

Country Guide

USA – Pennsylvania

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Legal Guide to Doing Business in Pennsylvania

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Contributors



Joan C. Arnold

TAX

Philadelphia | 215.981.4362 | joan.arnold@troutman.com



Tracey E. Diamond

LABOR + EMPLOYMENT

Princeton | 609.951.4235 | tracey.diamond@troutman.com



Duke Fitch

INTELLECTUAL PROPERTY

Berwyn | 610.640.7828 | duke.fitch@troutman.com



Jeremy Heep

LITIGATION

Philadelphia | 215.981.4972 | jeremy.heep@troutman.com



Michael K. Jones

INTELLECTUAL PROPERTY

Philadelphia | 215.981.4405 | michael.jones@troutman.com



David Kaplan

EMPLOYEE BENEFITS + EXECUTIVE COMPENSATION

Philadelphia | 215.981.4620 | david.kaplan@troutman.com



Thao Le

CORPORATE

Philadelphia | 215.981.4135 | thao.le@troutman.com



Victoria D. Summerfield

INTELLECTUAL PROPERTY

Pittsburgh | 412.454.5033 | victoria.summerfield@troutman.com



Julia E. Tomec

REAL ESTATE

Philadelphia | 215.981.4406 | julia.tomec@troutman.com



David J. Tshudy

REAL ESTATE

Harrisburg | 717.255.1127 | david.tshudy@troutman.com

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This guide reflects the laws of Pennsylvania as of December 2024. The reader should be aware that laws change and that appropriate steps should be taken to obtain current information. This guide does not constitute legal advice.

Firm Overview

Troutman Pepper Locke helps clients solve complex legal challenges and achieve their business goals in an ever-changing global economy. We aim to deliver exceptional value by providing insightful, practical, and tailored solutions, staying ahead of industry trends, and delivering results that impact your business now and in the years to come.



#28

Projected AmLaw
100 Ranking



30+

Combined Offices
(1 Intl.)



1600+

Attorneys



300+

Chambers Ranked
Attorneys + Practices

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INNOVATION

Our focus on innovation aims to help all of us – clients and our firm – work smarter, more efficiently, and more creatively.



TROUTMAN PLUS

Our standard-setting client experience program transforms client service into real value.



INCLUSION

The best results for our clients – and our people – happen when everyone feels included and able to bring their true self and best thinking to work.



PRO BONO

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Where high performance talent meets high touch legal service.

Results matter. Across our diverse practices, we have consistently delivered remarkable outcomes for our clients. From transformative transactions and bet-the-company trial verdicts to the advancement of innovative products and services, as well as the resolution of complex regulatory challenges, our results speak for themselves. While recognition from peers and industry observers is gratifying, the greatest reward remains the enduring trust our clients place in us — often spanning decades.

Best

Law Firms

Best Lawyers 2025

Top

Ranked

Chambers USA 2024

24

Nationwide Practice
Rankings

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Top 30

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Financial Times 2024

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We possess unique experience and depth in six sectors that are pivotal to the global economy both now and in the future: energy, financial services, health care and life sciences, insurance and reinsurance, private equity, and real estate. Within these sectors and beyond, we offer comprehensive corporate, finance, litigation and dispute resolution, intellectual property, and government regulatory counsel to clients ranging from startups to global conglomerates.



Corporate

Business Entities

- Corporations
- Limited Liability Companies
- Partnerships
- Foreign Qualification
- Corporate Transparency Act

Corporations

CORPORATE FORMATION

In Pennsylvania, one or more corporations (for profit or not-for-profit) or natural persons of full age may incorporate a corporation as an incorporator. Incorporators may also adopt the initial bylaws for the corporation, elect the initial directors for the corporation, and transact other organizational business. The formation of a corporation under Pennsylvania law is governed by the Pennsylvania Business Corporation Law of 1988 (PBCL) and the Pennsylvania Associations Code (PAC). The PBCL is the primary statute that governs the internal affairs of corporations organized under Pennsylvania law.

NAME REQUIREMENTS

Under the PBCL, there are both requirements and restrictions on the name of a corporation. The corporation's name must also be distinguishable from names already in the records of the Pennsylvania Department of State (DOS). The DOS has a searchable database of business entity names, which can be accessed at the following URL: <https://file.dos.pa.gov/search/business>. A person can reserve an entity name by submitting a request (either online, or by mail, or in person) with the DOS and paying the DOS a filing fee of \$70. Each name reservation is good for 120 days and may not be renewed. Once expired, the name becomes available again, and anyone including the original person may reserve it.

The name of a corporation must contain one of the following: "corporation," "corp.," "company," "co.," "incorporated," "inc.," "limited," "ltd.," "association," "fund," "syndicate," or "words or abbreviations of like import in languages other than English." The name of a corporation must not (a) imply that the corporation is: (i) a governmental agency; (ii) a bank, bank and trust company, savings bank, private bank, or trust company; (iii) an insurance company; (iv) a public utility; or (v) a credit union; (b) contain, unless the corporation is duly certified, registered, or otherwise permitted by statute: (i) college, university, or seminary when used in a manner as to imply that the corporation is an educational institution; (ii) engineer, engineering, surveyor, surveying, or any other word implying that the corporation provides any form of the practice of engineering or surveying; (iii) architect or architecture or any other word implying that the corporation provides any form of the practice of architecture; (iv) cooperative or an abbreviation thereof; (v) annuity, assurance, beneficial, bond, casualty, endowment, fidelity, fraternal, guaranty, indemnity,

insurance, insurer, reinsurance, reinsurer, surety, or title (or any similar words) when the use implies that the corporation is engaged in the business of writing insurance or reinsurance as principal; or (vi) any other words prohibited by law.

Prior written approval from the applicable regulating agency may also be required if the name would imply that the corporation is: (a) an educational institution; (b) a bank or other financial institution; (c) an insurer or reinsurer; or (d) a public utility corporation.

FICTITIOUS NAME

If the corporation wishes to do business in Pennsylvania under a name other than the name under which it was incorporated, it can register a fictitious name with the DOS. Although registering a fictitious name does not create any legal or exclusive right to the name, the name should be distinguishable from the name of any other existing domestic or foreign entity, or a name that has been reserved or registered as provided by statute. But corporations who use a fictitious name and fail to register the fictitious name with the DOS may face penalties, including the inability to use the courts of Pennsylvania to enforce a contract entered into using the fictitious name.

If the corporation includes an individual party in its Fictitious Name Registration form, it must officially publish notice of intention to file or the filing of the fictitious name registration. The notice must include (a) the fictitious name, (b) the street address of the corporation's principal office or place of business, (c) the names and addresses of persons who are parties to the registration, and (d) a statement that an application for registration of a fictitious name will be or was filed under the Fictitious Names Act. There is no requirement that the corporation provide proof of publication to the DOS. However, the corporation should maintain a copy of such proof of publication with its books and records.

ARTICLES OF INCORPORATION

A Pennsylvania corporation may be formed upon the filing its articles of incorporation (either online, or by mail, or in person) with the DOS and such articles of incorporation will be a matter of public record. A non-refundable fee of \$125 is due upon the filing of the articles of incorporation.

The articles of incorporation must meet the statutory requirements and state: (a) the corporation's name; (b) either the street address of the corporation's initial registered office in Pennsylvania; or the name of its commercial registered office provider and county for venue; (c) that the corporation is incorporated under the Business Corporation Law of 1988; (d) information regarding authorized shares if the corporation is organized on a stock share basis (not applicable if it is nonstock corporation), including: the aggregate number of authorized shares; the voting rights, designations, preferences, limitations, and special rights of the shares of any class or series (to the extent determined); and the board of directors' authority to divide shares into classes or series and determine the voting rights, designations, preferences, limitations, and special rights of a class or series; (e) each incorporator's name; and (f) the duration of the corporation. The articles of incorporation must be filed with a Docketing Statement.

In addition to the filing the articles of incorporation with the DOS, an advertisement giving notice of intention to file or the filing of articles of incorporation must be published in two newspapers of general circulation, including a legal journal if possible. The advertisement must contain: (i) the name of the proposed corporation, and (ii) a statement that the corporation is to be or has been incorporated under the provisions of the PBCL. Proof of the published advertisements is not required to be submitted to the DOS, but the corporation should maintain a copy of such proof as part of its books and records.

BYLAWS

In Pennsylvania, bylaws, rules of governance of the corporation, are required. The bylaws typically include among other things: (i) the procedures for shareholder and director meetings (including fixing a record date, notice and quorum requirements, and voting procedures); (ii) the procedures for director and officer election, removal, and compensation; (iii) establishing committees of the board of directors; and (iv) issuing and transferring the corporation's shares.

A corporation's bylaws are adopted by the corporation's incorporator or the corporation's initial board of directors at an organizational meeting. Except as otherwise provided by the PBCL, the shareholders entitled to vote thereafter have the authority to adopt, amend, and repeal the bylaws. The power to adopt, amend, and repeal the bylaws, subject to certain exceptions, may also be vested in the board of directors by an express authorization in the bylaws.

Bylaws do not need to be filed with the Pennsylvania Department of State, and as a result, it is recommended that corporations place corporate governance provisions in the bylaws instead of the articles of incorporation to allow for greater ease in the amendment process.

ISSUANCE OF SHARES

A corporation may issue its authorized shares at a price determined by the board of directors or according to a formula or method established by the board. Consideration for shares may consist of any combination of money, obligations, services performed (whether or not contracted for), contracts for services to be performed, shares or other securities or obligations of the corporation, or any other tangible or intangible property or benefit to the corporation.

A share of stock in a corporation is classified as a security under state and federal securities laws, which regulate the offer and sale of corporate stock, and any issuance of shares must comply with both federal and state securities laws. Parties must consider whether there are any registration or notification requirements applicable to the corporation's shares or other securities under the federal Securities Act of 1933, as amended (Securities Act), and the Pennsylvania Securities Act of 1972 (Pennsylvania Securities Act). Generally, a person cannot legally offer or sell any security in Pennsylvania unless it is either a federal covered security, exempted from registration, or registered under the Pennsylvania Securities Act.

Each shareholder of a Pennsylvania corporation is entitled to a share certificate representing the shares it owns unless the corporation's articles of incorporation provide that the shares will be uncertificated. Share certificates must state the following: (i) that the corporation is organized under Pennsylvania law; (ii) the name of the person to whom it is issued; and (iii) the number and class of shares, and the designation of the series, if any, that the certificate represents. If the corporation is authorized to issue more than one class or series of shares, the certificate must set out (or state that the corporation will provide, on request and at no charge) a full or summary statement of:

- The designations, voting rights, preferences, limitations, and special rights of the shares of each class or series authorized to be issued, to the extent fixed and determined.
- The authority of the board to fix and determine the designations, voting rights, preferences, limitations, and special rights of classes or series.

If a corporation has uncertificated shares, the corporation still has to provide the shareholder a written notice containing information which is similar to what is required for a share certificate.

A restriction on the transfer or registration of transfer of securities may be imposed by the bylaws or by an agreement among any number of security holders or among them and the corporation. Such restrictions may include a right of first offer, mandatory purchase provisions, a requirement of prior consent by other shareholders, or transfer restrictions applicable to designated persons or classes.

STOCKHOLDERS

Under the PBCL, except as otherwise provided in the articles of incorporation, a corporation must hold at least one meeting of its shareholders in each calendar year for the election of directors at such time as may be provided in or fixed pursuant to the corporation's bylaws. Shareholders must be given notice of any shareholders' meeting at least 10 days before the date of a meeting that will consider an entity transaction or a fundamental change and at least 5 days before the date of any other shareholder meeting. Notice may be given by facsimile transmission, email, or other electronic communication to a facsimile number or address for email or other electronic communications supplied to the corporation for the purpose of notice.

Some of the more common corporate actions that require shareholder consent include:

- the election of directors;
- the amendment of Articles of Incorporation;
- mergers or consolidations;
- the sale, lease or exchange of assets other than in usual and regular course of business;
- the dissolution of the corporation; and
- interested director transactions.

A quorum, unless otherwise provided in a bylaw adopted by the shareholders, for the purposes of consideration and action on a particular matter at a meeting of shareholders consists of: (i) the presence of shareholders entitled to cast at least a majority of the votes that all shareholders are entitled to cast on the matter; and (ii) if any shareholders are entitled to vote as a class on the matter, the presence of shareholders entitled to cast at least a majority of the votes entitled to be cast in the class vote.

Unless otherwise specified in the PBCL or the corporation's bylaws, any corporate action requiring a shareholder vote will be authorized if the shareholders holding a majority of the votes cast by all shareholders entitled to vote on the action approve it. If shareholders are entitled to vote as a class, the action will also require the affirmative vote of a majority of the votes cast by the shareholders entitled to vote as a class.

Any action required or permitted to be taken at a meeting of the shareholders or of a class of shareholders may be taken without a meeting by unanimous written consent, unless otherwise restricted in the bylaws.

BOARD OF DIRECTORS

The board of directors is primarily vested with managing or otherwise overseeing the business of the corporation. A director of a corporation stands in a fiduciary relation to the corporation and must perform the duties of a director, including duties as a member of any committee of the board upon which the director may serve, in good faith, in a manner the director reasonably believes to be in the best interests of the corporation and with such care, including the skill and diligence that a person of ordinary prudence would use under similar circumstances.

In Pennsylvania, a corporation's board of directors must consist of at least one member. A corporation's bylaws or articles of incorporation may affix the size of the board of directors or give the board the authority to affix the size of the board by resolution, subject to any shareholder approval that may be required by the corporation's bylaws, articles of incorporation or shareholders agreement or similar governing agreement. If not specified in the bylaws or the articles of incorporation, the PBCL sets the number of directors at three. A corporation's bylaws or its board of directors may establish one or more committees to consist of one or more directors of the corporation. All members must be natural persons of full age, and unless otherwise provided by the bylaws, the director need not be a resident of Pennsylvania or a shareholder of the corporation. Initial directors may, but are not required to, be named in the articles of incorporation. If a corporation's articles of incorporation do not name the initial directors, the corporation's incorporator must elect the corporation's board of directors. After appointment of the initial board of directors, the shareholders elect directors.

Unless otherwise provided by the bylaws, a majority of the directors of a corporations will be necessary to constitute quorum for the transaction of business. Any action required or permitted to be approved at a meeting of the directors may be approved without a meeting by unanimous written consent.

LIABILITY

If a bylaw adopted by the shareholders entitled to vote so provides, a director will not be personally liable for any action taken unless the director has breached or failed to perform the duties of the director –and– the breach or failure to perform constitutes self- dealing, willful misconduct, or recklessness. However, the limitations will not apply to the responsibility or liability of a director pursuant to any criminal statute, or the liability of a director for the payment of taxes pursuant to federal, state, or local law.

REMOVAL

Unless otherwise provided in a bylaw adopted by the shareholders, any individual director of a corporation may be removed from office without cause by the vote of shareholders. An individual director will not be removed from the board of a corporation in which shareholders are entitled to vote cumulatively for the board if sufficient votes are cast against the resolution for his removal which, if cumulatively voted, would be sufficient to elect one or more directors to the board.

OFFICERS

A Pennsylvania corporation must have a president, treasurer, and secretary (although other titles may be used). The corporation may have other officers or assistant officers. The treasurer may be a corporation, but the president and secretary must be natural persons of legal age. The bylaws may set out any other qualifications, and a person may hold more than one office. The time and manner of electing or appointing officers and assistant officers, and their terms of office, are fixed by or pursuant to the bylaws. Unless otherwise provided by the bylaws, officers have the authority and duties stated in the bylaws, or as determined by board action in the absence of controlling bylaw provisions.

