described above; similarly, members of such companies are subject to treatment as partners under Iowa tax laws.

#### D. Income Taxation of S Corporations

Every S corporation doing business in Iowa or deriving income from sources within Iowa must file an annual return on Form IA 1120S. The IA 1120S is due by the last day of the fourth month after the close of the taxable year (i.e., April 30th, in the case of a calendar-year S corporation).

S Corporations are generally not subject to Iowa tax; instead, as for federal income tax purposes, income or loss of an S corporation is passed through to shareholders who must report it on their individual returns. However, S corporations subject to tax on built-in gains under Section 1374 of the Internal Revenue Code or passive investment income under Section 1375 of the Internal Revenue Code are subject to Iowa corporation income tax on this income to the extent received from business carried on in Iowa or from sources in Iowa. The starting point for computing the Iowa tax on built-in gains or passive investment income is the amount of built-in gains or passive investment income subject to federal tax after considering the federal income limitation. No adjustment is made for either fifty percent of Federal income tax or Iowa corporation income tax deducted in computing the federal net income of the S corporation. The allocation and apportionment rules apply if the S corporation is carrying on business both inside and outside Iowa. Any net operating loss carry-forward arising in a taxable year for which the corporation was a C corporation shall be allowed as a deduction against the net recognized built-in gain or passive investment income of the S corporation for the taxable year. For purposes of determining the amount of any such loss which may be carried to any of the twenty subsequent taxable years after the year of the net operating loss, the amount of the net recognized built-in gain or passive investment income shall be treated as taxable income. The amount of Iowa taxable built-in gains or passive investment income is subject to tax at the same rates as C corporation income (6% to 12%).

Iowa resident shareholders must include all of their distributive shares of S corporation income in their Iowa taxable income. In the case of nonresident shareholders, if an S corporation is doing business inside and outside Iowa, then the S corporation can apportion the S corporation income received by the nonresident shareholders. This single factor business activity ratio is calculated in the same manner as for regular corporations and as such, all income is considered business income unless conclusively proved otherwise.

S corporations may elect to file an Iowa individual income composite tax return and pay any tax due on behalf of nonresident shareholders.

## E. Income Taxation of C Corporations

Every corporation doing business in Iowa or deriving income from sources within Iowa, unless exempt by Iowa Code § 422.34, must file an Iowa corporation return on Form IA 1120 or IA 1120A. Exceptions include S corporation (which must file Form IA 1120S) and banks, savings and loan associations and other financial institutions defined under Iowa Code § 422.61 (which are subject to the franchise tax and must file Form IA 1120F). The return is due by the last day of the fourth month after the close of the taxable year (i.e., April 30th, in the case of a calendar-year corporation).

The starting place in determining taxable income for Iowa corporate tax purposes is federal taxable income after the federal dividend deduction and before the federal net operating loss deduction. Certain additions and subtractions are then made pursuant to Iowa Code § 422.35, including a deduction for fifty percent of the federal income taxes paid or accrued and an addition for fifty percent of refunds received or accrued.

1. Nexus. The Iowa corporate tax is imposed on every corporation, unless entitled to a statutory exemption, doing business in Iowa, or deriving income from sources within Iowa. In determining whether or not a corporation is subject to the Iowa corporate income tax, "doing business" means engaging in any activity or transaction for the purpose of deriving gain or profit, regardless of whether the activity actually makes a profit. Every corporation organized for profit and carrying out any of its authorized purposes is conclusively presumed to be "doing business." "Income from Iowa sources" means income from real, tangible or intangible property located or having a situs in Iowa.

A foreign corporation is not treated as doing business in Iowa or deriving income from sources there if its sole activities in the state involve one or more of the following: (1) holding meetings of directors or shareholders; (2) holding holiday parties or employee appreciation dinners; (3) maintaining bank accounts; (4) borrowing money, secured or otherwise; (5) using Iowa courts for litigation; (6) personnel recruitment, if actual hiring occurs elsewhere; (7) mere ownership and control of a subsidiary with Iowa nexus, so long as the parent corporation has no physical presence in the state as related to its ownership and control; and (8) training or educating employees, or using facilities in Iowa to train or educate employees.

2. Allocation and Apportionment of Income. The Iowa corporate income tax is imposed on a corporation's entire Iowa net income if the trade or business of the corporation is carried on entirely in Iowa. If a corporation's trade or business is carried on partly inside and partly outside of Iowa, or its income is derived from sources partly inside and partly outside of Iowa, or its income is derived from trade or business and sources not entirely in Iowa, the Iowa corporate income tax is imposed only on the portion of the corporation's Iowa net income reasonably attributable to the trade or business or sources in Iowa. The net income attributable to and taxable by Iowa includes the amount of business income which is apportioned to Iowa by its business apportionment formula, plus the amount of non-business income which is allocated to Iowa.
  - a. Single Factor Formula: Manufacture or Sale of Tangible Personal Property. In the case of business income derived from the manufacture or sale of tangible personal property, Iowa uses a single business activity factor formula and looks to the proportion which the gross sales made within Iowa bear to the total gross sales. Similarly, by rule, Iowa provides that income derived from business other than the manufacture or sale of tangible personal property shall be attributed to Iowa in the proportion which the Iowa gross receipts bear to the total gross receipts.

- b. Nonbusiness Net Gains and Losses from the Sale of Assets. Gains or losses from the sale, exchange or other disposition of real property located in Iowa are allocable to Iowa. Gains and losses from the sale, exchange or other disposition of tangible personal property are allocable to Iowa if the property had a situs in this state at the time of the sale or the taxpayer's commercial domicile is in Iowa and the taxpayer is not taxable in the state in which the property had a situs. Gains or losses from the sale, exchange or other disposition of intangible personal property are allocable to Iowa if the taxpayer's commercial domicile is in Iowa.

If a taxpayer feels that imposition of the single factor formula or any allocation and apportionment method as prescribed by Iowa statutes or rules results in an injustice, the taxpayer may petition the Department of Revenue for permission to determine the taxable net income, both allocated and apportioned, on some other basis. The taxpayer must first file the return as prescribed by Iowa statutes and rules, and pay the tax shown due thereon. If a change to some other method is desired, a statement of objections and schedules detailing such alternative method shall be submitted to the Department. The mere fact that an alternative method of apportionment or allocation produces a lesser amount of income attributable to Iowa is not sufficient proof to invalidate the statutory method of allocation and apportionment. One of the possible alternative methods of allocation and apportionment is separate accounting provided the taxpayer's activities in Iowa are not unitary with the taxpayer's activities outside Iowa.

3. Tax Rates and Credits. Iowa corporate income tax rates range from six percent for taxable income of less than \$25,000 to twelve percent for taxable income above \$250,000. Various tax credits are allowed to qualified taxpayers.

#### F. Franchise Tax on Financial Institutions

Bank and other financial institutions are generally exempt from Iowa's corporate income tax. In lieu thereof, a "franchise tax" is imposed on banks, savings banks and other financial institutions (except credit unions, which are excluded from both the Iowa corporate income tax and franchise tax).

A financial institution computes its net income for the franchise tax in the same way that an ordinary corporation computes its net income for purposes of the Iowa corporate income tax, with certain special additions and subtractions as set forth in Iowa Code § 422.61(3). Federal income taxes are not allowed as a deduction for Iowa franchise tax purposes.

The franchise tax rate is five percent of net income. If business is conducted partly in Iowa and partly in one or more other states, the income will be allocated among the states all as provided in Iowa Code § 422.63. An alternative minimum tax is also set forth in Iowa Code § 422.60. Certain incentive credits are allowed as an offset to the franchise tax.

#### G. Sales and Use Tax

The Iowa retail sales tax is imposed on gross receipts from retail sales of tangible personal property (except motor vehicles which are taxed under the use tax and unless otherwise exempt), retail sale of utility service, sales of admissions to amusement places and athletic events and fairs, amusement devices and enterprises, enumerated services and room rentals and other items listed under Iowa Code § 423.2. The Iowa use tax is a complementary excise tax imposed for the privilege of using tangible personal property in Iowa that was not sold in Iowa, unless specifically exempt. If such property was previously taxed in another state, a credit may be allowed but cannot exceed the Iowa use tax rate. Generally, if



a transaction would be subject to Iowa sales tax if consummated in Iowa, such transaction, although consummated outside Iowa, is subject to use tax if the tangible personal property is intended for use in Iowa. Certain exemptions to both taxes are provided in Iowa Code § 423.6, including sales of certain foods, medical devices, farm machinery and machinery and equipment.

Sales are presumed taxable. The seller is liable for collection of tax on all sales of tangible personal property and services unless a proper exemption certificate is obtained in good faith from the buyer. The use tax is to be paid by the purchaser or in some instances, is collected by a retailer.

The sales and use taxes are imposed at the rate of six percent. As of July 1, 2008, counties no longer have a school infrastructure local option sales tax (SILO). However, with voter approval, an Iowa county/city may still impose an additional basic sales and services tax at a rate of up to one percent on gross receipts from the sale of tangible personal property and services within the county/city the proceeds from said tax to be utilized by the local government imposing the tax. As of July 1, 2010 all counties have a 1% local option sales tax.

Effective July 1, 2004, Iowa has revised and re-codified its sales and use tax law to conform to the provisions of the Multi-state Streamlined Sales and Use Tax Agreement. This will allow Iowa to: (1) permit remote sellers who compete with in-state retailers and do not currently collect Iowa sales and use tax to collect and remit those taxes; (2) provide an orderly procedure for Iowa's entry into the Multi-state Streamlined Sales and Use Tax Agreement; and (3) organize and simplify existing sales and use tax provisions of the Iowa Code.

#### H. Real Property Tax

Real property within Iowa, unless specifically exempted, is subject to property tax. Personal property is generally exempt from property taxes imposed in Iowa.

County and city assessors value and assess property in Iowa for property tax purposes. In general, property is assessed at its actual value as of January 1st of the year in which the assessment is made. Agricultural property is valued under a different valuation scheme that is based on productivity.

The property's actual value is its fair and reasonable market value, defined as the price of a current fair and reasonable exchange between a willing buyer and a willing seller, neither being compelled to buy or to sell, and both being familiar with all facts relating to the property. Sale prices of the property or comparable properties in normal transactions that reflect market value are considered, as is the probable availability or unavailability of interested purchasers. Abnormal transactions not reflecting market value are to be disregarded or adjusted to eliminate the effect of factors that distort market value, such as sales to the immediate family of the seller, foreclosure or other forced sales, contract sales, discounted purchase transactions or purchase of adjoining or other land to be operated as a unit with existing operations.

Any property owner or aggrieved taxpayer dissatisfied with assessment of his or her property may sign and file a written protest with the appropriate county or city board of review. Normal filing dates are April 16th through May 5th. Usually, a protest must state one or more of these grounds: (1) the assessment is not equitable compared with assessments of other like property in the taxing district (legal description and assessments of a representative number of comparable properties must be included); (2) the property is assessed for more than the value authorized by law (stating the specific amount the protestant believes is over-assessed, and the amounts believed to be its actual value and to be a fair assessment); (3) the property is not assessable, is exempt from taxes or is misclassified (stating the reasons for the belief); (4) there is an error in the assessment (stating the specific error); or (5) there is fraud in the assessment (to be stated specifically). Additionally, in even numbered years, an appeal can be based on the fact that there has



been a change in value downward since the last assessment.

Parties dissatisfied with the action of a local board of review with reference to their protests of assessment have an option to (1) appeal the board of review decision to the district court of the county in which the property is located or (2) appeal to the property assessment appeal board. The appeal to the district court must be made within twenty days after the date the board of review's letter of disposition of the appeal is postmarked to the party making the protest or May 31<sup>st</sup>, whichever date is later. The appeal must include a written notice and a petition setting forth the basis of the appeal and relief sought. If the property owner chooses to appeal to the property assessment appeal board and is dissatisfied with the decision of the property assessment appeal board, then the owner can appeal to the Iowa district court of the county in which the board sits. The court hears the appeal in equity, de novo.

After the valuations for the taxing districts within a county have been adjusted for the current year, the county auditor applies a tax rate, not in excess of that authorized by law, which will raise the amount required by the taxing districts, but no larger amount.

Property taxes must be paid, without demand, at the office of the county treasurer. Although payment in full, or payment of the first half, is due before September 1st, with payment of the remaining half due before March 1st, there is no delinquency if the first payment is made before October 1st and the second half payment made before April 1st.

#### I. Real Estate Transfer Tax

The real estate transfer tax is an excise tax imposed on all conveyances of Iowa real property, unless specifically exempted. The tax is administered by the Department of Revenue. There are no county or local taxes. The rate of tax is \$0.80 per \$500 of consideration attributable to real property (tax is also imposed at that rate on any fractional part of such consideration in excess of an integral multiple of \$500). The grantor is responsible for payment of the tax. Certain transactions are exempt, as provided by Iowa Code § 428A.2.

