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FIFTH THIRD BANK: WHAT'S IN A NAME?

Fifth Third Bank is a Wall Street darling with a name that is hard to figure out. Consider the name: Fifth Third. Could the bank have emerged from a town with an unusual number of "Third" National Banks? Perhaps it was named after the intersection of Fifth Street and Third Avenue? The explanation, it turns out, is quite simple. In an early version of what would become commonplace years later, Fifth National Bank and Third National Bank, both of Cincinnati, Ohio, merged. The year was



1908. Fifth was bigger, so its name came first.

According to Bradlee F. Stamper, President and CEO of Fifth Third Bank's Chicago affiliate, the name is not "geographically limiting." As the bank grew beyond its southwest Ohio base, it was always the only Fifth Third in any market. Corporate "name consultants" tried but could not improve upon what the merger had already provided, a name that was unique and memorable. "We never have a problem running into another Fifth Third," says Stamper.



*Bradlee F. Stamper,
President and CEO
Fifth Third Bank Chicago*

By all indications, Fifth Third's way of doing business is also not "geographically limiting."

"Fifth Third is much more about building relationships than doing transactions," says Stamper. "Obtaining a mortgage is a fundamental event in an individual's life. In our view, this is the beginning of a relationship — not the end of a transaction. Who knows this client and his or her needs better?"

Bankers Who Make House Calls

Stamper points out that one banking analyst who covers Fifth Third describes the bank's success as, "So simple, I don't understand it." The analyst was probably commenting on Fifth Third's focus on clients. "Our bankers are expected to make at least

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FEDERAL ACT MAY REQUIRE LOCAL ZONING LAWS TO ACCOMMODATE RELIGIOUS INSTITUTIONS

Religious groups that try to convert commercial real estate into houses of worship or expand into adjacent commercial properties have traditionally run into zoning problems.

Municipalities have a practical need to balance their books. Because of the tax-exempt status of religious organizations, it is understandable that municipalities would resist losing taxes

generated by commercial properties. Thus, zoning laws often work to limit houses of worship to residential areas.

Religious organizations point out however, that most

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Martin Ryan

SAFEGUARDING YOUR LIFE SAVINGS FROM FUTURE CREDITORS

Protecting assets from the claims of creditors has begun to assume a more prominent role in estate and financial planning due to the increasingly litigious nature of society. Potential creditors are all around — from the thousands of drivers with whom you share the road to a neighbor who may slip and fall on your property or who may be injured by your minor child. Fortunately, there are a number of planning opportunities available to protect your life savings from the claims of these potential creditors. These range from transferring assets to a spouse who has less exposure to creditors' claims to sophisticated offshore trust planning. Following are some techniques to consider:

Transferring Assets to Spouse. A person engaged in a business that may result in personal liability, such as a doctor or attorney, will sometimes transfer assets to his or her spouse. However, any such transfer should be made with caution as it could convert the property from marital property to the recipient spouse's separate property in the event of divorce.

Tenancy by the Entirety. Under Illinois law, a husband and wife may own their primary residence in "tenancy by the entirety." Tenancy by the entirety is a form of joint ownership that provides for rights of survivorship for the surviving spouse. If held in tenancy by the entirety, the residence may not be sold to satisfy any judgment entered against only one spouse, thus protecting the equity in the residence.

Liability Insurance. Homeowners and automobile insurance policies are an important aspect of your financial plan and will provide protection with respect to certain actions that may be brought against you. Nevertheless, exposure remains because of caps on damages that will be paid and limitations on actions that will be covered.

Statutory Exemptions. State and federal bankruptcy laws will exempt certain assets from creditors' claims. These assets include cash values in life insurance policies, certain qualified plans and IRAs. Transferring assets into these vehicles should provide protection for these assets.

Irrevocable Trusts. An irrevocable trust is an excellent vehicle to shield substantial amounts of wealth from a creditor's

claims. Assets transferred to an irrevocable trust for the benefit of family members should no longer be subject to the claims of your creditors or the creditors of your family members.