Before appointment, the bylaws should be checked for any requirements, and the potential officers for their future availability, as officers often are needed to sign future documents to carry out the corporation's business.

INDEMNIFICATION

Unless otherwise restricted in its bylaws, a corporation may indemnify any person in a pending or completed action or proceeding (other than an action by or in the right of the corporation), by reason of the fact that the person is or was a present or former director or officer of the corporation, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by the director or officer in connection with the action or proceeding if the director or officer acted in good faith and in a manner the person reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe the director or officer's conduct was unlawful.

RECORDKEEPING AND REPORTING

Effective as of January 1, 2024, Pennsylvania corporations are required to file an annual report prior to July 1 of each calendar year.

The corporation must keep complete and accurate books and records of account; minutes of the proceedings (and action taken without a meeting) of: (i) the incorporator(s); (ii) the shareholders; and (iii) the directors; and a share register that sets out: (i) the names and addresses of all shareholders; (ii) the number and class of shares registered in each shareholder's name; and (iii) all issuances and transfers of shares.

Limited Liability Companies¹

Limited liability companies (LLCs) as an entity choice have become favored as they offer many advantages. LLCs offer substantial flexibility and combine the liability protection of a corporation with the tax treatment of a partnership. The formation of an LLC requires fewer formalities than a corporation, but attention to detail is still required as there are many issues that will affect members' rights. A Pennsylvania LLC may exercise any right, power, franchise, or privilege that a corporation conducting the same business might exercise (except with respect to any law relating to taxation). However, certain businesses like banking institutions, credit unions, and insurers cannot be conducted as LLCs.

¹ LLCs may elect to be treated as a C-corp or an S-corp for federal income tax purposes. The rest of this summary assumes that the LLC does not make any such election and is treated as a partnership for federal income tax purposes.

The formation of an LLC under Pennsylvania law is governed by the Pennsylvania Uniform Limited Liability Company Act of 2016 (PA LLC Act). In Pennsylvania, one or more associations or individuals 18 years of age or older may organize an LLC. The person or persons need not be members of the LLC. A Certificate of Organization must be signed by each of the organizers and filed with the DOS along with a Docketing Statement.

NAME REQUIREMENTS

Under the PA LLC Act, there are both requirements and restrictions on the name of an LLC. The name of an LLC must contain the term “company,” “limited,” or “limited liability company” or an abbreviation of one of those terms, or words or abbreviations of like import used in another jurisdiction. Additionally, the proper name of an LLC must not imply that the company is a governmental agency, bank, or insurance company. Alternatively, the name of an LLC must not (a) imply that the LLC is: (i) a governmental agency; (ii) a bank, bank and trust company, savings bank, private bank, or trust company; (iii) an insurance company; (iv) a public utility; or (v) a credit union; (b) contain, unless the LLC is duly certified, registered, or otherwise permitted by statute: (i) college, university, or seminary when used in a manner as to imply that the LLC is an educational institution; (ii) engineer, engineering, surveyor, surveying, or any other word implying that the corporation provides any form of the practice of engineering or surveying; (iii) architect or architecture or any other word implying that the LLC provides any form of the practice of architecture; (iv) cooperative or an abbreviation thereof; (v) annuity, assurance, beneficial, bond, casualty, endowment, fidelity, fraternal, guaranty, indemnity, insurance, insurer, reinsurance, reinsurance, surety, or title (or any similar words) when the use implies that the corporation is engaged in the business of writing insurance or reinsurance as principal; or (vi) any other words prohibited by law.

The name must also be distinguishable from names already in the records of the DOS. Like for corporations, a person can verify the availability of a name by searching the DOS’s searchable database of entity names, which can be accessed at the following URL: <https://file.dos.pa.gov/search/business>. A person can reserve the name of an LLC by submitting a request (either online, or by mail, or in person) with the DOS and paying the DOS a filing fee of \$70. Each name reservation is good for 120 days and may not be renewed. Once expired, the name becomes available again, and anyone including the party who originally reserved the name, can seek to reserve the name.

Prior written approval from the applicable regulating agency may be required if the name would imply that the LLC is: (a) an educational institution; (b) a bank or other financial institution; (c) an insurer or reinsurer; or (d) a public utility corporation.

FICTITIOUS NAME

If an LLC wishes to do business in Pennsylvania under a name other than the name under which it was formed, it can register a fictitious name with the DOS. Although registering a fictitious name does not create any legal or exclusive right to the name, the name should be distinguishable from the name of any other existing domestic or foreign entity, or a name that has been reserved or registered as provided by statute. LLCs who use a fictitious name and fail to register the fictitious name with the DOS may result in penalties, including the inability to use the courts of Pennsylvania to enforce a contract entered into using the fictitious name.

If the LLC includes an individual party in its Fictitious Name Registration form, the LLC must officially publish notice of intention to file or the filing of the registration. The notice must include (a) the fictitious name, (b) the street address of the LLC's principal office or place of business, (c) the names and addresses of persons who are parties to the registration, and (d) a statement that an application for registration of a fictitious name will be or was filed under the Fictitious Names Act. There is no requirement that the LLC submit proof of publication to the DOS. However, the LLC should maintain a copy of such proof of publication with its books and records.

CERTIFICATE OF ORGANIZATION

An LLC may be formed under Pennsylvania law upon the filing of a certificate of organization with the DOS, along with a Docketing Statement and the payment of a non-refundable filing fee of \$125. The certificate of organization must state the LLC's name, and either, the street address (not a post office box) of the LLC's initial registered office in Pennsylvania; or the name of the commercial registered office provider and county for venue. An LLC's certificate of formation will be a matter of public record. The LLC is formed on the date and at the time the certificate of organization is filed with the DOS, unless the certificate of organization specifies a later effective date or time (or both). If a later effective date but no time is specified, the effective time is 12:01 a.m.

Provisions in the certificate of organization are deemed to be provisions of the operating agreement for purposes of any PA LLC Act provision that refers to a rule as set forth in the operating agreement.

OPERATING AGREEMENT

An LLC's operating agreement serves to function as a combination of a corporation's bylaws and a typical shareholder agreement. An operating agreement is essentially a contract as among the members and between the members and the LLC. The PA LLC Act does not require the agreement be in writing nor does it require a written operating agreement to be filed with the DOS. The PA LLC Act does not mandate any form for the operating agreement, but the PA LLC Act includes default provisions that apply to LLCs only if the operating agreement does not cover a specific matter. For example, under the PA LLC Act, the default rules would require an LLC to make pre-dissolution distributions to its members and disassociated members in equal shares among members. If the members of an LLC have negotiated the sharing of distributions in a particular priority and in particular amounts, they will want to memorialize that arrangement in a written operating agreement to avoid the default rules on distributions.

An operating agreement helps parties avoid the application of unwanted statutory default provisions that would otherwise apply if not addressed in the agreement. If the operating agreement addresses a particular issue, it overrides the PA LLC Act's default provision. However, certain PA LLC Act provisions cannot be eliminated or modified by the operating agreement.

An operating agreement typically addresses a variety of topics, including:

- the LLC's governance and management structure;
- the rights, preferences and privileges of the LLC's classes of membership interests;
- capital contributions and remedies for failing to make capital contributions;
- the allocation and distribution of the LLC's profits and losses;
- the rights and duties of the LLC's members or managers;

- the admission and removal of members and the transfer of membership interests;
- the term of the LLC and events which would trigger a dissolution of the LLC; and
- the procedures and conditions for amending the operating agreement and approving entity transactions, such as mergers, exchanges, conversions, divisions, or domestications.

Unless otherwise provided by the operating agreement, the PA LLC Act default rule is that amendments to an operating agreement would require the consent of all members.

MANAGEMENT

Pennsylvania LLC's may be member-managed or manager-managed. By default, a Pennsylvania LLC is member-managed unless the operating agreement specifies otherwise. In a member-managed LLC, each member typically has the inherent authority to act on behalf of the LLC and execute contracts. In the case of a manager-managed LLC, managers govern the LLC similarly to a corporation's board of directors. Regardless of the management structure, the operating agreement should include specific rules and procedures for managing the LLC, holding meetings, and taking action.

Managers or managing members owe fiduciary duties of loyalty, care, and good faith and fair dealing to the company and to the other members. While the operating agreement cannot eliminate these duties, it can outline how to authorize acts or transactions that might violate the duty of loyalty and can alter fiduciary duties if not manifestly unreasonable. Unless provided otherwise in the operating agreement, matters taken in the ordinary course of the LLC's activities and affairs may be decided by either the majority of the members in a member-managed LLC, or the sole manager or a majority of the managers, as applicable, in a manager-managed LLC.

Effective as of January 1, 2024, Pennsylvania LLCs must file with the DOS, before October 1 of each year, an annual report that states: (i) the address of the LLC's registered office, if any, in Pennsylvania, (ii) the name of at least one manager or managing member of the LLC, (iii) the names and titles of its principal officers, if any, of the LLC, (iv) the address of the LLC's principal office, including street and number, if any, wherever located, and (v) the LLC's entity number or similar identifier issued by the DOS.

LIABILITY

Members and managers are not liable for the LLC's debts, obligations, or liabilities solely by reason of being a member or manager. The operating agreement may provide that a manager or managing member is not personally liable for monetary damages to the LLC or the other members for a breach of the duty of care, except for an act that constitutes recklessness, willful misconduct, or a knowing violation of law.

Partnerships

In Pennsylvania, a partnership is an association of two or more persons to carry on as co-owners of a business for profit. But merely sharing ownership of property or revenue does not create a partnership. Pennsylvania law permits general partnerships, limited partnerships, and limited liability partnerships. The distinguishing feature between general partnerships and limited partnerships is that general partnerships have only general partners, while limited partnerships have at least one general and at least one limited partner.

GENERAL PARTNERSHIPS

In a general partnership, all partners share the management responsibilities and are individually and jointly liable for the partnership's debts and obligations. Additionally, a pass-through entity, a general partnership does not pay state or federal income tax. Instead, the individual partners pay taxes on their share of the general partnership's income.

A general partnership may register as a limited liability partnership (LLP). Limited liability partnership status provides the general partners with the advantage of having limitations and additional protection on their personal liability as general partners. Limited liability partnerships are often professional partnerships, such as law firms and accounting firms.

NAME REQUIREMENTS

General partnerships are not a filing entity, meaning there is no formal requirement to file a certificate or other document with the DOS. Accordingly, there is no need to register a legal or proper name and therefore no legal requirements apply to choosing a legal name for a general partnership. If a general partnership wishes to operate under a fictitious name, it must file a fictitious name registration form with the DOS and pay a \$70 fee. The fictitious name must be advertised in a newspaper of general circulation and a legal publication in the county where the business is located.

MANAGEMENT

A general partnership is managed by its partners, and each is considered an agent of the partnership and has the ability to sign on behalf and bind the general partnership. The general partners owe duties of loyalty, care, and good faith to the partnership. A partner's breach of duty of loyalty may be authorized or ratified by all the partners. Each partner has equal rights in the management and conduct of the partnership business. As a partnership, there are no ongoing compliance requirements and no periodic filing requirements.

Typically, there is a written partnership agreement which details how decisions would be made and the weight that will be given to each partner's vote. If there is no partnership agreement, the default statutory provisions will apply. Having a written partnership agreement will allow the partnership to waive or supersede these default provisions. The partnership agreement may grant to all or certain general partners the right to vote on any basis agreed to, separately or with all or any class of partners, on any matter. To amend the partnership agreement, consent is required from all the partners.

Each partner is entitled to share in distributions from the general partnership. This right to receive distributions is considered a transferable interest. Generally, property owned by a general partnership is considered partnership property and not individually owned by the partners. While the transferability of interest in the general partnership can be restricted by the partnership agreement, such a restriction is not effective against a transferee without knowledge or notice. Additionally, the assignment of a transferable interest does not, by itself, dissociate the transferring partner or dissolve the partnership, nor does it entitle the transferee to participate in management or gain general access to partnership information. After the formation of the partnership, a person can become a partner as provided by the partnership agreement, through an entity transaction, or with the consent of all partners.

Unless the partnership agreement specifies otherwise, partners and dissociated partners of the general partnership share equally in distributions made before the dissolution of the partnership. A person has no right to receive pre-dissolution distributions unless the partnership decides to make an interim distribution. Additionally, a partner cannot demand or receive a pre-dissolution distribution in any form other than money. Partners are not entitled to remuneration for services performed for the partnership, except for reasonable compensation for winding up the partnership.

LIABILITY

In a general partnership, there is no limited liability for partners, except in the case of a general partnership that has elected to be an LLP. All partners are jointly and severally liable for the debts, obligations, and other liabilities of the partnership unless otherwise agreed by the claimant or provided by law. The partnership itself is liable for any wrongful acts or other actionable conduct committed by a partner acting either in the ordinary course of business or with actual or apparent authority. However, a new partner is not liable for any preexisting debts, obligations, or other liabilities of the partnership.

In an LLP, partners are generally not liable for the debts or obligations of the partnership, except in specific circumstances. These exceptions include negligent or wrongful acts or misconduct committed by the partner or any person under the partner's direct supervision and control, debts, or obligations for which the partner has agreed in writing to be liable, and as expressly provided in the partnership agreement.

LIMITED PARTNERSHIPS

Under a limited partnership, limited partners have limited liability and fewer voting rights, but also typically have fewer rights in the partnership's business and affairs. The Pennsylvania Uniform Limited Partnership Act of 2016 allows limited partnerships to have various classes of limited partners with specific rights and duties as outlined in the partnership agreement. General partners often organize as limited liability entities to reduce liability, and businesses can also elect to become limited liability limited partnerships, where general partners are not liable for the partnership's debts in most circumstances.

Limited partnerships provide limited partners with a liability shield, but the general partners of a limited partnership still face unlimited liability unless organized as limited liability entities or the limited partnership elects limited liability limited partnership status.

A limited partnership is managed by its general partners, each of whom acts as an agent of the limited partnership and has the authority to sign on behalf of and bind the limited partnership. Whereas general partners owe a duty of loyalty, care, and good faith and fair dealing to the partnership and to the other partners, limited partners have only an obligation to discharge any duties to the limited partnership and the other partners consistent with the contractual obligation of good faith and fair dealing.

FORMATION – NAME REQUIREMENTS

Unlike general partnerships, limited partnerships have more filing requirements. To form a limited partnership in Pennsylvania, a certificate of limited partnership is filed with the DOS and such certificate of limited partnership will be a matter of public record. A non-refundable filing fee of \$125 is due upon the filing of the certificate of limited partnership. A certificate of limited partnership must include the name of the LP, the address of its registered office, and the names and addresses of the general partners. Except for restrictions against adopting the same or a

confusingly similar name as another entity, as described below, there are no legal requirements for an LP name.

In Pennsylvania, the name of a limited partnership (unless it is a limited liability limited partnership, or LLLP) does not need to contain a word or abbreviation indicating that it is a limited partnership. However, as a practical matter, limited partnerships typically contain some designator, such as "limited" or "limited partnership" or similar terms, to indicate that it is a limited partnership. Alternatively, the name of an LLLP must contain either the term "company," "limited," or "limited liability limited partnership," or an abbreviation thereof.

