ORPHAN WELL PROGRAM GETS FINANCIAL BOOST

The on-going and longstanding efforts to plug idle and orphaned oil and gas wells received a financial boost when House Bill 225 was signed into law on June 28, 2018.

To promote the proper plugging of oil and gas wells for which no responsible owner is known, the chief of ODNR's Division of Oil and Gas Resources Management each year must now spend 30% of the revenue credited to the oil and gas well fund during the previous fiscal year instead of the prior 14%. This revenue is used to (a) plug idle and orphaned wells or restore the land surface properly and (b) correct conditions causing imminent health or safety risks at these wells for which the owner cannot be contacted.

If a landowner discovers an idle and orphaned well or abandoned well, and the landowner doesn't own the well, the landowner may report the well's existence to the chief. ODNR must inspect the well within 30 days of receipt of the written report. The inspector will use a scoring matrix developed by the division to determine the priority of plugging the well or restoring the land. The well will be placed in one of three categories: distressed-high priority, moderate-medium priority, or maintenance-low priority.

The chief also must make a reasonable attempt to determine the current owners of the land, the mineral interests, and any drilling equipment, and those with liens on any equipment located at the well. The chief may now limit review of county recorder's office records to the prior 40 years.

Before plugging the well, the chief also must provide mail notice to the owners that can be found and publish notice in a newspaper of general circulation in the county where the well is located that the well is to be plugged. With the amendment, published notice constitutes sufficient notice to a person who cannot be found or for whom mail notice is returned. If the equipment has not been removed within 30 days of notice, the equipment is declared forfeited to the state without compensation or action by the state, so that the cost saved defrays the cost of plugging the well and restoring the land at the well site.

The appropriations for this purpose were effective June 29, when the new law was signed, and the effective date of the new law is September 28.

For more information on Ohio's Orphan Well Program, see the information and videos at ohiodnr.gov.

NEED AN ESTATE PLANNING OR BUSINESS SUCCESSION SPEAKER?

Consider giving Russell Cunningham a call. Russell is an OSBA certified specialist in estate planning, trust and probate law with more than 28 years of experience working with individuals, couples, and family businesses as they plan for the future.

He was a co-author with James Skeeles, OSU Extension Educator, on the Estate Planning Letter Study Course, 2004 edition and 2007, 2009 and 2012 online Fact Sheet Series. He is a multi-year recipient of the "Ohio Super Lawyer" designation from Law & Politics Magazine and was recognized as a "Top Lawyer" by Columbus CEO Magazine.

Call Russell at (614) 210-1840 or email to rcunningham@ohiocounsel.com.

& UPCOMING SPEAKING ENGAGEMENT

- David Barrett will be speaking on Sept. 12 about "Feeding a Litigious World" at the American Feed Industry Association's 2018 Liquid Feed Symposium at the Town and Country Resort in San Diego, California.

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PET OR SERVICE ANIMAL?

We've heard this question a few times this year:

"Can I keep service animals out of my u-pick fields?" As u-pick season is in full swing, we wanted to give you a reminder on this issue. In short, service animals are allowed to be anywhere customers are permitted. Service animals cannot be excluded from u-pick fields or limited to only certain areas of the fields, such as along driveways or the edge of the field.

However, you are permitted to keep pets out of your u-pick fields. Pets are not service animals. If customers bring their pets with them to pick berries, peaches, pumpkins, or other produce, the law does not require you to allow them into the field.

You may be asking, "What is the difference between a pet and a service animal?" According to the Americans with Disability Act ("ADA"), a service animal is any guide dog, signal dog, or other animal individually trained to provide assistance to an individual with a disability.

But how do you know if the animal is a pet or really a service animal? You cannot demand to see any sort of certification or identification documents before permitting the service animal to accompany the person with the animal. However, you may ask if the service animal is required because of a disability and what job the service animal has been trained to perform. Some of these animals may have special collars or harnesses, but ADA does not require these.

But what if the service animal appears aggressive and is interfering with my business and other customers? If the service animal's behavior is causing a threat to the health and safety of others, you may exclude it from your property. This decision must be made on a case-by-case basis. For example, if you have seen a certain breed of dog act aggressively in the past, you cannot use that past experience to exclude any service animal of that particular dog breed. Your past experiences with certain individual animals cannot be used to make assumptions on how other animals may behave.

Am I required to provide care for the service animal, such as food and water? The handler of the service animal has the sole responsibility to care for the animal while it is on your property.

But what about "emotional support animals"? Emotional support animals are not the same as service animals and do not have the same heightened level of training as service animals. Emotional support animals are not controlled by the ADA, but rather by Housing and Urban Development and the Fair Housing Act.

