Lex Mundi
World Ready

Guide to Doing Business

Missouri

Prepared by Lex Mundi member firm, Armstrong Teasdale LLP

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DOING BUSINESS IN MISSOURI

2018

Armstrong Teasdale

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I. BUSINESS ENTITIES

A. Corporations

1. Contact Information for Missouri Department of Economic Development and Secretary of State

Department of Economic Development
PO Box 1157
Jefferson City, MO 65101
Phone: 573-751-4962
Fax: 573-526-7000
E-mail: ecodev@ded.mo.gov

Secretary of State
600 West Main
Jefferson City, MO 65101
Phone: 573-751-4936
E-mail: info@sos.mo.gov

2. Application Process for a Corporation in Missouri:

A corporation formed in accordance with all the applicable laws is a *de jure* corporation. If all applicable laws have not been followed, a business may still be treated as a corporation under the de facto corporation doctrine where there has been a good faith attempt to organize as a corporation for a valid purpose. The following summarizes the requirements for formation of a *de jure* corporation:

a. Incorporators: The incorporators are responsible for filing the Articles of incorporation. Only natural persons 18 years old of age or older may act as incorporators. Only one incorporator is required, and the incorporator need not be a shareholder or subscriber to the shares. Legal counsel often serves as incorporator.

b. Contents of the Articles of Incorporation: The Articles of Incorporation must set forth the following information:

   i. Name of Corporation
   ii. Address and Name of initial registered agent
   iii. Capital Structure
   iv. Name and Address of each incorporator
   v. Corporate Duration (generally perpetual)
   vi. Purpose of Corporation (this can be very broad to cover all legal businesses)

c. Filing and recording: The duly executed articles and related incorporation fees must be filed with the secretary of state.

d. Issuance of a Certificate of Incorporation: If the Secretary of State (or other designated state agency) finds that the Articles of Incorporation comply with the requirements of law and that all applicable fees have been paid, they will file the Articles and issue the Certificate of Incorporation. This Certificate is taken by all courts of Missouri as evidence of the existence of the Corporation. The corporate existence begins on the date the articles are accepted for filing by the Secretary of State unless the Articles specify a later effective date not more than 90 days after its date of filing.

3. Laws Governing Corporations in Missouri:

The General and Business Corporation Law of Missouri ("GBCL") contains rules governing corporations in Missouri.

4. Mergers and Fundamental Changes

The GBCL authorizes fundamental corporate changes with the approval of the shareholders. The following modifications to the corporate structure are considered to be fundamental changes: merger, consolidation, sale, mortgage, or other disposition of substantially all corporate assets other than in the regular course of business; amendments to the articles of incorporation; dissolution and revocation of dissolution procedures.

Dissolution is the termination of the corporate existence. To dissolve the corporation, some act must be taken, which may be voluntary by the corporation or its shareholders or may be involuntary through judicial proceedings.

Liquidation: Although dissolved by judicial decree or voluntary dissolution, the corporation nevertheless will continue in existence for purposes of winding-up. Liquidation, involves collecting the corporate assets, paying the expenses involved, satisfying creditors' claims and distributing the net assets of the corporation.

Termination: A dissolved corporation must file a request for termination with the secretary of state when it has disposed all claims filed against it and all remaining assets have been distributed to its shareholders. Upon the date of issuance of the certificate of termination the corporation no longer exists.

B. Partnerships

1. General Partnerships:

a. Introduction: Missouri's Uniform Partnership Act (U.P.A.) defines a partnership as "an association of two or more persons to carry on as co-owners of a business for profit." The law of partnership is based on the law of contracts and agency. A partnership is unlike a corporation in that it lacks some of the entity characteristics of a corporation. A general partnership is not required to file with any governmental agency to create the partnership. However, a filing is required to convert the general partnership to one with limited liability of its owners called a "registered limited liability partnership."

b. Formation of a Partnership: A partnership is formed by way of a written or oral agreement; therefore it is governed by the general rules applicable to contracts. There are no particular formalities to the validity of the contract of partnership. It is normally not necessary for the partnership agreement to be in writing. The purpose for which the partnership was formed must be legal. An illegality of the purpose will make the partnership void. Determining the existence of a partnership is not difficult if the parties have an express contract, but where their intention is unexpressed problems may arise. If that is the case one must consider the following as evidence of its existence:

   i. Title to property
   ii. Designation of entity by parties
   iii. Amount of activity involved
   iv. Sharing of gross returns
   v. Sharing of profits
   vi. Sharing of losses

c. Property of a Partnership: Once the fact of partnership exists, it becomes important to distinguish which property belongs to the partnership and which to the individual partners.

Partnership capital consists of the property or money contributed by each of the partners for the purpose of carrying on the partnership's business. Partnership property embraces everything that the partnership owns, consisting both of the capital contributed by its members and the properties subsequently acquired in partnership transactions.

d. Rights of Partners: Unless there is an agreement to the contrary, partners have equal rights in the management of the partnership business. Each partner owes a fiduciary duty to the partnership. The profits made in the course of the partnership belong to the partnership. Unless an agreement provides the contrary, a partner is not entitled to remuneration for services rendered to the partnership. The partnership must indemnify every partner in respect of payments made and personal liabilities reasonably incurred by him in the ordinary and proper conduct of its business, or for the preservation of its business or property. Unless otherwise agreed, upon dissolution, each partner is repaid his or her contribution. Each partner shares equally in the profits and surplus remaining after all liabilities are satisfied. Each partner must contribute towards the losses. The partnership books must be kept, unless otherwise agreed, at the principal place of business and every partner has the right to inspect and copy them.

e. Third Party Liability: The authority of a partner to bind the partnership when dealing with third persons is governed by the law of agency. Every partner is an agent of the partnership for the purpose of its business. If the acting partner is not specifically authorized by the partnership agreement to do a particular act, then a majority of vote of the partners is required. Under the Missouri Partnership Act, all partners are jointly and severally liable for a partner's wrongful acts and breaches of trust and for the partnership's liabilities unless the partnership is converted to a "registered limited liability partnership."

f. Dissolution and Termination of a Partnership: According to the Missouri Partnership Act dissolution is the change in the relationship of the partners caused by any partner ceasing to be associated in the carrying on as distinguished from the winding up of the business. It does not mean that the business has been ended or that any assets have been distributed to partners. It can be caused in three ways; (i) by an act of the parties, (ii) by the operation of law and (iii) by a court decree.

Third parties are entitled to proper notice published in newspapers of general circulation in the area in which the partnership carries on the business. Those who were creditors at the time of dissolution or who had extended credit to the partnership prior to the dissolution are entitled to personal notice.

g. Continuance of Business after Dissolution: Unless otherwise agreed, dissolution gives the right to each partner, subject to limited exception, to have the business liquidated and his share of the surplus paid in cash. Under certain circumstances, the remaining partners have the right to continue with the partnership business.

2. Limited Partnership:

a. Introduction: A limited partnership is composed of one or more general partners and one or more limited partners. It differs from a general partnership in two ways:

i. A limited partnership is unknown at common law and is created under specific statutory authority.

ii. The liability of a limited partner for partnership debts is generally limited to the capital that he or she contributes to the partnership.

The law of limited partnership is governed by Missouri's Uniform Limited Partnership.

b. Formation: A certificate of Limited Partnership must be filed with the Secretary of State, and must set forth:

i. The partnership name
ii. The name and address of the agent for service of process
iii. The name and business address of each general partner
iv. iv. The latest date upon which the limited partnership is to dissolve

A limited partnership must maintain an agent and an office in the state of organization. As a general rule, a limited partner is not liable beyond his or her contribution for obligations of the limited partnership to third parties. There are three exceptions to this general rule: (1) the limited partner is also a general partner; (2) the limited partner participates in control of the business and, (3) the limited partner permits his or her name to be used in the name of the partnership.

c. Rights of Limited Partners: Limited partners have the following rights:

i. Right to vote
ii. Right to share of profits and losses
iii. Right to information
iv. Right to assign interest
v. Right to perform business transactions with the partnership
vi. Right to derivative actions
vii. Right to withdraw from the partnership
viii. Right to dissolve

d. Rights and liabilities of the General Partners: A general partner of a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a partner in a regular partnership, except otherwise agreed.

e. Dissolution and Distribution: A limited partnership may be dissolved by any of the following:

i. The occurrence of the time stated in the certificate of limited partnership;
ii. On the date or the occurrence of an event specified in the partnership agreement;
iii. Written consent of all partners;
iv. Withdrawal of a general partner; or
v. Entry of a decree of judicial dissolution.

When the winding-up occurs, the assets will be distributed as follows:

i. To creditors in satisfaction of liabilities of the limited partnership other than liabilities to partners upon withdrawal or for interim distributions.

ii. To general and limited partners and former partners in satisfaction of liabilities for interim distributions and to former partners to satisfy distributions owing upon the partners' withdrawal.

iii. To general and limited partners first for the return of their contributions and second for partnership profits and property in the proportions in which the partners share in distributions.

C. Sole Proprietorship

A sole proprietorship is an individual doing business for his own account. It is the most informal form of business organization.

A sole proprietorship is not a separate entity from its owner; therefore the owner will be subject to unlimited liability with regard to the obligations of the business. The sole proprietorship is the most widely used mode of business organization for small ventures with small capital and low growth expectations.

D. Joint Ventures

A joint venture involves two or more parties, individuals or other legal entities, working together to undertake a single transaction or a series of related transactions.

E. Nonprofit Corporations

The Missouri Nonprofit Corporation Act contains rules applicable to not-for profit corporations. The main distinction between a not-for profit corporation and a general business corporation is that a not-for- profit corporation has members who receive certificates of membership rather than shares. The profits and properties of the corporation do not belong to the members. A not-for-profit corporation may pay reasonable compensation to its employees and may make a profit, which means that it has more income than expenses. Hospitals are good examples of not-for-profit corporations. To qualify as a not-for-profit corporation, the company must have an ultimate purpose, specified by law, such as a charitable, educational, civic, religious, or cultural purpose. Many not-for-profit corporations are tax-exempt. However, merely forming a not for- profit corporation under Missouri state law does not guarantee that the state or federal government will treat the organization as tax exempt. Separate qualifications are required for tax-exempt status.