### V. LABOR AND EMPLOYMENT

#### A. Federal Considerations

1. Immigration. With the globalization of world markets, employers located in the United States often seek to employ foreign personnel. A variety of permanent and temporary visas are available depending on various factors such as the proposed job, the foreign national's qualifications, and the relationship between the United States employer and the foreign employer. Permanent residents are authorized to work where and for whom they wish. Temporary visa holders have authorization to remain in the United States for a temporary time and often the employment authorization is limited to specific employers, jobs, and even specific work sites.
  - a. Permanent Residency (the "green card"). Permanent residency is most commonly based on family relationships, such as marriage to a United States citizen, or offer of employment. Permanent residence gained through employment often involves a time-consuming process that can take several years to obtain. Therefore, employers considering the permanent residence avenue for a foreign national employee should ascertain the requirements for that immigration filing prior to bringing the employee to the United States.
  - b. Temporary Visas. The following are the most commonly used temporary visas:

- i. E-1 Treaty Trader and E-2 Treaty Investor Visas: These are temporary visas for persons in managerial, executive or essential skills capacities who individually qualify for or are employed by companies that engage in substantial trade with or investment in the United States. E visas are commonly used to transfer managers, executives or technicians with specialized knowledge about the proprietary processes or practices of a foreign company to assist the company at its United States location. E visas are limited to nationals of certain countries with which the U.S. has particular treaties, and the sponsoring company must also be able to claim the same nationality through at least 50% ownership by nationals of that country.
- ii. E-3 (Australia only): This special Visa for Australian nationals is similar to the H-1B Visa, and is the result of a U.S.-Australian agreement (see description below).
- iii. H-1B Specialty Occupation Visas: H-1B visas are for persons in occupations that require at least a bachelor's degree in a specialized field. Examples of such professionals are engineers, scientists, information technology professionals, architects, and accountants. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years (with additional time available in certain circumstances). H-1B visas are employer-and job-specific. Special allotments are made for nationals of Chile and Singapore based on agreements with these countries.
- iv. L-1 Intracompany Transferee Visas: Executives, managers or persons with specialized knowledge may be transferred from international companies to a U.S. affiliate if the foreign national has worked for the company abroad for at least one year. L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to five years (specialized knowledge employees) or seven years (managers or executives). As in the case of certain E visa capacities, some L managers or executives may qualify for a "shortcut" to permanent residence.
- v. B-1 Business Visitors: These visas are commonly utilized for brief visits to the United States of six months or less. Neither visa authorizes employment in the United States. B-1 business visitors are often sent by their overseas employers to negotiate contracts, attend business conferences or board meetings, or fill contractual obligations such as repairing equipment for brief periods in the United States. B-1 visitors cannot be on the United States payroll or receive United States-source remuneration.
- vi. TN Professionals: Under the North American Free Trade Agreement, certain Canadians and Mexicans who fill specific professional positions can qualify for TN status. Such professions include certain scientists, medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders are granted stays for specific employers. No visa is required for Canadian TNs, who may apply for TN entry at the border or airport.

- vii. F-1 and M-1 Academic Student Visas Including Practical Training: Often foreign students come to the United States in F-1 status for academic training or M-1 status for vocational training. Students in F-1 status can often engage, within certain constraints, in on-campus employment and/or off-campus curricular or optional practical training for limited periods of time. Vocational students cannot obtain curricular work authorization but may receive some post-completion practical training in limited instances. F-1 students in STEM fields (science, technology, engineering or math) may work for up to 29 months for a company that uses E-Verify with an optional practical training approval.
- viii. J Exchange Visitor Visas: These visas are for persons traveling to the United States to participate in an approved exchange program. Training, not employment, is authorized. Potential employers should note that some J exchange visitors and their dependents are subject to a two-year foreign residence requirement abroad before being allowed to change status and remain or return to the United States.
- ix. O-1 and O-2 Visas for Extraordinary Ability Persons: O-1 and O-2 visas are for persons who have extraordinary abilities in the sciences, arts, education, business or athletics and sustained national or international acclaim. Also included in this category are those persons who assist in such O-1 artistic or athletic performances.
- x. P-1 Athletes/Group Entertainers, P-2 Reciprocal Exchange Visitor and P-3 Culturally Unique Visas: These temporary visas allow certain persons – and support personnel in some instances – in the described categories to enter the U.S. to participate in an event or performance.
- xi. A number of other non-immigrant visas categories exist and may apply to specific desired entries. When planning to bring foreign personnel to the United States, United States employers should allow several months for processing by the U.S. Citizenship & Immigration Service, as well as the Department of State and, in some cases, the Department of Labor. Furthermore, employers should be aware that certain corporate changes, including stock or asset sales, job position restructuring, and changes in job duties, may dramatically affect (if not invalidate) the employment authorization of foreign employees.

## 2. Labor And Employment Statutes.

- a. Age Discrimination in Employment Act (“ADEA”): The ADEA forbids discrimination based on age in employment decisions. The ADEA applies to employers engaged in interstate commerce who have twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.
- b. Americans with Disabilities Act (“ADA”): The ADA proscribes discrimination in employment based on the existence of a disability. Furthermore, the Act requires that employers take reasonable steps to accommodate disabled individuals in the workplace. This Act applies to employers engaged in interstate commerce who have

fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year.

- c. Employee Polygraph Protection Act ("EPPA"): The EPPA greatly restricts polygraph testing of employees. The Act applies to all employers engaged in interstate commerce. Exempted are employers whose primary business purpose is running a security service or manufacturing, distributing or dispensing a controlled substance.
- d. Equal Pay Act ("EPA"): The EPA was an amendment to the Fair Labor Standards Act and is designed to promote equal pay for men and women who do the same jobs. Therefore, if the minimum wage provision of the FLSA is applicable to one's business, then the EPA is applicable as well.
- e. Fair Labor Standards Act ("FLSA"): The FLSA establishes the minimum wage, overtime and child labor laws for employers engaged in industries affecting interstate commerce, regardless of the number of employees.
- f. Family and Medical Leave Act ("FMLA"): The FMLA requires that eligible employees be allowed to take up to twelve weeks of unpaid leave per year for the birth or adoption of a child or the serious health condition of the employee or the spouse, parent or child of the employee. This Act applies to all employers engaged in commerce where the employer employs fifty or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.
- g. Federal Contractors: Employers that are federal contractors or subcontractors, depending on the type and size of their contracts, may have affirmative action obligations under Executive Order 11246 and the Vocational Rehabilitation Act. Certain federal contractors are also covered by the Drug-Free Workplace Act.
- h. Other Federal Regulations: Many employers operate in industries that are regulated by federal agencies. For example, the Department of Transportation requires employers to drug test employees who drive motor vehicles of over 26,000 pounds. Employers in regulated industries must be aware of any requirements imposed by federal or state regulations.
- i. National Labor Relations Act and Labor Management Reporting and Disclosure Act: These statutes set forth the guidelines governing labor-management relations. They apply to all employers who are engaged in any industry in or affecting interstate commerce, regardless of the number of employees. Employers who operate under the Railway Labor Act are not subject to these Acts.
- j. Occupational Safety and Health Act ("OSHA"): OSHA is the act that established the mechanism for establishing and enforcing safety regulations in the workplace. It applies to all employers who are engaged in an industry affecting commerce, regardless of the number of employees.
- k. Title VII: Title VII is the broad civil rights statute that forbids discrimination in hiring based on race, religion, gender and national origin. It applies to employers engaged in interstate commerce who have fifteen or more employees for each working day in each

of twenty or more calendar weeks in the current or preceding calendar year.

- i. Worker Adjustment Retraining and Notification Act (“WARN”): WARN requires employers to give sixty days notice to their employees of plant closings or mass layoffs. This Act applies to all businesses that employ 100 or more employees, excluding part-time employees, and to businesses that employ 100 or more employees who in the aggregate work at least 4,000 hours per week (exclusive of hours of overtime).
- m. Immigration Reform and Control Act (“IRCA”): IRCA requires that employers verify employment authorization for all employees hired on or after November 6, 1986. Employers are subject to significant fines and penalties for failure to comply with documentation requirements under IRCA, as well as for hiring unauthorized workers or discriminating against persons who appear or sound foreign.

### 3. Employee Benefits.

- a. Employee Retirement Income Security Act of 1974 (“ERISA”): ERISA governs implementation and maintenance of most types of employee benefit plans, including most retirement programs, life and disability insurance programs, medical reimbursement plans, health care plans, and severance policies. ERISA sets out a detailed regulatory scheme mandating certain reporting and disclosure requirements, setting forth fiduciary obligations and, in most types of retirement plans, coverage, vesting and funding requirements. ERISA generally preempts state laws governing employee plans and arrangements.
- b. Consolidated Omnibus Budget Reconciliation Act (“COBRA”): COBRA requires employers to make continuing coverage under medical reimbursement and health care plans available to certain terminated employees, at the cost of the employees. The usual period for which this coverage must be continued is eighteen months. COBRA contains very specific procedures for notifying terminated employees of their COBRA rights.

## B. State Considerations

1. Iowa Workforce Development Services. Iowa Workforce Development provides a wide range of services and programs affecting the Iowa workplace. Iowa Workforce Development has six divisions: Workers’ Compensation; Labor Services; Administrative Services; Unemployment Insurance; Workforce Services; and Labor Market and Workforce Information.

The Division of Workers’ Compensation administers, regulates, enforces and informs the public regarding Iowa workers’ compensation, occupational disease and occupational hearing loss laws. These laws are designed to provide, in nearly all types of employment, certain benefits to eligible employees who incur injuries or illnesses in connection with their employment activities. Although the division does not pay benefits to eligible employees or establish insurance rates for workers’ compensation coverage, the division does provide information to the public on rights and responsibilities under the workers’ compensation laws. The division also adjudicates any disputed workers’ compensation claim when an agreement cannot be reached between the employee and the employer’s insurance company.

The Division of Labor Services administers employment related laws, including those dealing with occupational safety and health; removal and encapsulation of asbestos; inspection of boilers, elevators and amusement rides; hazardous chemicals; workplace conditions; wage payment and collection; minimum wage; child labor; employment agency licensing; registration of construction contractors and non-English speaking employee rights. The division offers educational programs on occupational safety and health to both employers and employees; it also serves as an information or referral service to workers and employers for questions pertaining to conditions of employment or for problems relating to an individual's employment.

The Division of Administrative Services provides administrative support functions for the department, including customer service, building management, office services, financial reporting and accounting. The Division also develops, maintains and manages the Iowa Workforce Development's Information technology services.

The Division of Unemployment Insurance Services provides services to businesses, workers and the citizens of Iowa by collecting unemployment insurance taxes, maintaining the Iowa Unemployment Compensation Trust Fund and making payments to eligible jobless workers.

The Division of Workforce Services administers job placement functions through a statewide network of Workforce offices. Workforce Services serves as a one-stop location for workforce issues. Iowa employers list their job openings with Workforce Development, while workers register for employment and are referred to employers for job interviews. The division provides job counseling, job training and assistance and special services to special needs populations. It also provides support for the Iowa Workforce Development Board.

The Division of Labor Market and Workforce Information is the state's source for labor market information. The Division collects, analyzes and prepares a wide array of economic statistics and information that describes labor areas in terms of their economic trends, industries, occupations, wages and workers. The Division works in cooperation with the United States Bureau of Labor Statistics, United States Census Bureau and other researchers.

Iowa Workforce Development provides a wide range of services and programs designed to increase and improve the productivity of the Iowa workplace.

For general information, contact:

Iowa Workforce Development\*  
1000 East Grand Avenue  
Des Moines, Iowa 50319  
Phone: 515-281-5387; 800-JOB-IOWA  
<http://www.iowaworkforce.org>

2. Iowa Civil Rights Commission. The Iowa Civil Rights Commission is a statewide agency charged under Iowa Code Chapter 216 with enforcement of Iowa's civil rights laws, increasing public awareness of civil rights, providing dispute resolution services and offering community services statewide. Any allegation of employment discrimination based on age, race, creed, color, sex, religion, national origin, disability sexual orientation or other category protected by state or federal law, must first be brought to

the Iowa Civil Rights Commission before any civil claim may be filed.

Under Iowa Code Chapter 216, the Civil Rights Commission may process a discrimination complaint from any employee whose employer has four or more employees, so long as that complaint is brought within three hundred days of the date of the incident. A complaint meeting those guidelines will be screened for administrative review, mediation and/or investigation. The Commission has an active mediation program for employment complaints, with a goal of reaching an amicable resolution between the parties. The Iowa Civil Rights Commission may be contacted at:

Iowa Civil Rights Commission\*  
Grimes State Office Building, 2nd Floor  
400 E. 14th Street  
Des Moines, Iowa 50319  
Phone: 515-281-4121; 800-457-4416  
<http://www.state.ia.us/government/crc>

3. Local Agencies and Commissions. A variety of communities have city or county Human Rights Commissions or other local agencies that may regulate employment issues within the community's boundaries. These commissions frequently operate as contract agencies, cross-filing any complaint made to a local commission or agency with the Iowa Civil Rights Commission and potentially with the federal Equal Employment Opportunity Commission ("EEOC"). Each commission has separate rules and regulations. Information on the various commissions may usually be found either on the Internet or by contacting the commission directly. Cities may have individual ordinances granting legally protected status to persons or groups in addition to those protected under state or federal law.
4. Hours and Wages. Wages are broadly defined in Iowa under Iowa Code Chapter 91A and include any amounts owed for labor or services, as well as vacation, holiday, sick leave and severance payments if these payments are promised to an employee pursuant to an agreement or policy of the employer. Wages also include any payments to the employee for benefits such as medical, health, hospital, welfare, pension or profit sharing due under an agreement or policy of the employer, and expenses incurred or recoverable under a health benefit plan.

Different rates of pay based on sex are prohibited. The employer must provide employees notice regarding wages and regular paydays in writing at the time of hiring. The wage payment/collection law provides methods of wage payment and prohibits most wage deductions such as deductions for shortages, breakage and lost or stolen property, unless such losses are attributable to the employee's willful and intentional disregard of the employer's interests. Generally, the only permitted deductions are those required by statute or those authorized in writing by the employee accruing to his or her benefit. Examples might be deductions for educational classes, store credit accounts or computer leases. An employer is prohibited from discharging or discriminating against the employee because the employee has filed a wage complaint with the state.

All wage records must be kept for a minimum of three calendar years. The rights set forth in Iowa law apply to prior employees so long as there is any outstanding claim for wages. Employers are required to provide final wages to an exiting employee by the next regular payday.

If an employer intentionally fails to pay wages, the employer shall be liable to the employee for any wages intentionally failed to be paid, plus liquidated damages, court costs and attorney's fees. In other instances, the employer

shall be liable only for the unpaid wages, courts costs and attorney's fees.

There are no general laws regulating hours of work in Iowa, except the child labor laws under Iowa Code Chapter 92.

Iowa law limits the working hours of railroad employees and persons who operate motor vehicles. Employees who operate commercial motor vehicles on Iowa highways must be given at least eight hours off duty if they drive twelve nonconsecutive hours out of each twenty-four hour period.

5. Other Labor-Related Provisions.

- a. Garnishment of Wages (Iowa Code Chapters 252D and 252E). State law tracks the federal law regarding the amount of wages that may be garnished. Iowa Code Chapter 252D provides for wage assignments for child support, while Iowa Code Chapter 252E provides for assignment of medical support for children. In general an employer must withhold for any child support order with the specified amount being sent to a collection services center. An employer may also be required to add dependent children to a health insurance policy.

