

CHICAGO'S MILLENNIUM PARK NEARS COMPLETION



Nearly 25 acres, Millennium Park, at the northwest corner of Grant Park, is in the process of becoming another of Chicago's jewels. Pictured at left is renowned architect Frank Gehry's stunning music pavilion. The sound system is suspended by a trellis that spans the great lawn, promising to give concert-hall sound in the great outdoors.

The pavilion, which replaces Grant Park's Petrillo band shell, will host the Grant Park Music Festival — a free classical music series — as well as the city's popular free summer concerts, including the Blues Fest and Jazz Fest.

Park grounds are scheduled to open in mid-June, with the band shell opening in mid-July.

REAL ESTATE LAW

ILLINOIS CLOSES TRANSFER TAX LOOPHOLE

June 1 Expansion of State Transfer Tax to Include Off-Record Transactions

Movies. Casinos. Transfer taxes? After making moves to bring the movie industry and additional casinos to Illinois, the lawmakers in Springfield have now added an additional revenue-producing weapon to reduce the state's ballooning budget deficit. Effective June 1, 2004, Public Act 93-657 will amend the Illinois Real Estate Transfer Tax Law (35 ILCS 200/31-1 et seq.) to impose the \$0.50 state transfer tax for each \$500 of value on so called "off-record transactions."

Public Act 93-657 applies to transactions in which real estate is transferred indirectly and without a deed and conveyance of record through the transfer of a controlling interest in an entity (typically a corporation, partnership or

limited liability company) whose primary asset is real estate. Historically, such transactions would not be subject to transfer tax laws in Illinois. However, in the 1990's the City of Chicago

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Keeping Company Information Confidential, Chicago's Green Roof Requirements, And More...

ILLINOIS PASSES LAW PERMITTING TRUSTS FOR PETS

The Illinois State Legislature recently enacted a new law legalizing trusts set up exclusively for the benefit of pets or domesticated animals. This law

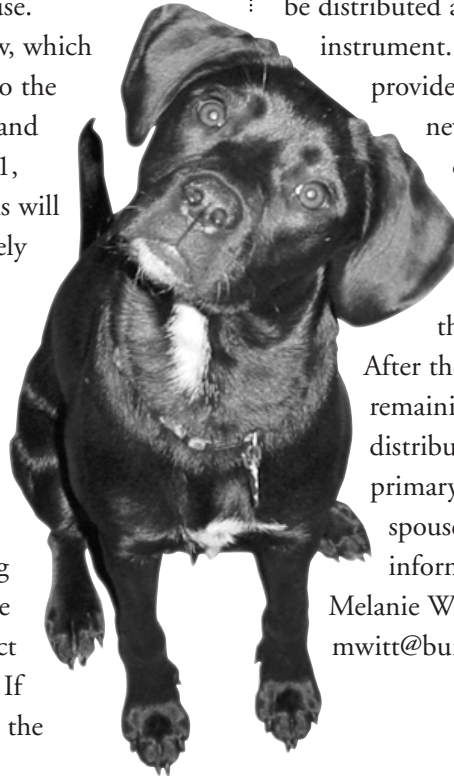


Melanie Witt

legitimizes the important role pets play in many peoples' lives and addresses the common concern over a pet's welfare after the owner's death. Prior to the enactment of the statute, if a person wanted to provide for their pet's housing, food and medical care, they had to leave money in trust to a "human beneficiary" as caretaker. This arrangement worked provided that the person so entrusted survived the pet,

was willing and able to care for the animal and would not convert the trust fund for their own use.

Under the new law, which adds a new section to the Illinois Probate Act and takes effect January 1, 2005, the trust funds will be available exclusively for a pet's care until there is no living designated pet beneficiary. This eliminates the prior requirement that a "human beneficiary" be living at all times. A trustee must be named to act for the pet's benefit. If no trustee is named, the



court may appoint one. At the death of the pet, the trust must terminate and be distributed as provided in the trust instrument. Individuals wishing to provide for their pets under this new law may do so by creating a new separate trust funded during their lifetime or simply by amending their current estate plan.

After the pet's death, any remaining trust assets can be distributed to the donor's primary beneficiaries (such as a spouse or children). For more information, please contact Melanie Witt at 312/840-7041 or mwitt@burkelaw.com. **B**

A PRIMER ON MEZZANINE FINANCING

Mezzanine financing is a term that has been used both in real estate and investment circles. As the name implies, mezzanine financing is "in-between" the typical floors of financing, namely, securitized loans and direct equity invested by the principals of the entity that owns the underlying assets. Although mezzanine financing takes many forms, a common use in the real estate context is when a borrower's principals pledge their equity interests in the entity that owns the real estate to the mezzanine lender as security for the loan. Alternatively, the borrower's principals may pledge a preferred equity position that entitles the mezzanine lender to receive distributions ahead of the borrower's principals.

Mezzanine financing is useful because first mortgage lenders may prohibit subordinate mortgage debt but permit a subordinate lender to take collateral in the form of an equity interest. Since the mezzanine lender does not take a security interest in the real estate, the first mortgage lender can feel



Dan Hardwick

comfortable that its lien will not be disturbed. This allows the borrower access to more funds for its project without upsetting the relationship with its primary lender.

The terms of a mezzanine loan vary widely based on the type of underlying real estate and the basis upon which the borrower needs the financing. One constant, however, is that the interest rate on the loan will usually be higher than the interest rate on the first mortgage loan.