LIMITED PARTNERSHIP AGREEMENTS

Limited partnerships are typically governed by a partnership agreement. The partnership agreement governs:

- relations among the partners as partners and between the partners and the limited partnership;
- the rights and duties under this title of a person in the capacity of a partner;
- the activities and affairs of the partnership and the conduct of those activities and affairs;
- the means and conditions for amending the partnership agreement; and
- the means and conditions for approving entity level transactions such as mergers, exchanges, conversions, divisions, or domestication.

A partnership agreement will also cover additional topics such as:

- the rights, preferences and privileges of the limited partnership's classes of partnership interests;
- capital contributions and remedies for failing to make capital contributions;
- the allocation and distribution of the limited partnership's profits and losses;
- the admission and removal of members and the transfer of membership interests;
- the term of the limited partnership and events which would trigger a dissolution of the limited partnership;
- the procedures and conditions for amending the partnership agreement.

The Pennsylvania Uniform Limited Partnership Act of 2016 contains certain default provisions that apply to a limited partnership if its partnership agreement does not cover a specific matter. For example, under the Pennsylvania Uniform Limited Partnership Act, distributions are to be shared among the partners "on the basis of the value, as stated in the required information when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner..." If the partners of a limited partnership have negotiated the sharing of distributions in a particular priority and in particular amounts, they will want to memorialize that arrangement in a written partnership agreement to avoid the default rules on distributions.

So long as not clearly unreasonable, the partnership agreement may also alter aspects of the duty of loyalty, identify specific types or categories of activities that do not violate the duty of loyalty, alter the duty of care, alter or eliminate any other fiduciary duty, and prescribe the standards by which the performance of the contractual obligation of good faith and fair dealing is to be measured.

Foreign Qualification

Corporations (whether for profit or not-for-profit), partnerships and limited liability companies which are doing business in Pennsylvania but were not formed under Pennsylvania law must be qualified to do business in Pennsylvania. To qualify to do business in Pennsylvania, such entities must file a Foreign Registration Statement, accompanied by a Docketing Statement, with the DOS.

The foreign entity must provide the following information in its Foreign Registration Statement: the name of the entity; the entity's jurisdiction of incorporation/formation and type of entity; and the street and mailing addresses of the entity's principal office and registered office in Pennsylvania. If the entity's name does not comply with Pennsylvania's naming requirements, an alternate name adopted pursuant to relevant statutes must be included. The Foreign Registration Statement must be signed by an authorized representative of the foreign entity. The fee for filing the Foreign Registration Statement is \$250, and expedited services are available for an additional cost, depending on the desired processing time. A foreign entity doing business in Pennsylvania that fails to register with the DOS may not maintain an action or proceeding in the Commonwealth. However, failure to register does not impair the validity of a contract or act of the foreign entity, nor does it preclude the entity from defending an action or proceeding in the Commonwealth.

Employee Benefits

Employee benefits are comprehensively governed by federal laws. The most prominent statutes are the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code). As further discussed below, federal law generally preempts state laws governing employee benefits.

ERISA

ERISA governs most types of employee benefit plans, including healthcare plans, life and disability insurance programs, most retirement plans, and many severance arrangements. ERISA sets out a detailed statutory scheme, including reporting and disclosure requirements, obligations for plan fiduciaries, benefit claim procedures, and, for most types of retirement plans, specific coverage, vesting, and funding requirements.

ERISA also includes rules, enacted as part of the Consolidated Omnibus Budget Reconciliation Act (COBRA), that require employers to offer temporary continuation of group health benefits where coverage would otherwise be lost due to certain qualifying events (such as termination of employment or reduction in hours). The cost of COBRA continuation coverage is generally paid by the affected employee or dependent. Notably, COBRA only applies to group health plans sponsored by employers with 20 or more employees.

Internal Revenue Code

The Code prescribes detailed rules employers must follow to receive favorable tax treatment for employee benefits, such as tax deductions for plan contributions. Failure to comply with these rules may also result in the loss of favorable tax treatment for benefits received by employees. The Code also imposes certain benefit plan-related excises taxes, such as penalties for failure to timely fund retirement plans, failure to offer minimum essential group health coverage, and failure to offer COBRA continuation coverage.

Federal Preemption of State Law

ERISA generally preempts (supersedes) state laws regarding employee benefits. However, state insurance laws, as they apply to insured employee benefit plans, are not preempted by ERISA. This means that insured employee welfare benefit plans (but not self-funded plans) are subject to state laws regulating insurance, including laws requiring that specific benefits be provided by medical plans.

Pennsylvania-Specific Considerations

While most rules governing employee benefits arise under federal law, there are (as noted above) select instances where state laws are relevant. Pennsylvania's "mini-COBRA" statute is a common example and is described below. Similarly, while the most significant rules regarding the taxation of employee benefits arise under federal law, states may tax employee benefits and compensation differently than the federal government. Examples of Pennsylvania's different tax treatment of employee benefits and compensation are also described below.

PENNSYLVANIA MINI-COBRA STATUTE

While COBRA applies only to employers with 20 or more employees, Pennsylvania's so-called "mini-COBRA" statute extends similar requirements to Pennsylvania employers with two to 19 employees. This statute allows employees, at their own cost, to continue their insured group health benefits for up to nine months following certain qualifying events that would otherwise cause a loss of that coverage.

PENNSYLVANIA INCOME TAXATION OF 401(K) CONTRIBUTIONS

Employee elective deferrals to 401(k) plans are generally exempt from federal income tax and 401(k) plan distributions are generally subject to federal income tax. In contrast, Pennsylvania treats elective deferrals to 401(k) plans as immediately taxable and generally exempts 401(k) plan distributions from taxation, unless taken early.

PENNSYLVANIA TAX WITHHOLDING FOR NON-RESIDENT INDEPENDENT CONTRACTORS

Compensation paid to independent contractors is generally not subject to federal income tax withholding. In contrast, Pennsylvania businesses are required to withhold Pennsylvania income tax (currently 3.07 percent) from the Pennsylvania source compensation of non-resident non-employees, if that income exceeds \$5,000 per year. This rule is often implicated for non-employee directors of corporations holding board or committee meetings in Pennsylvania.

Intellectual Property

Patents

U.S. PATENT ACT

Statutory law governing U.S. patents is located in Title 35 of the U.S. Code. As of March 16, 2013, the U.S. changed from a “first-to-invent” system to a “first-inventor-to-file” system. An issued U.S. patent provides the inventor or their assignee with the exclusive right to exclude others from making, using, importing, offering to sell, or selling the patented invention in the U.S. for a specified period of time. The United States Patent and Trademark Office (USPTO) controls the examination and issuance of U.S. patents. A U.S. patent application must be filed within one year of the first public disclosure (e.g., publication, offer for sale) of the invention. Foreign patents are not enforceable in the United States and U.S. patents are not enforceable in other countries. However, U.S. patents covering products or methods of making products may be enforced against unauthorized importation of those products into the United States.

UTILITY PATENTS

A utility patent may be obtained for an invention that is novel, non-obvious, and useful, and falls into one of the existing categories of patentable subject matter: 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). Improvements to existing technology falling within any of these patented inventions are also patentable.

DESIGN PATENTS

A design patent may be obtained for the ornamental design of an article of manufacture. A design patent protects only the appearance of an article.

PLANT PATENTS

A plant patent may be obtained for the development of a new variety of asexually reproduced plant, such as a tree or flower.

PROVISIONAL PATENT APPLICATIONS

A provisional patent application is a document filed with the USPTO that describes an invention and establishes a filing date. The USPTO does not examine the provisional application, it will not publish it, and it does not mature into an issued patent. The applicant must file either a U.S. non-provisional patent application or an international patent application within one year of the filing date of the provisional application if they wish to pursue an issued patent claiming the disclosed subject matter.

NON-PROVISIONAL PATENT APPLICATIONS

A non-provisional patent application is a request filed with the USPTO to grant a patent for the invention or design described in the application. Non-provisional patent applications consist of a specification describing the invention, as well as claims defining the scope of protection. The specification generally contains a section detailing the background and overview of the invention, a description of the invention and embodiments of the invention and may include figures to aid the description of the invention. The USPTO also requires that the application include a title and an abstract which provides a summary of the invention to aid searching.

PATENT PROSECUTION

Once filed, the non-provisional patent application is assigned to an examiner with a technical background relevant to the invention. The examiner reviews the application to ensure that it meets all of the statutory requirements and conducts a search of prior art to determine whether the invention is novel and non-obvious. Patent examination can take anywhere from 12 months to three years or more. An examiner's decision not to grant a patent or allow certain subject matter to be claimed may be appealed to the Patent Trial and Appeal Board (PTAB) of the USPTO and ultimately to the U.S. Court of Appeals for the Federal Circuit.

PATENT MARKING

Marking products with notices of patent protection is not mandatory but may be necessary to establish certain kinds of damages in infringement actions. Products that are the subject of pending patent applications may be marked "patent pending." After a patent issues, the marking should be changed to indicate the invention is patented and to provide the relevant patent numbers. A patentee may satisfy the patent marking requirement by marking the patented product with an internet address of a web page that identifies the patent numbers associated with the product. False or inaccurate patent marking can result in liability if there is intent to deceive the public.

PATENT TERM

A utility patent has a term of 20 years from the earliest non-provisional filing date, subject to patent term adjustments for delays in prosecution. Patent maintenance fees are due four, eight, and 12 years after issue in order to keep a utility patent in force. A design patent has a term of 14 years from the date of issue. There are no maintenance fees for design patents.

PATENT ENFORCEMENT

It is incumbent on the patent owner to enforce their patent rights. A patent owner must file an infringement lawsuit in federal district court if they wish to exclude others from making, using, importing, offering to sell, or selling the patented invention, or to receive monetary compensation for the infringement. All appeals of adverse decisions at the district court involving patents are heard by the U.S. Court of Appeals for the Federal Circuit.

Trademarks

TRADEMARKS - PENNSYLVANIA

Trademarks and service marks are crucial for distinguishing the source of goods and services within Pennsylvania. Pennsylvania affords protection to trademarks and service marks within the commonwealth under the Pennsylvania trademark act, with a registration term lasting five years from the date of registration. While state registration provides certain protections, it does not confer the same procedural benefits as federal registration with the USPTO.

In Pennsylvania, the Bureau of Corporations and Charitable Organizations (BCCO) of the Pennsylvania Department of State administers trademark applications and registrations. Forms and information are available on the Pennsylvania Department of State's website at www.dos.pa.gov. Registration requires that the mark be in use in commerce within Pennsylvania at the time of filing the application, with no intent-to-use applications permitted.

The Pennsylvania trademark registration process involves specific requirements and timelines, and maintaining a trademark requires periodic renewals and declarations of use. Marks are not eligible for registration under certain conditions, including but not limited to marks that are: (1) merely descriptive or deceptively misdescriptive of the applicant's goods or services, (2) primarily geographically descriptive or deceptively misdescriptive, (3) primarily a surname, or (4) resemble an already registered mark or previously used mark or trade name in Pennsylvania that is likely to cause confusion. Descriptive marks or marks consisting of a surname may be registered if they have acquired secondary meaning. Evidence of distinctiveness can include proof of continuous use for five years in Pennsylvania before the claim of distinctiveness is made. The registration of a trademark or service mark in Pennsylvania may be renewed by filing an application for renewal within six months prior to the expiration of the term. The renewal application must include a statement that the mark is still in use in the Commonwealth of Pennsylvania and a specimen showing actual use of the mark on or in conjunction with the goods or services.

In Pennsylvania, only a registered mark may be the basis for a statutory action for trademark infringement. However, unregistered trademarks can support a claim for infringement under common law. These common law trademark rights accrue with use and are enforceable under Pennsylvania law.

TRADEMARKS – FEDERAL

In addition to Pennsylvania's statutory trademark protection, federal trademark protection under the Lanham Act affords national trademark protection, including within the Commonwealth of Pennsylvania. The USPTO administers federal trademark registration through a multi-step process involving application submission, examination, and potential opposition. Applications must identify a single mark, the associated goods/services, and their International Classes, along with the specified fee. If the mark is already in use, the application must include the first use date and a specimen showing the mark in use. For goods, the specimen must show the mark on the goods, packaging, or sales displays; for services, it must show the mark in connection with the promotion or performance of the services. Applications can be filed based on the applicant's intention to use the mark prior to actual use, but registration is granted only after proof of use is submitted. An examining attorney reviews the application and may issue an Office Action if there are issues, the USPTO provides the applicant six months to respond. Final refusals can be appealed to the Trademark Trial and Appeal Board (TTAB) and federal court. If approved, the mark is published for

opposition, allowing third parties to file oppositions at the TTAB. If no oppositions are filed, the USPTO issues a registration certificate (for marks in use) or a Notice of Allowance (for intended use applications), which provides applicants a six-month period to submit proof of use, with up to five possible extensions.

Trademark registrations must be renewed every ten years by filing a renewal application that must include a declaration of continuing use and proof that the mark is still in use to maintain the registration. An initial declaration of continuing use is required six years after the registration is issued. As long as the Declarations of Use and renewal applications are filed timely, the trademark registration can remain in force indefinitely, providing ongoing protection for the mark.

Registering a trademark with the USPTO provides several legal advantages in infringement actions not available to Pennsylvania-issued trademark registrations. These include presumptions of ownership and validity, the exclusive right to use the mark in interstate commerce, and constructive nationwide use and notice. Additionally, after five years of continuous use since registration, the registrant can claim an incontestable right to use the mark, providing stronger protection against legal challenges.

Copyright

COPYRIGHT – FEDERAL

Copyright protection is administered at the federal level in the United States. The U.S. Copyright Act of 1976, codified at 17 U.S.C. § 101 et seq., grants authors of qualifying works (or their employers in the case of “works made for hire”) exclusive rights to use, distribute, modify, and display their works. Copyright protection lasts for the life of the author plus 70 years. For works made for hire, protection lasts for the shorter of: (a) 95 years after publication, or (b) 120 years after creation. Copyright infringement can lead to actual or statutory damages, injunctive relief, and attorney fees.

Copyright protection is available for any work that results from original and independent authorship and is fixed in a tangible form. Works eligible for copyright protection include literary, musical (including sheet music and lyrics), dramatic, choreographic, audiovisual, pictorial, graphic, sculptural, and architectural works, as well as sound recordings and computer software code. Although copyright attaches to a qualifying work at the moment of creation, there are advantages to registering a work with the U.S. Copyright Office. For a work that originates in the U.S., a copyright registration is required in order to initiate litigation. Registration of the copyright within three months after publication or before infringement occurs entitles the copyright owner to an award of statutory damages and attorney’s fees.

The U.S. Copyright Office administers the registration of U.S. copyright registrations and applications may be filed electronically at <https://www.copyright.gov/registration/>.

Generally, there is no requirement to display a copyright notice in connection with the work, but doing so can preclude a defense of “innocent infringement” by an alleged infringer.

WORKS MADE FOR HIRE

Copyright generally vests in the author, but for “works made for hire,” the employer is considered the author. This includes works created by employees within their employment scope or a qualifying commissioned work by an independent contractor. Companies often use employment agreements or contractor engagement agreements to confirm that qualifying works made for hire by an employee or independent contractor belong to the company and may include a separate intellectual property assignment agreement to ensure that any creative work generated under the engagement that does not qualify as a “work made for hire,” is assigned to the employer.

THE DIGITAL MILLENNIUM COPYRIGHT ACT

In 1998, the U.S. Congress enacted the Digital Millennium Copyright Act (DMCA) to address the relationship between copyright and the internet. The DMCA introduced key updates, including protections for online service providers when their users engage in copyright infringement, such as the notice-and-takedown system for removing infringing material. It also encouraged greater access to digital formats by providing legal protections against unauthorized access, such as account hacking or circumventing encryption and made it unlawful to provide false copyright management information or to remove or alter such information.

