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Special Interest Articles

WE'RE OPEN FOR CLOSINGS!

By: Michael S. Friman

NEW ILLINOIS TRUST CODE PRESENTS SHIFT IN TRUSTEES' OBLIGATIONS

By: Andrew D. Bell

About Our Law Firm

We are comprised of seasoned and dedicated professionals who familiarize themselves with our clients' industries as well as their legal issues. We strive to maintain long-term client relationships by keeping our clients fully informed and respecting their time and business resources.

LEGAL PRACTICE AREAS:

- Banking and Creditors' Rights
- Condo-Community Association Representation
- Corporate and Other Business Transactions
- Defamation, Privacy and First Amendment
- Employee Benefits
- Employment Law
- Estate Planning, Probate and Trust Administration
- Health and Fitness Industry
- Independent Sales Representatives
- Intellectual Property Law
- Litigation and Alternative Dispute Resolution
- Mergers, Acquisitions and Business Sales
- Real Estate and Finance
- Real Estate Tax Reduction
- Securities, Futures and Derivatives
- Trade Associations



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WE'RE OPEN FOR CLOSINGS!

Following the issuance of Governor Pritzker's March 20, 2020, "[Stay at Home Executive Order](#)" ("Order"), individuals and companies with real estate closings in the pipeline suddenly, and quite justifiably, panicked: "Does this mean we can't close our deal?" For now, the answer is yes, you can still close your deal, with precautions, good planning and an abundance of patience.

Title companies continue to remain open and are closing commercial and residential purchase and sale transactions and refinances, for the time being. Pursuant to Sections 12(f) and (r) of the Order, title companies and title services are considered "essential businesses" that are allowed to continue operating during this crisis. Despite what Shakespeare once declared ("The first thing we do, let's kill all the lawyers"), attorneys are also deemed "essential," so we are here to help.

Of course, being open does not mean "business as usual." In order to maintain recommended social distance, many title companies are doing the following:

- Offering cash transactions almost entirely electronically, using email and DocuSign (for now, Illinois still requires original, "wet" signatures on deeds and mortgages)
- Encouraging "curb-side" closings where, if scheduled ahead of time, processors will email documents to buyers and counsel ahead of time, a notary will deliver the documents to the buyer's home (taking all necessary, recommended CDC precautions) and will wait in the car for the buyer to complete signing. SFNR has participated in several of these "curb-side" closings and, using the wonderful world of technology, will video chat with the buyer to review documents for accuracy and explanation.
- Encouraging the seller and buyer/borrower to obtain Powers of Attorney (for residential closings) and authorizing resolutions (for commercial closings) from their respective attorneys to limit the number of people at the closing table. SFNR recommends that you do this at least a week ahead of time to avoid any last-minute, unnecessary drama.
- Consistent with existing practice, many closings are being conducted by overnight courier services. SFNR emails or overnights documents to

the client for signature. Overnight courier services will pick up the return package by appointment. Our SFNR team will receive the package, scan all contents to the title company, with the original documents delivered by overnight courier to the title company. Additionally, transaction documents are scanned to the opposing counsel, and all loan documents are scanned to the lender. Above all, this process requires organization and pre-planning.

- Wherever possible, using electronically submitted and signed documents (for the time being, Illinois still does not allow DocuSign for deeds or mortgages; a "wet" signature is required), but once delivered to the title company, "e-filing" is still utilized, even when the Recorder's Office is closed.

A common concern is that City and County offices continue to announce closures due to the pandemic on a daily basis. Among those offices that are closed is the Cook County Recorder of Deeds. In addition, many local municipal offices are closed, making it difficult, if not impossible, to obtain transfer stamps. Once again, with adversity comes ingenuity: most title companies are allowing closings to proceed with measures similar to those typically used when documents or releases are not obtained in time for closing: title indemnifications and Gap coverage (insuring the time period between delivery and recording of the deed or mortgage) signed by the parties in order to allow transactions to close. Moreover, the State of Illinois, while late to the dance, is finally in the process of allowing "video notarization." Governor Pritzker's [Executive Order 2020-14](#) provides the modernized processes and procedures by video conferencing for remote signing and notarization of documents, previously requiring in person acknowledgement of documents.

All of these measures cannot replace the one, tried and tested axiom of real estate closings: Be prepared...plan well ahead of time! Now more than ever, parties and counsel will need to have all "I's dotted and T's crossed" well in advance of a closing. SFNR recommends as best practices planning to have closing documents (when available) reviewed, revised, signed and ready to go at least a week ahead of the closing. As Benjamin Franklin so aptly penned, "Failing to plan is planning to fail!"

For questions or additional information, please feel free to contact [Michael Friman](#) or call (312) 648-2300.

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NEW ILLINOIS TRUST CODE PRESENTS SHIFT IN TRUSTEES' OBLIGATIONS

Welcome Aboard!