BWM&S attorneys have relationships with real estate investment companies and banks and can assist our clients in obtaining adequate funding for their future financing needs. For more information, please contact Dan Hardwick at 312/840-7093 or dhardwick@burkelaw.com. **B**

MEMBERS OF THE BWM&S FAMILY SERVING IN THE MIDDLE EAST

America's escalated military operations following the tragedy of September 11, 2001, have touched many families across the nation, including two of our own at BWM&S.

Capt. Scott M. Virgil, who was recently deployed to Afghanistan, is the son of BWM&S attorney Mike Virgil who heads the firm's ERISA practice. Capt. Virgil is currently the Logistics Officer for 3rd Squadron, 4th Cavalry Regiment, U.S. Army. While in Afghanistan, he will take command of Apache Troop, 3rd Squadron, 4th Cavalry Regiment, which is a Ground Scout Unit composed of helicopters and HUMVEE's.

Capt. Virgil is a 1998 graduate of West Point. He was recently married to Ivey Mercer, and is stationed in Hawaii when not otherwise deployed.

Airman First Class Gretchen L. Faulkner, daughter of BWM&S legal assistant Pamela Faulkner, will be leaving for Baghdad in August with her team to support Army rebuilding efforts and provide security in and around Baghdad, particularly the International Airport.

Airman Faulkner joined the U.S. Air Force in November 2001. She trained as a civil engineer and spent five months last year in Qatar, but is permanently stationed with the 3rd Civil Engineer Squadron at Elmendorf Air Force Base, Alaska. She is a graduate of Highland Park High School, class of 2000.

We extend to Capt. Virgil and Airman Faulkner our appreciation for their service, and wish both of them, and all of their brothers and sisters in arms, safe travels and a speedy return home to their families. **B**

ESTATE PLANNING

BWM&S ATTORNEYS ADVISE LOCAL CHARITIES ON HOW TO PROTECT PLANNED GIFTS



Martin Ryan

"Planned Gifts: Getting Them and Protecting Them" was the topic of a seminar presented in Chicago on May 11 by BWM&S attorneys Marty Ryan and Gerry Ring to a group of leaders from local charities. The goal of the presentation was to help charities avoid situations

that can needlessly jeopardize a charity's receipt of donated funds while better assuring that the wishes of the donor are carried out.



Gerry Ring

Joined by Tina Stretch, Executive Director of Little Brothers — Friends of the Elderly, both the legal perspectives and the perspectives of charities were discussed. Attendees were encouraged to engage in proactive planning and to communicate with the donor and members of his or her family. In addition, attendees were advised on how to identify and address legal issues that can lead to challenges to planned gifts.

The seminar was sponsored by the Retirement Research Foundation. The Chicago-based foundation is the nation's largest private foundation exclusively devoted to aging and retirement issues. The Foundation makes approximately \$10 million in grants each year to support programs,

research and public policy studies to improve the quality of life of older Americans. It was established in the 1950s and endowed in 1978 by the late John D. MacArthur. The foundation has a special interest in, and commitment to, serving the Chicago Metropolitan area and gives priority to nonprofit organizations serving this geographic area.

For more information please contact Marty Ryan at 312/840-7060 or mryan@burkelaw.com or Gerry Ring at 312/840-7014 or gring@burkelaw.com. **B**

BULLETIN

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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. ©2004 Editor: Cy H. Griffith, Director of Marketing; Legal Editor: Jay S. Dobrutzky, Esq.

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Transfer Tax Loophole

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and Cook County realized that savvy real estate investors were avoiding the payment of City of Chicago and Cook County transfer taxes by setting up entities whose sole asset was real estate, then transferring ownership of the entity rather than deeding the real property which the entity owned. This transaction structure did not involve the recording of a deed and therefore not only avoided transfer taxes but also the real estate tax reassessments typically triggered by the publication of sale prices. Chicago and Cook County closed this loophole through broadened transfer tax ordinances. It has taken a few years, but now the State has followed suit.

These “off-record” transactions include assignments of long term leases and transfers of a “controlling interest” in a “real estate entity”, which includes partnership interests, limited liability company memberships and corporate stock, if the entity exists or acts substantially for the purpose of holding, directly or indirectly, title to



John Stephens



Brett Smith

or beneficial interest in real property. In order to avoid the unintentional application of this tax to the transfer of a controlling interest in entities which exist for purposes other than holding title to the real estate to be transferred, the statute includes a rebuttable presumption that an entity is a “real estate entity” if it owns, directly or indirectly, real property having a fair market value greater than 75% of the total fair market value of all of the entity’s assets.

The amended statute’s reporting requirements are ambiguous and could be read that there is no requirement that off-record transfers be recorded. However, because the transfer tax stamps for such off-record transfers must be purchased from the recorder or registrar of titles of the county where the property is located, the

amount of the tax (and indirectly, the purchase price) will be made available to the local assessor.

It is also worth noting that Public Act 53-657 also amends the Illinois Counties Code (55 ILCS 5/5-1031.1) and the Illinois Municipal Code (65 ILCS 5/8 3-19) to allow home rule governmental entities which already have transfer taxes to apply such taxes to off-record transactions and validates existing ordinances (like those of the City of Chicago and Cook County) which already tax such transactions.

The amended statute also creates a new exemption to the state transfer tax. If a taxable transfer of a controlling interest in a real estate entity is liable for corporate franchise taxes under the Business Corporation Act of 1983 as a result of such transfer, then the real estate entity is exempt from paying the state transfer tax to the extent corporate franchise taxes are paid as a result of such transfer (35 ILCS 200/31-46).

For more information, please contact John Stephens at 312/840-7017 or jstephens@burkelaw.com or Brett Smith at 312/840-7064 or bsmith@burkelaw.com. **B**