



A POWER OF ATTORNEY CAN BE TAILORED.

Generally, a power of attorney is a document that authorizes another (known as the “agent” or “attorney-in-fact”) to act for another (known as the “principal”). This useful document permits one person to step into the shoes of another to legally bind him or her.



A power of attorney can be limited to only a real estate transaction or other

narrow transaction. The power of attorney form can also be limited in time, such as fixing effectiveness only until the principal becomes “disabled”.

General durable powers of attorney are broader and permit the agent to do anything that the principal could do regardless of the principal's health, including selling property, writing checks and running a business. But even with a general durable power of attorney, limitations can be included. For example, an aging parent may want to make a child his agent and grant that child most of the broad powers contained in a general power of attorney, but insert a specific limitation that the child does not have the power to sell the principal residence.

Powers of attorney are useful and convenient to help you when you cannot help yourself. Since the instrument can be specifically tailored, it need never be broader than necessary to achieve your needs and desires. ■

CORZINE EXTENDS STATE PAY-TO-PLAY LAW

For those who engage in state government contracting or state redevelopment projects, new requirements may prohibit you from making political contributions to gubernatorial campaigns, political parties and legislative leadership committees. A violation of the state pay to play law may lead to forfeiture of a government contract or a prohibition on entering into a state contract in the future.

Last fall, Governor Jon Corzine signed two new executive orders which impose new limits on making campaign contributions. The general “pay to play” rule on the state level is that anyone who holds a state contract or anticipates entering into a state contract within the next 12 months cannot contribute more than \$300 to a gubernatorial candidate or state or county political party committee.

The Governor's first executive order expands the definition of “business entity”, which now covers those individuals in a company who own or control 10% or more of the interest in it. The definition has been expanded to now also include officers, partners, principals and members of a company, even if they have no ownership or an interest that is less than 10%. Additionally, a spouse or resident child is now also included in the definition, unless that person can also

vote for the candidate to which he or she contributes.

This order also prohibits contributions that are more than \$300 to municipal political party committees and legislative leadership committees. This prohibition does not extend to local candidates for office (such as council or committee candidates) and does not affect individual state legislators' accounts.

The second executive order brings in state redevelopers to the pay to play prohibition. If you anticipate entering into a state redevelopment agreement, then you are now limited in what you can contribute. While this order does not impact local redevelopment agreements, there may be county or municipal pay to play rules that should be consulted.

There remain in effect other state, county and local pay to play requirements that are not impacted by these two new executive orders. If you engage in government contracting, make sure you consult all applicable pay-to-play rules before making any campaign contributions above \$300.

Contact NPD for specific guidance on complying with state and local pay to play laws before making a contribution. ■

OFFICE BUILDING BUYER BEWARE

Until recently the law in New Jersey used to be that the purchaser of a commercial building was not responsible for commissions due to a realtor for existing tenants unless the purchaser expressly agreed to assume that obligation. In a split decision, the New Jersey Supreme Court has changed the law.

In the case before it, the buyer of the property, during the due diligence period, received copies of

leases which contained commission agreements with brokers. At the closing the leases were assigned to the buyer. Relying on past court decisions, the buyer refused to acknowledge an obligation to pay the commissions and the broker sued.

The Supreme Court held that under these circumstances the buyer, as a result of assuming the leases, assumed the obligations

to pay the leases. This new case should encourage all buyers of commercial real estate as part of their due diligence to review any existing leases and determine whether brokerage commissions are owed going forward as those commissions are likely new owner's obligation.

Pagano Co. v. 48 South Franklin Turnpike, decided March 9, 2009. ■



JUDICIAL DECISIONS IN LAND USE - ARE THE WINDS SHIFTING?

For years, developers in New Jersey seeking to challenge municipal and county decisions in the land use field faced an uphill battle. The courts almost uniformly held that there was a legal presumption of validity with regard to any municipal, county or state decisions and developers had to show that the board's decision was arbitrary, capricious and unreasonable to obtain a reversal.