F. Limited Liability Company ("LLC")

A limited liability company is an unincorporated entity organized under state law that combines certain advantages of both a partnership (i.e. a single level of taxation) and a corporation (i.e. limited liability for its members). LLCs avoid many of the disadvantages and requirements of so-called S Corporations, which are a corporation which elects to be treated under federal tax law as a partnership. Whereas the S Corporation prohibits foreign ownership among other things, the LLC is not so limited. The key features of an LLC are: (1) flow-through tax treatment, (2) limited liability of its members or owners, (3) flexible management, and capital structures. These features make LLCs well suited both for entrepreneurial and privately held businesses and for passive investments, including businesses that develop and sell or license technology, venture capital management, real estate investments, and corporate joint ventures, where the limited liability of all owners is important, and where the freedom of planning distributions and allocations of LLC income and losses is desirable. Existing businesses may be able to take advantage of the LLC statute even if they are not interested in forming a new venture.

G. Branch of a Foreign Entity

It is possible also for a foreign business entity to establish a branch in Missouri. As in most jurisdictions, a simple filing with the Secretary of State is required of a foreign entity wishing to transact business within the state. The principal advantage of transacting business as a U.S. branch of an existing foreign entity is that organizational expenses are kept to a minimum since no new entity need be created. A disadvantage, however, is that doing business in such a

form exposes the entity's non-U.S. assets to claims arising out of activities of the U.S. branch as well as the possible application of a branch profits tax

H. Alternatives

Alternative methods for doing business are available to foreign enterprises which desire to introduce their products or services into Missouri.

a. Sales Representatives: A sales representative is an individual or foreign entity that solicits orders to the supplier enterprise, but which does not have authority to accept orders, set prices or negotiate sale conditions and terms, or bind the suppliers. Sales representatives are commonly compensated on a commission basis and often represent more than one principal.

b. Distributors: A distributor is different from a sales representative in that distributors purchase the manufacturer's or supplier's product for its own inventory and then later sell the product for their own account. Distributors are compensated by the profit derived from resale, and they assume the economic risks of purchasing and reselling the products.

c. Licensing: Companies that own patents, trade secrets or trademarks may enter into a licensing agreement, which is typically an agreement wherein the owner of the intellectual property right grants a license to the other contracting party allowing it to use the intellectual property for certain period of time in exchange for royalty payments or a specified lump sum. License Agreements must comply with state and federal antitrust laws designed to minimize the creation of a monopoly.

d. Franchising: Another method for companies is through the implementation of franchises. Franchising is a very flexible alternative of distribution of goods and services whereby the franchiser operates under the trademark of another. There are two different models of franchising:

   i. Product Franchises (manufactures)
   ii. Business Format Franchises (licenses)

II. 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).

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." While the Act focuses on price discrimination, it also addresses other concerns such as discriminatory advertising allowances.

4. The Federal Trade Commission Act.

The FTC Act declares unlawful "unfair methods of competition" and "unfair or deceptive acts or practices." 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 Section 721 of the Defense Production Act of 1950, 50 U.S.C. App. 2170 (as amended by the Foreign Investment and National Security Act of 2007) , 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 United States. 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.

Investigations of transactions 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 determines that a full- scale investigation is warranted, it has an additional 45 days to complete the 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 of a threat to the national security of the United States. If so, President has the authority to take any action deemed appropriate to suspend or prohibit the transaction, including requiring divestment by the foreign entity if the transaction has already been consummated.

In addition to the Exon-Florio Amendment, U.S. law places certain restrictions on acquisitions of businesses which require a facility security clearance in order to perform contracts involving classified information. Under the 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 and annual reports may be required thereafter.

3. The International Investment and Trade in Services Survey Act

The International Investment and Trade in Services Survey Act ("IISA" or the "Act"), 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 intends to 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. §§ 730-774.) Exports from the U.S. may require an export "license," authorizing the export of particular goods, services, and technologies. Typically exports are regulated by the type of goods or technical information and the destination for those items.

Whether an export license is required depends on the item's technical characteristics, the destination, the end-user, and the end-use. The proper classification of an item is essential to determining any licensing requirements under the Export Administration Regulations ("EAR"). While restrictions vary from country to country, the most restricted destinations are the embargoed countries and those designated as supporting terrorist activities, which include Cuba, Iran, North Korea, Sudan, and Syria. Restrictions on certain products, however, may be worldwide.

If the export of a specific product to a specific destination is subject to a 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. Note, however, that pursuant to EAR, an export of technical information occurs when the information is disclosed to a foreign national even if such disclosure occurs in within the United States. Therefore, if the information is subject to an export license requirement, the disclosure cannot be made to a foreign national without first obtaining the necessary license.

6. Foreign Trade Zones

Foreign trade zones are areas in or adjacent to U.S. ports of entry which are treated as outside the U.S. customs territory. In order to expedite and encourage trade, goods admitted into a foreign trade zone are generally not subject to U.S. customs laws 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. antidumping law (19 U.S.C. §§ 1671-1677) aims to protect American industries from unfair import competition. In particular, it imposes additional duties on goods from a foreign country if (i) the Department of Commerce finds that the goods are being sold in the United States at less than fair value ("dumped") and (ii) the International Trade Commission determines that the imports in question are causing or threatening "material injury" to domestic producers of the "like product." 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.

C. State Considerations

1. Consumer Protection

Missouri's consumer protection statutes (Chapter 407 of Missouri Revised Statutes) prohibit deception, fraud and misrepresentation or concealment of material facts in the sale or advertisement of goods or services. In addition, the statutes specifically authorize the attorney general to prevent promotion of pyramid sales schemes, stop the altering of vehicle odometers and ensure that the consumers' rights are protected.

2. Antitrust Law

The Missouri antitrust statutes (Chapter 416 of Missouri Revised Statutes) are construed in harmony with the federal antitrust statutes. Missouri's antitrust statutes prohibit every contract, combination or conspiracy in restraint of trade or commerce in the State. It also prohibits monopolization, attempted monopolization or any type of conspiracy to monopolize trade or commerce in the State. The statute makes it unlawful for any person to engage in exclusive dealing or tying arrangements where the effect may be to lessen competition or create a monopoly in any line of commerce in the State. All provisions of the Missouri Antitrust Law are severable.

However, Missouri has no statute of general application governing price discrimination and sales below cost. Nor does it have any statutory provision that prohibits unfair methods of competition.

Miscellaneous Missouri Antitrust Statutes cover particular persons, products and industries such as: milk and dairy products, motor fuel, insurance and school textbooks.

Milk and dairy products: the Missouri Revised Statutes prohibits unfair practices in the sale of milk. It also prohibits processors and distributors from advertising, offering to sell or selling milk at wholesale or retail in Missouri at less than the cost thereof to the processor or distributor when the intent is to effect or unfairly divert trade from a competitor, otherwise injuring a competitor, destroying competition or creating a monopoly. Proof of such advertising becomes prima facie evidence of a violation. The statute also prohibits any processor or distributor from engaging in local price discrimination in sales of milk with the same intent. However, a price difference that reflects the actual cost of transportation from the point of processing to the point of sale (in the case of a processor), and price differences that reflect the actual cost of transportation from the point of purchase to the point of resale (in case of a distributor) do not incur any violation of the statute. No milk processor or distributor shall give, offer to give or advertise the intent to give any rebate, service or thing of value with the intent or effect to unfairly divert trade from a competitor, otherwise injuring him or destroying competition. No purchaser of milk products is to accept such unlawful behavior.

Finally, the statute authorizes the Missouri Commissioner of Agriculture to request the Attorney General (or any prosecuting attorney) to institute suit for injunctive relief under Missouri's unfair Milk Sales Practices Law. Any person injured in his business or property is allowed to seek injunctive or treble damage relief in the case of violation of these provisions. A two-year statute of limitations is applicable to these remedies. Violations of Missouri's Unfair Milk Sales Practices Law can result also in revocation of state licenses. This Law does not prohibit quantity discounts.

Motor Fuels: The Missouri legislature introduced in 1993 the Motor Fuel Marketing Act which prohibits any person from selling or offering to sell motor fuel below cost if the intent is to unfairly divert trade from a competitor or injure him in any other way.

Insurance: The Missouri revised Statutes governs any unfair methods of competition and unfair practices in the insurance field. It specifically prohibits any agreement to commit any act of boycott, coercion or intimidation that results or tends to result in an unreasonable restraint of or monopoly in the insurance business. The Statute also prohibits unfair discrimination and illegal rebates in the business of insurance. It also provides that no person lending money or extending credit may require the lender to obtain insurance through a particular broker or agent.

Violation School Textbooks: The Missouri Revised Statutes provides that publishers of school textbooks must file a sworn statement with the State of Missouri that they have no understanding or agreement of any kind with any other publisher or interest in the business of any other publisher the effect, design or intent of which is to control the prices of books or to restrict competition in the adoption or sale of school textbooks in the state of Missouri. Any violation, whatsoever, may result in proceedings conducted by the Attorney General for the forfeiture of bonds posted by publishers and for a revocation of the authority of publishers to sell books in Missouri.

3. Warranties

The basic idea of the warranties law is to regulate the description, content and fulfillment of representations in written warranties on consumer products. This is to be accomplished through statutory requirements, regulations of the Federal Trade Commission, industry dispute settlements, and litigation by consumers and the government.

III. TAXATION

A. Federal Taxation

1. Income Taxation of Domestic Corporations, Foreign Owned Corporations, and Foreign Individuals

All residents and all citizens of the United States are subject to the federal income tax. For business entities, the federal corporate income is a tax on net income, or profits, with permissible deductions for most costs of doing business. It applies, not to partnerships or sole proprietorships, but only to businesses that are chartered as corporations.

2. Income Tax on U.S. Citizens or Resident Aliens

Citizens of the United States or resident aliens are subject to U.S. income tax on their worldwide income. Whether an individual is a resident alien status for tax purposes is determined under a set of complex rules. Any individual who is not a U.S. citizen and plans to spend a substantial amount of time in the United States should pay careful attention to these rules. Currently, the highest marginal U.S. individual income tax rate is 35% for ordinary income. For long term capital gains, the rate is generally 15%. A nonresident alien generally is subject to tax on dividends from U.S. corporations, as discussed below.

B. State Taxation

1. Personal Income Tax

The extent to which an individual will be subject to Missouri taxes depends upon his or her resident status for the taxable year. Residents of Missouri are taxed on income derived from both in-state and out-of- state sources. An individual who is domiciled in Missouri is considered to be a resident unless he or she does not maintain a permanent abode in Missouri and spends in aggregate thirty days or less in Missouri during the taxable year. An individual not domiciled in Missouri is considered to be a resident only if he or she maintains a permanent abode in Missouri and spends in the aggregate more than 183 days in Missouri during the taxable year. Individuals who are not residents of Missouri are taxable only on income received from sources within Missouri.