In 2020, Congress passed the Copyright Alternative in Small-Claims Enforcement (CASE) Act, establishing the Copyright Claims Board (CCB) within the U.S. Copyright Office. The CCB offers a voluntary, alternative forum to federal court for creators and users of copyrighted materials. The CCB is a three-member tribunal with extensive expertise to resolve copyright disputes involving claims up to \$30,000. The CCB handles claims such as misrepresentations in DMCA notices, copyright infringement, and declarations of noninfringement.

Trade Secrets

Pennsylvania has adopted the Uniform Trade Secrets Act (UTSA), codified as the Pennsylvania Uniform Trade Secrets Act (PUTSA), which applies to trade secret misappropriations occurring on or after April 19, 2004.

DEFINITION OF “TRADE SECRET”

Under the PUTSA, a “trade secret” means information, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that (1) 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 or, (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Information qualifies as a trade secret if it: (1) has actual or potential economic value because it is not generally known to the public or readily ascertainable by others; and (2) there are reasonable efforts taken by the owner to keep the information a secret.

The PUTSA expands on the UTSA’s trade secret definition to include customer lists and items of “actual or potential” value and defines “willful and malicious” as an intentional act or gross neglect of duty that shows: (a) a reckless indifference of the rights of others on the part of the wrongdoer; and (b) an entire want of care that raises the presumption that the person at fault is conscious of the consequences. Unlike UTSA, the PUTSA treats continuing misappropriations as separate violations of law for statute of limitations purposes.

CLAIMS UNDER THE PUTSA

Under the PUTSA, claims must be filed within three years of discovering the misappropriation or when it should have been discovered with reasonable diligence. One who owns or lawfully possesses a trade secret may bring a claim for misappropriation for either the acquisition of a trade secret of another by improper means, or for disclosure or use of a trade secret without the express or implied consent of one who owns or lawfully possesses the trade secret. Recovery for a successful trade secret misappropriation claim may include injunctive relief; monetary damages in the nature of actual loss, a reasonable royalty, or unjust enrichment; exemplary damages for willful and malicious misappropriation; and attorney fees, expenses, and costs. A three-year statute of limitations applies to PUTSA trademark misappropriation claims. Federal courts have recognized the doctrine of inevitable disclosure to apply to potential misappropriation by former employees of a trade secret owner under the PUTSA, though Pennsylvania's state courts have yet to confirm this.

Labor + Employment

Pennsylvania, being an employment-at-will state, permits employers to terminate employees at any time and for any reason, unless such termination violates a statute or an agreed upon contract.

Discrimination Laws

THE PENNSYLVANIA HUMAN RELATIONS ACT: 43 P.S. §§ 951 TO 963

The Pennsylvania Human Relations Act (PHRA) is applicable to any employer in Pennsylvania that has four or more employees. Under the PHRA, employers are prohibited from refusing to hire, employ, contract with, bar, or discharge an individual or independent contractor. Additionally, the Act forbids discrimination against individuals or independent contractors based on certain protected characteristics.

- Race
- Color
- Age (40 and over)
- Sexual orientation
- Gender expression
- Pregnancy
- Ancestry
- National origin
- Religion
- Disability
- The use, handling, or training of service/guide animals for a disability.

The PHRA prohibits harassment based on membership in any protected class, including sexual harassment. However, an exception exists for decisions based on a bona fide occupational qualification (BFOQ) if the employer can demonstrate that all or nearly all individuals in the protected class cannot safely and efficiently perform the job duties.

PENNSYLVANIA WHISTLEBLOWER LAW: 43 P.S. §§ 1422 TO 1423

A public employer is prohibited from discharging, threatening, discriminating, or retaliating against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on the employee's behalf, makes or intends to make a good faith report of wrongdoing or waste to the employer or authorities.

Leave Laws

JURY DUTY LEAVE: 42 PA. C.S.A. § 4563

All Pennsylvania employers, except those in the retail or service industry with fewer than 15 employees and those in the manufacturing industry with fewer than 40 employees, are required to provide jury duty leave to their employees and may not retaliate against an employee for serving as a juror.

Employees may take unpaid leave to comply with a summons for jury duty, which includes serving as a juror or attending court for prospective jury service. The amount of leave should be sufficient to allow the employee to comply with the summons.

WITNESS DUTY/CRIME VICTIM LEAVE: 18 PA. C.S.A. § 4957

All Pennsylvania employers must provide leave to employees who take leave to attend court as a victim of a crime, a witness to a crime, or a member of a victim's family. The amount of leave must be sufficient for the employee to attend court proceedings.

Workers' Compensation

PENNSYLVANIA WORKERS' COMPENSATION ACT (PWCA) (77 P.S. § 1 TO § 2710)

Pennsylvania employers must pay workers' compensation to employees who suffer an injury or disease in the course of employment, regardless of negligence. This includes personal injuries, deaths, and occupational diseases arising out of and in the course of employment.

Employers cannot retaliate against employees who file workers' compensation claims, include such claims in a release of claims agreement without approval from a workers' compensation judge, or opt out of workers' compensation coverage. Almost all employees in Pennsylvania are covered, except for independent contractors, certain agricultural workers, domestic employees, maritime workers covered under federal laws, and employees exempt for religious reasons.

Wage and Hour

PENNSYLVANIA MINIMUM WAGE ACT (PMWA): 43 P.S. §§ 333.101 TO 333.115

The Pennsylvania minimum wage currently is \$7.25 per hour and automatically increases to match federal minimum wage hikes. Employers must pay non-exempt employees at least 1.5 times their regular rate for hours worked over 40 in a workweek. Wages may include vacation pay depending on the terms of the vacation policy, with an employee's right to vacation pay determined by the employment agreement or policy.

Primary exemption categories include executive, administrative, professional, and outside salespeople. However, in July 2021, key regulations defining "executive," "administrative," and "professional" under the PMWA were repealed. While the exemptions still exist under the statute, the tests for determining these exemptions were effectively repealed, creating uncertainty about which standards apply. Pennsylvania courts may look to federal authority and the history of these exemptions for guidance.

WAGE PAYMENT AND COLLECTION LAW: 43 P.S. §§ 260.1 TO 260.45

Employers in Pennsylvania must pay employees all wages, excluding fringe benefits and wage supplements, on regular paydays designated in advance. Overtime wages can be paid in the next pay period.

PENNSYLVANIA EQUAL PAY LAW (PEPL): 43 P.S. §§ 336.1 TO 336.10

In Pennsylvania, sex-based discrimination in pay for positions requiring equal skill, effort, and responsibility, performed under similar working conditions is prohibited. Exceptions to this rule include pay disparities based on a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or any other factor other than sex.

Other

NON-COMPETITION CLAUSES

Under Pennsylvania law, covenants not to compete are enforceable only if reasonably necessary to protect the employer's legitimate business interests, such as customer relationships, confidential information, trade secrets, and specialized training. Customer lists are protectable as trade secrets only if they cannot be readily obtained from public sources. To be valid, a restrictive covenant must be ancillary to employment, supported by adequate consideration, necessary for protecting legitimate interests, and reasonably limited in duration and geographic scope. Employment is considered adequate consideration for a noncompete if it is agreed upon before or at the start of employment. Continued employment is not sufficient consideration for a new non-compete clause.

The Fair Contracting for Health Care Practitioners Act, Act 74-2024, effective January 1, 2025, places restrictions on noncompete agreements for healthcare practitioners. A noncompete provision lasting longer than one year will be unenforceable and a noncompete agreement will be unenforceable if the healthcare practitioner is dismissed by the employer.

THE MEDICAL MARIJUANA ACT (35 P.S. § 10231.2103)

In Pennsylvania, an employer is prohibited from discriminating or taking an adverse action against an employee or applicant solely on the basis of the individual's status as an individual who is certified to use medical marijuana. Employers do not have to make any accommodation of the use of medical marijuana on company property and may discipline employees for being under the influence of medical marijuana in the workplace or for working while under the influence of medical marijuana when the employee's conduct falls below the standard of care normally accepted for that position.

City-Specific Regulations

PHILADELPHIA**PHILADELPHIA FAIR PRACTICES ORDINANCE (PHILA. CODE §§ 9-1103)**

Philadelphia employers are prohibited from discriminating against applicants or employees based on an individual's race, ethnicity, color, sex (including pregnancy, childbirth, or related medical conditions), reproductive health autonomy, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, familial status, genetic information, or status as a victim of domestic or sexual violence.

PHILADELPHIA WAGE HISTORY DISCRIMINATION (PHILA., PA., CODE § 9-1131)

Philadelphia employers may not ask job applicants for their wage history.

PHILADELPHIA ENTITLEMENT TO LEAVE DUE TO DOMESTIC VIOLENCE, SEXUAL ASSAULT, OR STALKING ORDINANCE (PHILA. CODE § 9-3207)

Depending on the size of the employer, Philadelphia employers must provide four to eight weeks of unpaid leave to employees who are victims or have a family or household member who is a victim, of domestic violence, sexual assault, or stalking. Leave may be taken intermittently or on a reduced work schedule.

PHILADELPHIA FAIR CRIMINAL RECORDS SCREENING STANDARDS ORDINANCE (PHILA. CODE § 9-3504)

Employers are prohibited from inquiring about convictions on the employment application or in the initial interview or making inquiries and any employment decisions based on records of an arrest that did not result in a conviction. The Ordinance (otherwise known as “Ban the Box”) applies to private employers with 10 or more employees.

A criminal record check may be conducted after the employer has determined that the candidate is otherwise qualified for the position. If an applicant is rejected based on criminal record information, the employer must notify the applicant in writing, provide a copy of the criminal history report, and allow ten business days for the applicant to respond.

PHILADELPHIA PROMOTING HEALTHY FAMILIES AND WORKPLACES ORDINANCE (PHILA. CODE § 9-4106)

Philadelphia employers of ten or more employees are required to provide paid sick time.

Philadelphia employers of less than ten employees are required to provide unpaid sick time.

Employees accrue one hour of sick time for every 40 hours worked, up to a maximum of 40 hours per year, unless the employer sets a higher limit. Employers with existing paid leave policies that meet or exceed these requirements are not required to provide additional sick time. Accrued paid sick time can be used for the employee's or a family member's illness, injury, or medical care, as well as for issues related to domestic abuse, sexual assault, or stalking.

PHILADELPHIA FAIR WORKWEEK EMPLOYMENT STANDARDS 1165 (PHILA., PA. CODE § 9-4600)

A retail, hospitality, or food services establishment that employs 250 or more employees and has 30 or more locations worldwide (regardless of where those employees perform work) must provide Philadelphia employees with a written, good faith estimate of the employee's work schedule, including the average number of work hours the employee can expect to work each week in a typical 90-day period, whether the employee can expect to work any on-call shifts, and the days/times the employee can typically expect to work. The employer must also provide notice of any proposed changes to the work schedule as promptly as possible and prior to the change taking effect. For each employer-initiated change to a posted work schedule, the employer must pay the employee predictability pay in addition to regular pay for hours worked. The employee may decline to work any hours or additional shifts not included in the posted work schedule.

MEDICAL MARIJUANA (PHILA., PA. CODE § 9-5500)

Philadelphia employers may not require a prospective employee to submit to marijuana testing as a condition of employment. Exceptions exist for specific positions, such as law enforcement roles, jobs requiring a commercial driver's license, roles involving the supervision of vulnerable individuals, and positions where the employee could significantly impact the health or safety of others. Additionally, the prohibition does not apply to drug testing required by federal or state statutes, regulations, or mandated purposes.

PITTSBURGH**PITTSBURGH UNLAWFUL EMPLOYMENT PRACTICES (PITT. CODE §§ 659.02)**

It is unlawful for any Pittsburgh employer to refuse to hire or discriminate against any person in terms of hiring, tenure, compensation, promotion, discharge, or other employment conditions based on race, color, religion, ancestry, national origin, place of birth, sex (including pregnancy, childbirth, or related medical conditions), sexual orientation, gender identity, gender expression, familial status, status as a victim of domestic violence, age, nonjob-related handicap, disability in employment, or status as a medical marijuana patient. Additionally, it is unlawful to retaliate against individuals opposing forbidden practices or participating in investigations, and for any person to aid, incite, or coerce unlawful employment practices.

PITTSBURGH PAID SICK DAYS ACT (PITT. CODE § 626)

All employees in Pittsburgh have the right to sick time. Employees of employers with 15 or more employees accrue one hour of paid sick time for every 35 hours worked, up to 40 hours per year, unless the employer provides a higher limit. Employees of employers with fewer than 15 employees accrue one hour of unpaid sick time for every 35 hours worked, up to 24 hours of unpaid sick time in the first year, unless the employer provides a higher limit.

PITTSBURGH LIVING WAGE ORDINANCE (PITT. CODE § 161.35)

The City of Pittsburgh mandates that all employees of covered employers be paid a living wage. Covered employers are the City of Pittsburgh and employers receiving city subsidies, holding city contracts, or leasing city property. This wage is calculated to meet the needs of a family of four with two full-time earners, starting at \$9.12 per hour for employees with employer-provided health insurance and \$10.62 per hour for those without. The living wage is adjusted annually. Exemptions may be granted by City Council for specific statutory conflicts, special employment categories, or demonstrated peculiar harm to the employer.

PITTSBURGH MEDICAL MARIJUANA LAW (PITT. CODE § 651.02)

It is an unlawful employment practice for an employer to discriminate in hiring or employment against any employee or prospective employee because of the individual's lawful status as a medical marijuana patient, including by requiring pre-employment testing for marijuana and such testing during the course of employment as a condition of the employee's employment. The prohibition does not apply to any position that is subject to drug testing due to regulations of the U.S. or Pennsylvania Departments of Transportation, any position that requires an employee to carry a firearm, or any applicant whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses pre-employment drug testing of such applicants.

Further, the prohibition does not apply to for-cause drug testing performed when supervisors have reasonable cause to suspect an employee of being under the influence of a drug while at work or to post-accident drug testing.

ALLEGHENY COUNTY

ALLEGHENY COUNTY SICK LEAVE

Employers with 26 or more employees in Allegheny County must provide employees with one hour of paid sick time for every 35 hours worked, up to 40 hours per calendar year. The employer may designate a higher amount.

Litigation

Federal and State Court Systems Overview

FEDERAL COURT SYSTEM

The trial courts of the federal court system are called the U.S. District Courts. Pennsylvania is divided into three federal districts: the Eastern District, the Middle District, and the Western District. Each district has judges who are appointed by the President and approved by the Senate. District judges serve a life term. They handle all phases of civil and criminal matters.

Federal courts are courts of limited jurisdiction, as set forth by the U.S. Constitution and federal statutes. Federal courts have exclusive jurisdiction over cases involving bankruptcy, patents and copyrights, foreign consuls and vice-consuls, the Securities Exchange Act, admiralty and maritime law, and antitrust. They also have exclusive jurisdiction over cases by or against the United States. When the federal courts do not have exclusive jurisdiction over a matter, they have concurrent jurisdiction with the state courts.