Family Partnerships/LLCs. Family partnerships and limited liability companies enable you to transfer wealth to family members while at the same time protecting assets from the claims of their creditors. Assuming the governing documents do not provide otherwise, a judgment creditor of a limited partner of a partnership or a non-voting member of an LLC would not have the ability to force a liquidation of the entity in satisfaction of a judgment.

Alaska/Delaware Trusts. Certain states, such as Alaska and Delaware, have enacted legislation that enables a person to establish a self-settled trust and retain a beneficial interest while at the same time receiving creditor protection. There are strict requirements for establishing such a trust. For example, one Trustee must be a resident of the State and trust records and all or a portion of the trust assets must be located in the State. The legislation authorizing such trusts is quite new and, consequently, there are many issues with respect to the efficacy of such trusts that have not yet been tested by courts.

Offshore (Foreign) Trusts. An offshore trust is a trust established in a foreign jurisdiction (e.g., Bahamas, Cayman Islands, Bermuda) where the laws provide greater protection from creditors than do the laws of the United States. Unfortunately, such a trust usually requires relinquishing control of assets to a foreign trustee.

The ideal time to implement these strategies is when there are no creditors. Once the creditor is at your doorstep, your ability to implement many of these strategies will be greatly diminished. Often, assets transferred or other steps taken after a creditor appears are deemed fraudulent transfers and the assets are eventually held to be subject to the creditor's claims. Therefore, in the event you are concerned about protecting your assets from the potential claims of creditors, the sooner you take action the better protected you will be.

For more information, please contact your BWM&S attorney or Martin Ryan at 312/840-7060. **B**

GET A CLUE ABOUT HOMEOWNER'S INSURANCE



Ann-Marie Wieland

Homeowner's insurance used to be one of those last minute details home buyers handled a day or two before closing. However, rising losses from water and mold have caused insurance companies to be more discriminating about who and what they will insure. Now, what used to require a single phone call from a home buyer to an insurance company a day before closing has become a potential obstacle to a buyer's ability to obtain

financing and purchase a home.

This obstacle results from the relatively new Comprehensive Loss Underwriting Exchange ("CLUE") reports. CLUE is an 11-year-old database maintained by Choice Point Inc., in Alpharetta, Georgia, that provides reports of the history of insurance claims, inquiries about insurance claims concerning the property, or

inquiries made by the proposed insured concerning other properties. Consumers do not even have to file a claim to end up in the CLUE database. They merely need to ask their insurance agent about their coverage.

About 600 insurers, 90% of insurers in the U.S., report claims to the database, and many insurance companies base underwriting decisions on CLUE reports. CLUE originated as a tool for insurers to detect insurance fraud, but it has evolved into a tool for insurance companies to assess the risk of insuring a new property and, as a result, refuse to issue a policy or issue one at extraordinarily high premiums. Although CLUE can provide prospective buyers with more information about the property they are seeking to purchase, it is more likely to stop a deal in its tracks. If several insurance claims or even inquiries about claims are reported for a particular property or buyer, an insurance company may deny coverage, leaving home buyers unable to close.

Ultimately, home buyers can no longer take their insurability for granted. In order to prevent getting stuck without insurance the day before closing, home buyers should begin their search for insurance coverage with their search for financing.

For more information, please call your BWM&S attorney or Ann-Marie Wieland at 312/840-7086. **B**

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FIFTH THIRD BANK

26 in-person client calls each month, 18 to existing clients," says Stamper. Planning for and reporting results from this activity are discussed openly among Fifth Third bankers. Client calls are paired with regular "sales blitzes" where large numbers of bankers focus upon one area to get to know people and the market. "If it is only the receptionists that we get to meet, we get to know them. We also find out who the decision maker is for our next visit," says Stamper.

The client orientation that Stamper describes is not limited to a branch or a region, but is a part of Fifth Third's culture. "Leadership's role in the culture here is described as 'modeling the way,'" says Stamper. "You can't just say it, you need to do it here to be an effective part of Fifth Third."