Now however the winds appear to be changing. Significant Supreme Court and Appellate Division decisions in New Jersey now show that developers are obtaining relief. Witness the following:

1. In a March, 2008 decision, the New Jersey Supreme Court in *Toll Bros. v. Burlington County*, held that a municipal or county planning body may not condition site plan approval on a developer paying for improvements that are unconnected with its development, or if connected, paying an amount that is disproportionate to the development's impact. This was held to be true even though the developer had signed an agreed in writing to pay for specific off-tract improvement costs. The court invalidated the agreement and held that a municipal or county agency may only require a developer to pay for its pro rata share of the costs of off-tract improvements. The decision is very significant in that it holds that payment of more than the developer's fair share of improvement costs under the typical "arm twisting" that is involved in the planning process, could invalidate the very approvals obtained.
2. In June of this year, the New Jersey Supreme Court affirmed the Appellate Division in *Shore Builders v. Tp. of Jackson*, deciding that the New Jersey Municipal Land Use Law does not authorize a municipality to require a developer to make off-site contributions in lieu of on-site set asides for open space and recreation. The Court additionally held that the Act did not impliedly authorize municipalities to condition development approvals on a developer setting aside land to be used for common open space or recreation areas and facilities except in the case of planned developments. This is a very significant victory for the development community in view of municipalities requiring imposition of near extortionate recreational contributions on a per lot basis.
3. In November of 2008, the Appellate Division of the Superior Court in *Avalon v. DEP* held that the DEP lacked authority to require shorefront municipalities to require additional parking spaces and public restroom facilities in proximity to the oceanfront. The DEP had enacted rules requiring these onerous impositions. The New Jersey Supreme Court refused to grant the DEP's Petition for Certification, and thus the Appellate Division's decision stands.
4. In December of 2008, in *Riya Finnegan LLC v. South Brunswick*, the New Jersey Supreme Court invalidated a zoning ordinance amendment that was enacted to stop a specific retail development that was vigorously opposed by the public because of a perceived increase in traffic. The Court ruled the ordinance amendment as impermissible inverse spot zoning. This is an exception from the general rule in New Jersey that zoning ordinances and amendments would be routinely upheld where there was any discernable reason substantiating the governing body's efforts to address what it felt to be a legitimate public health, safety or welfare concern.

All of the above decisions are precedent setting and represent strong weapons in the developer's arsenal. Too often land use attorneys simply "roll over" to onerous municipal demands rather than diplomatically informing the board of these precedent setting decisions and requesting that the law be followed. We at Nehmad Perillo and Davis are experienced in handling these types of sensitive applications and will never apologize for asking a planning or zoning board, or county planning agency, to follow the law.



IN ECONOMIC DOWNTURN, NEED FOR COLLECTIONS RISE

With the current state of the economy, many businesses are simultaneously experiencing growing accounts receivable owed by their customers.

After attempting to settle a debt by phone or letter, the usual next step is filing a lawsuit against the debtor. Oftentimes this is a relatively straightforward process and if the debt is not contested or the creditor prevails at trial, the business obtains a monetary judgment against the debtor for the amount it is owed.

But collecting on a monetary judgment received from a court "victory" is a very difficult task. Depending on the circumstances and with the help of an attorney, a business attempting to collect on money judgments can take the following actions to protect their right to collect the debt:

Record the judgment as a statewide lien against the debtor's real property --- upon a real estate closing, the judgment should be paid from the sale proceeds; execute a portion of the debtor's wages from his or her place of employment; levy upon the debtor's bank accounts; garnish the debtor's personal property; or force the sale of the debtor's real property by pressing for a Sheriff's sale.

The attorneys at Nehmad Perillo and Davis, P.C. are able to assist businesses seeking to maximize the returns on their collection efforts. If you have any specific questions about this area of the law or our rates, please contact NPD for further assistance. ■