An employer is guilty of a simple misdemeanor if the employer discharges, refuses to employ or takes disciplinary action against an employee because the employee has a wage garnishment.

- b. Child Labor (Iowa Code Chapter 92). Specific labor divisions are based on age categories. The Iowa child labor law prohibits employment of a child under the age of fourteen except in either street trade or migratory labor occupations.

Children under sixteen are not permitted to work during regular school hours except (a) those who are legally out of school, where written proof is submitted to the Labor Commissioner; (b) those working in a supervised school work program or required to work as part of school training, (c) those aged fourteen and fifteen enrolled in school on a part-time basis and required to work as a part of school training, or (d) those fourteen- and fifteen-year-old migrant laborers during the summer school session.

The law prohibits any child under sixteen from working more than eight hours in a single day or forty hours per week during the summer, and four hours a day or twenty-eight hours per week when school is in session.

Iowa law restricts some types of employment at certain establishments. Examples include (a) youths age fourteen or fifteen are not permitted to work in the following areas: manufacturing; mining; processing (other than food, retail or gasoline service); public messenger services; power-driven machinery; transportation; warehousing; communications; utilities; construction or any other area considered hazardous by the Labor Commissioner; and (b) persons under eighteen are restricted from working in such occupations as the manufacture or storage of explosives; motor vehicle driver or helper; operation of logging or woodworking machinery; operation of power-driven apparatus; mining; meat packing; manufacture of brick, tile and related products; foundry work; operation of dry cleaning machinery or occupations involving exposure to radioactive substances, chemicals, or other hazardous materials or equipment.

A work permit is required for those under the age of sixteen. The



permit is available from the minor's school superintendent or from a local Workforce Center.

The child labor law does not prohibit part-time or volunteer work for nonprofit organizations; working around the home when not related to a business, trade or profession of an employer; fourteen- or fifteen-year-olds engaged in corn detasseling during the months of June, July and August; part-time work in agriculture not included in the migratory labor law; or work in any business operated by the child's parents.

- c. Blacklisting (Iowa Code Sections 730.1 and 730.2). A person, agent, company or corporation, after having discharged an employee from service, may not prevent or attempt to prevent by word or writing of any kind the discharged employee from obtaining employment with any other employer except by furnishing in writing upon request a truthful statement as to the reason for the discharge. Violation of this statute is a serious misdemeanor.
- d. Equal Employment Opportunity (Iowa Code Chapter 216). Iowa's Fair Employment Practices Law prohibits employment discrimination on the basis of race, creed, color, sex, age, religion, national origin, sexual orientation, gender identity or disability. The statute applies to all employers with four or more employees and is enforced by the Iowa Civil Rights Commission as well as local and county commissions. Individual counties or cities may have additional categories of persons who are protected against discrimination; a possible additional category is marital status.
- e. Polygraph Examinations (Iowa Code Chapter 730). Iowa law prohibits an employer from conditioning employment, promotion, change of status in employment or the provision of any benefit of employment on the requirement that an employee take or pass a polygraph examination; certain limited exceptions apply for state employees. The state may administer a polygraph examination to any person who is a candidate for employment as a peace officer, corrections officer or an employee of a law enforcement agency where that person would have access to prisoner funds, cash assets or confidential information.
- f. Personnel Files (Iowa Code Chapter 91B). Iowa law provides that employees may access their personnel file with the exception of reference information. A personnel file is generally defined to include performance evaluations, disciplinary records and other information concerning employer/employee relations. The file does not have to be produced upon demand and the employer and employee should agree upon an appropriate time and place for review of the file. The employer may charge a reasonable fee for copying the file.
- g. References (Iowa Code Chapter 91B). Limited immunity is granted to employers who provide information relating to the work of former or current employees. Employers are immune from civil liability for providing work-related information in good faith about a prior employee to a prospective employer. However, immunity is not provided if the person giving the reference violates a civil right of the prior employee, provides information that is not reasonably work related or acts in any manner which would be considered to be bad faith.
- h. Jury Duty. Pursuant to Iowa Code Section 607A.45, employers may not discharge, threaten to discharge or otherwise intimidate or coerce an employee because of jury duty.

- i. Surveillance and Wiretapping (Iowa Code Chapter 727). Third party monitoring or mechanical eavesdropping on any telephone or communication wire is a serious misdemeanor, unless one party to the conversation consents to such monitoring.
- j. Clean Air. State statute and city ordinances prohibit smoking in public areas and office buildings.
- k. Drug and Alcohol Testing. Iowa Code Section 730.5 governs drug and alcohol testing of employees. Limited testing is permitted, subject to stringent rules and circumstances. Testing may be conducted post-offer and pre-hire for prospective employees; it may be conducted upon reasonable suspicion that an employee is under the influence; it may be conducted during and after completion of substance abuse rehabilitation; and it may be conducted on a random basis or for an entire company or class of employees. "Reasonable suspicion" under the statute requires a determination based on observable phenomena, abnormal conduct, credible reports of alcohol or drug use, evidence that an individual has tampered with the test, evidence that an employee caused an accident which resulted in injury to a person or property damage in excess of \$1,000 or evidence that an employee has manufactured, sold or distributed prohibited substances during employment. Employees chosen for random testing must be chosen from a generalized pool as determined by an outside third party. Prior to any testing, the employer must have a written policy describing the circumstances when such testing may be conducted as well as outlining other specific factors such as rehabilitation. Employers must provide for rehabilitative treatment for employees who test positive for alcohol, under certain circumstances. Such treatment is not required for those who test positive for drugs.
- l. Termination of Employment. Generally, employment relationships in Iowa are considered to be "at-will": unless the employer alters the at-will status of an employee by contract, policy or practice, the employee may quit or be terminated at anytime with or without cause or notice. No Iowa statute requires advance notice of termination of employment; however, in some instances an employee handbook or written policies may create notice or cause requirements regarding termination. Employers are prohibited from terminating employees for discriminatory reasons or in violation of state or federal law. Courts have also stated that termination is unlawful if it violates public policy, such as termination for filing a worker's compensation claim, utilizing health insurance, making a criminal report regarding the employer or an affiliated entity or refusing to violate a criminal statute.
- m. Covenants Not to Compete. The courts frequently will enforce covenants not to compete entered into between an employee and employer if there is a business reason for the covenant and if consideration is paid, so long as the covenant is not unduly broad or overly burdensome. Courts will decline to enforce fully covenants that are not reasonably limited in duration and geographic scope.
- n. Background Checks. The Iowa Division of Criminal Investigation ("DCI") maintains a database regarding criminal convictions. Certain groups of employees, such as those providing dependent adult care or childcare, are required to undergo specific background checks through DCI. In other types of employment, the employer may require that prospective employees submit to a criminal records check as a condition of employment. DCI will not conduct a criminal record check

without a consent form signed by the prospective employee, and it imposes a charge for all DCI checks.

- o. Employee Privacy. Employees do not have a recognized right to privacy in the workplace under Iowa law. Employers have the general right to search or review information and items kept in areas such as employer-provided computers, desks or lockers. Policies adopted by the employer, however, may create a right of privacy for employees.

Employees do have a reasonable right and expectation to privacy regarding their personnel records and healthcare information. Various state laws, including those governing drug testing, impact the manner in which an employer may obtain and use health information. Employers who keep, maintain or access employee health information are also governed under federal law, including regulations promulgated pursuant to the Health Insurance Portability and Accountability Act ("HIPAA").

- p. Workers' Compensation (Iowa Code Chapters 85, 85A, 85B, 86, 87). The Workers' Compensation Commissioner administers the workers' compensation system in Iowa. Contract provisions that waive employee rights or otherwise authorize employers to avoid statutory workers' compensation liability are invalid. An employee, the employee's dependent or a representative of either, is required to provide notice of injury within ninety days from the date of the occurrence unless the employer or its representative had actual knowledge of the occurrence. If an employee has a temporary injury causing incapacity for a period longer than three days, then the employer has four days from the date of notice to file a First Report of Injury with the Commissioner. Injuries resulting in permanent disability or death also must be reported within four days of the employer having notice. Failure to give such notice exposes the employer to monetary penalties and adverse findings in any action.

## VI. ENVIRONMENTAL LAW

### A. Federal Considerations

- 1. Resource Conservation and Recovery Act ("RCRA"): 42 U.S.C. " 6901, et seq. RCRA's primary goal is to control the generation, transportation, storage, treatment and disposal of hazardous waste. The administration of RCRA has been delegated to a number of states by statute (including to South Carolina through the Hazardous Waste Management Act) and, therefore, the states regulate most aspects of hazardous waste management within their borders.

By statute, the disposal of hazardous waste is prohibited except in accordance with a permit. Section 7003 of RCRA authorizes the Federal Environmental Protection Agency (the "EPA") to bring suit against any person or entity contributing to the handling, storage, treatment or disposal of a hazardous waste in a manner presenting an imminent and substantial endangerment to health or the environment.

RCRA was amended in 1984 by the Hazardous and Solid Waste Amendments of 1984, which added new requirements pertaining to groundwater contamination. Currently, a permit for a treatment, storage or disposal facility must detail required corrective action for any release of hazardous waste from any solid waste management unit, regardless of when the waste was placed on the site.

2. The Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"): 42 U.S.C. " 9601, et seq. CERCLA, or Superfund as it is commonly called, was enacted in 1980 to provide for the clean-up of abandoned disposal sites. It also provides a vehicle for the EPA to recover for damage to natural resources caused by hazardous substance releases. This statute has possibly generated more litigation and controversy in the past decade than any other federal legislation.

CERCLA allows the government and private parties to sue "potentially responsible parties," or PRPs for reimbursement of clean-up costs caused by releases, actual or threatened, of hazardous substances. Liability is strict, joint and several, with little or no regard for causation. By statute, there are four categories of persons liable for clean-up costs:

- "Owners or operators" of the contaminated facility. A "facility" is virtually any place in which a hazardous substance is found. The current owner or operator is liable, regardless of when the hazardous substance was disposed of at the facility and whether the present owner or operator did anything to contribute to the release.
- "Owners or operators" of the facility at the time of release of the hazardous substances. Any person who contracted or arranged to have hazardous substances taken to, disposed of, or treated at a facility. This category generally applies to generators and manufacturers.
- Transporters of hazardous substances.

There are limited defenses under Superfund that are narrowly construed. A PRP can escape liability if it can establish that the hazardous substance release was caused solely by an act of war, an act of God, or an act of unrelated third parties. This latter "third party" defense does not apply if the damage from hazardous substances was caused by an employee or agent of the PRP, or a third party acting in connection with a contract with the PRP.

3. The Clean Air Act ("CAA"): 42 U.S.C. " 7401, et seq. The CAA regulates air pollutants under federal standards implemented and enforced by the states. The Act was amended in 1990 to add several new programs, including acid rain control and stratospheric ozone protection programs, coupled with modification of existing programs for attaining the national ambient air quality standards ("NAAQS") and reducing emissions of hazardous air pollutants. Because of the nature of air pollution and its sources, this program is generally considered to be the most complex of the federal environmental programs.

Under the Act, air emissions are regulated through various controls. EPA is expected to issue standards for 150 to 200 industrial source categories of air pollutants by the year 2000. The sources that will be affected range in size from large petrochemical complexes to neighborhood dry cleaners.

The CAA, as amended, requires a new operating permit for all "major" air sources, with state administration and enforcement. A significant new feature is a permit fee based on tons of pollutants emitted on an annual basis; the permit fees are to fund and support the state operating permit programs.

4. The Clean Water Act ("CWA"): 33 U.S.C. " 1251, et seq. The CWA regulates the discharge of pollutants into all navigable waters. The CWA prohibits the discharge of any pollutant into the water of the U.S. unless

a permit has been issued. Permits are issued by either the state under an approved state program or by the EPA if the state program has not been approved. South Carolina's program has been approved. The permit limits are based upon EPA's effluent limitation regulations and are incorporated into a National Pollutant Discharge Elimination System ("NPDES") permit.

The CWA effluent limitations for industrial dischargers will also specify standards for pretreatment for those who discharge to a publicly owned treatment work. In 1990, EPA promulgated new rules regarding permits for storm water discharges under the NPDES permit program.

## VII. INTELLECTUAL PROPERTY

Intellectual property is an important asset to both new and existing businesses. Almost every business owns some form of intellectual property. Securing intellectual property protection can protect ideas from being stolen, business and product names from being misappropriated or misused and products from being copied.

### A. Patents

1. U.S. Patents. A U.S. patent is a legal grant from the Federal Government giving an inventor the right to exclude others from making, using, selling, offering to sell or importing their invention for the duration of the patent. Patents are used to protect applications of ideas, though not abstract ideas. Patents protect a wide variety of inventions, including machines, compositions of matter, plant varieties, computer software, microorganisms and business methods.

There are several different types of patents. The most common type is a utility patent, which protects inventions that are machines, articles of manufacture, compositions of matter, a method or process or an improvement thereof. A utility patent is granted for a term of twenty years. A second type of patent is a design patent, which protects ornamental and non-functional designs. This type of patent is granted for a term of fourteen years. Another type of patent is a plant patent for asexually reproduced plants. An inventor can also file a provisional patent application. A provisional application is a mechanism for quick and inexpensive filing in order to preserve a filing date. In order to receive a patent from a provisional application, the provisional application must be replaced with a regular application within twelve months.

In order to obtain a utility patent, the invention must be new, useful, and non-obvious. Useful means the invention performs the purpose of the invention and must not be immoral, frivolous or mischievous. An example of a non-useful invention is a method for counterfeiting. Novel means the invention, when viewed as a whole, is different from the prior art (not exactly like something already in existence). An invention is non-obvious if, at the time the invention was made, the invention would not be obvious to one of ordinary skill in the art to which the invention relates.