Federal courts can exercise jurisdiction in three main ways: diversity jurisdiction, federal question jurisdiction, and the Class Action Fairness Act. A federal court can exercise diversity jurisdiction if the dispute is between citizens of different states and the amount in controversy exceeds \$75,000. There must be complete diversity, so each plaintiff must be from a different state than each defendant. A federal court can exercise federal question jurisdiction if the complaint presents an issue arising under the Constitution, U.S. statutes, or U.S. treaties. Mere anticipation of a federal defense is not enough to establish federal question jurisdiction. See *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149, 152 (1908). The Class Action Fairness Act allows federal courts to hear class actions through diversity jurisdiction so long as the aggregated amount in controversy exceeds \$5 million and any class member is diverse from any defendant.

Even if a case is filed in state court, a federal court can still exercise jurisdiction over the case if it is properly removed. If the federal court could have exercised jurisdiction at the time the plaintiff filed the case, a defendant can remove the case to federal court. All defendants must consent to removal. If the basis for jurisdiction is diversity, removal is not available if any defendant is a citizen of the forum state.

Federal district courts are governed by the Federal Rules of Civil Procedure, which have been promulgated by the U.S. Supreme Court and approved by Congress. Federal district courts are also governed by their own local rules, which often set forth additional procedural requirements. Local rules are usually found on the court's website. Counsel should always consult both sets of rules.

In Pennsylvania, appeals are made to the Third Circuit Court of Appeals, which is located in Philadelphia. Appeals are governed by the Federal Rules of Appellate Procedure, which apply to all appeals from federal district courts to federal appellate courts, and the Third Circuit Local Appellate Rules.

PENNSYLVANIA COURT SYSTEM

Pennsylvania has a unified, statewide court system known as the Unified Judicial System of Pennsylvania. This system consists of minor courts, courts of common pleas, intermediate appellate courts (the Commonwealth Court and the Superior Court), and the Supreme Court of Pennsylvania.

At the lowest level of the Unified Judicial System are minor courts, which include magisterial district courts, the Philadelphia Municipal Court, and the Pittsburgh Municipal Court.

Pennsylvania's minor courts are inferior courts of limited jurisdiction. They have jurisdiction over civil claims where the amount in controversy does not exceed \$12,000, and the defendants do not include a Commonwealth agency or party. Minor courts commonly handle preliminary arraignments and hearings, bail matters, and traffic cases.

At the mid-level are courts of common pleas, which are Pennsylvania's trial courts. Courts of common pleas are organized into 60 judicial districts. As courts of general jurisdiction, courts of common pleas hear civil cases that are not exclusively assigned to another court. They commonly hear civil cases with an amount in controversy exceeding \$12,000, serious criminal cases, matters involving children and families, and appeals from the minor courts.

Pennsylvania's intermediate appellate courts consist of both the Commonwealth Court and the Superior Court. The Commonwealth Court has exclusive jurisdiction over matters brought by or against state agencies, the Commonwealth, local governments, and government officers acting within their official capacities. The Superior Court has general appellate jurisdiction over most civil and criminal appeals from the courts of common pleas, except for appeals that are exclusively reserved for the Commonwealth Court or Supreme Court of Pennsylvania.

The Supreme Court of Pennsylvania is the state's highest court and the oldest appellate court in the nation. It hears discretionary appeals from the Superior and Commonwealth Courts and certain direct appeals from the lower courts, such as when a federal or state law has been found unconstitutional. The Supreme Court of Pennsylvania's decisions are binding on all state courts in Pennsylvania and on all matters of Pennsylvania law.

Pennsylvania cases are governed by the Pennsylvania Rules of Civil Procedure, the Pennsylvania Rules of Appellate Procedure, and the court's local rules.

PENNSYLVANIA'S CASE MANAGEMENT PROGRAMS FOR COMMERCIAL AND BUSINESS LITIGATION

The Philadelphia and Pittsburgh Courts of Common Pleas have specialized case management programs for business and commercial cases. Philadelphia's Commerce Program and Pittsburgh's Commerce and Complex Litigation Center hear cases involving (1) the internal affairs or governance of business enterprises, (2) disputes between business enterprises relating to transactions, business relationships, or contracts, (3) trade secret or non-compete agreements, (4) business torts, (5) intellectual property disputes, (6) securities, (7) corporate trust affairs, and (8) business or commercial insurance policy disputes. Cases in these divisions are presided over by judges who routinely hear complex commercial disputes. Each case is assigned to a single judge who is responsible for handling all phases of the case. Case management techniques, such as early case assessment, pretrial conferences, electronic filing, and Alternative Dispute Resolution, are frequently employed in these divisions to efficiently resolve disputes.

In Philadelphia, a plaintiff who seeks to have their case assigned to the Commerce Program should indicate this in their initial filing. Any party who believes the case should be assigned can also file a Notice of Management Program Dispute requesting the assignment. The Supervising Judge will then decide if assignment to the Commerce Program is appropriate. In Pittsburgh, a party who seeks to have their case assigned to the Commerce and Complex Litigation Center should file a Motion to Assign. Like in Philadelphia, assignment to the Commerce and Complex Litigation Center in Pittsburgh is subject to the approval of the Supervising Judge.

PENNSYLVANIA JUDGES

Justices and judges in Pennsylvania are elected through partisan elections, which require their political affiliation to be listed on the ballot. They can serve an unlimited number of terms until they reach the age of 75, and all but magisterial district judges can be retained with a “yes” or “no” vote without a reference to their political affiliation.

Justices and judges in Pennsylvania can serve an unlimited number of terms until they reach the age of 75. Those on the bench in the Supreme Court of Pennsylvania, appellate courts, and courts of common pleas serve a ten-year term, while judges in magisterial district courts and municipal courts serve a six-year term.

Pre-Litigation Considerations

STATUTES OF LIMITATIONS

A statute of limitations is the time frame during which a plaintiff can initiate legal proceedings. Once the statute of limitations expires, the plaintiff is barred from bringing their claims. Only in a few distinct situations can a plaintiff bring a claim after the statute of limitations has expired, including fraudulent concealment by the defendant, absent and unemancipated defendants, and the inability of the plaintiff (despite reasonable diligence) to know they were injured. The duration of the statute of limitations depends on the claim, and it is usually set forth in the applicable statute. If there is no express statute of limitations set forth in the statute, the default in Pennsylvania is six years. See 42 PA. STAT. AND CONST. STAT. ANN. § 5527(b) (West).

Alternative Dispute Resolution (ADR) Options

MEDIATION

Pennsylvania public policy favors Alternative Dispute Resolution since it is more efficient and cost-effective than litigation. Mediation is a form of Alternative Dispute Resolution through which a neutral party assists the parties in coming to an agreement.

Unlike litigation and arbitration, the mediator does not make a binding decision on the merits but assists the parties in coming to an agreement that benefits everyone.

Mediation is used in both state and federal courts, and the process is typically governed by the Pennsylvania Rules of Civil Procedure and the court’s local rules. Mediation is usually a voluntary process, but some courts throughout Pennsylvania require it, such as the Court of Common Pleas of Allegheny County. See Allegh. L. R. No. 212.7. Aside from a few exceptions, all mediation communications and documents are privileged under Pennsylvania law.

ARBITRATION

Arbitration is another form of Alternative Dispute Resolution through which a neutral party issues a final, binding award on the parties. Arbitration is governed in Pennsylvania by the Pennsylvania Uniform Arbitration Act if the arbitration agreement was entered into prior to July 1, 2019, and The Pennsylvania Revised Statutory Arbitration Act if the agreement was entered into on or after July 1, 2019. Arbitration is also governed by the Pennsylvania Rules of Civil Procedure and the court's local rules.

Like mediation, arbitration can be voluntary or mandatory. A Pennsylvania court can mandate non-binding arbitration when the amount in controversy is less than an amount specified by the county (typically \$50,000). See 42 PA. STAT. AND CONST. STAT. ANN. § 7361. Arbitration is also mandatory when there is a mandatory arbitration clause in the parties' contract. Pennsylvania courts enforce written agreements to arbitrate unless the plaintiff's claim is outside the scope of the arbitration agreement, all parties consent to revoke the agreement, or the agreement has been affected by duress, mutual mistake, illegality, fraud, or unconscionability. See 42 PA. STAT. AND CONST. STAT. ANN. §§ 7303 and 7342.

Commencing Litigation

SELECTING A VENUE

The following sections describe the procedure for litigation in Pennsylvania state courts. The procedure for federal courts is governed by the Federal Rules of Civil Procedure, the Federal Rules of Appellate Procedure, and the specific federal court's local rules. Because these rules are fairly standard throughout the country, they are not described separately here.

Before initiating a lawsuit in Pennsylvania, the plaintiff must select an appropriate venue. Pennsylvania's venue rule, which permits venue in any county where a corporate defendant regularly conducts business, has been interpreted very liberally. The U.S. Supreme Court recently ruled that, by simply registering to do business in Pennsylvania, an out-of-state business consents to being sued there. See *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023).

The Philadelphia Court of Common Pleas is notorious for being plaintiff friendly, as it commonly awards large verdicts to plaintiffs. As a result of Pennsylvania's liberal venue rule and Philadelphia's favorable treatment of plaintiffs, plaintiffs from around the country tend to select Philadelphia as their venue.

PRE-SUIT INVESTIGATIONS

The pre-litigation phase usually consists of an investigation period where counsel gathers facts and evidence to determine which claims to pursue, if any. If a plaintiff in Pennsylvania initiates litigation by filing a praecipe for writ of summons, they can avail themselves of a procedure for pre-complaint discovery, including depositions and interrogatories. Pre-complaint discovery is fairly unusual in the United States. To do so, the plaintiff must show that the discovery sought is "material and necessary to the filing of the complaint," and the discovery must not "cause unreasonable annoyance, embarrassment, oppression, burden or expense to any person or party." Pa.R.Civ.P. 4003.8(a). Upon an objection to pre-complaint discovery, the court can "require the plaintiff to state with particularity how the discovery will materially advance the preparation of the complaint." Pa.R.Civ.P. 4003.8(b).

If there is a likelihood of litigation, potential litigants in Pennsylvania have a duty to preserve any materials relevant to the litigation. They should therefore issue litigation holds during this phase that prevent the destruction or modification of any relevant materials.

FILING A COMPLAINT

A plaintiff commences a lawsuit in Pennsylvania when they file either a complaint or a praecipe for a writ of summons. A praecipe for a writ of summons does not assert factual allegations or claims for relief, but instead simply asks the court to issue a writ of summons against the defendant. A writ of summons is typically used when the statute of limitations is about to expire.

A complaint, however, describes the factual allegations, the claims for relief, the parties, the chosen venue, the basis for the court's jurisdiction, and the relief sought from the court. The complaint must contain all facts that are material to the plaintiff's claim, and the facts must be specific enough to allow the adverse party to prepare a defense. See Pa.R.Civ.P. 1019(a). Plaintiffs should avoid impertinent, scandalous, and catch-all allegations, all of which can result in additional delays and costs. In cases where the plaintiff alleges fraud or mistake, the plaintiff must plead those facts with particularity, which is a higher pleading standard. See Pa.R.Civ.P. 1019(b).

In addition to the writ or complaint, the plaintiff must generally file a civil cover sheet, a Certification of Compliance with Pennsylvania's Case Records Public Access Policy, and any exhibits. If there is confidential information in any of the case-initiating documents, the plaintiff must also file a Confidential Document Form, which can be found on the Unified Judicial System of Pennsylvania's website. If the plaintiff initiated the action through a writ of summons, they must also file a proof of service if the writ of summons was already served on the defendant and the court's local rules require the proof of service. A plaintiff should always reference the court's local rules prior to filing, as they might require additional documents or electronic filing.

SERVICE OF PROCESS

Once the plaintiff files the appropriate documents with the court, the defendant must be served with process. The defendant must be served with a copy of the original writ of summons or complaint along with any Confidential Information Forms, exhibits, or documents required by the court's local rules. If the defendant is a corporation, process can be personally served on an executive officer, partner, trustee, or agent, or mailed to the corporation's regular place of business. See 246 PA. CODE § 310.

A sheriff typically serves the defendant with process. In a limited number of cases, a competent adult over the age of 18 can serve the defendant, so long as the individual serving process is neither a party to the action nor an employee or relative of a party. See Pa.R.Civ.P. 400(b).

Process must be served on the defendant within 30 days of filing the writ or complaint if the defendant is in Pennsylvania and within 90 days if the defendant is outside of Pennsylvania. See Pa.Rs.Civ.P. 401(a) and 404.

RESPONDING TO THE COMPLAINT OR WRIT OF SUMMONS

In Pennsylvania, once a defendant has been served with a complaint, they must respond within 20 days. See Pa.R.Civ.P. 1026. The defendant can respond with either an answer or preliminary objections. See Pa.Rs.Civ.P. 1017(a) and 1028(a). There are eight kinds of preliminary objections, and all objections must be raised at one time or else they are waived. See Pa.R.Civ.P. 1028(a)-(b). In the answer, the defendant must either admit the allegations, deny them, or say that they are without information sufficient to form a belief as to the truth of the allegations (which is treated as a denial). See Pa.R.Civ.P. 1029. The answer should contain any counterclaims, cross-claims, and affirmative defenses. Many affirmative defenses will be waived if they are not included in the answer. See Pa.R.Civ.P. 1030.

If the defendant was served with only a writ of summons, no response is required. A defendant can, however, demand that the plaintiff file a complaint within 20 days. See Pa.R.Civ.P. 1351 (1985 explanatory comment). If the plaintiff does not timely file the complaint, the defendant can obtain a judgment of non pros, which is a judgment dismissing the plaintiff's case due to their failure to prosecute in a timely manner. See Pa.Rs.Civ.P. 237.1, 237.4, 1037, and 1659.

DISCOVERY

The Pennsylvania Rules of Civil Procedure allow for discovery of any non-privileged matter that is relevant to the subject matter of the underlying action. See Pa.R.Civ.P. 4003.1(a). Unlike the Federal Rules, the Pennsylvania Rules of Civil Procedure do not mandate a meet and confer for parties to discuss their plans regarding the production and preservation of electronically stored information (ESI). The Pennsylvania Rules also do not provide a safe harbor provision for parties to avoid sanctions in the event their ESI is destroyed inadvertently.

Trial

VOIR DIRE AND JURY SELECTION

In some Pennsylvania counties, voir dire and jury selection can be conducted outside the presence of a judge. For example, in Allegheny County, the court clerk will preside over voir dire and jury selection unless the parties request that the judge preside over the process. See Allegh. L. R. No. 212.2(d). Judges who do not preside over voir dire lack firsthand perception of the potential jurors during questioning. This could subsequently impact their rulings on motions to strike potential jurors. It is, therefore, crucial to check the local rules throughout litigation, as different local practices can impact a party's overall case strategy.

Appeals

FILING AN APPEAL

An aggrieved party who believes that there has been a material error made by a lower court can appeal the order. In Pennsylvania, appellants commonly appeal to the Superior Court unless the judgment involves the Commonwealth, the local government, or a state agency, in which case they appeal to the Commonwealth Court. Issues that were not raised in the lower court cannot be raised for the first time on appeal. See Pa.R.A.P. 302.

In general, appeals from courts of common pleas to an appellate court are initiated through a notice of appeal. This notice informs the court and the appellee that the appellant seeks review of the case. The notice must (1) identify the party filing the notice, (2) identify the specific order being appealed, (3) state the appellate court asked to hear the appeal, (4) state that the order being appealed was entered in the docket and provide the date of entry, (5) state that a copy of the docket is attached, and (6) either state that the filing party requested a transcript and include a copy of the request or state that no verbatim record of the proceeding exists. See Pa.R.A.P. 904(a)-(d). This notice must be filed with the court of common pleas within 30 days of its judgment. See Pa.R.A.P. 903.