The bank's client-oriented culture is paying dividends, literally. Fifth Third has a 29-year track record of delivering consistent earnings growth; over the past 25 years, Fifth Third shareholders have received an annualized total return of 25% since the stock began trading in April 1975. In fact, Fifth Third shares have outperformed the S&P 500 21-fold over a 20-year period. With such strong financial performance, it may be no surprise that Fifth Third was rated the #1 Superregional Bank for

two years running by *Fortune Magazine*.

The attorneys at BWM&S are honored to assist Fifth Third Bank with its expansion into the Greater Chicago market. That work has included assistance in all phases of the company's banking center acquisition and development as well as transactional negotiations and loan documentation. For more information, please contact your BWM&S attorney. **B**

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Stephen Voris

BWM&S'S JOINS CHAMBER BOARD

BWM&S's Stephen Voris was recently elected to the Board of Directors of the Chicagoland Chamber of Commerce. The Chamber's mission is to foster the growth and success of Chicago-area business. Mr. Voris

will serve on the Chamber's political action committee, which works to guide legislation deemed important to area business interests. For more information, Mr. Voris can be contacted at 312/840-7018. **B**

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The Bulletin is written by the firm of Burke, Warren, MacKay & Serritella, P.C. to keep clients and friends current on developments in the law and the firm that might affect their business or personal lives. This publication is intended as a general discussion and should not be construed as legal advice or legal opinion on any specific facts or circumstances. It is meant as general information only. Consult an attorney with any specific questions. This is a promotional publication. ©2003 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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FEDERAL ACT MAY REQUIRE LOCAL ZONING LAWS

residential areas are completely developed, leaving them with very few options. In recent years, religious organizations have resorted to filing lawsuits citing the First Amendment right to



Douglas Wambach

free religious expression and the Fourteenth Amendment's equal protection clause. In 1993, Congress enacted the Religious Freedom and Restoration Act ("RFRA") to curtail the effects of laws that interfered with religious freedom. In 1997, the United States Supreme Court held that the Act's application to State law was unconstitutional. (Since then, however, many states, including Illinois, have

enacted their own versions of RFRA.)

In response to the Supreme Court ruling, Congress enacted the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). The statute provides that with the exception of a public or health risk, government can not impose or implement a land use regulation that imposes a burden on a person or an assembly seeking to practice religion. RLUIPA became law in 2000.

The act further requires that local governments must not treat religious assemblies or institutions on less than equal terms with non-religious assemblies and institutions. It prevents governments from imposing regulations that discriminate on the basis of religion or religious denomination and it requires that there not be a total exclusion or unreasonable restriction on religious assemblies and institutions.

Groups in favor of the legislation state that RLUIPA gives religious groups the leverage to fight out-of-date local zoning laws limiting or banning religious assembly. Opponents state that the act bypasses the authority of local governments by limiting their ability to regulate land use within their boundaries.

In Chicago and surrounding communities, lawsuits using RLUIPA are beginning to surface to challenge traditional zoning laws. Evanston, Northbrook and Franklin Park all have had to defend lawsuits where violations of RLUIPA were claimed. The Supreme Court may ultimately need to decide whether the Act passes constitutional muster.

BWM&S attorneys have considerable experience serving the needs of municipal governments as well as religious organizations throughout the region. As RLUIPA plays itself out in the courts in costly legal battles, both municipalities and religious organizations need to learn about the Act.

Leaders from municipal governments and religious organizations each have an interest in each other's mutual success. Therefore, as issues arise, constructive dialogue between the two parties is a critical first step to achieve a win-win outcome.

To discuss this topic in more detail, please contact your BWM&S attorney or Douglas Wambach at 312/840-7019. **B**



Religious leaders meet in Chicago. From left, Very Reverend John Doctor, O.F.M., Very Reverend Kenneth Capalbo, O.F.M., BWM&S's James Serritella, and Very Reverend Michael P. Guimon O.S.M. jointly hosted a regional religious roundtable in Chicago.