There are several advantages to obtaining patent protection. A patent grants the inventor the right to exclude others from making, offering to sell or importing the patented invention. In other words, the patent owner has the right to bring an infringement suit against another who is making, using or selling the invention. A patent owner may benefit from granting a license to others to practice the invention. In exchange for allowing a licensee to use the invention, the inventor may receive income from royalties. A patent may help a business to protect its market share. Patents are assets favorably recognized by venture capitalists, investment bankers and investors.

2. **Foreign Patents.** Filing a U.S. patent application does not protect the invention outside of the United States. To obtain protection in a foreign country, a separate application must be filed. In general, most foreign countries require an inventor to file a patent application before any public disclosure is made. If a U.S. patent application is filed before any public disclosure has been made, a foreign patent can usually be filed up to one year after the U.S. filing date.

## B. Trademarks

Trademarks protect business and product names. A trademark is usually a word, phrase, symbol or logo used by a manufacturer or merchant to identify its goods or services and distinguish them from those of its competitors. An established and subsisting trademark provides value in three ways: (1) it distinguishes goods or services from those of competitors; (2) it serves as a guaranty of consistency of quality; and (3) it helps to advertise and sell products or services.

A trademark should be exclusive. It should indicate that all goods carrying that trademark come from or are sponsored by the same company. Even though a purchaser may not know the name or location of a company, he/she is entitled to rely on the fact that a trademark is exclusively the mark of one entity and identifies goods or services emanating from that entity.

Many businesses form corporations or other entities or file a fictitious business name statement. Neither a certificate of incorporation nor the fictitious business name statement gives a business the right to use a trade name which is likely to cause confusion with a trade name or trademark that was previously used by someone else in the same area of trade.

1. **Federal Trademark Registration.** The United States has a federal statutory scheme of trademark protection known as the Lanham Act. There is no requirement that a trademark be registered pursuant to the Lanham Act, but there are several advantages to a trademark registration. An owner of a federal trademark registration is presumed to own a valid mark and also is presumed to have the exclusive right to use the trademark in interstate, territorial and foreign commerce. A federal registration is constructive notice of the registrant's claim of ownership of the mark. No one else may begin using the same or a confusingly similar mark on the same or related goods and then assert that he/she did not know of the registrant's ownership of the mark.

A trademark applicant can file for federal protection for a mark that is in use in commerce or for a mark that the applicant has a bona fide intent to use in the near future.

Trademark rights can last indefinitely if the owner continues to use the mark to identify its goods and services.

2. **State Trademark Registration.** Trademarks may also be registered with the state of Iowa, pursuant to Iowa Code Chapter 548. The Office of the Secretary of State handles matters related to state trademark registration. The trademark statutes define a cause of action for infringement of state registered trademarks, injury to business reputation and dilution. The statute gives courts the power to enjoin such wrongdoing, and authorizes court action to recover damages if appropriate, including treble damages.
3. **Common Law Trademark Rights.** In addition to the statutory trademark protection, Iowa has a history of enforcing common law trademark rights. The common law also recognizes broader rights in the area of unfair competition.

### C. Trade Secrets

A trade secret is information that has economic value because it is kept secret. Trade secret information includes customer lists, manufacturing methods and chemical formulas.

Iowa has adopted in substantial form the Uniform Trade Secrets Act, codified in Iowa Code Chapter 550. The Act defines a trade secret as information of nearly any kind, that derives economic value from not being generally known or readily ascertainable by proper means, and is the subject of reasonable efforts to maintain its secrecy. The Act also defines several categories of misappropriation of trade secrets, including theft, bribery, misrepresentation, breach or inducement of a breach of a confidential duty and espionage. Disclosure of a trade secret obtained by improper means or in violation of a duty of confidence is also an offense. Injunctive relief and damages, including double damages, may be awarded. The Iowa Trade Secrets Act does not preempt common law trade secrets. See 205 Corp. v. Brandow, 517 N.W.2d 548 (Iowa 1994).

### D. Copyrights

Copyrights are used to protect an original expression of an idea that is fixed in a physical medium (such as paper, electronic discs or tapes). Copyrights cover art, music, technical and architectural drawings, books, computer programs and software, certain aspects of websites, advertising materials and brochures.

A copyright owner has the right to bar others from copying the copyrighted work or creating substantially similar works. Specifically, copyright protection includes: (1) the right to reproduce the work; (2) the right to make derivative works; (3) the right to distribute copies by sale, lease or rental; (4) the right to publicly perform certain works; and (5) the right to publicly display certain works.

For works created after January 1, 1978, the copyright grant lasts for the life of the author plus seventy years after the author's death. If the work was created for an employer within the scope of an employee's employment, the copyright grant lasts for ninety-five years from the date of first publication, or one hundred and twenty years from the date of creation, whichever is shorter.

A copyright need not be registered until a copyright suit is filed. Early registration, however, offers the copyright holder some significant advantages, including increased damages, and an award of attorney's fees incurred by the copyright owner during a lawsuit.

In general, a business owns the copyrights in works created by full-time employees within the scope of their employment. An employer, however, has limited rights to works created by independent contractors.

## VIII. DISPUTE RESOLUTION

### A. Federal Court System

The trial courts of the federal court system are the U.S. District Courts. Each district has four federal district court judges who are appointed by the President for life terms upon approval by the United States Senate. Appeals are to the Eighth Circuit Court of Appeals.

The federal district courts are courts of limited jurisdiction. The types of cases they may hear are mandated by both the U.S. Constitution and federal statute. They have exclusive jurisdiction over bankruptcy, patent and copyright, antitrust, postal matters, internal revenue, admiralty, and federal crimes, federal torts, and customs. All other jurisdiction is concurrent with that of the state courts. There are generally two ways to gain access to the federal district courts when there is such concurrent jurisdiction. First is diversity jurisdiction, which involves disputes between citizens

of different states with an amount in controversy exceeding \$50,000. To be brought in federal court, there must be complete diversity, i.e., none of the plaintiffs may be a citizen of the same state as any of the defendants. The second primary basis involves a federal question, i.e., presenting an issue arising under the Constitution, statutes, or treaties of the United States. If a party's case does not fit within one of the statutorily mandated jurisdictions, there is no recourse to the federal courts.

The workings of the federal district courts are governed by the Federal Rules of Civil Procedure, promulgated by the U.S. Supreme Court and approved by the U.S. Congress. These are a uniform body of procedural rules applicable to every federal district court in the U.S. Each federal district court also establishes its own rules applicable only to the procedure in that district court.

These rules often set forth very specific guidelines for the handling of an action, and close attention must be paid to them. Thus, one participating in a suit in federal district court must be aware of that court's local rules as well as the Federal Rules of Civil Procedure.

1. Northern District. The Northern District is comprised of the fifty-two counties roughly located north of U.S. Highway 30 which bisects the state. The district has its headquarters in Cedar Rapids with court regularly held in Cedar Rapids, Fort Dodge and Sioux City. The court currently is made up of two district judges, Chief Judge Linda R. Reade and District Judge Mark W. Bennett; two senior judges, Edward J. McManus and Donald E. O'Brien; and two magistrate judges, Chief Magistrate Judge Jon S. Scoles and Magistrate Judge Leonard T. Strand. Information about the Northern District, including local rules, information about judges and selected opinions, may be found on line at: <http://www.iand.uscourts.gov>.
2. Southern District. The Southern District is comprised of the forty-seven counties in the southern half of the state. The district has its headquarters in Des Moines and routinely hears cases in Des Moines, Council Bluffs and Davenport. The district is currently made up of three district court judges, Chief Judge James E. Gritzner, and District Judges John A. Jarvey and Stephanie M. Rose. The district also has four senior judges, Robert W. Pratt, Harold D. Vietor, Charles R. Wolle and Ronald E. Longstaff. There are three magistrates who serve the Southern District: Chief Magistrate Judge Celeste F. Bremer and Magistrate Judges Thomas J. Shields and Ross A. Walters. Information about the Southern District, including local rules, information about judges, and selected opinions, may be found online at: <http://www.iasd.uscourts.gov>.

## B. State Courts\*

1. District Court. The Iowa district court has general jurisdiction of all civil, criminal and juvenile cases and probate matters in the state. The district court, which is also known as the trial court, is the point of entry in the court system for most cases. The Iowa district court is composed of different kinds of judicial officers with varying amounts of jurisdiction—judicial magistrates, associate juvenile judges, associate probate judges, district associate judges and district court judges. Iowa magistrates have authority to handle small claims up to \$5,000. There are eight different districts, some of which are divided into sub-districts.
2. Court of Appeals. The nine-member Iowa Court of Appeals reviews appeals from the trial courts that have been transferred to the Court of Appeals by the Supreme Court. Appeals are typically heard by three judge panels. A decision of the Court of Appeals is final unless reviewed by the Iowa Supreme Court on a discretionary grant of further review. Some Court of Appeals opinions are published and become precedent for subsequent



cases. Unpublished opinions maybe cited in briefs, but unpublished opinions shall not constitute controlling legal authority. The majority of appeals filed in Iowa are ultimately decided by the Court of Appeals.

3. Supreme Court. As the constitutional head of the Iowa Judicial Branch, the seven-member Iowa Supreme Court is the “court of last resort” in Iowa. Its opinions are binding on all other Iowa courts and set precedent for subsequent cases decided in the state. The Court is the administrative head and policy-making body of Iowa’s statewide court system. It also has authority to admit, regulate and disbar persons who practice law in Iowa.

Information on the Iowa Court systems can be found online at: <http://www.iowacourtsonline.org>. Online state court records can be accessed online at: <http://www.iowacourts.state.ia.us>.

### C. Alternative Dispute Resolution - Arbitration

Iowa recognizes the right of parties to enter into contracts that permit resolution of disputes in arbitration rather than through litigation. Under Iowa law, a party may agree in advance to have disputes resolved in arbitration except in a contract of adhesion or in a contract between an employer and an employee. Another significant exception is that tort claims (negligence, wrongful termination, willful injury, etc.) may not be subject to an advance arbitration agreement unless all parties to the contract agree to the provision in a separate writing.

1. Limitation: Contracts of Adhesion. The clause prohibiting advance arbitration agreements in contracts of adhesion has been the source of several court decisions in Iowa that may affect the enforceability of an arbitration clause. Courts generally will not enforce the arbitration provision found in automobile insurance policies issued in Iowa, considering such a clause to be part of a contract of adhesion. However, where there is a clear link to interstate commerce, Iowa courts have held that the Federal Arbitration Act preempts Iowa law and have enforced advance agreements to arbitrate. While the Iowa courts have only considered the enforceability of an arbitration clause found in the Federal Crop Insurance Act, where there is a clear tie to interstate commerce, the Iowa Act will likely be preempted by the Federal Arbitration Act. This may permit enforcement of interstate employment agreements, interstate shipping agreements or other similar contracts involving movement of goods or services across state lines.
2. Agreement to Arbitrate: Post-Occurrence. Once parties agree to arbitrate disputes after the dispute arises, courts will enforce the agreement even though the dispute relates to a tort claim, employment claim or is a part of an insurance dispute. Iowa courts have routinely held that arbitration is a preferred method of resolution of disputes and will require the parties to abide by their agreement to arbitrate if the agreement is reached after the dispute arises.
3. Authority of Arbitrators. Arbitrators in Iowa can issue subpoenas to require witnesses to appear or produce documents at the hearing. In addition, the arbitrator may issue a subpoena to order that a person appear and give a deposition in a pending arbitration matter. The subpoenas may be enforced in Iowa district court to the same extent as if issued by the court.
4. Enforcement of Orders. Once the arbitrator issues an order, it may be enforced in Iowa state court unless the arbitration award was procured by fraud, corruption or other illegal means. Iowa courts will also not enforce an award when the arbitrator exceeds the powers granted by the contract, when the arbitrator refuses to postpone a hearing where rights were prejudiced or when there was no arbitration agreement. While an Iowa court may

reverse an arbitration award that is not supported by substantial evidence, it will not be able to do so in cases where the arbitration proceeding was not transcribed by a court reporter, the parties have agreed that a vacation shall not be made on this ground, or the arbitration was conducted under the auspices of the American Arbitration Association.

D. Alternative Dispute Resolution - Mediation

Iowa recognizes the rights of parties to mediate civil disputes. Iowa Code Chapter 679C governs mediation confidentiality, mediator privilege and immunity for both required and consensual mediation. Statutes in a wide variety of areas require or encourage mediation including agricultural disputes, domestic relations, collective bargaining and workers' compensation.

IX. REAL ESTATE

A. Ownership of Real Estate

Real estate located in Iowa can be owned by individuals, partnerships, joint ventures, corporations, limited liability companies, limited partnerships, limited liability partnerships, limited liability limited partnerships, trusts and other entities recognized by Iowa law, or by any combinations of such individuals or entities.

Individuals in Iowa must be at least eighteen years of age and mentally competent to own real estate in Iowa. There are restrictions on nonresident aliens owning agricultural land as discussed in Section O below.

An entity formed under the laws of Iowa or any other jurisdiction in the United States, may own real estate in Iowa (although there are limitations on corporate, limited liability company and limited partnership ownership of agricultural land, as discussed in Section P below). A corporation or other entity formed under the jurisdiction of another state is not required to register to do business in the State of Iowa if its only activity in Iowa is ownership of real estate.

B. Types of Concurrent Ownership of Real Estate

1. Tenants in Common and Joint Tenancy with Rights of Survivorship. A conveyance to more than one individual or entity is presumed by Iowa law to create a tenancy in common; to create a joint tenancy with rights of survivorship there must be an affirmative statement so stating, such as "John Doe and Jane Doe, as joint tenants with rights of survivorship, and not as tenants in common." See Iowa Code § 557.15.
2. Spousal Rights in Iowa Real Estate (Dower Interest and Homestead Exemption). A spouse has a dower interest in all real estate owned by the other spouse in Iowa during the marriage. Under certain circumstances, this dower interest extends to real estate held in a spouse's revocable trust. See Iowa Code § 633.238. The dower interest of a spouse in real estate automatically terminates upon the dissolution of marriage, the death of the claimant spouse or a judicial sale of the property (if the claimant spouse has been properly joined in the judicial proceeding). Any deed, contract, lease or mortgage entered into for land located in Iowa and held by an individual, should also be signed by the individual's spouse, or a power of attorney on behalf of the individual's spouse, who should make a designation that he/she has signed "solely to release their dower interest" in the real estate if not a titleholder. See Iowa Code § 561.13.

