



SWANSON MIDGLEY DIRECTIONS

LISTEN—PLAN—ACHIEVE

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DO NOT COUNT ON PAYMENT BY RETURN MAIL

Contractors cannot bank on being paid net 30 after submission of a monthly pay application, nor even after filing a mechanic's lien or payment bond claim. Today, contractors, owners and lenders aggressively challenge mechanic's liens and payment bond claims, often countering with claims of slander of title, malicious prosecution, defective work or tortuous interference.

In recent months, Swanson's Construction Practice Group is experiencing an expanding list of technical defenses to mechanic's liens asserted by owners and lenders. To compound the situation, even though courts are required to construe mechanic's liens liberally in favor of lien claimants,

courts increasingly appear willing to rule mechanic's, engineer and architect liens invalid for one of 20 or so technical reasons. Even when the courts ultimately rule in favor of the lien claimant, the litigation costs and loss of capital use during the fight often force lien claimants to compromise otherwise valid demands for payment for work done. The top five challenges include: 1) no "just and true account" of the work claimed, 2) failure to give or provide the proper notices, 3) failure to correctly name the owner or general contractor, 4) failure to timely file the lien, and 5) lender priority. In order to avoid having a contractor's only real "security interest" in the work thrown out by a court on some technicality, it

is very important that suppliers and contractors understand, negotiate and preserve their lien/payment bond rights prior to beginning work, during performance, and continue monitoring through final retention, including proper documentation of the labor, materials, supplies and equipment supplied to a project.

With today's aggressive challenges, Swanson Midgley's Construction Practice Group strives to assist contractors in preserving their "security interest" in the "work" prior to work starting through final retention payment.

"DID YOU KNOW..." SERIES

UPCOMING SEMINARS

- August "Social Networking Websites and the Workplace"
- September "Estate Planning in a Changing Economic and Tax Environment"
- October "Single Entity LLC Ownership of Real Property"
- November "International Law Applied to Local Disputes"

ECONOMICAL LITIGATION DEFENSE

The best and most economical litigation defense to any commercial transaction is to make sure your contracts are clear, concise, complete, understood and favorable before you sign.

Recent Kansas and Missouri cases indicate that pre-printed agreements

"clear enough to advise the [other party] of its purpose and potential effect" are "a clear expression of the" parties' agreement and are binding and enforceable, even if the language is buried in the middle of the agreement.



ALL DEEDS ARE NOT THE SAME

Title to land is transferred by a deed. Sounds simple, but it is more complicated than you might expect. There are a number of parts to a deed that need to be drafted correctly to be sure the deed operates to transfer the title intended to the grantee (the person acquiring title) and the grantee ends up owning what he thought he was going to receive. Before you can be sure the deed is drafted correctly, you have to decide the type of deed to use. Missouri and Kansas recognize three different types of deeds. The distinctions between the deeds affect the title warranties being made by the grantor (the person transferring title) and thus the protection received by the grantee.

The general warranty deed contains the broadest warranties. The grantor warrants that title to the land is good against all claims arising since the original patent from the United States government. In the Kansas City metropolitan area, the general warranty deed is typically used in residential transactions.

A special warranty deed is similar to the general warranty deed except that the grantor warrants title to be good but only from those things that have been done since the time the grantor acquired title. The warranty by the grantor does not cover any claim that predates the time the grantor acquired title. Although this deed contains a more limited

warranty, it is customarily used when corporations and other entities convey title.

The deed which provides the grantee with the least protection is the quit claim deed. This deed does not include any warranty of title. The deed only operates to convey to the grantee whatever the grantor has, if anything. Because of the limited protection afforded by the quit claim deed its use is limited to those situations where the grantor wants the grantee to have whatever title the grantor may possess but is not willing to warrant that it has any title. If you want to transfer title to land, call us for assistance. We can help you decide the type of deed and address the other issues associated with the transfer.



USING SOCIAL NETWORKING SITES AS A SCREENING DEVICE FOR JOB APPLICANTS

The increasing popularity of social networking sites such as LinkedIn, Facebook and Twitter is leading some employers to use these sites to screen potential employees.

There are risks, however, in reviewing an applicant's social networking profile and postings prior to making a hiring decision. Unlike the information in a traditional cover letter and resume, a social networking site may include references to

an applicant's race or color, sex, national origin, religion, pregnancy, age or disability, all of which should not be considered in the hiring process. And, once an employer accesses inappropriate information about a job candidate's protected status, it may be difficult to prove the inappropriate information was not considered in making the employment decision.

Thus, employers should proceed with caution and consider whether there are job related reasons for seeking social networking information about job applicants.

Please join us for a lunch seminar on Thursday, September 3rd to further discuss social networking sites and the workplace.

"There are risks in reviewing an applicant's social networking profile prior to making a hiring decision."

IS THE ECONOMIC CLIMATE RIGHT TO CONSIDER ADDING A "QPRT" TO YOUR ESTATE PLAN?

Supplementing an estate plan with a Qualified Personal Residence Trust (a "QPRT") can be an effective tool to transfer property to the next generation in a tax-beneficial manner. A QPRT is an irrevocable trust where the grantor transfers title to a personal residence to the trust but retains the right to live in the residence rent-free for a term of years. If the grantor is still living at the end of the term, the residence passes to

the remainder beneficiaries (usually the children) of the trust. A vacation home that you want to remain in the family is the ideal property to transfer to a QPRT.

A QPRT may allow the grantor to: (1) potentially transfer his or her personal residence, including a vacation home, at a reduced gift tax cost, (2) not include the residence in the grantor's estate for federal estate tax purposes, and

(3) take advantage of some income tax savings.

The market conditions may be right to consider including a QPRT in your estate plan. Contact your Swanson Midgley Trust & Estate attorney for more information.