Missouri personal income tax is based on taxable income. Missouri taxable income is generally determined as follows:

- Federal adjusted gross income;
- Positive Missouri modifications;
- Negative Missouri modifications;
- Missouri adjusted Gross Income;
- Missouri standard deduction or Missouri itemized deduction;
- Missouri personal and dependency exemptions;
- Missouri deduction for federal income tax liability; and
- Missouri taxable income.

Missouri income tax is imposed on the Missouri taxable income of resident individuals at rates that are progressive on taxable income up to $9,000, and on higher amounts of taxable income at a flat rate of six percent (6%) of taxable income in excess of $9,000. In order to mitigate the impact of multiple taxation of the same income, a resident individual is allowed credit against his or her Missouri income tax for income taxes imposed by another state or political subdivision.

An individual taxpayer's method of accounting for Missouri income tax purposes must be the same as his or her accounting method for federal income tax purposes, subject to a requirement that the method used must fairly reflect income in the opinion of the Director of Revenue.

Like the federal income tax, Missouri requires individuals to make periodic payments of estimated income tax. These estimated tax payments are normally made through wage withholdings. But if wage withholdings are insufficient, the individual will be required to make quarterly payments to avoid interest and penalties.

Missouri income tax returns are due, absent an extension of time for filing, on the fifteenth day of the fourth month following the close of the taxpayer's taxable year (generally April 15th).

2. Corporate Taxation

For purposes of the Missouri corporate income tax, the term corporation includes every corporation, association, joint stock company and joint stock association that is organized, authorized or existing under the laws of Missouri. Entities organized under the laws of a foreign jurisdiction are also deemed a corporation, provided that they are doing business in Missouri or are licensed to do business in the State. Missouri corporate income tax shall not be applied to the following entities:

- Tax-exempt organizations;

- Express companies which pay annual tax based upon gross receipts earned by the corporation;
- Insurance companies required to pay an annual tax on the gross premium receipts earned in Missouri;
- A Missouri mutual or an extended Missouri mutual insurance company organized under Chapter 380, RSMo; or
- Any other corporation that is exempt from the tax pursuant to Missouri or Federal law. This includes S corporations that are exempt from Missouri income tax.

Missouri corporate income tax liability is computed through the following steps:

- The calculation begins with the corporation's federal taxable income. If the corporation has a loss for federal income tax purposes, the calculation begins with zero, instead of a negative number.
- The federal taxable income is modified, and the federal deductions are subjected to the applicable modifications.
- The deduction for federal income tax, to the extent permitted, is subtracted from the "modified" income amount.
- The resulting income amount is allocated and apportioned to determine that part of the corporation's income that is attributable to Missouri.
- Corporate dividends from sources in Missouri are subtracted from the Missouri taxable income. The amount remaining is the corporation's Missouri taxable income.
- The applicable tax rate is applied to the Missouri taxable income, to determine the corporation's Missouri corporation income tax.
- The corporation's tax may be offset by any tax credits available to the corporation under Missouri law.

For taxable years beginning after September 1, 1993, the Missouri corporate income tax is imposed at the flat rate of six and one fourth percent (6.25%) of Missouri taxable income.

Missouri corporate tax returns must be filed on or before the fifteenth day of the fourth month following the close of the taxpayer's taxable year. A corporation's taxable year is deemed to be identical to its federal taxable year.

In Missouri, corporations are required to make periodic payments of its estimated income tax, which is defined as the taxpayer's estimated Missouri income tax liability less the estimated amount of its tax credits. The declaration is due on or before April 15 of the taxable year.

3. Franchise Tax

The franchise tax is an excise tax on the privilege of doing business within Missouri. The tax is levied on the privilege of transacting business in Missouri and not on the property of the corporation itself. All domestic and foreign for-profit corporations doing business in Missouri are subject to the franchise tax except those specifically exempted by statute. The franchise tax has been construed to apply only to organizations having technical corporate status. Unincorporated associations, including partnerships, limited partnerships, business trusts, and limited liability companies, are not

subject to the franchise tax, even though they may be treated as corporations for income tax purposes. A corporation's franchise tax year begins on the same day as its tax year for income tax purposes.

The annual franchise tax rate is equal to one-thirtieth of one percent of the corporation's outstanding shares and surplus if their sum exceeds $1,000,000. Only corporations whose Missouri assets exceed $1,000,000 are subject to the tax.

The franchise tax is payable on or before the fifteenth day of the fourth month of the corporation's taxable year, the due date for the annual franchise tax report.

4. Property Taxation

Property is classified as real property, tangible personal property, or intangible personal property. Both real property and tangible personal property are subject to tax, but intangible personal property is not. Real Property is sub-classified as residential; agricultural; and all other properties not included in another subclass.

Tangible personal property generally includes every tangible thing subject to ownership other than money or real property, but it does not include articles of household or personal use.

The standard of value in Missouri is "true value in money." Property will be assessed at a percentage of its true value in money. Fair market value is arrived at by using the three recognized approaches to value: the cost approach; the market approach; and the income approach.

The rate of tax levied against a property is generally established by the county commission after the tax book is corrected and adjusted by law. All real and personal property taxes are due on or before December 31 of the year assessed. However, an exception is made for real property taxes in Kansas City, which must be paid on or before October 31 of the year of the assessment. All taxes paid after that date are considered delinquent and subject to lien. Appeals that involve assessment disputes, the method used for valuation, or the assignment of a discriminatory assessment must be appealed to the Missouri State Tax Commission.

The Missouri Constitution and legislature exempt some property from taxation entirely and give other property partial exemptions. For example: Federal property, property used or set apart by a cemetery, property not held for private or corporate profit and used exclusively for agricultural or horticultural purposes, household goods, furniture, wearing apparel, inventory and other property subject to the merchants and manufacturers tax, and intangible personal property are all exempt from taxation. Generally all property, real and personal, regularly used for religious worship, for schools and colleges or for purely charitable purposes and not held for private or corporate profit are exempt from taxation. Although it is not mandatory to file an exemption, filing an exemption application with the assessor is the preferred method for initiating the appeal process.

5. "Sub- S" Status

A corporation that has a valid Federal S corporation election is not subject to Missouri corporate income tax. Missouri "piggy backs" the Federal election. An S corporation's income, gain, loss, deduction, and credit are passed through to its shareholders. The income of the S corporation allocated to its shareholders for purposes of Missouri income taxation is the S corporation's income for Federal income tax purposes subject to certain modifications. The Missouri modifications consist of:

- State and local income taxes deducted on Federal Form 1120S (less Kansas City and St. Louis earning taxes); and

- State and local bond interest (except Missouri) exempt from Federal tax, less related expenses and decreases to Federal reported S corporation income for interest from exempt Federal obligations less related expenses, and the amount of any state income tax refund included in Federal ordinary income.

Missouri does not "piggy back" the Federal tax treatment of LIFO inventory recapture, passive investment income, or net recognized built-in gains.

To elect S corporation status, the corporation must file Federal Form 2553: Election by a Small Business Corporation. Every S corporation that has a Missouri resident shareholder or income derived from Missouri sources and is required to file Federal Form 1120S must file a Form MO-1120S, this form is signed by an officer of the S corporation.

The taxable year of the S corporation for Missouri tax purposes is the taxable year of the S corporation for Federal tax purposes.

6. Sales and Use Tax

Sales and use tax of 4% is imposed on the amount charged on or paid for:

- Retail sales in state of tangible personal property;
- Admission and seating accommodations, or fees paid to any type of amusement or athletic event;
- Electric current, electricity, gas and water;
- Telephone services;
- Telegraph services;
- Rooms, meals and drinks furnished at any other place in which rooms, meals, or drinks are regularly served to public;
- Intrastate tickets;
- Lease or rental of tangible personal property that is not tax exempt.

It should be noted that on local option, some cities and counties of the State of Missouri might impose additional taxes. Some examples of allowed exemptions are:

- Motor fuel subject to excise or sales tax under another law of the State of Missouri;
- Fuel to be consumed in manufacturing or creation of power, gas, steam, electrical current or furnishing water to be sold ultimately at retail;
- Grain to be converted into foodstuffs;
- All sales of pesticides and bedding used in production of food or fiber;
- Sales of animals and poultry for breeding or feeding;
- Newsprint for public newspapers;

- Water service, gas, wood, electricity, coal and heating for domestic use.

Also exempt are sales by or to: religious and charitable institutions or organizations; elementary and secondary schools publicly operated, in their religious, charitable or educational functions and activities; penal institutions; industries of state; any institution of higher learning supported by public funds; admissions to museums, zoos and planetariums.

A 4% use tax is imposed on storing, using or consuming tangible personal property in state. However the following exemptions should be noted:

- Constitutional exemptions;
- Property taxed under sales taxes of the State of Missouri;
- Property which would not be subject to sales taxes in the State of Missouri;
- Property taxed under other State's sales or use tax, except if that tax rate is less than 4% (in this case the difference will be taxed);
- Property held for resale;
- Personal and household effects of nonresidents of Missouri;
- Farm machinery of nonresident coming into the State of Missouri.

7. Miscellaneous Taxes

In the State of Missouri Merchants must pay ad valorem tax on amount of all merchandise in their possession whether owned by them or consigned to them for sale on January 1st of each year.

Manufacturers are also taxed on all raw materials, finished products, tools, machinery and appliances been used by them in the same manner and to the same extent as merchants are taxed. However, if the value of the above items is less than $1,000 no manufacturers' tax will be imposed.

Building and loan associations as well as savings and loan associations are taxed at an annual rate of 7% of net income of the preceding year.

IV. 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 job proposed for the alien, the alien'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 an alien 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:

1. E-1 Treaty Trader and E-2 Treaty Investor Visas

These are temporary visas, which are only applicable to citizens from certain countries that have a treaty with the U.S., 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. Generally, E visa holders receive a five-year visa stamp but only one-year entries at any time.

2. H-1A, H-1B and E-3 Specialty Occupation Visas

H-1B visas are for persons in specialty occupations that require at least a bachelor's degree. Examples of such professionals are engineers, architects, accountants, and, on occasion, business persons. Initially, H-1B temporary workers are given three-year temporary stays with possible extensions of up to an aggregate of six years. A person can extend his H-1B begun six years after he demonstrate that his employer has taken steps forwards sponsorship. H-1B visas are employer-and job-specific. H-1A visas are for registered nurses only

Similar to the H-1B visa is the E-3 visa which is available for citizens of Australia.