In addition to dower interest, every family is entitled to a "homestead exemption" under Iowa law. The homestead exemption basically protects a

home from judicial sale when one member of the family incurs debts against the property. A “homestead” is the house used as the primary home of the owner and may contain contiguous lots or tracts with the building that are used as part of the single dwelling. See Iowa Code § 561.1. If located within a city, the homestead may not exceed one-half acre and otherwise not more than forty acres. See Iowa Code § 561.2.

Homestead rights are carefully guarded by Iowa courts, but may be trumped in certain circumstances, such as when the rights of a purchase money mortgagee are involved. See Iowa Code § 561.13(3). In addition, the homestead exemption does not protect the homestead from debts that were antecedent to the acquisition of the homestead. However, when the homestead is changed, and a new homestead has been acquired with the proceeds of the old homestead, the new homestead is exempt up to the value of the old homestead. See Iowa Code § 561.20. The exemption may be waived if the debt is in writing and the owner(s) expressly stipulate the homestead shall be liable for payment of the debt. See Iowa Code § 561.21(2). When a homestead includes agricultural land greater than forty acres, specific statutory language must be included in the installment contract or mortgage for the exemption to be waived. See Iowa Code § 561.22(1)(a). Finally, debts incurred solely for work done or materials acquired for improvement to the homestead are not protected. See Iowa Code § 561.21(3).

C. Purchase and Sale of Real Estate in Iowa

Agreements for transfer of real estate in Iowa are governed by state contract law. No specific forms have been approved by the legislature for such transactions. The Iowa State Bar Association and many associations of real estate professionals have developed forms for use in residential property transactions.

In the sale of residential real estate in Iowa, a Seller’s Disclosure Statement must be completed to the best of the Seller’s knowledge after reasonably diligent inquiry and delivered to the Buyer. See Iowa Code § 558A.3(1); Iowa Admin. Code § 193E-14.1. The Seller must also deliver to the Buyer a copy of the pamphlet prepared by the Iowa Department of Public Health entitled “Iowa Radon Home-Buyers and Sellers Fact Sheet”. If not delivered prior to the time an offer is made by a purchaser, or an offer accepted by the purchaser, the purchaser has three days after personal delivery or five days if delivered by mail, to revoke the agreement to purchase the property. See Iowa Code § 558A.2.

D. Transfer Tax, Declaration of Value, Groundwater Hazard Statement and Private Sewage Disposal System Inspection

1. Real Estate Transfer Tax. When legal title to real estate is transferred, a transfer tax must be paid to the recorder in the county where the real estate is located unless the transfer is exempt by the Iowa Code. The tax is equal to eighty cents per five hundred dollars, or fractional part of five hundred dollars, of actual market value of the real property transferred in excess of five hundred dollars. See Iowa Code § 428A.1. For example, if a house were sold for \$152,375, the amount liable for the tax is \$152,000. This figure is computed by rounding the purchase price up to the nearest \$500 increment and then deducting \$500 for the initial exemption. Next divide \$152,000 by \$500 and multiply by \$0.80. The transfer tax in this example would be \$243.20.
2. Declaration of Value. A Declaration of Value, in a form prescribed by the State of Iowa, must generally be filed with each deed or contract for which a transfer tax will be paid. See Iowa Code § 428A.1. It must be signed by a buyer, a seller or one of their agents. A new form of Declaration of Value was adopted by the Iowa Department of Revenue effective September 30, 2012.

If a property is exempt from transfer tax, the deed or contract must state the reason for the exemption on its face and preferably cite the Iowa Code provision containing the exemption. Exemptions are set forth in Iowa Code Section 428A.2.

3. Groundwater Hazard Statement. With each Declaration of Value submitted to a County Recorder, a Groundwater Hazard Statement must also be filed. See Iowa Code § 558.69. The Groundwater Hazard Statement must be signed by the owner or his/her representative and contain the owner/representative's good faith response to the following six questions:
  - a. whether any known private burial site is situated on the property and, if so, the approximate location of the site;
  - b. whether any known wells are situated on the property and, if so, the approximate location of each known well and its status with respect to Iowa Code Sections 455B.190 or 460.302;
  - c. whether any known disposal site for solid waste which has been deemed to be potentially hazardous by the Iowa Department of Natural Resources ("DNR"), exists on the property and, if so, the location of the site;
  - d. whether any known underground storage tank exists on the property and, if so, the type and size of the tank and any known substance in the tank;
  - e. whether any known hazardous waste exists on the property and, if so, whether the waste is being managed in accordance with DNR rules; and
  - f. whether any known private sewage disposal system exists on the property, and, if so, whether it has been inspected or is exempt from inspection.
4. Private Sewage Disposal System Inspection. A deed for residential property that contains a private sewage disposal system is not to be recorded unless it is accompanied by a certified inspector's report, a certification that the inspection was prevented by weather and will be done at the earliest practicable time, or a certification that the residential structure will be demolished. There are exemptions to the requirement. See Iowa Code § 455B.172(11). An inspection report is valid for two years. If the inspection reveals deficiencies in the system, the system must be modified to conform to current construction standards.

## E. Deeds

In Iowa, property is conveyed using a Warranty Deed, Special Warranty Deed or Quit Claim Deed. The deed must contain words of conveyance, the signature of the grantor, a description of the real property being conveyed and must be written and acknowledged. Witnesses are not necessary. A deed is enforceable between grantor and grantee without acknowledgement, but acknowledgement is required before the deed may be recorded. A deed must be recorded to be effective as to subsequent purchasers for value without notice. Subsequent purchasers take title to real estate subject to interests in the real estate of which they have actual notice or inquiry notice even though the interests are not recorded. See Iowa Code § 558.41(1).

1. Warranties of Title in General Warranty Deed, Special Warranty Deed and Quit Claim Deed. In a warranty deed, the following warranties of title apply: the grantor is indefeasibly vested of an estate in fee simple with full power

to convey, the property is free of all encumbrances except as listed in the deed, the grantee and the grantee's successors and assigns shall have quiet and peaceful possession of the property, and the grantor will defend the grantee's title to the property.

No specific form of warranty is required; a simple statement will suffice, such as "John Doe and Mary Doe, husband and wife hereby convey and transfer to John Smith, and warrant the title against all persons whomsoever." See Iowa Code § 558.19(3).

A "special warranty deed" is not defined under Iowa law, and therefore any limitations on the general warranties of title should be specifically stated in the deed.

A quit claim deed makes no warranties; it simply conveys the grantor's title, if any, in the real estate. No specific form of language is required for a quit claim deed, and the words "John Doe and Mary Doe, husband and wife, hereby quit claim to John Smith" would suffice. See Iowa Code § 558.19(1).

#### F. Mortgages and Deeds of Trust

Mortgages must be executed, acknowledged and recorded under the same formalities and requirement as deeds. See Iowa Code § 558.19(4). A deed of trust is treated in substantially the same manner as a mortgage under Iowa law. See Iowa Code §654.2.

Priority of mortgages is generally based upon the filing date and time of the mortgage, or other instrument, with the earlier document having priority over subsequent documents, except purchase money mortgages, which are discussed below. See Iowa Code §§ 654.12A, 654.12B.

1. Purchase Money Mortgage. If funds are advanced to acquire real property and the funds are secured by a mortgage on the real property acquired, the mortgage is a purchase money mortgage, which has priority over all other mortgages except earlier recorded purchase money mortgages. See Iowa Code § 654.12B. In order to have priority over other liens and mortgages, a purchase money mortgage must state on its face that it is a purchase money mortgage and the mortgage must actually secure a purchase money debt. However, the Iowa common law recognizes purchase money mortgages and priority may be obtained even in cases where the mortgage instrument does not contain the required statutory notification.

In Iowa, borrowers are entitled to copies of any and all debt documents signed by them during a transaction. See Iowa Code § 535.16. When copies of debt documents are provided to a borrower, the lender should receive an acknowledgment that the copies were delivered.

In a credit transaction, pursuant to Iowa Code Section 535.17(3), the following provision should be added to the credit document(s) to require that all future changes in the documents be in writing to be enforceable:

"IMPORTANT: READ BEFORE SIGNING. THE TERMS OF THIS AGREEMENT SHOULD BE READ CAREFULLY BECAUSE ONLY THOSE TERMS IN WRITING ARE ENFORCEABLE. NO OTHER TERMS OR ORAL PROMISES NOT CONTAINED IN THIS WRITTEN CONTRACT MAY BE LEGALLY ENFORCED. YOU MAY CHANGE THE TERMS OF THIS AGREEMENT ONLY BY ANOTHER WRITTEN AGREEMENT."

2. Future Advance Provisions. In Iowa, mortgages may be open-ended, such that any mortgage may allow for future advancement of funds by the mortgagee to the mortgagor. Pursuant to Iowa Code Section 654.12A, in

order for the lien securing the advanced funds to relate back to the date the mortgage was recorded for priority purposes, the mortgage must contain the following language:

“NOTICE: This mortgage secures credit in the amount of \$\_\_\_\_\_. Loans and advances up to this amount, together with interest, are senior to indebtedness to other creditors under subsequently recorded or filed mortgages and liens.”

The priority established for future advances by this clause does not apply to advances made after receipt of a notice of foreclosure or action to enforce a subsequently recorded mortgage or filed lien. It also does not affect the priority of mechanic’s liens under Iowa Code Section 572.18.

#### G. Foreclosure

Generally, a mortgage or real estate contract may be foreclosed through a judicial foreclosure proceeding filed in the county in which the real estate is located. See Iowa Code § 654.1. Foreclosure is an equitable action in Iowa, and the foreclosing party is free to seek damages equal to the entire amount due to the mortgagee, including the foreclosure costs. See Iowa Code § 654.5. If the proceeds of the sheriff’s sale are not sufficient to pay the amount due in full, the lender may attempt to collect the deficiency through attachment of other non-exempt assets of the mortgagor. See Iowa Code § 654.6.

1. Deficiency. At the beginning of the action, the mortgagee must decide whether a deficiency will be preserved during the foreclosure, because such decision will affect the length of either the delay of sale for a foreclosure without redemption, or the redemption period, if a foreclosure with redemption is used. See Iowa Code §§ 628.1 et seq., 654.26.
2. Foreclosure of Mortgages on Residential Property. If the property being foreclosed on is the residence of the borrower, and such residence is a single-family or two-family dwelling, the borrower must receive a notice of right to cure prior to the foreclosure being initiated. The creditor must give the notice in accordance with Iowa Code § 654.2B. The borrower has thirty days to cure the default from the date the creditor gives notice. See Iowa Code § 654.2D. Additionally, Iowa Code § 654.4B requires that an Attorney General notice of mortgage mediation assistance be mailed to the borrower with an attorney’s initial communication and also served with the original notice of the foreclosure action.
3. Foreclosure of Mortgages on Land Used in Agriculture. Prior to beginning foreclosure of a mortgage on agricultural land securing more than \$20,000, and if the borrower is an individual, family farm corporation or authorized farm corporation, there must be a forty-five day notice provided, as well as a request for mediation with the Farm Mediation Service. See Iowa Code §§ 654.2A, 654.2C. A mediation release is a condition precedent for filing the foreclosure action; however, the court can waive the requirement for a mediation release if, after hearing, the court determines that a delay for mediation would cause the mortgagee irreparable harm.

Foreclosures of agricultural land must be filed with redemption (see Section 5 infra). In addition, a mortgagor of agricultural land that has been foreclosed upon has the right of first refusal to repurchase the land by matching an offer to the mortgagee, or to a notice of not less than sixty days if the sale is at auction with the minimum terms for sale disclosed. See Iowa Code § 654.16A.

4. Foreclosure without Redemption. This foreclosure method is an equitable action and can be used for all foreclosures except those covering agricultural

land. However, the mortgagor is entitled to file a demand for delay of sale, which will delay the sale from two months to twelve months depending upon the circumstances of the foreclosure (i.e., whether the creditor has waived deficiency and whether the property is residential real estate occupied by the borrower). During this period, the mortgagor is entitled to pay off the judgment and retain the real estate. See Iowa Code § 654.21.

A petition of foreclosure without redemption must contain the following, in accordance with Iowa Code Section 654.20:

#### NOTICE

“THE PLAINTIFF HAS ELECTED FORECLOSURE WITHOUT REDEMPTION. THIS MEANS THAT THE SALE OF THE MORTGAGED PROPERTY WILL OCCUR PROMPTLY AFTER ENTRY OF JUDGMENT UNLESS YOU FILE WITH THE COURT A WRITTEN DEMAND TO DELAY THE SALE. IF YOU FILE A WRITTEN DEMAND, THE SALE WILL BE DELAYED UNTIL TWELVE MONTHS (or SIX MONTHS if the petition includes a waiver of deficiency judgment) FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING OR UNTIL TWO MONTHS FROM ENTRY OF JUDGMENT IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS YOUR RESIDENCE OR IS YOUR RESIDENCE BUT NOT A ONE-FAMILY OR TWO-FAMILY DWELLING. YOU WILL HAVE NO RIGHT OF REDEMPTION AFTER THE SALE. THE PURCHASER AT THE SALE WILL BE ENTITLED TO IMMEDIATE POSSESSION OF THE MORTGAGED PROPERTY. YOU MAY PURCHASE AT THE SALE.

If the plaintiff has not included in the petition a waiver of deficiency judgment, then the notice shall include the following:

IF YOU DO NOT FILE A WRITTEN DEMAND TO DELAY THE SALE AND IF THE MORTGAGED PROPERTY IS YOUR RESIDENCE AND IS A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT WILL NOT BE ENTERED AGAINST YOU. IF YOU DO FILE A WRITTEN DEMAND TO DELAY THE SALE, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU IF THE PROCEEDS FROM THE SALE OF THE MORTGAGED PROPERTY ARE INSUFFICIENT TO SATISFY THE AMOUNT OF THE MORTGAGE DEBT AND COSTS.