For appeals of interlocutory orders, or those that do not end the entire case, the appellant must seek permission from the appellate court. They can do so by filing a petition for permission to appeal. This petition must contain (1) a statement of the basis for the appellate court's jurisdiction, (2) the text of the order in question, (3) a concise statement of the material facts, (4) the proposed questions for review, (5) a concise statement of the reasons for appeal, and (6) a copy of the opinions relating to the order. See Pa.R.A.P. 1312. The petition must be submitted within 30 days of the entry of the lower court's order. See Pa.R.A.P. 1311.

To initiate an appeal of a Commonwealth or Superior Court order, the appellant generally must petition for an allowance of appeal. The main sections to be included in the petition are (1) a reference to the opinions of the lower courts, (2) the text of the order in question, (3) the questions presented for review, (4) a statement of place of raising or preservation of issues, (5) a concise statement of the case containing material facts, (6) a concise statement of the reasons for the appeal, and (7) a copy of any opinions relating to the order. See Pa.R.A.P. 1115. This petition must be filed with the Supreme Court of Pennsylvania within 30 days of the order being appealed. See Pa.R.A.P. 1113.

APPELLATE BRIEFS

Once the appeal is initiated, both parties must file and serve their appellate briefs within 40 days. Appellate briefs must "conform in all material respects" with the Pennsylvania Rules of Appellate Procedure. Pa.R.A.P. 2101. The main sections to include in the brief are (1) a statement of jurisdiction, (2) the order in question, (3) a statement of the scope and standard of review, (4) a statement of the questions involved, (5) a statement of the case, (6) a summary of the argument, (7) the argument, and (8) a conclusion. See Pa.R.A.P. 2111.

ORAL ARGUMENTS

Appeals to the Commonwealth and Superior Courts are generally decided by a panel of three judges. All cases are eligible for oral argument, though sometimes the panel decides the merits of the appeal on the briefs alone. Oral arguments are more typical in large, complex cases, and they provide the parties with an opportunity to answer questions and clear up confusion amongst the judges. Oral arguments can be requested by the appellant or ordered by the court. Each side typically receives fifteen minutes to present their arguments, unless they are on an expedited argument list, in which case they receive only five minutes.

APPELLATE COURT DECISION

Once the appellate court issues its decision, a party can seek relief by applying for reconsideration, reargument, clarification, or an award of costs and damages incurred on appeal. See Pa.R.A.P. 2542. A party can also seek relief from the Supreme Court of Pennsylvania by filing a petition for allowance of appeal. The party must generally file this petition within 30 days of the appellate court's order. See Pa.R.A.P. 1113(a).

Real Property

Ownership

WHO CAN HOLD TITLE TO REAL PROPERTY IN PENNSYLVANIA

General. Real property (i.e., land and buildings) in Pennsylvania can be owned by individuals, general and limited partnerships, corporations, limited liability companies (LLCs), business trusts, testamentary and inter vivos trusts, decedents' estates, and other entities.

Persons under legal disabilities. Minors and persons under disabilities may not be able to hold title to real property, and Pennsylvania statutes should be consulted in this regard.

Foreign owners. The word "foreign" can refer either to a U.S. person or entity that is not a citizen of or formed under the laws of Pennsylvania (i.e., a citizen of or an entity formed under the laws of another state), or to a non-U.S. person or entity.

Non-Pennsylvania owners. The Privileges and Immunities Clause of the U.S. Constitution prevents a state from treating citizens of other states of the United States in a discriminatory manner. Among other things, this means that a business entity formed under the laws of another state can own real property in Pennsylvania to the same extent as a business entity formed under the laws of Pennsylvania.

Non-U.S. owners. Non-U.S. owners and buyers of real property present special problems. There are legal limitations on dealings with individuals, entities, and countries on lists maintained by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. The disposition of real property by a foreign transferor is subject to the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA) income tax withholding. Finally, Pennsylvania statutes contain limitations on ownership of real property by non-U.S. persons and entities. For example, except where a treaty provides otherwise: land of "alien enemies" can be sequestered; there is a general 5,000-acre (2,023 hectare) limitation on land holdings by aliens; there is a 100-acre (40 hectare) limit on agricultural land holdings by aliens; and there are special rules about aliens who acquire land by devise, descent, or process of law.

WHEN A DOMESTIC OR FOREIGN BUSINESS ENTITY CAN OWN REAL PROPERTY IN PENNSYLVANIA

General. Corporations, LLCs, general and limited partnerships, business trusts, and other business entities can own real property in Pennsylvania.

Corporations. Corporations do not enjoy any particular advantages when purchasing and owning real property in Pennsylvania. Due to adverse federal income tax treatment, corporations are rarely used to hold title to real property, except where a corporation operates a business on the property. Prior to the elimination of the Pennsylvania Capital Stock Tax and Foreign Franchise Tax in 2016 (each a "Tax", collectively the "Taxes"), corporations were disfavored for holding title to real property because they were subject to one or the other Tax.

Partnerships. Limited partnerships, having corporate or LLC general partners, are preferred by many practitioners for holding title to real property because they generally are pass-through entities for federal income tax purposes. Limited partnerships were formerly preferred over LLCs because LLCs were subject to the Taxes, but the Taxes were eliminated in 2016.

Limited liability companies. Since the elimination of the Taxes, LLCs have become the preferred form of entity to own real property in Pennsylvania.

Business trusts. Business trusts are a rarely used form of business entity.

Nonprofit business entities. Nonprofit business entities (that is, entities without owners, or whose owners may not receive the profits of the entity) can own real property to the same extent as their for-profit counterparts. Some, but not all, nonprofit entities are exempt from specific species of U.S. and Pennsylvania taxation.

THE ADVANTAGES AND DISADVANTAGES OF THE VARIOUS FORMS OF CONCURRENT OWNERSHIP

Tenancy in common. A transfer of real property to two or more parties, other than a married couple, is presumed to create a tenancy in common. Each tenant in common may transfer or encumber its interest separately. Tenants in common may each occupy the entire real property, which can lead to disputes. The disputes, if not resolved, can result in judicial sale or physical partition of the real property. Under some circumstances, one tenant in common must account for and pay a share of profits to other tenants in common. There are special rules for tenants in common of natural resources such as minerals, coal, oil and gas.

Joint tenancy. For the parties to create a joint tenancy, the parties must use language in the deed sufficient to overcome the presumption of tenancy in common and must expressly provide for rights of survivorship. This means that, upon the death of one joint tenant, his or her interest passes to the other joint tenants and not to his or her heirs. Each joint tenant may occupy the entire real property. Transfer or encumbrance by one joint tenant can, under some circumstances, “sever” or convert the joint tenancy to a tenancy in common. Joint tenancy is used as an estate planning tool or as a substitute for tenancy by the entireties where unmarried individuals desire treatment similar to married couples. Joint tenancy is unusual in other circumstances.

Tenancy by the entireties. Pennsylvania continues to recognize tenancy by the entireties. A transfer of real property to a married couple is presumed to create a tenancy by the entireties. A married couple must expressly state otherwise if they do not wish to hold title in this manner (e.g., if the grantees on a deed are identified as “husband and wife,” then they are taking title as tenants by the entireties). Grantees or devisees who are not married cannot take by a tenancy by the entireties. A tenancy by the entireties is considered to be a single, indivisible interest. Tenants by the entireties may not transfer or encumber any interest in the real property separately and neither spouse may convey the real property without joinder by the other spouse so long as both spouses are alive. Tenants by the entireties may each occupy the entire real property.

Spousal Rights

THE RIGHTS ONE SPOUSE HAS TO REAL PROPERTY IN THE EVENT OF DIVORCE FROM THE OTHER SPOUSE

In the event that spouses hold real property in a tenancy by the entireties and the spouses divorce, the tenancy by the entireties ceases and becomes a tenancy in common. As a result, one former spouse can convey his or her interest in the real property without joinder of the other. See [Tenancy in common](#) above.

THE RIGHTS ONE SPOUSE HAS TO REAL PROPERTY IN THE EVENT OF THE DEATH OF THE OTHER SPOUSE

If spouses hold real property in a tenancy by the entireties and one spouse dies, the whole estate continues in the surviving spouse, who becomes the sole owner of the entire real property. Because the whole estate continues in the surviving spouse, the surviving spouse's title dates, not from the time of death of the deceased spouse, but from the date of original acquisition by both spouses.

THE RESPONSIBILITIES ONE SPOUSE HAS IN THE EXECUTION OF A MORTGAGE

Should spouses hold real property in a tenancy by the entireties, both spouses must appear on the title to the real property and both spouses must sign the mortgage.

When spouses own real property in a tenancy by the entireties, a judgment against one of the spouses does not encumber the entireties property. If one spouse conveys individual real property to both spouses as tenants by the entireties with intent to defeat the creditors of the conveying spouse, the conveyance is subject to avoidance as a fraudulent transfer (12 Pa.C.S. §5101). If entireties property is mortgaged when there is an existing judgment against either spouse, the new mortgage may be placed in a subordinate position if the non-judgment debtor spouse dies or if the spouses divorce. Therefore, title insurers commonly insist that any judgment against one spouse that is on record at the time of a new mortgage (including a refinance mortgage) must be paid, released, or subordinated to the new mortgage.

Pennsylvania does not grant one spouse community property rights in the real property of the other spouse. One spouse can generally acquire, encumber, and convey real property in his or her individual capacity, without the joinder of the other spouse. In the event that only one spouse holds real property, only the spouse who holds the real property must sign a deed or mortgage. If a search discloses a pending divorce, however, a title insurer may require the non-titled spouse to join in a deed or mortgage.

Purchase/Sale of Property

PROCEDURES IN DRAFTING PURCHASE AGREEMENTS

Agreements for the purchase and sale of real property must be in writing to be enforced under the Statute of Frauds.

There is no standard form of commercial real property sales agreement in Pennsylvania. The Pennsylvania Association of Realtors (PAR) has various preprinted forms which are often used by brokers and attorneys for the purchase and sale of commercial and residential real property. It is common for specific provisions of the PAR forms to be struck or modified by addendum.

For residential sales, the seller is required to provide a property disclosure form when entering into an agreement of sale (68 Pa. C.S.A §7301 et seq.). The disclosure form is part of the PAR agreement form set for residential property.

PURCHASE STATEMENTS

In addition to the residential property disclosure form, there are certain statutory disclosures which should be included in the sales agreement. Failure to include these disclosures may result in a warranty being implied against seller or may even render the sales agreement voidable by the buyer. Statutory disclosures include zoning (21 P.S. §611 et seq.), water and sewage availability (35 P.S. §750.7a), and coal and subsurface support notices (52 P.S. §1551 and 52 P.S. §1406.14).

If a licensed real property broker or salesperson is preparing the agreement of sale, certain disclosures and statements are required to be included (49 Pa. Code §35.333).

STATE LEGISLATION PROTECTING BUYERS AGAINST FRAUD

Pennsylvania is a “race-notice” jurisdiction. A bona fide purchaser without knowledge will take free of and have priority over the unrecorded interest of an earlier claimant. To give legal notice to third parties, the deed must be properly recorded. The recording statute is found at 21 P.S. §351. The deed must be recorded in the Office of the Recorder of Deeds of the county or counties in which the real property is located; and the recording fee and the realty transfer tax, if any, must be paid upon presentation of the deed for recording. The recording fee is set by the county and may vary.

TAXES LEVIED ON A SELLER AND BUYER

A realty transfer tax is levied by the Commonwealth of Pennsylvania and may be levied by the municipality and school district in which the real property is located. The state tax rate is currently 1%, and the combined municipal and school rate is generally 1% but varies by municipality and school district and can be as high as 5%. The state realty transfer tax statute is found at 72 P.S. §8101 C et seq. The local realty transfer taxes are imposed by local ordinances and taxing resolutions, under the authority of and subject to the limitations imposed by state tax enabling statutes.

The realty transfer tax is determined by multiplying the tax rate by the consideration paid for the property or, in some circumstances, by the computed fair market value of the property. The computed value is obtained by multiplying the assessed value of the property for ad valorem real property taxation by a “common level ratio real estate valuation factor” for the county in which the real property is located. The “common level ratio real estate valuation factor” for each county is published annually by the Pennsylvania Department of Revenue (based on sales data compiled by the State Tax Equalization Board) for documents accepted during the period commencing July 1 of each year and ending June 30 of the following year.

There are a number of parties and categories of transactions which are exempt or excluded from realty transfer taxes. Examples of excluded transactions are transfers between certain family members, transfers by will or intestacy, and transfers pursuant to statutory mergers of corporations. However, Pennsylvania law contains provisions which may subject real property

transactions to the tax in unexpected ways. For instance, entities are treated as separate taxpayers from their shareholders and subsidiaries, and the tax often applies to intercompany transactions such as placing real property into a newly formed single purpose entity for purposes of financing real property. Also, the tax may apply to the transfer of stock or partnership interests in a company that owns real property. Finally, the assignment of an executory purchase and sale agreement may be a taxable event, in addition to the ultimate conveyance of the property to consummate the agreement (resulting in double tax).

While there is no requirement in Pennsylvania that the actual consideration be recited in the deed, the party recording a deed which recites no or nominal consideration will be required to record a Realty Transfer Tax Statement of Value setting forth the actual consideration paid and the computed value, to enable the correct calculation of the tax. In the event that the parties deem the conveyance as exempt from realty transfer tax, the party recording the deed will be required to record a Realty Transfer Tax Statement of Value setting forth the basis for such exemption.

Pennsylvania currently does not levy a tax on mortgages or indebtedness secured by real property.

TAX PRORATION BETWEEN BUYER/SELLER

Realty transfer taxes are not specifically a tax on the grantor or the grantee; if not paid they are the joint and several obligation of grantor and grantee. The parties may agree to allocate payment of the tax between them by agreement. The purchase and sale agreement often provides (and the PAR forms always provide unless modified) that the tax is split equally between the grantor and the grantee. Ad valorem real property taxes are usually prorated between buyer and seller based on the number of days in the taxing period before and after the delivery of the deed. The taxing period varies from taxing body to taxing body.

STATE PROCEDURES FOR CONVEYING REAL PROPERTY IN PENNSYLVANIA

In Pennsylvania, real property is conveyed by deed. Although the deed may bear the name "Indenture" suggesting that it is a bilateral document, deeds are typically only signed by the grantor (except for red coal notices and certificates of residence, discussed below). Bills of sale are not used to convey real property in Pennsylvania. 21 P.S. §1 sets forth a statutory form of deed which is quite short. 21 P.S. §2 et seq. sets forth interpretive provisions and "approved" words of conveyance. Longer versions of deed language remain in common use notwithstanding the statutory short form. There are local conveyancing practices which should be researched before drafting or review a deed.

There are three basic types of deeds in Pennsylvania: (i) the general warranty deed, (ii) the special warranty deed, and (iii) the quitclaim deed (21 P.S. §§5, 6 and 7). A general warranty deed warrants title against claims of all persons whomsoever. A special warranty deed only warrants title against the claims of the grantor and those making claims under the grantor. A quit claim merely remises, releases and quit-claims unto the grantee all right, title, interest, property, claim and demand the grantor may have in and to the property, if any; and the grantor agrees it shall not at any time thereafter have, claim, challenge, or demand the property in any manner whatever. There also are fiduciary deeds and sheriffs deeds which have their own specific warranties and formatting requirements.