To determine if emotional support animals are permitted in u-pick fields, we must look at state law. Ohio law provides regulations for "assistance dog" (Ohio Revised Code §

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955.43) and an "animal assistant" (Ohio Administrative Code § 4112-5). A blind, deaf or hearing impaired, or mobility impaired person or trainer with an assistance dog "is entitled to the full and equal accommodations, advantages, facilities, and privileges of all public conveyances, hotels, lodging places, all places of public accommodation, amusement, or resort, all institutions of education, and other places to which the general public is invited, and may take the dog into such conveyances and places (so long as the dog does not occupy a seat; it remains on a leash, and is covered by liability insurance if still in training). An "animal assistant means any animal which aids the disabled. Specific examples include: (1) A dog which alerts a hearing impaired person to sounds; (2) A dog which guides a visually impaired person; (3) A monkey which collects or retrieves items for a person whose mobility is impaired" (Ohio Administrative Code § 4112-5-02).

"Emotional support animals" often provide therapeutic benefits; however, they are generally not trained to perform specific tasks, such as guiding the blind, for their handlers. Ohio law does not require you to allow "emotional support animals" in your u-pick fields.

Animals on commercial flights have been in the news lately. Pets on flights are not controlled by the ADA, but rather the Air Carrier Access Act, which protects the rights of individuals with disabilities in air travel.

If you have any additional questions about service animals or the difference between "pets" and "service animals," give Amanda Stacy Hartman a call at (614) 210-1840.

& NEWS WORTH NOTING

Amanda Stacy Hartman has been named the 2018-2019 chairperson of the Ohio State Bar Association's Agricultural Law Committee.

EDUCATION SAVINGS PLANS: 529 PLAN UPDATES

The main advantage to setting up a 529 plan for minor children or grandchildren is that the earnings in the account are tax-free as long as the distributions are used for qualified educational expenses. You also may obtain a $2,000-per-year per-beneficiary Ohio income tax deduction if you use the Ohio 529 plan. More advantageous rules are new for 2018.

Qualified educational expenses now include expenses for tuition for enrollment or attendance at elementary or secondary public, private or religious school, so long as the tax-free distributions for elementary or secondary school are limited to $10,000 per year. The tax-free distributions for college tuition or qualifying related expenses are not limited.

Ohio has increased the Ohio income tax deduction to $4,000 per year per beneficiary. If gifts are made in excess of $4,000 per beneficiary, you can carry the excess forward for deductions into future years.

If you want to accelerate the tax-free earning potential of a 529 account, you can gift $75,000 (5 times the annual exclusion of $15,000 per year in 2018) and have it treated as an annual exclusion gift over a five-year period of time ($150,000 if both spouses contribute) by filing a gift tax return to make this election. By making the election, you do not use any portion of your lifetime applicable exclusion amount for federal gift and estate tax purposes. The most you can give to an Ohio 529 account in 2018 is $462,000, less any existing value of the account. Because you incur a 10% penalty for distributions that are not for qualified educational expenses, such a large gift may not be advisable.

Remember to designate a successor owner of the account for probate avoidance, in the event you die prior to termination of the account.

For more information, see https://www.collegeadvantage.com.

HOW TO PROTECT BUSINESS TRADEMARKS AND TRADENAMES

Jack wants to buy a special kind of shoes -"GOLDIE SHOES" - for his wife for her birthday. "GOLDIE SHOES" is a trademark representing the kind of shoes preferred by his wife.

The shoe company that sells "GOLDIE SHOES" has established a reputation, or goodwill, for "GOLDIE SHOES" among consumers like Jack's wife. "GOLDIE SHOES" is a trademark simply because it is used in business, even though it is not registered anywhere. However, the unprotected trademark comes with risks.

What if another shoe company uses a similar name, "GOLD SHOES," for another type of shoes? What if Jack mistakenly buys "GOLD SHOES" instead of "GOLDIE SHOES" for his wife? Besides the confusion in name causing some strife between Jack and his wife, use of similar names can create strife between the shoe companies. Who wins the dispute? Will "GOLDIE SHOES" prevail if the Ohio company registered the name first in Ohio?

Even if the name "GOLDIE SHOES" is registered with the Ohio Secretary of State, the state registration of name will not assist in resolving the issue. Registration with the state only means no one else in Ohio can use the exact same name as a company name or trade name within the state. Another company can use a similar name, for example, "Goldy Shoes" instead of "Goldie Shoes," which will be accepted by the Secretary of State. In today's world of the internet, "GOLDIE SHOES" is likely doing business and wants to do business with loyal customers who live in other states. Further, even if you only do business in Ohio, most likely you would post information to clients or potential clients on Internet or social media. Then other companies that want to maintain their trademark rights might make sure your brand or trademark would not confuse their customers. The competitors will not want their customers to think that your products/services are associated with their trademarks.

In this example, if the name "GOLDIE SHOES" is already registered with the United States Patent and Trademark Office, the company owning "GOLDIE SHOES" can send the company selling "GOLD SHOES" a letter, demanding it stop using the name. In this case, the "GOLDIE SHOES" owner has a presumed right to the trademark simply with the registration. The company also can ask the domain registers, such as GO DADDY, to stop the uses of the domain name "GOLDSHOES.COM" or other similar domain names.