IF THE MORTGAGED PROPERTY IS NOT YOUR RESIDENCE OR IS NOT A ONE-FAMILY OR TWO-FAMILY DWELLING, THEN A DEFICIENCY JUDGMENT MAY BE ENTERED AGAINST YOU WHETHER OR NOT YOU FILE A WRITTEN DEMAND TO DELAY THE SALE.

5. **Foreclosure with Redemption.** This foreclosure method is also an equitable action. In this action there is a redemption period for the debtor or subordinate lien-holders after the sheriff’s sale of the real estate, which can be from sixty days to one year depending upon the circumstances of the foreclosure (such as whether the land was owner occupied residential property, agricultural land, commercial real estate, and whether the mortgagee waived its right to collect any deficiency). See Iowa Code §§ 628.3, 628.26-28. In order to obtain certain shortened redemption periods for parcels less than ten acres where deficiency is waived, the mortgage must contain certain statutory language. See Iowa Code § 628.26.
6. **Non-judicial Foreclosure.** Iowa law has two procedures for the non-judicial foreclosure of real estate mortgages. Neither is used extensively, because each requires the cooperation of the mortgagor in completing the procedure. The first procedure is set forth in Iowa Code Section 654.18 and is similar

to a deed in lieu of foreclosure transaction, except it requires a thirty-day notice to subordinate lien-holders. The notice allows a subordinate lienholder an opportunity to pay the senior debt and preserve its lien interest in the property. The other procedure is set forth in Iowa Code Chapter 655A; however, the chapter does not apply to real estate used for an agricultural purpose as defined in section 535.13, or to a one or two family dwelling which is, at the time of the initiation of the foreclosure, occupied by an equitable titleholder. See Iowa Code § 655A.9. The mortgagor can reject the proceeding by serving a rejection notice on the mortgagee and filing it, together with a proof of service on the mortgagee, in the county recorder's office. Iowa Code Section 655A.6.

#### H. Real Estate Contracts

When a seller of real estate is providing financing for the buyer, the common alternative to using a deed, note and mortgage is to use a real estate installment contract, which is governed by Chapters 558 and 656 of the Iowa Code.

After the buyer (contract vendee) and seller (contract vendor) execute the real estate installment contract, the vendee holds equitable title to the real estate and the vendor retains the legal title as a security interest. Equitable title is a real property interest, which carries with it the full rights and obligations of real property. Legal title is a personal property interest.

If the contract vendee defaults in performance of the contract, the contract vendor can accelerate the total amount owed under the contract and foreclose the contract as if it were a mortgage. Alternatively, if the contract so provides, the contract vendor may forfeit the contract under Iowa Code Chapter 656. To forfeit the contract, the contract vendor must serve a thirty-day notice to cure on the vendee that specifies the buyer's default and necessary cure. See Iowa Code § 656.2. If the default is not cured within thirty days, the buyer's interest in the contract is forfeited and the seller may retain the real estate and all antecedent payments.

#### I. Recording Requirements for Contracts

Real estate installment contracts concerning the sale of residential real property or agricultural land must be recorded within one hundred eighty days of being executed. Failure to record can subject the contract seller to a fine of up to one hundred dollars (\$100) per day, and bars the right to forfeit for breach. See Iowa Code § 558.46.

If a contract seller of residential real estate has sold four or more properties in the previous three hundred sixty-five days, certain additional disclosures must be made to the buyer, and the time period for recording the contract is reduced to forty-five days from execution. See Iowa Code § 558.70. Some municipalities have adopted their own ordinances requiring special disclosures when residential property is sold using an installment contract.

A Declaration of Value and Groundwater Hazard Statement must be filed when the contract is recorded, but the transfer tax is not paid until the deed in fulfillment of the contract is delivered.

#### J. Easements

In Iowa, easements can be created by the consent of the parties or by prescription. To establish a prescriptive easement, the party claiming the prescriptive right must establish the right based on adverse possession thereof for a period of at least ten years through evidence that is distinct and independent from his/her use, and must show that the party against whom the easement is claimed had express notice of the claim of right. See Iowa Code § 564.1.



## K. Leases

Leases can be either at will or for a set or periodic term. If a lease is for a term of longer than one year, the lease must be in writing and signed by the parties. See Iowa Code § 622.32(3).

1. Residential Property. Residential leases are governed by the Iowa Residential Landlord and Tenant Act (Iowa Code Chapter 562A). Leases of spaces in mobile home parks are governed by the Manufactured Home Communities or Mobile Home Parks Residential Landlord and Tenant Law (Iowa Code Chapter 562B). In Iowa, all of these statutes are based upon, but not necessarily identical to, the model acts. Following an Iowa Supreme Court ruling that held Iowa Code Section 562A.29A(2) unconstitutional, the General Assembly passed significant revisions to the notice provisions in Iowa Code Chapters 562A, 562B, and 648 (forcible entry and detainer actions – see Section 4 infra). As a result, landlords must carefully adhere to these notice provisions whenever a method other than personal service is used to provide a required notice.
2. Farm Leases. A farm lease that covers a term of five or more years must be recorded within one hundred eighty days of execution. Failure to record a lease is punishable by a fine of up to one hundred dollars (\$100) a day. See Iowa Code § 558.44. All farm leases, except in cases of a mere cropper, terminate on the first day of March of the year following the last crop year contained in the lease, and a notice of termination must be given to the tenant no later than the prior September 1st. In general, failure to provide timely notice of termination extends the lease term for another crop year. See Iowa Code §§ 562.5-562.8. No lease or grant of agricultural lands shall extend for a period longer than twenty years. See Iowa Const., Art. 1 § 24.
3. Commercial Leases. Leases on property used for commercial, but non-agricultural, purposes are subject solely to the contractual rights of the parties as set forth in the lease.
4. Eviction. To recover possession from a tenant in unlawful occupancy of leased property, the landlord may bring a “forcible entry and detainer” action under Chapter 648 of the Iowa Code, which is given expedited treatment in comparison to ordinary civil actions (such as actions for ejectment, another remedy that could be used to regain possession of the leasehold). Prior to filing such an action, the tenant must be served with a 3-day Notice to Quit or 3-day Notice of Nonpayment of Rent and Right to Cure. The action must be commenced within thirty (30) days after the cause of action arose. In addition, for the court to have jurisdiction, proper grounds must exist for the eviction. In the case of forfeiture of an installment contract, the contract must state that any contract vendee holding over after the forfeiture will be treated as occupying the property as a month-to-month tenant, or jurisdictional grounds for the action will not exist. The hearing on the action must be held within the number of days after the Petition is filed allowed by the statute, otherwise the court may lose jurisdiction.

## L. Eminent Domain

Various governmental agencies, railroads and utilities are given the power of eminent domain to acquire necessary interests in real estate for the public good. A showing must be made that the taking is for a public good as designated by the legislature. Legislation passed in response to the United States Supreme Court’s Kelo decision substantially changed the eminent domain law and the procedure for filing a condemnation action for takings for economic development purposes.



- b. Devise or Descent. Land acquired via devise or descent.
  - c. Encumbrances. Bona fide encumbrances created for purposes of security.
  - d. Debt Collection. Land acquired by a process of law in the collection of debts, by a deed in lieu of foreclosure, pursuant to a forfeiture of a contract for deed, or by any procedure for the enforcement of a lien or claim on the land, whether created by mortgage or otherwise. However, land so acquired must be sold or otherwise disposed of within two years after title is transferred. Use restrictions apply during the period pending the sale or disposition.
  - e. Research. Land acquired for research or experimental purposes, as such terms are defined by statute.
  - f. Land Acquired for Non-agricultural Use. An interest in agricultural land, not to exceed three hundred and twenty acres, acquired for an immediate or pending use other than farming.
2. Prohibition on Certain Transfers by Foreign Owners. A nonresident alien, foreign business or foreign government may not transfer title to or interest in agricultural land to a nonresident alien, foreign business or foreign government, except by devise or descent.

O. Restrictions on Ownership of Iowa Farmland by Entities

A corporation, limited liability company, limited partnership or trust may not directly or indirectly acquire or lease any Iowa farmland, unless such entities qualify under certain statutory definitions (such as “family farm corporations” or “authorized limited liability companies”). See Iowa Code Chapter 9H. Persons violating the statute are subject to monetary penalties, divestiture and other equitable relief. The attorney general and county attorneys are authorized to bring suit to enforce the statute.

1. Exemptions. The prohibition on entity ownership of farmland does not apply to certain types of ownership interests, some of which are set forth below.
- a. Encumbrances. A bona fide encumbrance taken for purposes of security.
  - b. Research. Land acquired for research or experimental purposes, as defined by statute.
  - c. Non-profit Corporations. Land, including leasehold interests, acquired by an Iowa nonprofit corporation.
  - d. Non-farming Use. Land acquired by a corporation, limited liability company or trust for immediate or potential non-farming purposes.
  - e. Debt Collection. Land acquired by a corporation or limited liability company in the collection of debts, or pursuant to a contract for deed executed prior to August 15, 1975, or by enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
  - f. Municipal Corporations. Land acquired by a municipal corporation.
  - g. Certain Trusts. Land acquired by a trust company or bank as a fiduciary or as trustee for a family trust, authorized trust, or testamentary trust (as those terms are defined by statute) or for nonprofit corporations.

h. Grandfather Clause. Land held or leased by a corporation on July 1, 1975 (July 1, 1977 for trusts), as long as such ownership or leasehold continues.

2. Limitations on Ownership by Authorized Entities. Certain entities allowed to own agricultural land are subject to restrictions on their activities and must derive at least sixty percent of their annual gross revenues from farming. Certain other entities allowed to own agricultural land are also subject to statutory limits on the aggregate amount of farmland that may be owned.

P. Condominiums and Cooperatives

Iowa recognizes the submission of real estate into a horizontal property regime (condominium) for residential and commercial purposes. Iowa Code Chapter 499B governs the submission of property to a condominium property regime.

Iowa Code Chapter 499A allows residential cooperatives to be established for the ownership of residential property.

Q. Mechanic's Liens

Contractors, subcontractors, sub-subcontractors, and suppliers are permitted to obtain a mechanic's lien against real estate upon which the contractor or supplier has provided goods or services under Chapter 572 of the Iowa Code. Sweeping changes to Iowa mechanic's lien law were passed by the General Assembly in 2012. Effective January 1, 2013, to perfect a mechanic's lien and properly preserve priority of payment in the credit line, the mechanic's lien must be posted on the Secretary of State online mechanic's lien registry within ninety days after the work was completed or goods were provided by the claimant. If the lien is posted more than ninety days following the completion of work or delivery of materials, the lien only attaches to the extent of the balance due from the owner to the contractor at that time of the filing. See Iowa Code §§ 572.10-11.

Mechanic's liens are enforced through equitable foreclosure actions in the Iowa district court in the county where the real estate is located. A foreclosure action must be brought within two years of the expiration of the ninety-day filing period for the mechanic's lien. See Iowa Code § 572.27. Despite the two-year statute of limitations, an owner may demand that the holder of a mechanic's lien foreclose the lien. See Iowa Code § 572.28. If a lienholder fails to foreclose a lien within thirty days of the owner's demand, the lien is stripped from the real property.

A mechanic's lien must state: (i) the time when materials were furnished or labor performed and when completed, (ii) the correct legal description, local address, and tax parcel identification number of the property upon which the lien is to attach, and (iii) the name and last known mailing address of the owner, agent or trustee of the property. See Iowa Code § 572.8.

1. Construction Mortgages. A mortgage given to secure a loan for the construction of improvements on real estate is a "construction mortgage" and is entitled to priority over any mechanic's liens of any contractors, subcontractors or suppliers who commenced work or supplied goods to the site after the construction mortgage was recorded. See Iowa Code § 572.18.

In cases where work commenced prior to a construction mortgage being filed, the lender should obtain subordinations from any suppliers and contractors who provided goods or services to the real estate prior to the filing of the mortgage. A contractor or supplier that provides goods or services to improve the real estate prior to the recording of a mortgage will have priority over the mortgage for all amounts owed to them, and not just amounts for services or goods provided prior to recording of the mortgage.

2. Residential Construction. Effective January 1, 2013, two new pre-lien notices are required for mechanic's liens on residential construction where subcontractors are involved. First, the general contractor must post a Notice of Commencement of Work to the Secretary's of State's mechanic's lien registry within 10 days of the commencement of work on the property. This Notice must provide: (i) the name and address of the property owner; (ii) the name, address, and telephone number of the general contractor; (iii) the legal description, local address, and tax parcel identification number for the property; and (iv) the date the work commenced. In addition to the Notice of Commencement of Work, the general contractor must provide the written "owner notice" set forth in Iowa Code § 572.13. A general contractor who fails to post the Notice of Commencement of Work or provide the "owner notice" forfeits his right to a mechanic's lien. See Iowa Code § 572.13A.

Once the Notice of Commencement of Work is posted to the mechanic's lien registry, a registry number is assigned to the project by the Secretary of State. Thereafter, to preserve their rights to mechanic's liens, subcontractors and sub-subcontractors must post a Preliminary Notice to the mechanic's lien registry. The Preliminary Notice must set forth: (i) the name of the owner; (ii) the registry number assigned to the project; (iii) the name, address of the claimant; (iv) the name and address of the person who contracted with the claimant; (v) the name of the general contractor; and (vi) the legal description, local address, and tax parcel identification number for the property. Upon posting to the mechanic's lien registry, notification of the posting which includes the "owner notice" set forth in Iowa Code § 572.13 must be sent to the property owner by either the Secretary of State or the subcontractor or sub-subcontractor himself. See Iowa Code § 572.13B.

3. Subcontractors of Subcontractors in Commercial Construction. A person who furnishes labor or materials to a subcontractor is not entitled to a lien unless that person notifies the principal contractor in writing with a one-time notice containing the name, mailing address, and telephone number of that person and the name of the subcontractor to whom the labor or materials are being furnished. The notice must be given within thirty (30) days of first furnishing the labor or materials for which the lien is claimed. In addition, the mechanic's lien filed must contain a certified statement that the principal contractor was timely given the proper notice. These requirements do not apply to a mechanic's lien on single-family or two-family dwellings.
4. Public Improvements. Iowa Code Chapter 573 governs the rights of contractors and suppliers on "public improvements" (covering all state, county cities, public school corporations, and all officers, boards or commissions with authority to enter into contracts for construction of public improvements). The general mechanic's lien statute, Iowa Code Chapter 572, does not apply to public improvements.