Special warranty deeds are the most common type of deed in most counties. Title insurance is purchased in lieu of relying on the grantor's general warranty. The general warranty deed is, however, still sometimes used in western Pennsylvania.

A deed conveying real property may require a coal severance notice from the grantor, if there has been a prior or if there is a contemporaneous severance of coal or any part of the right of surface support; the coal severance notice must be either in capital letters or in type or writing distinctively different from the balance of the instrument or set apart from the balance of the instrument by underlining (52 P.S. §1551). A deed may also require a bituminous coal subsidence notice signed by the grantee if the land being conveyed is in a county in which bituminous coal has been found; the bituminous coal subsidence notice must be in a contrasting color (typically red) with the word “notice” in no less than twenty-four-point type with the remainder of the notice in no less than twelve point type (52 P.S. §1406.14). These notices serve to notify the grantee that a third party may (and often does) own the coal rights and the right of support.

For a conveyance of land to be effective, the real property must be described with sufficient definitiveness and certainty so as to locate and distinguish it from other lands of the same kind. In some counties, the deed will not be accepted for recording unless the deed includes the uniform tax parcel identification number, the location of which is specified by local recording rules. Some counties require the deed description or the tax parcel identification number to be “certified” before it will be accepted for recording.

Standard execution requirements for deeds in Pennsylvania require signature of and delivery by the grantor and an acknowledgement of grantor’s signature before a notary public or other public officer. Deeds need not bear the seal of the grantor or a seal substitute. If the grantor is a corporation, then a corporate seal may (but need not) be affixed and attested by the corporate secretary.

The rights of dower and curtesy have been abolished by statute in Pennsylvania. However, issues pertaining to equitable distribution may be of concern if the grantor is married but separated or involved in divorce proceedings. Accordingly, many practitioners routinely require the grantor’s spouse to execute a joinder releasing and waiving any right, title or interest to the real property acquired by virtue of marriage.

Pennsylvania has enacted the Uniform Written Acknowledgement Act, which prescribes the accepted form of a notary or other acknowledgement. Under the Act, documents executed in another state are eligible for recordation in Pennsylvania, if the acknowledgement is made in the statutory form of that state. However, the various Pennsylvania Recorders of Deeds are not always familiar with out-of-state forms, and it is recommended that the Pennsylvania format be used. Alternatively, practitioners may call ahead to the Recorder of Deeds and have the out-of-state acknowledgement approved.

Another requirement which is specific to Pennsylvania for deeds is the certificate of residence whereby the grantee certifies its proper and correct mailing address.

A disclosure statement may be required to be included in the deed if the property being conveyed has been a solid waste disposal site (35 P.S. §6018.405) or has been the subject of an administrative response action (35 P.S. §6020.512).

ASSURANCE OF TITLE TO REAL PROPERTY

Title insurance is available in Pennsylvania and is the common form of title assurance. Title insurance is available with respect to fee interests, leaseholds, easements, mortgages, and most other forms of real property interests. Title insurance is, however, rarely used for coal and never for oil or gas. Owners' policies and lenders' policies are available. Title insurance is regulated in Pennsylvania by the Title Insurance Rating Bureau of Pennsylvania (TIRBOP). Title insurance premium rates are established by TIRBOP and are not otherwise negotiable. Title policy forms and endorsements are also regulated by TIRBOP, and certain endorsements available in other states, such as for zoning, are not available in Pennsylvania. Title insurance may be obtained directly from title insurance companies, or through agents who need not be attorneys.

Mortgages

STATE PROCEDURES FOR MORTGAGING REAL PROPERTY TO SECURE A DEBT IN PENNSYLVANIA

Pennsylvania follows a hybrid of the title and the lien theories of mortgages. Deeds of trust are not used in Pennsylvania. The execution requirements of a mortgage follow the same requirements set forth for the execution of a deed. A mortgage must also include a certificate of residence with respect to the mortgagee.

Mortgages generally have priority from the time they are left for recording (42 Pa. C.S.A. §8141). Purchase money mortgages have priority from the time they are delivered to the mortgagee if they are recorded within ten days after their date; otherwise, from the time they are left for recording (42 Pa. C.S.A. §8141).

The general rule is that only advances made at the time of delivery of the mortgage have this priority, but there are important exceptions to the rule. Future advances may be secured with priority which relates back to the date of recording under the Open-End Mortgage statute (42 Pa. C.S.A. §8143). If the mortgage is an "open-end mortgage" which meets the requirements of the statute, and if the mortgage is properly recorded, then subsequent advances of loan proceeds take priority over intervening encumbrances and liens. In order to obtain the benefits of the statute, the mortgage must include the words "open end" in the heading (title) of the instrument and must contain statutory language. If the lender receives statutory notice of a junior lien, and the subsequent advance is not obligatory, then subsequent advances will not have priority over the junior lien. There are several other statutory exceptions to the priority of open-end mortgages. Certain protective advances are also statutorily secured by mortgages with priority which relates back to the date of recording (42 Pa. C.S.A. §8144). Advances to pay taxes and insurance, costs maintaining the property, costs of securing the lien and other costs take priority over intervening interests.

SATISFYING MORTGAGES

Under the Mortgage Satisfaction Act (21 P.S. §721-1 et seq.), a lender must satisfy the mortgage by recording a satisfaction piece in the Recorder of Deeds Office in the county in which the real property is located within 60 days following: (i) payment in full of the underlying debt of the mortgage and (ii) borrower's first written request to satisfy the mortgage. Failure to properly satisfy the mortgage within the 60-day period may result in the lender becoming subject to a penalty. The lender may also be required to reimburse any costs and expenses, including reasonable attorneys' fees, incurred by the borrower in pursuing satisfaction of the mortgage. The Mortgage Satisfaction Act provides a form of the satisfaction piece which meets the statutory requirements.

The document removing real property from a mortgage is typically called a release. The form is not statutory.

MORTGAGE FORECLOSURES

Pennsylvania is a judicial foreclosure state and private powers of sale are not enforceable. A judicial sale is the only method of cutting off the mortgagor's equity of redemption. Mortgage foreclosure actions are governed exclusively by the Pennsylvania Rules of Civil Procedure.

Easements

Easements provide negative or affirmative rights and duties. Easements that provide negative rights and duties are also known as "servitudes." Once an easement is created, the burden is on the party who avers its nonexistence to show that the easement has been extinguished.

There are two types of easements: (1) an easement appurtenant, which is a liberty, privilege, or advantage profit that the owner of one piece of land has in the land of another but is not an estate or interest in the land itself; and (2) an easement in gross, which is a personal right in the real property of another, meaning that it is personal to the grantee and is not appurtenant to other land. Appurtenant easements pass with the transfer of title to the benefited land from the grantor to the grantee. Whether an easement in gross is assignable depends upon the nature of each easement in gross and the terms of its creation.

There are seven ways for an easement to be created:

1. by exception or reservation within a deed or by a standalone document usually called a "deed of grant";
2. by presumption when land is bounded by a street, road, non-navigable lake, or park;
3. by prescription, requiring continuous, open, visible, notorious, hostile, adverse, and uninterrupted use of an easement for 21 years or more;
4. by implication via a conveyance where an owner of land has subjected part of the land to an open, visible, permanent, and continuous servitude or easement in favor of another part of the land, then conveys either part, whereby the purchased land shall be seen to take subject to the burden or benefit of the servitude or easement, as applicable;
5. by necessity, which easement arises by implication when a parcel of land conveyed is situated such that the land can only be accessed by passing over the remaining land of the grantor of that parcel;

6. by statute pursuant to the Historic Preservation Act (37 Pa.C.S. §501 et seq.) to preserve facades or properties of historic, architectural, and archaeological significance when lawfully transferred; and
7. by statute pursuant to the Agricultural Security Area Law (3 P.S. §903), to preserve an interest in land, less than fee simple, which represents the right to prevent the development or improvement of the land for any purpose other than agricultural production.

There are seven ways for an easement to be extinguished:

1. by release with a showing of express authority;
2. by adverse possession whereby the owner of the servient property has demonstrated a visible, notorious, and continuous adverse and hostile use of the land that is inconsistent with the use made and the rights held by the easement holder for a period of 21 years;
3. by abandonment demonstrated by both an intent to abandon the dominant tenement and an affirmative act by the owner of the easement by either rendering its use impossible or obstructing the easement in a manner inconsistent with the easement's further enjoyment;
4. by merger of title when the owner of the servient tenement acquires title to the dominant tenement for the benefit of which the easement was created, or if the owner of the dominant tenement acquires title to the entire servient tenement;
5. by foreclosure of a lien antedating the easement so that the security of a mortgage cannot be impaired by a subsequent easement without the consent of the mortgage holder and so that the purchaser or such sale takes free of the later-created easement because the purchaser's title relates back to the date of recording of the mortgage;
6. by condemnation under power of eminent domain; and
7. by cessation of purpose, for instance, when an easement granted for one purpose and then the dominant tenement ceases to be used for that purpose or when the necessity that created an easement obtained by necessity no longer exists.

Lease

PENNSYLVANIA STATUTES GOVERNING LEASING

Pennsylvania's Landlord and Tenant Act of 1951 (68 P.S. §250.101 et seq.) generally applies to all forms of leases but also contains provisions which specifically govern the residential landlord and tenant relationship. The Landlord and Tenant Act of 1951 is fairly limited in its application to commercial leases, which are generally covered by contract law. The Plain Language Consumer Contract Act (1993 Pa. HB 110), which promotes the writing of consumer contracts in plain language to protect consumers from entering into contracts they do not understand, governs written agreements for residential leases. There is a statutory form of recordable memorandum of lease (21 P.S. §405). The Statute of Frauds requires that all leases of real property for a term of three years or longer must be in writing to be enforced. The realty transfer tax is assessed on leases having a term of thirty years or more, counting all renewal terms provided in the lease (whether exercised or not), if rent is set forth therein, but not including the renewal term (whether exercised or not), if rent for the renewal term is based upon the fair market value rent at the time of the renewal, even if the lease otherwise provides a mechanism for determining fair market value.

STANDARD FORM OF LEASE IN PENNSYLVANIA

There is no “standard” form of lease, residential or commercial, in general use in Pennsylvania. Subject to the Landlord and Tenant Act and case law, the parties are free to negotiate the terms of use and occupancy. Commercial leases often contain warrants to confess judgment against the tenant for money damages, including rent, and for possession of the property (in ejectment). While such provisions may still be legally enforceable in Pennsylvania, the Rules of Civil Procedure limit their scope and enforcement; and these lease provisions are often the subject of negotiation.

UNIQUE FEATURES OF RESIDENTIAL LEASES IN PENNSYLVANIA

Pennsylvania’s Landlord and Tenant Act generally applies to all forms of leases but also contains provisions which specifically govern the residential landlord and tenant relationship. Pennsylvania case law implies a warranty of habitability in residential leases, but not in commercial leases.

UNIQUE FEATURES OF COMMERCIAL LEASES IN PENNSYLVANIA

While both residential and commercial leases are generally governed by contract principles, the Pennsylvania Supreme Court has held a commercial lease to be an estate in property governed by real property concepts (rather than contract concepts) in certain respects. For instance, Pennsylvania law apparently does not imply a duty of the landlord to mitigate its damages in a commercial lease.

State Zoning

The Pennsylvania Municipalities Planning Code (53 P.S. §10101 et seq.) authorizes municipalities to enact zoning ordinances and subdivision and land development ordinances. Although some counties have ordinances which govern land use in municipalities without ordinances, most zoning and land use regulation in Pennsylvania is on the municipality level. Municipalities in Pennsylvania include Cities of the First, Second, and Third Class, Townships of the First and Second Class, Boroughs, and Towns. Each type of municipality has a separate statutory code which prescribes the manner in which it enacts ordinances and resolutions, but all municipalities (other than Cities of the First and Second Class - currently Philadelphia and Pittsburgh - and Counties of the Second Class - currently Allegheny County) are subject to the Municipalities Planning Code. Currently, there are more than 2,550 municipalities with the power to regulate land use in Pennsylvania.

Pennsylvania municipality’s zoning ordinance typically divides the municipality into several zoning districts on a zoning map, and each zoning district is subject its own regulations regarding permitted uses and dimensional matters (e.g., setbacks, minimum lot size, impervious cover, etc.). Permitted uses are either by right, by special exception (requiring a hearing before the municipality’s zoning hearing board), or by conditional use (requiring a hearing before the municipality’s governing body). A municipality’s zoning hearing board may also grant a variance to allow for a use or dimensional matter not otherwise permitted by the zoning ordinance provided that the applicant for the variance demonstrates an unnecessary hardship caused by the application of the zoning ordinance.

Subdivision and land development ordinances regulate the division of land into two or more lots and land development, which is generally defined as the development of two or more residential buildings or one commercial building. Subdivision and land development plans, after being approved by the municipality’s governing body or planning commission (as the case may be) are recorded in the applicable county’s recorder of deeds office.

State Mineral Rights

Pennsylvania law recognizes three types of estates in real property: (i) the surface estate, (ii) the subsurface estate; and (iii) the right of the surface to lateral and subjacent support from the subsurface. The subsurface estate is sometimes further subdivided into coal, other “hard” minerals, and oil and gas estates. Oil and gas are not ordinarily classified as “minerals” in Pennsylvania. A property owner may own real property in any combination of the foregoing estates, and each estate may be owned by a separate party. In the coal fields, the owner of the coal often owns the support estate. As a consequence, the owner of the coal may remove the coal and allow the surface to subside without liability to the surface owner.

Eminent Domain

“Eminent domain” and “condemnation” are synonyms. Pennsylvania has a uniform Eminent Domain Code (26 Pa. C.S.A. §101 et seq.) which prescribes the procedures for condemnation and the damages to be awarded for condemnation (the latter being subject to constitutional requirements). The Eminent Domain Code governs condemnation by all entities that have the power to condemn in Pennsylvania. The Eminent Domain Code does not, however, grant the power to condemn. The Commonwealth of Pennsylvania has the power to condemn as an inherent power descended from the powers of the British Crown; the right is confirmed by the Pennsylvania Constitution. The power to condemn is granted statutorily by the Commonwealth to counties (of which there are eight classes), municipalities (see Zoning above), governmental authorities, and public utility companies. Under the Eminent Domain Code, “condemn” means to take, injure or destroy property by authority of law for a public purpose. Eminent domain for private business is prohibited, but eminent domain to relieve “blight” is allowed and is the basis for redevelopment projects. All classes of real property are subject to condemnation, but there are some impediments to the condemnation of agricultural property.

Taxes

State + Local Taxes for Businesses

The Commonwealth of Pennsylvania's revenue comes from a variety of taxes, including Corporate Net Income Tax, Sales, Use and Hotel Occupancy Tax, Personal Income Tax, Gross Receipts Tax, Inheritance Tax, Realty Transfer Tax, Insurance Premiums Tax, Financial Institution Taxes, Cigarette Tax, Other Tobacco Products Tax, Malt Beverage Tax, Liquor Tax, Table Games Tax, Fantasy Contest Tax, Interactive Gaming and Multi-Use Gaming Device Taxes, and Sports Wagering Tax, as well as various fees. Local governments derive a substantial portion of their revenue from local property, income taxes and a variety of taxes like amusement taxes.

Many tax credits programs exist for businesses, including those for research and development, educational support, investment in specific geographic areas, historic preservation, new jobs, entertainment, and various others.