In fact, if the name "GOLDIE SHOES" is registered with the United States Patent and Trademark Office, the company has no need to register the name with the Ohio Secretary of State.

If the name "GOLDIE SHOES" is not registered with the United States Patent and Trademark Office, then the company must provide evidence of using this name prior to the company selling "GOLD SHOES" and compete with "GOLD SHOES" for the extent and scope of the trademark rights.

The best practice is to avoid the situation by asking a competent trademark attorney to do a quick search before the company commits to using a name. If other similar names are already registered, the attorney can help the company come up with a less risky trademark from beginning.

SOME OTHER THINGS TO THINK ABOUT RELATED TO TRADEMARKS:

- A trademark comes into existence by using it in business in association with products or services.
- Registration with the U.S. Patent and Trademark Office provides presumed valid trademark rights recognized by many services providers, such as domain registers.
- A quick preliminary trademark search opinion prior to or at the beginning of using the trademark can avoid lots of trouble and expense later.
- Secretary of State registration of a trademark or tradename does not provide protection from use of a similar name in Ohio and beyond.

If you have further questions about trademarks or tradenames, contact Yimei Hammond at yhammond@ohiocounsel.com.

WIN BY OHIO COOPERATIVE HAS MULTIPLE IMPACTS
FEDERAL APPELLATE COURT DECISION

A unanimous ruling issued on June 4 by the U.S. Court of Appeals for the Sixth Circuit provided an important win for Ohio-based Sunrise Cooperative Inc. ("Sunrise"), and the decision also has broader impacts regarding the limits on government action.

Sunrise has for a long time paid patronage to its farmer-members in Ohio and Michigan related to the crop insurance purchased by its members. Patronage represents the return of the cooperative's net margins or earnings to its members. In 2008, Congress enacted restrictions on payment of patronage related to crop insurance. However, entities already paying patronage related to crop insurance were permitted to continue paying patronage after 2008. Sunrise was one of these grandfathered entities.

In 2016, Trupointe Cooperative was merged into Sunrise. Even though Ohio law and federal law considered Sunrise as the surviving entity, the U.S. Department of Agriculture's Risk Management Agency decided it had the right to determine that Sunrise was ineligible to continue paying patronage to its members buying crop insurance. USDA decided that it had the right to determine what the term "entity" meant for purposes of the federal law, even though Congress had not directed USDA to make such a decision.

While the U.S. District Court for the Northern District of Ohio sided with USDA, the three-judge panel of the U.S. Court of Appeals for the Sixth Circuit found for Sunrise in an opinion written by the chief judge:

"When Congress speaks clearly, administrative agencies must listen. Congress spoke clearly in the 2008 Farm Bill when it said 'an entity that was approved' to provide rebates to its members may continue to do so 'in a manner consistent with the payment plan approved.'"

The appellate court made it clear that limits exist on the federal bureaucracy's powers. It is Congress - not the federal bureaucracy - that is charged with changing the law. A federal agency cannot impose requirements that are not authorized by Congress.

David Barrett argued the case on behalf of Sunrise Cooperative Inc. before the three-judge federal appellate panel in Cincinnati, Ohio.

BECE WELCOMES EMMA MIRLES-JONES

Emma Mirles-Jones recently joined BECE as a senior associate. She will be working with Jeff Easterday in the area of tax planning and return preparation, as well as using her experiences in business, commercial lending, human resources, commercial real estate, and litigation to serve our clients.

Emma has fond memories of helping her paternal grandmother harvest seeds at the end of every summer from her garden in Struthers, Ohio. While Emma grew up in Youngstown, part of her everyday life was helping Grandma harvest, shell, peel, and store a year's supply of beans, corn, garlic, onions, potatoes, herbs, strawberries, pears, and every other vegetable Grandma found space to grow. Emma's maternal grandparents were tobacco, plantain, and banana farmers in Puerto Rico before they moved to Youngstown to work in the steel mills, and her grandfather returned to the island to farm after he retired.

Emma graduated from Brown University with a Bachelor of Arts Degree for a dual major in Hispanic Studies – Language and Linguistics and Russian Area Studies. She is a graduate of Case Western Reserve University School of Law and the Weatherhead School of Management, where she earned a joint Juris Doctor and Masters of Business Administration degree. She had a dual major in Banking & Finance and Entrepreneurship. She also has completed advanced courses in mediation, negotiations, and dispute resolution.

Following graduation, Emma returned to the financial services industry as a commercial banking associate for a large bank in Ohio. Upon completion of the management training program, Emma worked as a commercial real estate portfolio manager before moving on to work as a legal analyst/JD Paralegal for a national real estate developer. For the past 8 years, Emma has practiced law as a sole practitioner in central Ohio. Emma speaks Spanish fluently and Russian conversationally.

Contact Emma by email at emirles@farmlawyers.com or by phone, 614-210-1840.