3. L-1 Intracompany Transferee Visas

Most often utilized in the transfer of executives, managers or persons with specialized knowledge from international companies to United States-related companies, L-1 visas provide employer-specific work authorization for an initial three-year period with possible extensions of up to seven years for managers and executives, and five years for persons with specialized knowledge. L managers or executives may qualify for a shortcut in any permanent residence filings. The L1-visa requires among other things a corporation relationship and a one year employment.

4. B-1 Business Visitors and B-2 Visitors for Pleasure

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, to attend business conferences or board meetings, or to fill contractual obligations such as repairing equipment for brief periods in the United States. B-1 or B-2 visitors cannot be on the United States payroll or receive United States-source remuneration.

5. TN Professionals

Under the North American Free Trade Agreement, certain Canadians and Mexicans who qualify and fill specific defined professional positions can qualify for TN status. Such professions include some medical/allied health professionals, engineers, computer systems analysts, and management consultants. TN holders are granted three-year stays for specific employers and other employment is not allowed without prior visas approval.

6. F-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.

7. J Exchange Visitor Visas

These visas are for academic students, scholars, researchers, and teachers 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 to H-1B or lawful permanent residence status.

8. 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.

9. P-1 Athletes/Group Entertainers and P-2 Reciprocal Exchange Visitor Visas

These temporary visas allow certain athletes who compete at internationally recognized levels or entertainment groups who have been internationally recognized as outstanding for a substantial period of time, to come to the United States and work. Essential support personnel can also be included in this category.

When planning to bring foreign personnel to the United States, United States employers should allow several months for processing by the U.S. Citizenship and Immigration Service, as well as the Department of State and 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 an actual or perceived 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.

l. 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, 1991. 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. The Missouri Service Letter

The Missouri Letter Service Statute was first enacted in 1905. The intent of the legislation was to correct the abusive practice of blacklisting. The Letter Statute remained unchanged until August 13, 1982, when it underwent substantial changes. Some of these substantial changes are:

- To be subject to the act a corporate employer must employ seven or more employees.
- The request for the service letter must be made within reasonable time, in any case not later than one year following the date of termination or discharge.
- A service letter request must be made in writing and sent by certified mail.
- The statute allows the corporation's registered agent to be person to whom a request for service letter may be addressed.

- The corporation's superintendent or manager must issue a service letter within forty five days after receipt of the request.

- No punitive damages or awards shall be based upon the content of the service letter.

- The law requires specific reference to the statute, so that vagueness in drafting the request is no longer a problem.

The statute clearly indicates that the request is to be made by the employee. A strict interpretation of the statute indicates that the request letter must be signed by the employee.

The three basic requirements for the service letter are:

i. The nature and character of the service
ii. The duration of such service
iii. The true cause, if any, for the termination of employment

Even if the text of the service letter will vary depending upon the facts and circumstances of the particular case, it may be technically deficient because the reasons given for the discharge are not substantially specific.

It has been said that the law presumes nominal damages from the employer's failure to supply a proper service letter; nominal damages are customarily limited to $1.

The evidentiary requirements for an award of substantial actual damages have been carefully delineated by Missouri's appellate courts. Two things must be shown by the plaintiff:

1. The approximate date when he was either refused employment or hindered in his efforts to obtain employment for lack of a service letter;

2. The salary rate of a definite job for which the plaintiff would have been hired but for his or her lack of an adequate service letter.

Since the 1982 amendment the number of service letter cases has been reduced because the plaintiff can no longer recover punitive damages under the new statute based on the contents of the service letter.

It is important to note that because an employer is obligated by law to issue a service letter upon a former employee's request or petition, a service letter constitutes a qualified privileged communication.

2. Discrimination Law

"The Missouri Human Rights Act" prohibits employment discrimination on the base of color, race, religion, national origin, ancestry and sex. It covers employers with 6 or more employees. It also prohibits discrimination in employment against disabled persons. There are two common discrimination theories:

a. The Disparate Treatment Theory: This theory focuses on whether an individual received unequal treatment based upon his or her protected status (i.e.: race, sex). Discriminatory intent is a critical element of this model.

b. The Disparate Impact Theory: This particular theory focuses on a seemingly neutral employment practice or procedure which is applied to everyone equally, but its effects are unequal on members of a protected class.

Although discrimination may be proved with direct evidence (which is very rare) indirect or comparative evidence is more commonly used to support a discrimination claim.

The Missouri Commission on Human Rights is the agency tasked with administering and enforcing the Act. Following that purpose, it has promulgated some Guidelines and Interpretations of Employment Anti-Discrimination Laws. The Charge filing requirements are similar to those under Title VII. If the Commission concludes that the respondent has engaged in any unlawful employment practices, it may serve upon the respondent an order requiring it to cease and desist from such employment practice(s) and to take affirmative action to require hiring, reinstatement or even upgrading of the employee(s), with or without back pay, or restoration to membership in any respondent labor organization.

Finally, under the Missouri Act it is unlawful for any employer, labor organization or employment agency to discharge, expel or discriminate against any person who has opposed any prohibited practice, or because he/she has filed a complaint, assisted or testified in any proceedings under the statute.

3. Employment at Will

Missouri Courts have repeatedly declared that in the absence of a contract for a definite term or a contrary statutory provision, an employer may discharge an employee without cause or reason, or for any reason, and no action can be brought for the wrongful discharge. The rationale for the rule has been stated to be that, in a contract of employment for an indeterminate period (since an employee can quit at any time) there is not the binding mutuality of obligation requisite to an enforceable contract.

An implied contract that might create contractual rights as to continued employment of the employee could arise from documents or circumstances of employment relationship.

A discharge is wrongful and actionable if it is motivated by the fact that the employee did something that public policy encourages or that he refused to do something that public policy forbids or condemns. For purposes of this public policy theory, public policy is limited to constitutional or statutory declarations.

4. Minimum Wage Law

Missouri has enacted a wage law, providing an hourly minimum wage and overtime pay for employees of most economic fields. As of 2018, the Missouri minimum wage is $7.25 per hour or the federal minimum wage – whichever is higher. Since then, the Missouri minimum wage adjusts annually based on the changes in the consumer price index. Overtime exemptions under the Fair Labor Standards Act are also recognized under the Missouri Minimum Wage Law.

The Missouri minimum wage laws generally apply to all employers, except those engaged in agriculture. Any agreement between the employer and employee to work for less than the required wage rate is no defense to an action of the employee.

V. 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 APRPs@ 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 as 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.

B. State Considerations

1. Introduction

Environmental issues have become an important factor in real estate and business transactions. Much of environmental Law in Missouri parallels or is rooted in Federal Law. The United States Environmental Protection Agency (EPA) and the Missouri department of Natural Resources (MoDNR) generate most of the environmental law actions and issues in Missouri. Therefore Environmental law should be viewed as a mixture of both federal and state authority wherein basic federal statutes have established broad frameworks of regulation in some areas and specific criteria for standards in other areas.

2. Missouri Air Law of Statewide Application

To understand the Missouri air program, it is mandatory to review federal law because the Missouri program is based on the framework provided by it. The Missouri law concerning air pollution is the Missouri Air Conservation Law. This law establishes the Air Conservation Commission as the statewide regulatory authority with responsibility for controlling air pollution in Missouri. The statute creating the Commission mandates that the Commission develop a comprehensive plan for the prevention, abatement and control of air pollution. Air pollution that occurs solely within the workplace is outside of the Commission's jurisdiction.

In carrying out its delegated power to promulgate air pollution regulations, The Commission has currently set quality of air standards for the following pollutants: particulate matter; sulfur dioxide; carbon monoxide; photochemical oxidants (ozone); nitrogen dioxide; hydrogen sulfide; sulfuric acid and lead. A member of the regulated community who feels that a given regulation or pollution limitation is particularly onerous can try to obtain a hardship variance.

3. Water Pollution Control

The goal of the Missouri Clean Water Law is to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the state or nation any other person in carrying out these objectives. In order to fulfill this objective, Missouri has adopted a statutory and regulatory scheme that requires point

source and certain storm water discharges to be permitted and water contaminants to meet minimum applicable effluent control regulations.

4. Solid Waste Management

Missouri adopted a solid waste law in 1972, the purpose of which is to prevent public nuisances, public health hazards, and the despoliation of the environment that necessarily accompany the accumulation and unmanaged disposal of garbage, refuse and filth. The law imposes responsibilities for the collection of solid waste, regulates its disposal and the facilities that process the waste, and provides an enforcement mechanism. The Missouri Department of Natural resources (MoDNR) is the agency authorized to implement the law.

5. Miscellaneous Environmental Laws

As environmental law appears to be of growing public interest the Missouri legislature provides several further ways to protect natural resources and the environment. This involves for example hazardous and infectious waste management, the dealing with abandoned and uncontrolled hazardous waste sites, the protection of wildlife and natural resources and further specific topics like storage tanks, mining and pesticides.

Further, Missouri also enacted a Community Right-to-Know Law since 1985, which is essentially an adaption and implementation of the Federal Emergency Planning Community Right-to-Know Act of 1986, Title III of the Superfund Amendments Act and Reauthorization Act ("**Title III**"). Accordingly, the Missouri Governor established the Missouri Emergency Response Commission, which in turn designated 60 local emergency planning districts and appointed a local emergency planning committee for each district. Title III provides various notification and reporting requirements to the Commission. The Missouri Right-to-Know Law generally parallels Title III but differs in certain respects, like inspections, updating of information and public availability.

VI. INTELLECTUAL PROPERTY

A. Federal Law

1. Copyright Law: This area is governed exclusively by federal law. Title 17, U.S.C.

In General. Copyright law provides the author of a copyrightable work (or such person's employer in the case of a "work made for hire") with certain specific exclusive rights to use, distribute, reproduce, modify and display or perform the work. Generally, works are entitled to copyright protection for the life of the author plus 70 years. However, as to works made for hire or anonymous works, copyright protection is for the shorter of 95 years after publication or 120 years after creation. Anyone who without authority exercises the rights reserved exclusively to the copyright owner is considered to infringe the copyright and may be liable for actual or statutory damages and may be subject to injunctive relief.

Copyrightable Works. Works of authorship that qualify for copyright protection include literary works, musical works (including lyrics), dramatic works, choreographic works, audiovisual works, pictorial, graphic and sculptural works, sound recordings and architectural works. The Computer Software Copyright Act of 1980 expressly made computer software eligible for copyright protection, a point previously in doubt. While constantly developing technology is likely to present many new issues, presently unforeseen, copyright protection may extend to HTML, deposits and trade secrets, derivative computer programs, CD-ROMs, computer screen displays, user manuals, video games, and object code.

