

## TOP 5 REASONS TO CREATE A BUSINESS ENTITY



Kevin C. McIntosh

If you have a business or are thinking about starting a business in North Carolina, you need to create a North Carolina business entity, which will help your business grow and allow you to keep more of the money you work hard to make. A separate business entity provides immeasurable benefits to the owner. We know a new business is exciting and you want to hit the ground running, but it is important to start your business out right so that you have the best possible chance for success.

**Below are the top five reasons to form a business entity:**

### 1. Protect Personal Assets

Properly established and operated business entities separate the business' assets from your personal assets. Therefore, a business entity will provide you with personal liability protection for any debt or liability incurred by the business.

### 2. Save Taxes

Setting up a business entity will allow you to take full advantage of possible business deductions and can minimize your self-employment taxes. Also, the ability to choose the type of business entity created will allow you to determine the most beneficial way for the profits, losses, and distributions of the business to be taxed.

### 3. Raise Capital

If you set up a business entity, you may be able to raise

capital for start-up costs and other business expenses by selling an ownership interest in the business. This is accomplished by selling shares of stock or membership units to investors.

### 4. Gain Professional Credibility

Once a business entity is set up, your business name will include the designation of whichever type of entity is chosen (i.e., Inc., LLC, etc.). This designation will increase trust and confidence in your business. Clients and banks will know that the business' finances are separated from those of the owner. Also, they will know that the business is professionally run because it has an organized management and operation structure.

### 5. Ease of Selling Business or Passing Business to Heirs

If your business is a sole proprietorship, others may be reluctant to rely on your products and services because of the uncertainty which would occur should you become unable to run the business. However, if you set up a business entity, the business can survive for an unlimited period of time and can easily be transferred or sold.

Once you have decided to set up a business entity, we can help you decide what kind of entity would most benefit your business. North Carolina business entities include corporations, partnerships, limited liability companies, limited partnerships, and hybrids and sub-types of these.

**If you are ready to set up a business entity or want more information regarding this article, please contact Kevin C. McIntosh or Terry M. Taylor at (828) 322-4663.**

## ABOUT YMBT AND LEGAL COMPASS

Young, Morphis, Bach & Taylor, LLP is a full-service law firm located in the First Lawyers Building in downtown Hickory, North Carolina. Established in 1949, our firm serves clients throughout North Carolina and offers expertise in a broad range of practice areas including bankruptcy, business and corporate law, civil litigation, collections, estate planning and probate, real estate, tax, traffic matters, wills and trusts, homeowners' associations, guardianship and special needs law, local governments, and non-profit organizations.

*Legal Compass* is published by Young, Morphis, Bach & Taylor, LLP. We hope that it will give you useful information and alert you to changes in the law; however, *Legal Compass* is not intended as legal advice, as every situation is different. For legal advice, please contact our office. If you have a colleague or client who would benefit from receiving a copy of *Legal Compass*, please let us know. If you would prefer to receive *Legal Compass* as an electronic newsletter, please send your email address to: [Newsletter@hickorylaw.com](mailto:Newsletter@hickorylaw.com).

We have been here for generations, and will continue to be here in the future to help counsel you and plan for all of your legal needs.

## AROUND THE OFFICE: New Associate Announced



Jordan L. Faulkner

In January we welcomed Jordan L. Faulkner as associate in the firm. Faulkner, a Lexington, S.C. native, currently focuses on business and corporate law, estate planning and probate, and other areas of general practice. Faulkner moved to Hickory in the spring of 2012 with her husband, Will, who works locally for the USDA.

Faulkner earned her Bachelor of Science from Presbyterian College in Clinton, S.C. She received her Juris Doctorate from the Charleston School of Law in Charleston, S.C. While in law school, she served as Articles Editor for the Charleston Law Review and as a volunteer Guardian ad Litem.

Faulkner is a member of numerous professional associations, including the Catawba County Bar Association, 25<sup>th</sup> Judicial District Bar Association, North Carolina State Bar Association, American Bar Association, and the National Academy of Elder Law Attorneys. She is also a Board Member for the Family Guidance Center in Hickory.



YOUNG, MORPHIS,  
BACH & TAYLOR, LLP  
ATTORNEYS AT LAW

400 2nd Avenue, NW  
PO Drawer 2428 (28603)  
Hickory, NC 28601  
Phone: (828) 322-4663  
[www.HickoryLaw.com](http://www.HickoryLaw.com)

# LEGAL COMPASS

Volume 1

Spring 2013

## LEASING LAND FOR SOLAR POWER



Terry M. Taylor

Landowners all over our region are experiencing a new way to lease their property with excellent cash flows: Leasing land for solar power generation.