#### R. Mortgage Broker, Loan Originator, and Banker Regulation

Iowa requires registration by and licensing of any mortgage banker, mortgage broker, or closing agent under Chapter 535B of the Iowa Code, unless the entity is already regulated as a national bank, federally chartered savings association, state bank, credit union, insurance company, loan company or a wholly owned subsidiary of such an entity. In addition to registration and licensing, Iowa law requires that such lenders (i) post a bond, (ii) be subject to periodic examination, and (iii) submit information to the Iowa administrator. Iowa also requires registration by and licensing of mortgage loan originators in compliance with the federal SAFE Act under Chapter 535D of the Iowa Code.

## S. Abstracting, Title Opinions and Title Insurance

The State of Iowa does not regulate the use of title insurance, but it prohibits a company organized in Iowa or doing business in Iowa from issuing title insurance. No title insurance companies or title agents are authorized to transact business in the State of Iowa. However, the Iowa Supreme Court has indicated, and a longstanding Iowa Attorney General Opinion has held, that title insurance can be obtained on real estate located in Iowa, as long as the title insurance transaction occurs outside of the state of Iowa. See *Chicago Title Ins. Co. v. Huff*, 256 N.W.2d 17 (Iowa 1977).

In lieu of title insurance, Iowa uses a system of title abstracting to review the quality of title to real property. First, title abstractors create an abstract of title that indicates every transfer of an interest in or other matters affecting title to a particular piece of real property, beginning at the root of title. Next, the abstract of title is reviewed by an attorney, who issues a title opinion letter that provides the owner or lender an opinion of the quality of the title and identifies any potential adverse claims against the real property. In order to help eliminate adverse claims, the Iowa Legislature has enacted a variety of "title clearing statutes" that eliminate adverse interests after varying lengths of time. The most powerful of these statutes, is one that authorizes an owner to file an "affidavit of possession," which bars most adverse claims if the owner in possession can establish a continuous chain of title for ten years.

The State of Iowa has established a title guarantee program through the Iowa Finance Authority ("IFA") that insures the abstractor and attorney. The IFA issues guarantees of title that are similar to title policies, and numerous endorsements, similar to endorsements issued by title insurance companies, may be obtained. IFA title guarantees require a title opinion, which may be issued by a member attorney or directly by the IFA's Title Guaranty Division.

## T. Zoning and Land Use

All land in the State of Iowa other than agricultural land may be subject to zoning regulation at the county level. No county zoning ordinance can apply to land or buildings primarily adapted for agricultural purposes unless they are in a flood plain. Once land is included within a corporate municipality, the city has control over the zoning of that property, under the State's "home rule" legislation. The simplicity or complexity of the zoning scheme varies among jurisdictions.

If no county zoning ordinance applies to the area, a city, by ordinance, may also have zoning power regarding development of land within a two mile radius of the city's boundaries.

A typical framework for zoning is to have a planning and zoning commission, appointed either by the County Board of Supervisors or City Council. The zoning or use plan is first submitted to the planning and zoning commission for review and approval. Upon approval or rejection, the plan then moves to the Board of Supervisors or City Council for review and approval. Plans rejected at the planning and zoning commission level must be approved by a supermajority of the elected body.

Each county or city also has a separate quasi-judicial board to review requests for variances and exceptions from zoning rules, as well as conditional or special use requests and appeals from zoning officer determinations. Such a board is usually referred to as the "Board of Adjustment," with members appointed by the Board of Supervisors or City Council. Decisions by a board of adjustment are final, subject to judicial review in Iowa district court.

## X. SECURITIES REGULATION IN IOWA

The sale of securities to residents of Iowa is regulated by both state and federal law. This short article addresses only state law issues in Iowa. The Iowa Uniform Securities Act is found in Chapter 502 of the Iowa Code. The Iowa Act was enacted in 2004, became effective

January 1, 2005, and is patterned largely on the 2002 version of the Uniform Securities Act. The Iowa Act is based upon a regulatory approach that is common to many other state securities statutes. This article is intended only to alert readers to the general applicability of Iowa law to these matters. Please refer to Iowa Code Chapter 502, the Iowa Administrative Code and applicable U.S. statutes and regulations.

#### A. Exemptions from Registration Requirements

Under the Iowa Act securities sold to Iowa residents must be registered with the Iowa Securities Bureau unless: (i) the securities qualify as “federal covered securities;” or (ii) the securities, or the transaction through which the securities are sold, qualify for an exemption from registration under the Iowa Act. Persons and entities involved in the business of distributing and trading securities are required to be registered under the Iowa Act.

1. Federal Covered Securities. The term “federal covered securities” includes securities sold under Rule 506 of Regulation D of the federal Securities Act of 1933. Under Rule 506 an unlimited dollar amount of securities can be sold to a maximum of thirty-five sophisticated and experienced investors and an unlimited number of accredited investors without federal review or registration, as long as the securities are sold in compliance with certain other requirements contained in Regulation D. Rule 191-50.81 of the Iowa Administrative Code contains the notice filing procedures for Rule 506 offerings in Iowa. An issuer offering securities under Rule 506 must file a notice on SEC Form D, a consent to service of process on a form U-2 and pay a fee of \$100 to the Iowa Securities Bureau no later than fifteen days after the first sale of the federally covered security in Iowa. The term “accredited investor” is defined by Federal law. By way of example, an individual is an accredited investor if the individual has (i) a net worth, individually or with a spouse in excess of \$1,000,000 (excluding the value of a primary residence in accordance with the parameters set forth in Regulation D) or (ii) an income in excess of \$200,000 in each of the two most recent years, or \$300,000 jointly with a spouse, and has a reasonable expectation of reaching the same income level in the current year.
2. Exemptions. There are a variety of exemptions under the Iowa Act that may apply to the offering of securities to Iowa residents. One such exemption is the private placement exemption found in Iowa Code § 502.202(14). Under this exemption, an issuer may sell unregistered securities, as part of a single issue, to no more than thirty-five purchasers (plus an unlimited number of “institutional investors”) in Iowa during any twelve consecutive month period. The term “institutional investor” under Iowa law has generally the same meaning as does the term “accredited investor” under federal law. The Securities Bureau has indicated that persons who purchase at different times should be counted as a separate “purchaser” for each such transaction. The owners of entities formed for the purpose of making an investment will each be counted as a separate “purchaser” for purposes of this exemption. No general solicitation is allowed and no commissions or other remuneration may be paid (other than to broker-dealers registered in Iowa) in order to qualify for this exemption. The issuer must reasonably believe that each purchaser, other than any institutional investor, is purchasing the securities for investment purposes.

#### B. Disclosure Requirements

Regardless of whether the offering of securities is exempt from either Iowa law or U.S. federal law regarding registration, no offering is ever exempt from the anti-fraud provisions of federal and state securities laws. The Iowa Act also contains the typical prohibitions against use of fraudulent practices in the issuance and distribution of securities. All issuers must provide adequate disclosure to each prospective investor to assure that the investor has the information necessary to make an informed decision. Please refer to the Iowa Act

and accompanying regulations regarding these matters.

## XI. BANKING

### A. Regulation of Iowa Banks

The Iowa Banking Act, Iowa Code Chapter 524, regulates the establishment, management and operation of state banks in Iowa. The Purpose of the Iowa Banking Act is to safeguard the conduct of the business of banking, conserve the assets of state banks, maintain public confidence in state banks, protect the interests of depositors, creditors, shareholders and the public and effectively serve the same, to allow state banks to be competitive with each other and to allow management of a bank to exercise its business judgment. The Iowa Division of Banking has been created within the Iowa Department of Commerce to protect the interests of those doing business with banks and other financial services providers by ensuring safety, soundness and adherence to the laws and regulations of Iowa. The Iowa Division of Banking is administered by the Superintendent of Banking. Under Iowa Code § 524.107, only a state or national Bank may receive money for deposit or engage in the business of banking in Iowa. Certain provisions of the Iowa Banking Act are affected or preempted by Federal Law.

### B. Organization

A state bank may be incorporated in Iowa by one or more individuals eighteen years of age or older. The majority of the incorporators must be residents of Iowa and citizens of the United States. A Bank can be formed as either a corporation or a limited liability company. An application must be filed with the Iowa Division of Banking and authorization must be granted by the Superintendent before engaging in the business of banking. Articles of Incorporation must be filed with the secretary of state. The Iowa Banking Act generally permits statewide branching and the establishment of branches in other states, subject to approval by the Superintendent. A state bank must have five or more directors eighteen years of age or older, a majority of whom must be residents of Iowa and citizens of the United States. Directors may be removed with or without cause by a majority vote of the shareholders.

### C. Powers

An Iowa state bank has broad powers specified by the Iowa Banking Act including, but not limited to, the power to sue and be sued in its corporate name, to have a corporate seal, to purchase and acquire real or personal property and to dispose of the same, to make bylaws, to make donations, to indemnify a director, officer, or employee, to elect officers of the bank, to contract for indebtedness and to set off a customer's account against a customer's debts owed to the bank. These powers, along with all other powers listed under the Iowa Banking Act, may be preempted by Federal laws. The exercise of some powers may be subject to approval by the Federal Deposit Insurance Corporation ("FDIC") or by the Federal Reserve if the bank is a Federal Reserve member.

### D. Adverse Claims

A state bank is not required, without an order from the court, under Iowa Code §§ 524.808 and 524.811, to recognize any claim to, or any claim of authority to exercise control over, a deposit account or property in a safe deposit box made by a person or persons other than the customer in whose name the account is held or an individual authorized to draw on or control the account. In order to recognize a claim on a deposit account or property in a safe deposit box the person making the claim must either obtain a court order or deliver the bank a bond, with an amount satisfactory to the bank to indemnify the bank against liability.

### E. Lending Limits

Generally, a state bank may grant loans and extensions of credit to one borrower in an



amount not to exceed fifteen percent of the state bank's aggregate capital, defined as the sum of capital, surplus, undivided profits and reserves as of the most recent calculation date.

Under Iowa Code § 524.904, a state bank may, subject to certain limitations, grant a loan or extend credit to one borrower in an amount not to exceed twenty-five percent of the state bank's aggregate capital if a certain portion of the loan is fully secured by mortgages, deeds of trust or similar instruments granting a first lien on farmland or on single-family or two-family residences.

A state bank may also grant loans and extensions of credit to a borrowing group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to Iowa Code § 524.904(2) or (3), and the financial strength, assets, guarantee or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. The lending limitation for a borrowing group can be increased to an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to subsection 2, 3 or 4 of Iowa Code § 524.904, and the financial strength, assets, guarantee or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. A borrowing group includes a person and all legal entities in which, among other things, the person owns or controls fifty percent or more of the shares entitled to vote.

#### F. Fiduciary Powers

The Superintendent may authorize a state bank to act in a fiduciary capacity under Iowa Code § 524.1001. With such approval, the bank may serve as Trustee, Executor, Conservator, Custodian and in other fiduciary capacities. A state bank must segregate from its assets all property held as fiduciary, other than items in the course of collection, and must keep separate records of all such property for each account for which such property is held. Funds held by a fiduciary account may be deposited in the state bank which is acting as fiduciary, either as demand deposits, savings deposits or time deposits having a single or multiple maturity. A state bank shall not make a loan or extension of credit of any funds held as fiduciary, directly or indirectly, to or for the benefit of a director, officer or employee of the state bank or of an affiliate, a partnership or other unincorporated association of which such director, officer or employee is a partner or member, or a corporation in which such officer, director or employee has a controlling interest, except a loan specifically authorized by the terms upon which the state bank was designated as fiduciary.

#### G. Doing Banking Business in Iowa

A bank is defined as a corporation or limited liability company organized under Iowa Code Chapter 524, or a national bank organized under 12 U.S.C. § 21. All persons that engage in the business of banking in Iowa are subject to the provisions of the Iowa Banking Act or the laws of the United States with respect to national banks. The business of banking is defined as business generally done by banks. Iowa Code § 524.1603 makes it a criminal offense for anyone to engage in the business of receiving money for deposit or to transact business done by banks in violation of Iowa Code § 524.107. An out of state bank is not engaged in the business of banking in Iowa where its relationship with borrowers does not extend beyond the making of loans that do not originate in Iowa or the collection of loans or foreclosure on collateral in Iowa. The fact that a transaction is connected to a person, property or collateral in Iowa does not alone qualify a bank as transacting the business of banking in Iowa. See Farmers Bank of Northern Missouri, Unionville, Missouri v. Erpelding, 555 N.W.2d 222 (1996).

## XII. INCENTIVE FOR DOING BUSINESS IN IOWA

Iowa offers a number of business and economic development programs, including financial

assistance, tax incentives and job training programs. Summaries about these programs can be found on the website maintained by the Iowa Economic Development Authority:

<http://www.iowaeconomicdevelopment.com/Programs>

Further information is available from:

Iowa Economic Development Authority\*  
200 East Grand Avenue  
Des Moines, Iowa 50309 USA  
Phone: +1.515.725.3000  
Fax: +1.515.725.3010  
e-mail: [info@iowa.gov](mailto:info@iowa.gov)

Below are very brief descriptions of some of these programs.