All works eligible for copyright protection must meet two specific requirements. First, the work must be fixed in some tangible form; there must be a physical embodiment of the work so that the work can be reproduced or otherwise

communicated. Second, the work must be the result of original and independent authorship. The concept of originality does not require that the work entail novelty or ingenuity, concepts of importance to patentability.

Advantages of Copyright Registration. Copyright protection automatically attaches to a work the moment that the work is created. However, "registration" of the work with the U.S. Copyright Office provides advantages. A certificate of registration is prima facie evidence of the validity of the copyright, provided registration occurs not later than five years after first publication. With respect to works whose country of origin is the U.S., registration is a prerequisite to an action for infringement. With respect to all works, regardless of the country of origin, certain damages and attorneys' fees relating to the period prior to registration cannot be recovered in an infringement action. Registration also is a useful means of providing actual notice of copyright to those who search the copyright records.

Copyright Registration Application Process. In order to obtain registration of copyright, an application for registration must be filed with the U.S. Copyright Office. The application must be made on the specific form prescribed by the Register of Copyrights and must include the name and address of the copyright claimant, the name and nationality of the author, the title of the work, the year in which creation of the work was completed, and the date and location of the first publication. In the case of a work made for hire, a statement to that effect must be included. If the copyright claimant is not the author, a brief statement regarding how the claimant obtained ownership of the copyright must be included. An application must be accompanied by the requisite fee, and a copy of the work must be submitted. Copyright applications can also be submitted electronically at the U.S. Copyright Office.

Copyright Notice. Until 1989, all publicly distributed copies of works protected by copyright and published by the authority of the copyright owner were required to bear a notice of copyright. A copyright notice is no longer mandatory. However, use of the notice is still required for older works. All works published before March 1, 1989 must bear the copyright notice or risk the loss of copyright protection. Even though use of the copyright notice is no longer mandatory for works created after 1989, its use is still advantageous. For example, the defense of "innocent infringement" is generally unavailable to an alleged infringer if a copyright notice is used.

If a Copyright Notice is Used: The notice should be located in such a manner and location to sufficiently demonstrate the copyright claim. The notice should consist of three elements. First should be the symbol © (the letter C in a circle), or the word "copyright," or the abbreviation "Copr." Second should be the year of first publication. Third should be the name of the copyright owner.

Works Made for Hire: In a "work made for hire" the employer is presumed to be the author. Authorship is significant because a copyright initially vests in the author. The parties can rebut the presumption of employer authorship by an express written agreement to the contrary. The term "work made for hire" applies to any work created by an employee in the course and scope of employment. "Work made for hire" can also refer to a work specially commissioned for use as a contribution to, including but not limited to, a collective work, as a part of a motion picture, as a translation, as a compilation, provided the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

On occasion, there is dispute as to whether a work created by an employee arose from the employment. Employers often require execution of a formal employment agreement under which the employee expressly agrees that all copyright rights will belong to the employer. A similar agreement is also advisable in connection with the engagement of an independent contractor to perform copyrightable services for a business, but the employer should be aware that only certain types of works may be considered a "work made for hire" when created by an independent contractor. If the particular matter cannot be a "work made for hire", the employer should negotiate an agreement for the assignment of the copyright by the independent contractor.

Copyright Protection for Foreign Authors. Copyright protection is available under U.S. law for foreign authors until the copyrightable work is published. If the work has been published, the availability of continued U.S. copyright

protection is dependent upon the location of the publication and the nationality or domicile of the author. Copyright protection continues in the U.S. subsequent to publication if publication by the foreign author occurs in the U.S., or occurs in a country that is a party to the Universal Copyright Convention or to the Berne Convention, or occurs in a country named in a Presidential copyright proclamation. If the work is first published by a foreign author outside the U.S., continued copyright protection in the U.S. is only available if the foreign author is either a domiciliary of the U.S. or a national or domiciliary of a country that is party to a copyright treaty to which the U.S. is also a party. A person is generally a domiciliary of the country in which the person resides with the intention to remain permanently.

2. Patents: This area is governed exclusively by federal law. Title 35, U.S.C.

In General. One who invents or discovers a new machine or device or a new manufacturing or computer-implemented process may be able to obtain a U.S. patent. A U.S. patent provides the inventor with the exclusive right for a specified time to prevent others from making using, importing and offering to sell in the U.S. the patented invention. A patent provides the holder with a limited monopoly on the use of the patented invention. A valid patent forecloses use of the patented invention by any other party, even if another party independently conceives the identical invention.

Anyone without authority from the patent holder who makes, uses, imports, or sells in the U.S. the patented invention during the life of the patent is considered to "infringe" the patent and may be liable for damages. A utility patent generally governs the functional aspects of a machine, manufacturing or computer-implemented process, or composition of matter. The right to exclude others from practicing the invention claimed in a utility patent is enforceable after grant of the patent and ends 20 years after the filing date of the regular patent application. . A provisional patent, which is filed before a regular patent application, establishes a priority filing date and provides up to 12 months to further develop the invention without filing a regular patent application.

A design patent may be obtained for the ornamental design of an article of manufacture and is enforceable after issuance for up to 14 years from the filing date of the patent. A design patent offers less protection than a utility patent, because the patent protects only the appearance of an article, and not its construction or function.

A plant patent may be obtained by anyone developing a new variety of asexually reproduced plant, such as a tree or flower. Some plants may also be protectable with a utility patent or under the Plant Variety Protection Act, administered by the United States Department of Agriculture.

Effect of Foreign Patents. A foreign patent is generally not enforceable in the United States. Furthermore, an invention that is the subject of a foreign patent cannot be the subject of a U.S. patent, unless an application for a U.S. patent is filed within one year following filing of the foreign patent. Accordingly, an inventor who holds a foreign patent and who fails to apply for a U.S. patent within one year from the date of filing of a foreign patent will usually have no recourse against others who use the invention in the U.S.

Patentability Under Federal Patent Statutes. To be eligible for a patent, an invention must fall into one of the classes of patentable subject matter set forth in the United States patent statutes. These classes are machines (e.g., a mechanism with moving parts), articles of manufacture (e.g., a hand tool), compositions of matter (e.g., a plastic), and processes (e.g., a method of refining). An improvement falling within any of these classes may also be patentable. Discoveries falling outside these categories are not patentable, unless some other statutory provision applies. Notably, with respect to computer-implemented processes, a mere implementation of an abstract idea via software, such as hedging risk in a computer-implemented trading algorithm, is not eligible for a patent, Patents for computer-implemented processes must be drafted with care to avoid being construed as merely implementing such abstract ideas on a computer.

In addition to being within one of the four classes and being fully disclosed, a utility invention must also be:

- "novel," in that it was not previously known to or used by others in the United States or printed or described in a printed publication anywhere;
- "non-obvious" to a person having ordinary skill in the relevant art; and
- "useful" in that it has utility, actually works, and is not frivolous or immoral.

In order to determine novelty and, hence, patentability of an invention, it is often useful to search the records of the U.S. Patent and Trademark Office and foreign patent offices. There one may examine all U.S. patents, many foreign patents, and a large number of technical publications. A patent search is customarily performed by a patent attorney or by an individual with similar technical training, sometimes referred to as a patent agent. A patent attorney or patent agent may be asked to render an opinion regarding the patentability of a particular invention. An inventor can then make an informed decision as to whether to proceed with the cost of an actual patent application.

Patent Application Process. A U.S. patent application must be filed with the U.S. Patent and Trademark Office. A complete patent application includes four elements. First, the application must include the "specification." The specification is a description of what the invention is and what it does. The specification can be filed in a foreign language, provided that an English translation, verified by a certified translator, is filed within a prescribed period. Second, the application must include an oath or declaration. The oath or declaration certifies that the inventor believes himself or herself to be the first and original inventor. If the inventor does not understand English, the oath or declaration must be in a language that the inventor understands. Third, the application must include drawings, if essential to an understanding of the invention. Fourth, the appropriate fee must be included.

After a proper application is filed, the application is assigned to an Examiner with knowledge of the particular subject matter. The examiner makes a thorough review of the application and the status of existing concepts in the relevant area to determine whether the invention meets the requirements of patentability. The patent review process generally takes from 18 months to 3-5 years. Rejection of a patent application by an Examiner may be appealed to the Board of Patent Appeals. Decisions of the Board of Patent Appeals may be appealed to the federal courts.

Markings. After a patent application has been filed, the product made in accordance with the invention may be marked with the legend "patent pending" or "patent applied for." After a patent is issued, products may be marked "patented" or "pat.," together with the U.S. patent number. Marking is not required, but it may be necessary to prove marking in order to recover damages in an infringement action.

Rights to Patented Inventions. Disputes sometimes arise between employers and employees over the rights to inventions made by employees during the course of employment. Because of this, employers often require employees to execute formal agreements under which each signing employee agrees that all rights to any invention made by the employee during the term of employment will belong to the employer.

3. Trademarks

This area is governed by both state and federal law.

In General. A trademark is often used by a manufacturer or service-provider to identify its merchandise or services and to distinguish its merchandise or services from those of others. A trademark can be a word, a name, a phrase, a slogan, a symbol, a logo, or a combination. A trademark should not be confused with a trade name. Although the same designation may function as both a trademark and a trade name, a trade name refers to a business title or the name of a business and may never be seen by or known to consumers. On the other hand, a trademark is meant to help consumers identify and distinguish the source of the goods or services of one party from those of another.

Selection of Trademark. A manufacturer or service-provider should carefully consider the trademark selected for its goods or services. The level of protection against infringement of a trademark varies with the "strength" or "uniqueness" of the trademark. A "fanciful" mark, the strongest type of mark, is a coined name that has no dictionary definition. On the other hand, "descriptive" marks are the weakest and least defensible. A descriptive trademark is a mark that describes some characteristic, feature, function, or quality of the goods and is typically not granted federal protection, except in specific circumstances. Other potential grounds for refusing registration of a proposed mark include, without limitation:

- Whether the mark is a surname;
- Whether the mark is geographically descriptive of the origin of the goods or services;
- Whether the mark is disparaging or offensive;
- Whether the mark is a foreign term that translates to a descriptive or generic term;
- Whether the mark contains an individual's name or likeness;
- Whether the mark is the title of a single book or movie; and
- Whether the mark is used in a purely ornamental manner (rather than as a source identifier).