This section will explore the tax types of most importance to businesses in Pennsylvania. The information in this section was developed from applicable statutes and regulations, as well as the Pennsylvania Department of Revenue's website, and the [August 2023 Tax Compendium](#) published by the Pennsylvania Department of Revenue. Care should be taken with this information as tax statutes, regulations, and positions of the Department of Revenue often change.

Corporate Net Income Tax

OVERVIEW

This corporate net income tax (CNI) is paid by all corporations that are doing business, carrying on activities, or employing or owning capital or property in Pennsylvania, and that have not elected to be taxed as "S" corporations. The tax is imposed on corporations formed in Pennsylvania (known as domestic corporations) and those formed outside of Pennsylvania (known as foreign corporations). The CNI is levied on federal taxable income apportioned to Pennsylvania, and with Pennsylvania modifications.

ENTITIES SUBJECT TO THE TAX

Domestic and foreign C corporations, as well as limited liability companies and business trusts that are classified as corporations for federal income tax purposes and are doing business in Pennsylvania, are subject to the CNI. Building and loan associations, banks, savings institutions, trust companies, insurance and surety companies and nonprofit corporations are exempt from the CNI. See below for a discussion of certain "alternative" taxes that apply to several of the exempt types of entities.

Corporations are taxed on a separate company basis, even if they are under common control. No consolidated filings are allowed.

There is a rebuttable presumption that corporations without any physical presence in Pennsylvania but with more than \$500,000 in gross receipts sourced to Pennsylvania, have nexus such that the CNI is applied to them.

TAX BASE

The CNI is levied on federal taxable income that is properly apportioned to Pennsylvania activities, without any federal net operating loss and special deductions, subject to certain additions and subtractions. Importantly, for this purpose federal taxable income is calculated without the application of any tax treaty with a non-U.S. country. For example, if a non-US entity is engaged in a business in the U.S. but is not subject to federal income tax because it does not have a permanent establishment in the U.S., the CNI tax base is calculated as if the treaty did not exempt the company from federal income tax.

TAX RATE

The CNI tax rate for 2024 is 8.49% and is scheduled to reduce by .5% each year until 2031, when it stabilizes at 4.99%.

PAYMENTS

The CNI is paid on an estimated tax payment system. Total prepayments must exceed 90% of reported annual liability, or 100% of the liability two years prior. Quarterly payments are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the year. Final reports and payments are due thirty days after the federal report is due. Extensions are available for filing reports, but not payments.

APPORTIONMENT

For corporations with operations both inside and outside of Pennsylvania, income is apportioned. Business income is apportioned using a single sales factor. The sales factor is determined by having Pennsylvania sales or receipts in the numerator and total everywhere sales or receipts in the denominator. Special apportionment factors are available for railroad, truck, bus, airline, or qualified air freight forwarding companies, pipeline or natural gas companies, water transportation companies, and satellite television service providers. Services and intangibles generally are sourced using market-based sourcing.

NET OPERATING LOSSES

Currently, the cap on net operating losses (NOLs) is 40% of current year taxable income. Legislation in 2024 gradually increases the cap to 80% of taxable income over four years in 10% increases, beginning in 2026 and ending in 2029. To account for losses carried forward from years beginning prior to January 1, 2025, the legislation provides that the allowable NOL deduction using the following calculation:

1. For a net loss incurred in a tax year beginning prior to January 1, 2025, deduct 40% of taxable income; and
2. For a net loss incurred in a tax year beginning on or after January 1, 2025, deduct the applicable percentage for the tax year specified in the legislation (for instance, 50% for 2026) minus the actual percentage of taxable income deducted under (1) above, multiplied by the taxable income for the tax year.

ALTERNATIVE TAXES FOR CERTAIN ENTITIES

As noted above, certain types of entities are not subject to the CNI. Pennsylvania does impose “alternate” taxes in lieu of CNI for certain entities. For instance, the Insurance Premiums Tax is imposed on domestic and foreign insurance companies for the privilege of doing business in Pennsylvania. The tax base is the yearly insurance premiums received from doing business. Generally, the tax rate is 2%, plus any retaliatory fee. Policies written with surplus lines insurers or other non-admitted insurers when the insured’s home state is Pennsylvania are subject to a 3% tax. Finally, marine insurance companies are taxed 5% on their underwriting profits in lieu of a tax on premiums.

Various classes of financial institutions are also subject to three different taxes: Bank and Trust Company Shares Tax (imposed on every bank and trust company having capital stock which is conducting business in Pennsylvania; tax base is share value); the Title Insurance Companies Shares Tax (imposed on domestic title insurance companies; tax base is share value); and the Mutual Thrift Institutions Tax (imposed on savings institutions, savings banks, savings and loan associations, and building and loan associations conducting business in Pennsylvania; tax base is net earnings or income received). Credit unions are not subject to tax.

Sales, Use and Hotel Occupancy Tax

The Sales, Use and Hotel Occupancy Tax (SUT) is levied on the sale at retail, including rental, of tangible personal property and certain services, or upon the use within Pennsylvania of tangible personal property, or taxable services purchased at retail if the tax was not paid at the time of purchase. A tax on the occupancy of hotel rooms is imposed as part of the sales and use tax law.

ENTITIES SUBJECT TO THE TAX

The SUT is imposed on the ultimate consumer of the property or service but is generally collected and remitted to Pennsylvania by vendors or retailers. Economic nexus for vendors and retailers exists if they have more than \$100,000 of gross sales into Pennsylvania, even if they have no physical presence. If SUT is not collected from the consumer on an otherwise taxable transaction, then the consumer must accrue and remit use tax. Contractors generally must accrue use tax on materials used as part of a contract.

TAX RATE

The SUT rate is 6%; however, there is an additional tax of 2% in Philadelphia County and 1% in Allegheny County.

PAYMENTS

The frequency by which retailers and vendors must remit sales tax depends on the amount of liability. Frequency can be semi-annually, quarterly, or monthly, which may include prepayments.

Semi-Annual: Semi-annual filing is required when liability is up to \$75 annually. The returns and payments are due on August 20th for the January to June period and February 20th for the July to December period.

Quarterly: Quarterly filing is required when the liability is between \$75.01 and \$600 annually. The returns and payments are due on the 20th day of April, July, October, and January for the preceding calendar quarter.

Monthly-No Prepayment: Monthly filing with no prepayment is required when the liability is between \$600.01 and \$24,999 annually. The returns and payments are due on the 20th day of the following month.

Monthly-Level 1 Prepayment: Monthly filing with a Level 1 prepayment is required when the liability is between \$25,000 and \$99,999 annually. Prepayments are due the 20th of the same month, and may be either \$50 of the tax liability for the same month of the previous year or greater than 50% of the actual tax liability for the same month in the current year, with the return and remaining payment due the 20th of the following month.

Monthly-Level 2 Prepayment: Monthly filing with a Level 2 prepayment is required when the liability exceeds \$99,999. Prepayments are due the 20th of the same month and must be 50% of the tax liability for the same month of the previous year, with the return and remaining payments due the 20th day of the following month.

EXEMPTIONS

Many exemptions exist for the SUT. Among the exemptions are manufacturing, research and development, resale, pollution control, isolated sale, and agriculture. Certain entities, such as charities, governments, and churches are also exempt. Vendors are generally expected to collect appropriate exemption certificates from customers when an exemption applies.

Gross Receipts Tax

In addition to the CNI, Pennsylvania imposes various gross receipts taxes on corporations, companies, associations, limited partnerships, joint-stock associations, co-partnerships or persons engaged in certain industries. These gross receipts taxes are imposed on private bankers; pipeline, conduit, steamboat, canal, slack water navigation and transportation companies; telephone, telegraph and mobile telecommunications companies; electric light, water power and hydroelectric companies; express companies; palace car and sleeping car companies; and freight and oil transportation companies.

Electric Companies: The tax is based on gross receipts from sales of electric energy within Pennsylvania at a rate of 59 mills. The gross receipts tax on electric energy is reported to the Department of Revenue on RCT-112, Gross Receipts Tax—Electric, Hydro-electric and Water Power Companies Report. Firms are required to file reports and remit tax payments annually by March 15th for taxable gross receipts in the prior year. Several exemptions apply, including sales for resale, certain receipts received in connection with a nuclear generating facility which has experienced an accident or natural disaster, sales by municipally owned or operated public utilities to customers within the limits of the municipality, and sales by electric cooperative corporations to customers within their service territory.

Telecommunications Companies: The tax is based on gross receipts from telegraph and telephone messages transmitted within Pennsylvania, including gross receipts from mobile telecommunications services, interstate, and international landline calls originating or terminating in Pennsylvania and billed to a service address in Pennsylvania. The gross receipts tax on telecommunications services is 50 mills and is reported to the Department of Revenue on RCT-111, Gross Receipts Tax—Telegraph and Telephone Business Report. Firms are required to file reports and remit tax payments annually by March 15th for taxable gross receipts in the prior year. Certain receipts are excludable, including sales of access to the internet, sales for resale; and the sales of telephones, telephone handsets, modems, tablets, and related accessories, including cases, chargers, holsters, clips, hands-free device, screen protectors and batteries. Importantly, telecommunications companies that pay a gross receipts tax to another state on messages or services which are taxable in Pennsylvania are entitled to a credit against the tax due.

Transportation Companies: The tax rate is 50 mills and the tax is based on gross receipts from passengers, baggage, and freight transported within Pennsylvania, and on intrastate shipment of freight and oil. This does not include transportation by motor vehicles or railroads. The gross receipts tax on transportation services is reported to the Department of Revenue on RCT-113a. Firms are required to file reports and remit tax payments annually by March 15th for taxable gross receipts in the prior year.

Private Bankers: The tax is imposed on private bankers doing business in Pennsylvania at a rate of 1 percent on gross receipts from commissions from loans; banking services; discounts on loans; charges or fees on depositor accounts; rents; rentals of safe deposit boxes; interest from bonds, mortgages, premiums, and dividends; profits from the purchases and sales of securities; and many other related services. Form RCT-131 must be filed annually with payment by February 15th following the close of the prior calendar year.

Personal Income Tax

Pennsylvania personal income tax (PIT) is levied at the flat rate of 3.07 percent against taxable income of resident and nonresident individuals, estates, and trusts. Taxpayers with total Pennsylvania income of over \$50 must file a PIT return. Spouses may elect to file joint or separate returns. Annual returns and payments are due on or before the due date for the taxpayer's federal return, or the date the federal return would be due if none is filed. Taxpayers with income other than compensation subject to withholding reasonably expected to exceed \$2,500 must file and pay estimated tax. Importantly, municipalities are also authorized to impose taxes on earned income and business profits, and many do.

Pennsylvania taxes eight classes of income: (1) compensation; (2) interest; (3) dividends; (4) net profits from the operation of a business, profession, or farm; (5) net gains or income from the dispositions of property; (6) net gains or income from rents, royalties, patents, and copyrights; (7) income derived through estates or trusts; and (8) gambling and lottery winnings, including cash prizes from the Pennsylvania Lottery. Importantly, a loss in one class of income may not offset against income in another class, nor may gains or losses be carried backward or forward from year to year.

Pennsylvania residents are taxed on all income, regardless of where earned. Credits are granted for income taxes residents pay to other states. A resident is a person who is domiciled in Pennsylvania or if not domiciled in Pennsylvania, maintains a permanent place of abode in Pennsylvania and spends, in the aggregate, more than 183 days a year there. A nonresident is taxed on income from Pennsylvania sources.

The commonwealth employs three primary methods for collecting PIT: (1) estimated and final payments from individuals; (2) employer withholding; and (3) estimated withholding from nonresident partners or shareholders by partnerships and S corporations.

The PIT does not provide for a standard deduction or personal exemption. However, individuals may reduce tax liabilities through certain deductions, credits, and exclusions.

Items specifically excluded from Pennsylvania taxable income include: combat pay; disability payments; educational loan forgiveness repayments; employer provided adoption assistance; employer provided housing; fringe benefits; gifts; interest and dividends from contributions to tuition account programs.

Real Property Tax

School districts and local governments rely heavily on real property taxes for funding. The tax is imposed on the record owner of the property. All real property in Pennsylvania is subject to tax unless an exemption applies. Exempt property owners include charitable organizations, hospitals, educational institutions, governments, and cemeteries.

Special assessment rules apply to some types of property, including agricultural and forest property (subject to reduced “Clean and Green” assessments) and public utility-owned property (subject to the Public Utility Realty Tax Act (PURTA), a statewide tax regime that uses local property assessments but imposes tax and distributes revenues using a statutory formula).

Generally, each county in Pennsylvania is an assessment district. Counties assess properties and local taxing jurisdictions use those assessed values to impose taxes. Tax rates vary widely across Pennsylvania. Taxes are set, billed and paid locally. Every property owner and taxing jurisdiction has an annual chance to appeal the assessed value of property. In most counties in the state, these appeals are heard by a local board of tax assessment appeals, with an appeal from that board possible in the county court of common pleas.

Counties may not “spot assess” a property. Reassessments are only permitted as a result of certain statutory events, including (1) a countywide reassessment when all properties are reassessed, (2) when property is improved, (3) when property is subdivided, or (4) when property is destroyed. A mere sale of property is not justification for a reassessment. Beware, however, because a sale of a property may trigger a taxing jurisdiction assessment appeal which will seek to raise the assessment.

Generally, countywide reassessments do not happen frequently. In the intervening years, a ratio is developed to reflect actual sales prices versus assessed values. These ratios are then used for property tax appeal purposes, adding new assessments to the roll, and for realty transfer tax.

Realty Transfer Tax

Pennsylvania imposes a tax on the transfer of any interest in real property by deed or document. Generally, the tax applies to any deed, instrument, or writing which conveys, transfers, demises, vests, confirms, or evidences any transfer or demise of title to real estate. Importantly, the tax also applies to transfers of 90% or more of the controlling interests in certain types of entities that own real estate if those transfers happen collectively within a three-year period. Leases of 30 years or more are subject to tax. The tax is imposed on both the transferor and transferee at the time of recording (or the filing of the Declaration of Acquisition in the case of a controlling interest transfer), with the parties free to contract who actually pays the tax.

Tax is generally imposed on the value of the property, which can either be the consideration paid or if that does not reflect actual value, the “computed value” determined by multiplying the assessed value of the property by the appropriate common level ratio then in effect in the county of recordation. The state tax rate is 1% and while generally most localities also impose an additional 1%, some impose higher rates up to an additional 4%.

Generally, transfers between related corporate entities are subject to tax, as are transfers of property between entities and their owners. An exception exists for transfers of property from an entity to an interest holder if the property is transferred in the same proportion as the interest holder’s proportion in the entity, and the holder has held the interest for at least two years.

There are several exemptions, and each transaction must be examined carefully to determine if an exemption applies. Generally, the Pennsylvania Realty Transfer Tax is viewed as very broad and is a trap for the unwary.

Local Taxes

As mentioned above, Pennsylvania does authorize its municipalities to impose taxes on earned income, and nearly all do. Also, taxing jurisdictions may impose a Local Services Tax on employees (including the self-employed) in the jurisdiction. Generally, this tax is imposed in the amount of approximately \$10-\$52 per year, with an exemption for individuals making under \$12,000 if the tax is more than \$10.

More problematic for businesses is the existence in many municipalities of “business privilege taxes” or “mercantile taxes.” These are essentially gross income taxes and are fortunately not imposed by most municipalities. In fact, municipalities that did not have such a gross receipts tax on the books on November 30, 1988, are forbidden from now enacting such a tax. Still, many municipalities, especially larger ones, impose these gross receipts taxes.