A. Entrepreneurial/Small Business Assistance

1. The Demonstration Fund. The Demonstration Fund is designed to provide financial and technical assistance to encourage commercially viable high technology prototype and concept development. The Demonstration Fund was created to support commercialization activities by small and medium-sized Iowa companies in the advanced manufacturing, biosciences, and information technology industries. The primary purpose of the fund is to help businesses with a high-growth potential reach a position where they are able to attract later stage private sector funding.
  - a. Eligibility:
    - i. Business must be an Iowa-based company developing a unique and competitive product, technology, or process that can be protected in the marketplace.
    - ii. Applicants must have a NAICS code that falls within the industries of advanced manufacturing, bioscience, or information technology.
    - iii. Applicants must be able to demonstrate that the product is ready for commercialization and market entry.
    - iv. Applicants must show their ability to develop and commercialize products and manage successful ventures.
  - b. Information can be found at: [http://www.iowaeconomicdevelopment.com/Entrepreneurial/DemoFund.\\*](http://www.iowaeconomicdevelopment.com/Entrepreneurial/DemoFund.*)
2. The Iowa Capital Access Program. The Iowa Capital Access Program (ICAP) can assist Iowa businesses in their efforts to secure financing to launch, retain, or expand business operations in Iowa. ICAP encourages banks and other eligible financial institutions to consider small business loans that fall outside of conventional underwriting criteria by providing loan portfolio insurance to reduce lender risk and help businesses retain and create jobs for Iowans.
  - a. Eligibility:
    - i. Borrowers: Any for-profit or non-profit business located in the state of Iowa with fewer than 500 employees.
    - ii. Lenders: Eligible lenders include federally insured banks, credit unions, and community development financial institutions.
  - b. What types of loans are eligible?
    - i. Real estate, construction, equipment, and working capital
    - ii. Term loans and lines of credit
    - iii. Loans or lines of credit up to \$500,000

- iv. Loans may NOT be used to pay delinquent taxes, lending activities, passive or investment real estate, gambling or speculative activities, or any illegal activity.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Entrepreneurial/ICAP.\\*](http://www.iowaeconomicdevelopment.com/Entrepreneurial/ICAP.*)

3. The Iowa Innovation Acceleration Fund. The Iowa Innovation Acceleration Fund is being organized to promote the formation and growth of businesses that engage in the transfer of technology into competitive, profitable companies that create high paying jobs.

The fund is being designed to provide financing to eligible businesses through three program components that correspond to three different stages of growth for investment-grade, high-growth enterprises:

- Iowa LAUNCH — for pre-seed capital stage financing.  
The request for financial support should be specifically and narrowly tailored to the plan outlined in the application, but individual awards will not exceed \$100,000 or 50% of the project costs. Accordingly, it is not anticipated that each applicant will request the maximum amount of funds that may be awarded under this program. Awards will be in the form of low-interest loans.
- Iowa PROPEL — for seed capital stage financing.  
The request for financial support should be specifically and narrowly tailored to the plan outlined in the application. Individual awards shall not exceed \$500,000 or 50% of the project costs. Awards will be in the form of low-interest loans or royalty agreements.
- Iowa INNOVATION EXPANSION — for expansion-stage financing.  
The request for financial support should be specifically and narrowly tailored to the plan outlined in the application but individual awards will not exceed \$2,000,000 or 50% of the total project cost. Accordingly, it is not expected that each applicant will request the maximum amount of funds that may be awarded under this program. Awards are typically in the form of a secured, low-interest loan.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCInnovation.\\*](http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCInnovation.*)

4. The Iowa Small Business Loan Support Program. The Iowa Small Business Loan Support Program (ISBLSP) is designed to aid Iowa entrepreneurs and small businesses in their efforts to access capital for business purposes.

- a. Eligibility:
  - i. Iowa small businesses that are located in Iowa, are owned, operated and actively managed by an Iowa resident, and have 750 or fewer full-time equivalent employees.
  - ii. Applicants must fully complete the program application and provide supporting documentation including a business plan, historical financial data, and future projections for the business as detailed in the program application.
  - iii. Applications will be reviewed according to typical lending criteria such as quality of business plan, cash flow, value and quality of collateral, and creditworthiness of the business and its owners.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Entrepreneurial/ISBLSP.\\*](http://www.iowaeconomicdevelopment.com/Entrepreneurial/ISBLSP.*)

5. Financial Assistance and Tax Incentive Programs. Iowa offers a variety

of avenues for financial assistance options to assist with relocations and expansions to locations within Iowa. Assistance is provided in the form of loans and/or forgivable loans, based in part on job creation, capital investment, the ability to meet certain wage standards, quality of employment, and economic benefits for the state and local community.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCI.\\*](http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCI.*)

6. The High Quality Jobs Program. The High Quality Jobs Program is the state's premier financial assistance program designed to support innovation and job growth. Applications for this program may be filed by cities, counties or community colleges on behalf of eligible businesses. An assistance package can include tax credits, exemptions and/ or refunds.

The High Quality Jobs program is designed to provide qualifying businesses tax credits to off-set the cost incurred to locate, expand or modernize an Iowa facility. To qualify, a business must be a non-retail or non-service business and meet certain wage requirements.

- a. Eligibility Requirements:
  - i. A business must meet wage thresholds requirements.
  - ii. Actual award amounts will be based on the business's level of need; the quality of the jobs; the percentage of created or retained jobs defined as high-quality; and the economic impact of the project.
  - iii. Created jobs must pay at least 100% of the qualifying wage threshold at the start of the project and 120% of the qualifying wage threshold by project completion and through the project maintenance period.
  - iv. Retained jobs must pay at least 120% of the qualifying wage threshold throughout the project completion and maintenance periods.
  - v. The business must provide a sufficient benefits package to all full time employees that includes at least one of the following:
    - Business pays 80% of medical and dental premiums for single coverage plans, OR
    - Business pays 50% of medical and dental premiums for family coverage plans, OR
    - Business pays for some level of medical and dental coverage and is designed to provide the monetary equivalent value through other employee benefits.

## B. Tax Incentives

- The State's refundable research activities credit may be increased while the business is participating in the program.
- A local property tax exemption of up to 100% of the value added to the property to a period not to exceed 20 years may be available.
- An investment tax credit equal to a percentage of the qualifying investment, amortized over five years. This tax credit is earned when the corresponding asset is placed in service and can be carried forward for up to seven additional years or until depleted, whichever occurs first.
- A refund of state sales, service or use taxes paid to contractors or subcontractors during construction.
- For distribution center projects, a refund of sales and use taxes paid on racks, shelving, and conveyor equipment.
- To assure your addition/expansion can benefit from this program, businesses must apply prior to the beginning of the project.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Finance/HQJ.\\*](http://www.iowaeconomicdevelopment.com/Finance/HQJ.*)

C. EB-5 Regional Center

The Iowa Economic Development Authority (IEDA) is partnering with CMB Regional Centers to manage and operate the recently amended Iowa Regional Center as part of the EB-5 program.

The EB-5 (Immigrant Investor) program was authorized by Congress in 1990, to target qualified foreigners seeking to obtain lawful permanent residency by investing in a business that will benefit the US economy and create or save at least 10 full-time US jobs.

Information can be found at: [http://www.iowaeconomicdevelopment.com/Finance/EB5.\\*](http://www.iowaeconomicdevelopment.com/Finance/EB5.*)

XIII. TAX-EXEMPT FINANCING – SMALL ISSUE PRIVATE ACTIVITY BONDS

Below is a summary of some of the restrictions of small issue private activity bonds. This summary does not identify all of the limitations and other requirements that may apply to a determination regarding bond eligibility.

A. Types of Facilities Financed

Small issue bonds can finance only manufacturing facilities or land or property for first-time farmers.

1. Manufacturing Facility. A manufacturing facility is defined under IRC § 144(a)(12)(C) as any facility used in the manufacturing or production of tangible personal property. This includes processing which results in a change in the condition of tangible personal property, and facilities that are directly related and ancillary to a manufacturing facility if: (i) located on the same site, and (ii) not more than 25% of the net proceeds were used to provide these ancillary facilities. While mere assembling is not manufacturing, major assembly may be manufacturing (such as automobile plants).

Some Examples of what is or is not a manufacturing facility are below:

- a. Facility engaged in the transformation of rolls of paper into paper bags is a manufacturing facility;
- b. Facility used to crush and flatten aluminum, glass or plastic is not a manufacturing facility because this does not create tangible personal property;
- c. Facilities used in printing company, printing presses and other similar equipment used in the printing company are considered manufacturing;
- d. Facility used to feed, grow and harvest live animals is not a manufacturing facility; and
- e. Snowmaking at a ski resort is not a manufacturing facility.

Some examples of what is or is not directly related and ancillary to a manufacturing facility are below:

- a. An on-site laboratory for quality control or testing of raw materials to be used in the production is directly related and ancillary to manufacturing facility;
- b. A laboratory for new research and development is not included;
- c. Machinery used to load or unload the raw materials or finished product, such as forklifts, is related and ancillary to a manufacturing facility; and
- d. Vehicles used in the delivery of the raw materials or finished product are not related and ancillary to the manufacturing activity.

2. Farm Property. Generally, no more than 25% of the bond proceeds may be spent on land acquisitions, and no portion of the proceeds may be used for the acquisition of land for farming purposes. However, there is an exception for land acquisitions by first-time farmers. A first time farmer is any individual who has not at any time had direct or indirect ownership of, and material participation in, "substantial farmland," and who has not received financing in any amount which, when added to current financing exceeds \$250,000. Ownership, material participation or financing by a spouse or minor child is treated as ownership and material participation by the individual but parent's ownership of a farm is not treated as ownership. "Substantial Farmland" means any parcel of land unless it is smaller than 30% of the median size of a farm in the county where it is located, and the fair market value of the land does not exceed \$125,000 at any time while held by the individual.

## B. Limitations

1. Use of Proceeds. At least 95% of the net proceeds of the Bonds must be used for a qualified purpose. Net proceeds means bond proceeds less amounts in a reasonably required reserve fund.
2. Limitation on Principal Amount of Bonds. Generally, the face amount of a qualified small issue bond may not exceed \$1 million. Under certain circumstances, the \$1 million limitation may be increased to \$10 million.

In determining the aggregate face amount of the issue for purposes of the \$10 million limitation, the following amounts are included: the face amount of the bond issue in question; the face amount of all issued and outstanding prior bond issues; and certain capital expenditures of the principal user or related persons. Capital expenditures included are those paid or incurred by the principal user of the facility with moneys other than proceeds of prior small issue bonds during a six-year period. This six-year period begins three years before the date of issuance of the bonds and ends three years after the issuance of the bonds.

There is also a limit on the aggregate principal amount of qualified small issue bonds, which may be outstanding nationwide for a particular beneficiary to \$40 million.

3. Other Limitations.
  - a. An issuer must receive volume cap allocation for the issue (IRC § 146);
  - b. There are limitations on the average maturity of the bonds (IRC § 147(b));
  - c. There are prohibitions to the acquisition of existing property unless the first use of such property is pursuant to such acquisition (IRC § 147(d));
  - d. There are notice and public approval requirements prior to the issuance of the bonds (IRC § 147(f));
  - e. There are limitations to the cost of issuance (IRC § 147(g));
  - f. The arbitrage and rebate rules of IRC § 148 are applicable; and
  - g. The rules of IRC § 149 are applicable.

XIV. APPENDIX

1. **Iowa Alcoholic Beverages Division**  
1-866-469-2223 or (515) 281-7400  
<http://www.iowaabd.com/>
2. **Iowa Civil Rights Commission**  
Grimes State Office Building,  
2nd Floor  
400 E. 14th Street  
Des Moines, Iowa 50319  
Phone: 515-281-4121; 800-457-4416  
<http://www.state.ia.us/government/crc>
3. **Iowa Department of Commerce**  
<http://commerce.iowa.gov/>
4. **Iowa Division of Banking**  
(515) 281-4014  
<http://www.idob.state.ia.us/>
5. **Iowa Economic Development Authority**  
200 East Grand Avenue  
Des Moines, Iowa 50309 USA  
Phone: +1.515.725.3000  
Fax: +1.515.725.3010  
e-mail: [info@iowa.gov](mailto:info@iowa.gov)
6. **Iowa Insurance Division**  
(515) 281-5705  
<http://www.iid.state.ia.us/>
7. **Iowa Judicial Branch**  
<http://www.iowacourtsonline.org>  
Online state court records: <http://www.iowacourts.state.ia.us>.
8. **Iowa Professional Licensing Bureau**  
(515) 281-7393  
<http://www.state.ia.us/government/com/prof/>
9. **Iowa Secretary of State**  
Lucas Building, First Floor  
321 E. 12th Street  
Des Moines, IA 50319  
(515) 281-5204  
(515) 242-5953 (fax)  
[sos@sos.iowa.gov](mailto:sos@sos.iowa.gov)  
<http://sos.iowa.gov>
10. **Iowa Securities Bureau**  
<http://www.iid.state.ia.us/securities>
11. **Iowa Utilities Board**  
1-877-565-4450 or (515) 725-7321  
<http://iub.iowa.gov/>
12. **Iowa Workforce Development**  
1000 East Grand Avenue  
Des Moines, Iowa 50319  
Phone: 515-281-5387; 800-JOB-IOWA  
<http://www.iowaworkforce.org>

**Iowa Economic Development Authority Links**

- Demonstration Fund: [www.iowaeconomicdevelopment.com/Entrepreneurial/DemoFund](http://www.iowaeconomicdevelopment.com/Entrepreneurial/DemoFund)
- The Iowa Capital Access Program: <http://www.iowaeconomicdevelopment.com/Entrepreneurial/ICAP>
- The Iowa Innovation Acceleration Fund: <http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCInnovation>
- The Iowa Small Business Loan Support Program: <http://www.iowaeconomicdevelopment.com/Entrepreneurial/SBLSP>
- Financial Assistance and Tax Incentive Programs: <http://www.iowaeconomicdevelopment.com/Entrepreneurial/SSBCI>
- Tax Incentives: <http://www.iowaeconomicdevelopment.com/Finance/HQJ>
- EB-5 Regional Center: <http://www.iowaeconomicdevelopment.com/Finance/EB5>







[WWW.DAVISBROWNLAW.COM](http://WWW.DAVISBROWNLAW.COM)

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THE DAVIS BROWN TOWER  
215 10TH ST., STE. 1300  
DES MOINES, IA 50309

THE HIGHLAND BUILDING  
4201 WESTOWN PKWY., STE. 300  
WEST DES MOINES, IA 50266

THE AMES OFFICE  
2605 NORTHRIDGE PKWY., STE. 101  
AMES, IA 50010

THE EMMETTSBURG OFFICE  
2214 MAIN ST., P.O. BOX 314  
EMMETTSBURG, IA 50536

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