Selection of a trademark should be accompanied by a trademark search to determine whether another party has already adopted or used an identical or similar. The U.S. Patent and Trademark Office offers a free search system known as Trademark Electronic Search System ("TESS"). However, there are a number of businesses that specialize in more comprehensive trademark searches, and such searches could prevent the expense of (1) applying for and launching a major advertising campaign surrounding a mark that is already registered and/or (2) having to defend an infringement lawsuit.

Advantages of Trademark Registration. In the United States, the first user of a trademark generally has superior rights to junior users of the same or similar marks used in connection with the same or similar goods or services. As a result, trademarks do not have to be registered in order to be valid and enforceable. A trademark owner may have state statutory rights in a trademark that has been registered pursuant to a state statute. In addition, use of an unregistered mark may create "common law" trademark rights in certain geographic regions of the country, or even throughout the nation. Federal registration, however, generally creates the strongest trademark rights and can create an absolute, nationwide bar to the use and/or registration of a confusingly similar mark.

Federal registration of a trademark is presumptive evidence of the ownership of the trademark and of the registrant's exclusive right to use of the mark in interstate commerce, strengthening the registrant's ability to prevail in any infringement action. Federal registration is also a prerequisite for bringing a lawsuit under the federal trademark laws.

After five years of continued use of the mark following federal registration, the registrant's exclusive right to use of the trademark becomes virtually conclusive. Federal registration may assist in preventing the importation into the U.S. of foreign goods that bear an infringing trademark. There are also other less tangible advantages of registration, such as the goodwill arising out of the implication of government approval of the trademark.

State registration provides some advantages, although not as extensive as federal registration. State registration is usually advisable, particularly in situations in which a party's sales or services are limited to one state.

4. Federal Registration Application Process. 15 U.S.C. 1051, et seq.

Federal trademark registration requires that a trademark application be filed with the U.S. Patent and Trademark Office. Most applications fall into one of two categories: an application based on use of the mark in interstate commerce, or an application based on a bona fide intention to use the mark in interstate commerce. Trademark owners may also seek registration based on foreign registration of the mark. All applications must identify the mark and the goods or services with which the mark is or will be used. Moreover, an application based on "use" must also provide the date on which the mark was first used in commerce in connection with the associated goods or services as well as a specimen showing evidence of such use. The best specimen for a good is a photograph of the actual good itself bearing the mark or a photograph of the packaging, tag, or label for the good bearing the mark. A point of purchase display is also sufficient if the mark is clearly displayed in close proximity with the goods. Finally, a web page is sufficient if it contains the mark, a description of the photo of the goods, and an "Add to Cart", "Buy", or other button showing that a purchase can actually be made from the website. For services, the best specimens are advertisements that show the mark in close proximity to a description of the services being offered. Website print outs, marketing materials, and other advertisements may be acceptable if they show the mark being used to promote the services listed in the application and a means by which to order those services.

Each type of application must be accompanied by payment of the requisite fee and a drawing page depicting the mark. After the application is filed, it is reviewed by an examiner who evaluates, among other matters, the substantive ability of the mark to serve as a valid mark and the possibility of confusion with existing marks. If the examiner rejects the application, the examiner's decision can be appealed to the Trademark Trial and Appeal Board. An adverse decision by that body can be appealed to federal court.

If the application I s approved, the mark is published in an official publication of the Patent and Trademark Office. Opponents of the application have thirty days after publication, or such additional time as may be granted, to challenge registration of the application. If no opposition is raised, or if the opponent's claims are rejected, an applicant whose mark is already in use receives a certificate of registration.

An applicant whose application is based on its intent to use the mark in commerce receives, upon approval of the application, a "notice of allowance." At that time, the applicant has six months to furnish evidence of the actual use of the trademark. If the applicant cannot prove use of the mark within sixth months from the date the notice of allowance was issued, the applicant may file up to five extensions of time, each for a six-month period. Once the applicant submits its use of the mark in commerce and such use is accepted, the applicant then is entitled to a certificate of registration. Failure to furnish evidence of the actual use of the mark within the time allowed results in abandonment of the application.

5. Post-Certificate Federal Procedures.

A certificate of trademark registration, issued by the U.S. Patent and Trademark Office, generally remains in effect for ten years. However, between the fifth and sixth year from the date of registration, the applicant is required to file a Declaration of Use with the U.S. Patent and Trademark Office, provided the mark has been in continuous use. At the same time, the applicant may also file an Affidavit of Incontestability. This affidavit affirms that there are no outstanding lawsuits or claims challenging the registrant's rights to use the mark. These filings serve to elevate the trademark registration from "presumptive" evidence of the registrant's exclusive right to use of the trademark to virtually conclusive evidence of an exclusive right.

After this initial post-registration filing, the registration must then be renewed before the end of every ten-year period after the registration date or within the six-month grace period thereafter. Failure to make these required filings will result in the cancellation of the registration.

6. Trade Secrets

This area is governed by both federal and state law.

Federal Trade Secret Protection – In 2016, Congress passed the Defend Trade Secret Act (the "DTSA," codified at 18 U.S.C. § 1836, et seq.), thus creating a federal civil cause of action for trade secret misappropriation available to trade secret owners to bring suit in federal court. The DTSA does not preempt state trade secret laws, but instead operates as a powerful tool for owners to enforce their trade secret rights in federal court. The DTSA provides broad, uniform definitions of "trade secret," "misappropriation," and "improper means":

> "trade secret" means all forms and types of financial, business, scientific, technical, economic, or engineering information, including patterns, plans, compilations, program devices, formulas, designs, prototypes, methods, techniques, processes, procedures, programs, or codes, whether tangible or intangible, and whether or how stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if (A) the owner thereof has taken reasonable measures to keep such information secret; and (B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information. 18 U.S.C. § 1839(3).
>
> "misappropriation" means (A) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (B) disclosure or use of a trade secret of another without express or implied consent by a person who (i) used improper means to acquire knowledge of the trade secret; (ii) at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was (I) derived from or through a person who had used improper means to acquire the trade secret; (II) acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret; or (III) derived from or through a person who owed a duty to the person seeking relief to maintain the secrecy of the trade secret or limit the use of the trade secret; or (iii) before a material change of the position of the person, knew or had reason to know that (I) the trade secret was a trade secret; and (II) knowledge of the trade secret had been acquired by accident or mistake. 18 U.S.C. § 1839(5).
>
> "improper means" means (A) includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means; and (B) does not include reverse engineering, independent derivation, or any other lawful means of acquisition.

The DTSA provides a variety of remedies, including monetary damages (e.g., lost profits, unjust enrichment, reasonable royalty), injunctions, "exemplary damages" for willful and malicious misappropriation, and reasonable attorney's fees. Also, unlike state trade secret laws, the DTSA created a unique civil seizure procedure under which courts may order the ex parte "seizure of property necessary to prevent the propagation or dissemination of the trade secret." 18 U.S.C. § 1832(b)(2).

The DTSA also created a federal safe harbor for whistleblower employees which provides immunity from any liability (criminal or civil) for disclosing trade secrets to attorneys or government officials in confidence for the purpose of reporting or investigating a suspected violation of the law or in filing a lawsuit under seal. 18 U.S.C. § 1833(b).

Missouri Uniform Trade Secrets Act ("MUTSA") – Missouri joined the vast majority of states by adopting the Uniform Trade Secret Act in 1995. Mo. Rev. Stat. §§ 417.450, et seq. Its provisions predated the federal DTSA, but the two statutory schemes largely parallel each other, rather than displace with each other. Like the DTSA, the MUTSA is an effective tool for protecting competitively sensitive information and for obtaining remedies from the improper taking or use of trade secrets. Under the MUTSA, upon a showing of misappropriation (actual or threatened) of a trade secret,

a plaintiff may be entitled to compensatory damages, punitive damages, and/or an injunction. A plaintiff can bring a MUTSA claim in Missouri state court or in federal court based upon diversity jurisdiction.

To be a successful claimant under the MUTSA, a plaintiff must prove 3 fundamental elements: (1) a trade secret exists, (2) the defendant misappropriated the trade secret, and (3) the plaintiff is entitled to either damages or injunctive relief. A "trade secret" is defined under the MUTSA as "information, including but not limited to, technical or nontechnical data, a formula, pattern, compilation, program, device, method, technique, or process, that (a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Mo. Rev. Stat. § 417.453(4). The following is a non-exclusive list of examples of information that have qualified as trade secrets: customer lists, pricing information, market research, documents reflecting product or system designs or functionality, competitive analyses, engineering documents, business plans, financial models. While items of public knowledge or generally known information cannot qualify as trade secrets, compilations of information (regardless of whether it is non-secret or secret) may qualify as a trade secret if the compilation offers a competitive advantage by being secret and not readily ascertainable. Furthermore, in demonstrating that the trade secret was the subject of efforts to maintain its secrecy, a plaintiff does not need to show absolute secrecy; instead, it must show its efforts were reasonable under the circumstances (e.g., requiring confidentiality agreements, limiting the people with access to the trade secret, placing confidentiality legends on the trade secret documents, etc.).

According to the Missouri Supreme Court, "misappropriation occurs in three scenarios: (1) when a person acquires the trade secret while knowing or having reason to know that he or she is doing so by improper means, (2) when a person who has acquired or derived knowledge of the trade secret discloses it without the owner's consent, or (3) when a person who has acquired or derived knowledge of the trade secret uses it without the owner's consent." Under the MUTSA, "improper means" includes "theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means."

With respect to remedies for trade secret misappropriation, the MUTSA authorizes the recovery of damages including actual losses, unjust enrichment, reasonable royalty, and, in cases finding the misappropriator's evil motive or reckless indifference to the rights of others, punitive damages. Mo. Rev. Stat. § 417.455. Also, injunctive relief is available. Mo. Rev. Stat. § 417.455(1) ("Actual or threatened misappropriation may be enjoined.").

B. Other State Considerations

1. Trademarks and Service Marks

Missouri provides both statutory and common law protection for trademarks and service marks. Missouri has adopted the Model Trademark Act. Trademarks and Service Marks may be registered with the Secretary of State. Use is a prerequisite for registration. A Missouri registration has a term of ten years, and is indefinitely renewable so long as the registered mark is still in use.

2. Noncompetition Clauses

To date, Missouri has not enacted any statutes addressing the enforceability of noncompetition clauses. Missouri recognizes the need to enforce noncompetition clauses if they are reasonable under the circumstances and directed to a legitimate employer interest. Where the employee has made customer contacts and has had the use of the employer's customer lists, the courts have enforced a noncompetition agreement. Employment is sufficient consideration for a noncompetition clause. Salary increases and promotions also constitute sufficient consideration for noncompetition clauses. Even continued employment can constitute sufficient consideration.