Property owners are being surprised to find how much their low generating farm land or vacant land will bring. Many landowners may have recently received a letter of intent from a solar company requesting details about their property, or actually may have received a draft or form lease to sign. Typically, these companies are looking for a flat piece of ground with excellent sun hours. Also, the system needs to be connected to the power grid, so they

are looking for property that is located near power lines. There are important questions for a landowner to ask and to make sure these matters are addressed in the contract and/or agreement they are being shown. These include:

How long is the duration of the contract? What is the tax implication of the payments? Is there an option to renew or an option to purchase, or a right of first refusal to purchase included in the agreement? How permanent are the structures that are installed? What is the formula for determining payments? What are the potential liabilities to you if trespassers or company workers injure themselves on your property? Can you ask for power as a part of the contract? How will the power be transmitted from the solar array onto the grid? Will that require the replacement of towers across the rest of your land? What sort of access

(Continued on page 2)

## ATTORNEYS' FEES IN BUSINESS LITIGATION

Historically, the ability to recover attorneys' fees in contractual business disputes in North Carolina has been very limited, even if the contract at issue provided for such recovery. In the past, even where business contracts have provided for reimbursement of attorneys' fees, courts have typically limited enforcement of those provisions to where recovery is otherwise permitted by statute.

However, a relatively new law in North Carolina has expanded the breadth and enforceability of contractual attorneys' fees provisions and will undoubtedly have a



Timothy D. Swanson

(Continued on page 3)

## IN THE COMMUNITY

Just as we believe in establishing strong relationships with our clients, we also believe in establishing lasting relationships with our community. As active community leaders, our attorneys volunteer countless hours by serving as board members and directors with many service organizations and community groups, including:

Catawba County Chamber of Commerce  
Catawba Science Center  
Catawba County United Way  
Catawba Valley Community Foundation  
Exodus Homes  
Family Care Center  
Family Guidance Center  
Friends of the South Mountains State Park  
Frye Regional Medical Center  
Auxiliary Hospitality House  
Girl Scouts—Carolinas Peaks to Piedmont  
Hickory Downtown Farmer's Market  
Hickory Rotary Club  
Through Healing Eyes

## Upcoming Events

### April 20, 2013: Work Day at South Mountains State Park

In honor of Earth Day, the Friends of the South Mountains State Park have planned a work day for community members to participate. Even if you cannot come out for the work day, please bring your family out to the state park and enjoy the hiking, biking, and horse trails available.

### September 12, 2013: Golf Tournament Fundraiser for Family Guidance Center

The Family Guidance Center is excited about their upcoming Golf Tournament to be held at the Catawba Springs Golf Facility. The Center is currently looking for golfers and corporate sponsors to make the day a success. For more information, please contact Jordan Faulkner at (828) 322-4663.

## ESTATE PLANNING AFTER THE TAX RELIEF ACT OF 2012



Wayne M. Bach

We may finally have some certainty as to what the rules for estate planning are for the foreseeable future. This is assuming, of course, that you believe Congress will not change its mind. As the “fiscal cliff” loomed late last year, Congress and the President passed the American Taxpayer Relief Act of 2012, which prevented the predicted fiscal crisis. The effects of this legislation on estate planning are important and in some ways dramatic. A summary of where we are

currently is:

- An individual now has a lifetime gift tax exemption, estate tax exemption, and generation skipping transfer (“GST”) tax exemption each in the amount of \$5,250,000. These exemption amounts are indexed for inflation.
- Any amounts beyond these exemptions will now be taxed by the federal government at a maximum rate of 40%.
- For married couples, the concept of portability was made permanent so that a spouse, subject to certain rules and filing requirements, is able to keep any unused portion of a deceased spouse’s estate tax exemption. Portability effectively allows a husband and wife to currently pass \$10,500,000 upon death before encountering any estate taxes. Please note that there is a very strict 9 month deadline to use portability, which if missed will likely prevent a surviving spouse from making this election.
- The annual gift tax exclusion will continue to increase based on inflation, and is currently set at \$14,000.
- There were no changes to some advanced planning techniques such as GRATs and FLPs, but the President has said that he would like to enact legislation to restrict the use of techniques like these. How Congress will proceed on this issue is anyone’s guess.

- There are some new rules that allow the conversion of a traditional 401(k) to a Roth 401(k) and some new rules that allow individuals over 70.5 years of age to take advantage of certain charitable deductions.

These are just some of the tax changes which occurred at the beginning of the year. Because of these, many individuals and small businesses may not now have to address estate tax issues. While avoidance of the estate tax has traditionally been the major reason people engaged in estate planning, there are many other reasons why you may want to direct what will happen with your assets upon death, including:

- Planning for your own cost of health care by addressing your eligibility for long term care insurance, Medicare, or Medicaid and the benefits that accompany each;
- Structuring a child’s inheritance in a way that gives you peace of mind (protecting their inheritance from unforeseen circumstances or allowing the child to continue receiving government assistance benefits);
- Addressing the disposition or transition of a family business; and
- Addressing mixed or blended family situations.

Regardless of your economic situation, we recommend discussing your estate planning with a professional in order to not only give yourself assurance with regard to your assets, but also to spare your heirs from potential difficulty and distress.