3. Right of Publicity

Missouri Courts recognize a property right in an individual's name, picture, image and reputation. No one may appropriate the commercial value of another's name, picture or reputation without consent.

4. Franchise and Business Opportunities

The Missouri Franchise Act regulates the termination or non-renewal of franchise agreements affecting business located in Missouri. With limited exceptions, the Act requires that the franchisor provide the franchisee with written notice of termination or non-renewal at least ninety days before termination or expiration of the franchise agreement.

VII. DISPUTE RESOLUTION

A. Federal Court System

The trial courts of the Federal court system are the U.S. District Courts for the Eastern District of Missouri and the Western District of Missouri. The number of judges in each District varies. The Judges are appointed by the President for life terms upon the consent of the United States Senate. Appeals from the two Federal districts (Eastern and Western) in Missouri 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, 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 $75,000. 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 Class Action Fairness Act of 2005 varies these requirements in connection with putative class actions. The second primary jurisdictional 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 recognized basis of Federal 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 and Federal Rules of Criminal 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 and Criminal Procedure.

B. Organization of Federal Court System in Missouri

1. Eastern District

The U.S. District Court for the East District of Missouri has three divisions: the Northern Division, the Eastern Division, and the Southeastern Division.

The Northern Division is composed of the following counties: Adair, Audrain, Chariton, Clark, Knox, Lewis, Linn, Macon, Marion, Monroe, Montgomery, Pike, Ralls, Randolph, Schuyler, Scotland and Shelby. The Court sits at Hannibal.

The Eastern Division is composed by the City of Saint Louis and the following counties: Crawford, Dent, Franklin, Gasconade, Jefferson, Lincoln, Maries, Phelps, St. Charles, St. Francois, St. Louis City, St. Louis County, Warren and Washington. The Court sits at Saint Louis.

The following counties compose the Southeastern Division: Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, Ste. Genevieve, Stoddard and Wayne. The Court sits at Cape Girardeau.

2. Western District

The U.S. District Court for the Western District of Missouri has five divisions: the Western Division, the Southwestern Division, the Southern Division, the Central Division and the St. Joseph Division.

The following counties compose the Western Division: Bates, Carroll, Cass, Clay, Henry, Jackson, Johnson, Lafayette, Ray, St. Clair and Saline. The Court sits at Kansas City.

The Southwestern Division is composed of the following counties: Barry, Barton, Jasper, Lawrence, Mc Donald, Newton, Stone and Vernon. The Court sits at Joplin.

The Southern division is composed of the following counties: Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Oregon, Ozark, Polk, Pulaski, Taney, Texas, Webster and Wright. The Court sits at Springfield.

The following counties comprise the Central Division: Benton, Boone, Callaway, Camden, Cole, Cooper, Hickory, Howard, Miller, Moniteau, Morgan, Osage and Pettis. The Court sits at Jefferson City.

The Saint Joseph Division is composed of the following counties: Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway, Platte, Putman, Sullivan and Worth. The Court sits at Saint Joseph.

C. State Court System

The Missouri State Courts handle all cases which do not qualify for Federal jurisdiction. There are three levels – the Circuit Court (or trial level), the Courts of Appeals and the Supreme Court of Missouri.

1. Supreme Court of Missouri

In Missouri, the Supreme Court is composed of seven judges. The Supreme Court sits at Jefferson City. It has an appellate and superintending jurisdiction over circuit and other courts of record. The Supreme Court has the power to issue writ of habeas corpus, quo warranto, mandamus, certiorari, and any other remedial writs.

In general, the Supreme Court has exclusive appellate jurisdiction of cases that involve construction of the state constitution, state revenue laws as well as title to state office, and in cases where the punishment imposed is death. It has superintending control over all inferior courts and may issue and determine original remedial writs.

2. Courts of Appeals

The Courts of Appeals consists of three different districts: Western, Eastern and Southern. The Court has appellate jurisdiction of all cases from Circuit Courts and inferior courts of record and control over those courts, except in those cases in which appeal lies directly to Supreme Court. The Courts of Appeals have power to issue prerogative and remedial writs and to hear and determine cases in which such specific writs may be determined.

3. Circuit Courts

The jurisdiction of the Circuit Courts is over all non-Federal cases and matters, civil and criminal. The Circuit Court sits in more than 80 cities and towns.

D. Alternative Dispute Resolution

1. Arbitration and Award

Missouri has adopted the Uniform Arbitration Act. In Missouri, arbitrators have the power to issue subpoenas and compel attendance of witnesses. A written agreement that submits an existing controversy to arbitration except an insurance contract or contract of adhesion is valid and enforceable, but the statute requires there be a specific declaration in 10-point type or larger and all capital letters, immediately above the signature block of a contract containing an arbitration provision. Warranties against any defects in construction of new houses and reinsurance contracts are not contracts of insurance or contracts of adhesion, therefore arbitration may be applicable.

The award rendered in arbitration may be appealed to an appropriate court of law but only for very limited reasons such as undue influence.

2. Mediation

Mediation is frequently ordered by the state and federal courts in Missouri and frequently agreed to by the parties. Settlements in mediation are purely voluntary. There are no awards in mediation, only efforts by the mediator to achieve a meeting of the minds and thus a resolution between the parties of their dispute.

VIII. FINANCING INVESTMENTS

A. Commercial Banking

The power to execute laws relating to banks, trust companies, bank holding companies, credit unions, savings associations, and all banking business in the State of Missouri has been given to the Division of Finance of the Department of Insurance, Financial Institutions & Professional Regulation located in Jefferson City. The Missouri Division of Finance also oversees mortgage licensing and licensing of various consumer credit lenders, such as money transmitters, consumer installment lenders, and payday lenders.

In Missouri, banking corporations organized under laws of this state have general banking powers and may hold real estate conveyed to it in satisfaction of debts, decrees or liens. Banks are allowed to exercise powers through subsidiary companies. However, real estate so acquired must be sold within ten years, except if the building is occupied as an office for the bank. Banks are allowed to purchase Federal Insurance Deposit Corporation shares, offer financial consulting, purchase and sell investment securities, provide securities brokerage services, establish mutual funds, and to purchase and hold stock in corporations whose only purpose is to buy or convey real property.

Depending on the type and character of securities, a bank may face certain applicable restrictions.

In order to exercise fiduciary powers, a bank organized under the laws of Missouri must have paid-up capital of at least $50,000 in a city with population no bigger than 5,000 people; $75,000 for no more than 10,000 people; $150,000 in a city of from 10,000-50,000 population or; $300,000 in city of more than 50,000 population.

In Missouri new private banks are not allowed to be established.

A foreign banking corporation has to be licensed by the Director of Finance, and it can perform limited business in the state of Missouri. The license fee is approximately $250 per year.

A 7% tax rate measured by net income, minus certain credits, is imposed on national banking associations and state bank and trust companies in lieu of tax on bank shares and tangible and intangible personal property. A bank that holds companies in Missouri's adjoining states may be permitted to acquire control of a Missouri bank or bank holding company if the specific adjoining state has reciprocal legislation.

B. State Securities Issues

The Securities Division of the Missouri Secretary of State located in Jefferson City regulates securities offerings and the issuers thereof, brokers and advisors, and family trust companies.

To register securities by qualification or coordination, the following documents are required:

1. Two copies of the prospectus;
2. Form U-1 (and the required accompanying documents including subscription agreement);
3. All exhibits filed with the SEC; and
4. The applicable fees as described below.

The minimum filing fee for all registration applications is $100. This $100 fee allows for registration of securities in an amount up to $100,000. To register more than $100,000 of securities in Missouri, the registration fee is 1/20 of 1% of the amount above $100,000. The maximum total fee (filing plus registration) is $1,000.

A registration statement is effective for one year after its effective date. To renew a registration statement for an additional year, the registrant must file with the Securities Division a completed form SR-2 on or within 30 days before the anniversary of the effective date of the registration statement in Missouri.

Missouri recognizes a number of exemptions from registration. One of the most commonly utilized exemptions from registration is that of 409.2.-202(14), RSMo and its corresponding regulation, 15 CSR 30-54.130.Section 409.2-202(14) applies to any securities transaction of a sale or offer to sell securities of an issuer, if part of a single issue in which:

1. Not more than 25 purchasers are present in this state during any 12 consecutive months;
2. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;
3. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under the Missouri Securities Act for soliciting a prospective purchaser in Missouri; and
4. The issuer reasonably believes that all purchasers in Missouri are purchasing for investment.

The 409.2-202(14) exemption is self-executing with no notice filing required.

For securities offered in Missouri pursuant to an offering exempt under Rule 506 of SEC Regulation D, a notice filing is due within 15 days of the first sale of securities in the state containing the following items:

1. One copy of the Form D filed with the SEC;
2. A filing fee of $100; and
3. A cover letter stating the date on which the first sale of securities occurred in Missouri (or, that no sales have yet occurred in Missouri).

IX. REAL ESTATE

A. Ownership

1. Aliens

All aliens may acquire, hold and dispose of title to real and personal property in the same manner and to the same extent as natural born citizens of the United States, except the ownership of farmland by foreign entities.

2. Corporations

In Missouri, domestic corporations and foreign corporations which have received a valid certificate of authority, are entitled to purchase, take, receive, lease, gift, legacy, own, hold, use, and otherwise deal in and with any real or personal property, except farm land unless the corporation qualifies for an exception such as a family farm corporation, research or experimental farm and other exceptions defined in the statute.

3. Partnerships

All properties brought into the partnership or subsequently acquired on account of the partnership is partnership property. Unless there is a clearly expressed intention to the contrary, property acquired with partnership funds is partnership property. Title acquired in the partnership name may be conveyed only in the partnership name.

4. Limited Liability Companies

Each limited liability company organized under Missouri law may sell, convey, mortgage, pledge, lease, and otherwise dispose of all of or any part of its property and assets.

B. Concurrent Ownership

1. Tenancy in Common

Two or more people may own a parcel of real estate as tenants-in-common. In such a case, each co-tenant holds an undivided fractional interest in the property. The co-tenants have unity of possession. In Missouri, a single deed may show the proportional interests of each tenant-in-common, or a separate deed may show each co-tenant's individual proportional interest. Where a single deed is silent as to the proportional interests of each co-tenant, the interests are presumed equal.

Each tenant-in-common can sell, convey, mortgage or transfer its interest without the consent of the other co-tenants. There is no right of survivorship between tenants-in-common. However, no individual co-tenant may transfer the ownership of the entire property. If a co-tenant is an individual and such co-tenant dies, such co-tenant's undivided interest passes either pursuant to the terms of his or will or the applicable laws of intestate succession.

2. Joint Tenancy with Right of Survivorship

In a joint tenancy with right of survivorship, title is held as though all joint tenants collectively constitute one entity. The death of one of the joint tenants does not destroy the ownership entity where there is a right of survivorship in the others; it only reduces by one the number of people who make up the entity. Upon the death of a joint tenant, the decedent's interest in the property automatically passes by law to the surviving joint tenant(s). The transfer is deemed to occur at the moment of death, thus such interest is outside the reach of the decedent's estate (and not subject to creditor's claims with respect to such interest).

A joint tenancy can only be created by the intentional, specific act of conveying a deed or devising the property by will as a joint tenancy. A joint tenancy is terminated by destroying any one of the four unities (possession, interest, time and title). Thus, any transfer of an interest would destroy the joint tenancy with respect to the transferor. The remaining joint tenants (if there are more than one) would still have joint tenancy among themselves, but the new holder of the property would take it as a tenant- in-common.

3. Tenancy by the Entirety

A tenancy by the entirety is a marital estate akin to joint tenancy. In Missouri a tenancy by the entirety is presumed in any conveyance to a husband and wife. Only death, divorce, mutual agreement, or execution by a joint creditor of both the husband and wife can sever a tenancy by the entirety. An individual spouse cannot convey or encumber property held in a tenancy by the entireties. A deed or mortgage executed by only one spouse is ineffective to encumber such property.

C. Spousal Rights

Although Missouri law recognizes that spouses may own separate property, Missouri law also protects the non-owner spouse. Missouri abolished the concepts of dower and courtesy but replaced these spousal rights with laws protecting the non-owner spouse which effectively require the non-owner spouse to join in or assent to the conveyance of separate property by their spouse.

D. Purchase/Sale of Property

1. Purchase

a. Drafting Purchase Agreements

Before there can be a contract with binding effects, there must be a meeting of the minds which has resulted in a contract, sufficiently complete and definite in material terms. A proposed real estate contract that has been filled in and signed by one party and presented to the other may constitute an offer to sell or purchase. The document will become a contract if and when the other party accepts and signs it without changing its terms. The proposed contract should contain a time limit during which the offer will remain open. In addition, contracts for the sale of real estate will often include certain contingencies and riders. A contract for the purchase or sale of real estate must be in writing.

The following are basic considerations that parties should consider when preparing a real estate contract, prior to closing:

1. Who are the parties?
2. Is the property to be subdivided?
3. Is the property improved? Are improvements included? What will happen if they are destroyed?

4. Is a survey required?
5. What will be the method of payment?
6. What evidence of title is to be furnished?
7. Will the contract contain any type of contingencies?
8. Which adjustments will be made for taxes, insurance and utilities?
9. Are there any warranties being made by the seller?
10. Will the contract be personal or will it bind the heirs, successors, legal representatives of purchaser and seller?
11. When and where will the closing be held?
12. What is to happen if the seller is a foreign person?
13. Have the parties dealt with any applicable environmental provisions?

b. Hazardous Materials

Real estate contracts should deal with and resolve environmental issues and regulations. Special consideration should be given to obtaining representations and warranties in contracts concerning the use or existence of hazardous materials on or about the property. It is recommended to test or investigate the property for any of these problems, so that parties can resolve who will assume all responsibility and liabilities.

c. State Legislation against Fraud

Missouri's consumer protection statutes prohibit deception, fraud and misrepresentation or concealment of material facts in the sale or advertisement of goods or services.

d. Transfer Taxes

The State of Missouri does not impose a tax on the transfer of real estate.

e. Tax Proration between Buyer and Seller

At closing, the seller will normally pay the buyer at closing an estimated amount designed to cover the unpaid real estate taxes on the property up to and including the day of closing. The buyer, having been compensated, is then responsible for paying all real estate tax bills that come due. The amount of proration is based on a percentage of the most recent, ascertainable full year's tax bill.

2. Closing

a. Deed

All deeds need to be acknowledged or proved before a proper officer and recorded in the county in which the property is located, in order to be effective against third parties without actual notice. If the deed has been acknowledged, no witness is required. The deed of an individual does not require a seal.

In the state of Missouri, to qualify for recording all deeds must have, among other things, a legal description of the property and mailing address of at least one grantee. If the address has not been provided the deed is not affected in its validity but cannot be recorded.

A corporate deed has to be executed in the name of a corporation, signed and acknowledged by an authorized signatory. The deed of a corporation does not require a seal, unless the corporation has a seal.

b. Financing

The Tax Reform Act of 1986 and all subsequent tax changes have modified the tax motivation of any real estate transaction since that year. In Missouri, there are a number of partial real estate financing vehicles and programs which may be used beneficially in financing a particular project.

c. Closing Statement

The closing statement will generally contain a list of "credits" by and for both the buyer and seller.

E. Foreclosures

Deeds of trust and the foreclosure of deeds of trust in Missouri are governed by Chapter 443 of the Revised Statutes of Missouri. Most notes payable to commercial lenders will contain an acceleration clause whereby the lender can declare the entire remaining principal balance due if any single payment is late. Missouri law provides for the nonjudicial foreclosure of a deed of trust under power of sale. This is the most efficient method of foreclosure.

Missouri also allows for judicial foreclosure. In order to obtain a judicial foreclosure, the lender must initiate the process by first filing a petition and serving a summons upon the borrower. Missouri law provides for a limited statutory right of redemption which subsists for one year from the date of sale.

Upon confirmation of sale resulting from a judicial foreclosure, the purchaser takes title free and clear of all outstanding liens that were subordinate to the deed of trust being foreclosed even if the purchaser has knowledge of the claim and even if the purchaser is the original mortgagor.

F. Easements

A purchaser of real estate is said to have notice of an easement if the easement appears in the record chain of title, or, with respect to an easement appurtenant, if it would be noticed by inspection of the premises.

The property benefited by the easement is sometimes called the "dominant estate," while the property burdened is sometimes called the "servient estate". Under Missouri law, the owner of the dominant estate is entitled to any use of the easement that is reasonably necessary for full enjoyment of the dominant estate, subject to the terms and conditions of any easement agreement governing the use of such easement.

Owners of an easement are allowed to make repairs so that the easement is reasonably usable. They are not allowed to make material alterations in the easement's character that place a greater burden on the servient estate.

Absent an agreement to the contrary, the owner of the servient estate may use the burdened property for any purpose that does not materially interfere with or obstruct the use of the easement by the owner of the dominant estate. An easement cannot be lost by mere non-use, but can be lost by abandonment.

G. Lease

Even for short term leasing of small properties, a written contract will prove to be superior and more efficient than a "month to month" oral agreement. The simplest written agreements should cover among other things, the parties, determination of the leased premises, the length of the term, rent, maintenance, landlord's indemnity, and the termination of the tenancy.

H. Zoning

Under Missouri law, and whether or not so stated in the contract, a buyer takes title subject to all existing laws, including municipal and county ordinances. The non-compliance with zoning ordinances does not create nonmarketable or non-merchantable title. However, violation of a zoning or building restriction is a defect (which must generally be cured prior to closing).

I. Mineral Rights

Any mineral right may be conveyed by deed or lease, which may be acknowledged and recorded in the same manner and with like effect as other deeds and leases of real estate.

Under a mining lease, minerals belong to the lessor as long as they remain in the land, but lessee has the right to explore and reduce them to possession, upon which he pays the reserved royalty or rent.

The owner of the surface of the land under which the mining rights have been conveyed is entitled to subjacent support, and if he is deprived of the necessary support by the removal of mineral under the land, even if under the most advanced system of mining, the person removing the support is responsible for any damages.

J. Eminent Domain

In order to exercise the power of eminent domain, the condemning authority must undertake statutorily prescribed procedures that result in the formal transfer of title from the landowner to the condemning authority and the condemning authority must have express constitutional authority.

X. MISCELLANEOUS

A. Licensing and Regulatory Requirements

The Missouri Business Center (MBC) maintains a database that includes information on all of the state- level licenses, fees, permits and requirements related to business operations in Missouri. The database tracks the data by SIC (Standard Industrial Classification) codes. This code allows MBC to produce a listing based on the type of business activity. The database currently contains information on over 300 licenses, permits and other requirements. The information ranges from the standard business requirements of sales tax numbers and vehicle licensure to more obscure requirements. Data is collected from all state agencies.

For more information and assistance, please contact the Missouri Business Center at 1-888-751-2863 or fill out the email form at: http://www.missouribusiness.net/contact.asp

B. Restrictions on Specific Professions

Licenses are required for a large number of businesses and professions. Among these business and professions we can find: Architects; auctioneers; boat dealers; brokers and exchange dealers; child care facility; chiropodists; chiropractors; dentists; engineers; geologists; hospitals; insurance brokers; manufacturers; meat plants; merchants; osteopaths; pharmacists; real estate agents and brokers; sale and issue of checks, drafts and money orders by other than banks; trust companies; savings and loans associations or Federal Government or its agencies; and veterinarians. However, commercial travelers need not be licensed unless they are itinerant vendors or peddlers.

C. Business Name Registration Requirements

Selecting a name for your business is one of the most important decisions you can make. While there are many considerations in selecting a name, one is the legal availability of the name. Limited Partnerships, Limited Liability Companies and Corporations have legal protection of their business name when they file their registration with the Missouri Secretary of State.

Since there can be no duplication of names for these types of entities, you may want to check on the availability of your selected name either through the Secretary of State's website https://www.sos.mo.gov/BusinessEntity/soskb/csearch.asp or by calling (573) 751-4153. Sole proprietorships and partnerships are required to file a "fictitious name registration" with the Secretary of State's Office. However, this registration does not afford the business legal protection of their business name – e.g., there can be multiple sole proprietorships/partnerships with the same business name. Since there is no name protection, name availability checks will not be done.

D. Legal Profession

In Missouri the state bar is integrated. Its official name is The Missouri Bar Association. The power to admit practice is vested exclusively in the Supreme Court. The admission regularly is with an examination; however there are some exceptions that should be noted, such as where public interest, considering character, education, extent and continuity of practice and ability of applicant, will be taken into account when permitting such admission. The license is issued by the Supreme Court and it is necessary in order to practice law in the state of Missouri.

Students who received their legal education outside the United States may request permission to take the Missouri bar examination by furnishing evidence that their legal education is equivalent to that provided at an ABA-accredited law school. By recent Supreme Court rule, students receiving an LL.M. at a Missouri law school may apply to take the Bar Examination as well.