**For more information or assistance regarding this matter, please contact Wayne M. Bach or Henry S. Morphis at (828) 322-4663.**



Henry S. Morphis

## LEASING LAND FOR SOLAR POWER (Continued from Page 1)

for construction will be required? Will they repair all damage that might be caused during construction? What kind of maintenance will take place, and who will be responsible? What type of, if any, chemicals or weed control will be used on the land? Does the annual or monthly payment schedule include annual increases to account for inflation? If the lease is terminated, does the lease require the company to remove the equipment and restore the land unto its original condition? (i.e. remove concrete fixings and any contaminated soil, replanting trees, etc.) Is there a time frame for doing that? Is there a deposit or bond for the re-rectification or damages? Where, specifically, are the access roads? What condition will the company maintain those roadways and/or access ways?

These are all questions to be considered by landowners leasing their property for these types of projects, and attorneys at our firm are available to assist you in reviewing these important questions and considerations if approached or presented with an option or letter of intent by a company. These, along with other questions, should be carefully examined and weighed in making the decision.

**For more information or assistance regarding this matter, please contact Terry M. Taylor at (828) 322-4663.**

## POTENTIAL ISSUES WITH NO-FAULT ATTENDANCE POLICIES IN THE WORKPLACE



Paul E. Culpepper

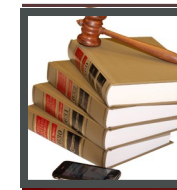
Most people and experts have recommended no-fault attendance policies to be fair to all employees and reduce the risk that an employer’s actions could be viewed as discrimination. No-fault attendance policies are also much easier for employers to enforce—instead of having to follow-up with out of work notes and make determinations on what absences are allowed or approved, the no-fault rules apply. Although that is still the majority view, the Equal Employment Opportunity Commission (“EEOC”) has recently taken a different position.

The EEOC has started to attack some no-fault policies because they allegedly violate the Americans with Disabilities Act (“ADA”). Recent amendments to the ADA broaden the definition of who is disabled, causing substantially more people to fall under the ADA. Employers have an obligation to try to accommodate employee’s disabilities. The ADA covers all local and state government agencies, and any private employer who employs 15 or more employees. Therefore, if you, as an employer, are aware the reason for

the employee’s absence is due to a covered disability and the employee is asking for additional time off, you may need to also consider whether giving additional time off is a reasonable accommodation you can make for the employee. If an accommodation is requested, you are required to perform a balancing test to determine if you can accommodate the employee’s request. Most accommodations would be for additional time off, and there is a multilevel test to determine if the request is a reasonable accommodation under the law.

There are no black and white answers, but if the issue does arise, you need to know when to contact your attorney to evaluate the next move to make. If you believe you need your policies reviewed, do not hesitate to contact our office for assistance.

**For more information or assistance regarding this matter, please contact Paul E. Culpepper at (828) 322-4663.**



**To receive our Newsletter via e-mail, please send your request to [Newsletter@hickorylaw.com](mailto:Newsletter@hickorylaw.com)**

## ATTORNEYS’ FEES IN BUSINESS LITIGATION (Continued from Page 1)

significant impact on the drafting of business contracts in North Carolina and any litigation involving those contracts.

The new law on “reciprocal attorneys’ fees provisions,” contained in Section 6-21.6 of the North Carolina General Statutes, grants courts and arbitrators the power to enforce such contractual provisions in any suit, action, proceeding or arbitration and thereby award reasonable attorneys’ fees and expenses in accordance with the terms of the business contract at issue. This new law does contain important limitations however, which include:

- The new law applies to attorneys’ fees provisions in written business contracts;
- The amount of attorneys’ fees recovered cannot exceed the monetary damages awarded;
- The contract must be primarily for business or commercial purposes (does not include a consumer contract, employment contract, or a contract to which a government or a governmental agency of the State is a party);
- The ability to recover attorneys’ fees must be reciprocal;
- The amount of attorneys’ fees that may be recovered is limited to “reasonable attorneys’ fees”;
- The business contract must be in writing and must be signed by hand;
- The contracting parties may define the circumstances under which the provision will apply, so long as the circumstances are reciprocal; and
- The business contract must be subject to North Carolina law.

This new law can have a powerful effect on litigating business contracts in the future. While parties to a contract may have previously been hesitant to file a lawsuit to enforce the terms and conditions of the contract due to the anticipated legal fees and expenses of litigation, parties will now be able to hold a breaching party responsible for the legal fees and expenses incurred in compelling the breaching party to do what it agreed to do. In deciding whether or not to amend their business contracts to include a reciprocal attorneys’ fee provision, businesses should consider both the pros and cons of doing so. If you feel that it’s time to review or update your business contracts, or would just like more information on this topic, please do not hesitate to contact our office for assistance.

**For more information regarding this article, please contact Timothy D. Swanson at (828) 322-4663.**