We are excited to announce the addition of [Michael C. Kim](#) to SFNR. Mike's practice is focused on condominium and homeowner association law, construction law, real estate law and civil litigation. Mike joins the Firm in an Of Counsel capacity.

Case Success

[Rich Goldwasser](#) and [Matt Tyrrell](#) obtained a favorable verdict after a bench trial in the U.S. District Court for the Northern District of Illinois. SFNR asserted claims for common law fraud and fraudulent concealment on behalf of a client of the Firm. The court entered a six-figure judgment, including lost profits, in favor of the Firm's client on November 20, 2019.

Notable Publication

An article featuring advice from Partner [Bruce Bell](#) was featured in *Forbes*. [How to Shrink Your Tax Bill for Employer Stock Grants](#) was published on March 14, 2020.

Speaking Engagements

At the Electrical Representatives Association (ERA) Conference in February, Partner [Adam Glazer](#) presented *Tales from the Front (of the Courtroom)*, recounting several different styles of commission recovery cases the Firm has prosecuted on behalf of independent representatives.

Associate [Matt Tyrrell](#) presented at a CLE for the National Business Institute (NBI) on March 10, 2020 to a nationwide audience. The subjects of his presentations were: (i) Employer Obligations to Employees with Substance Abuse Issues, (ii) FMLA and ADA Considerations for Employees with Chronic Health Conditions, and (iii) Ethical Issues in Employment Law.

Attorneys Quoted

On March 31, 2020, in a Chicago Daily Law Bulletin article entitled [Stimulus package details emerge](#), Partner [Norm Finkel](#) was interviewed about the impact of the coronavirus on businesses and the legal and business advice he is giving to SFNR clients on various issues being presented during these difficult times.

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The new Illinois Trust Code (760 ILCS 3/1, et seq.) (the "Code"), became effective January 1, 2020 and reflects a significant overhaul of the way Illinois trusts are administered. The Code requires a reexamination of existing revocable living trusts to determine if any modifications are necessary and consultation for trustees of all trusts.

The Code mostly affects trusts that become irrevocable on or after January 1, 2020, while providing a supplemental set of rules for trusts that became irrevocable prior to the effective date. Although the Code codifies many common law rules with respect to trust administration that had been observed as a matter of course, it does create additional requirements for trustees that may not be intuitive. The most pertinent duties imposed on trustees by the Code fall into two broad categories: (i) a duty to provide information to "qualified beneficiaries," and (ii) a duty to provide trust accountings to certain beneficiaries annually and at the time the trust terminates.

A "qualified beneficiary" means a beneficiary who (i) is a distributee or permissible distributee (in the case of a trust where the trust instrument grants the trustee discretion over the distribution of income and principal to the beneficiaries), (ii) would be a distributee or permissible distributee of trust income or principal if the interests of the current distributees terminated (without causing the trust itself to terminate), or (iii) would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date. In short, the qualified beneficiaries of a trust will be the (i) current beneficiaries, (ii) the successor beneficiaries should the current beneficiaries die, and (iii) the final beneficiaries who are entitled to receive the trust principal upon the termination of the trust.

The Code requires that a trustee for any trust that becomes irrevocable after January 1, 2020 must inform all qualified beneficiaries of (i) the existence of the trust, (ii) the qualified beneficiary's right to request a complete copy of the trust instrument, and (iii) whether the qualified beneficiary has the right to receive a trust accounting. The information set forth above must be given to the qualified beneficiaries within 90 days of the trust becoming irrevocable and within 90 days of the trustee becoming aware of a new qualified beneficiary. This information must also be given to the representative of a qualified beneficiary within 90 days of the trustee learning that the qualified beneficiary has a representative – such as where a beneficiary is a minor child or an adult with a disability. The same rule applies when such qualified beneficiary no longer has a representative; in that

case, the trustee has 90 days to provide the information required by the statute directly to the qualified beneficiary even if the trustee had previously provided the information to the representative.

Not all qualified beneficiaries are entitled to annual accountings under the Code. Instead, the Code mandates annual accountings be provided only to current beneficiaries and presumptive remainder beneficiaries. Current beneficiaries are those beneficiaries current entitled to income or principal from the trust, whether their entitlement is mandatory, or the trustee has discretion over those distributions. Presumptive remainder beneficiaries are those beneficiaries who would be eligible to receive a distribution of income or principal if the trust would terminate on that date, or, those beneficiaries who would receive the income or principal upon the termination of the trust if all current beneficiaries' interest in the income or principal ended on the determining date. Therefore, the persons or entities entitled to annual accountings are: the (i) current recipients (or permissible recipients if distributions are made in the trustees' discretion) of trust income and principal; (ii) the persons who would be immediately entitled to the final distribution of the trust assets should the trust terminate; and (iii) the first contingent class of persons who would receive the final distributions if the persons described in (ii) above had no interest in the trust. Upon the termination of the trust, the beneficiaries of the trust are entitled to a final accounting, effective from the date of the last annual accounting.

For trusts that became irrevocable prior to January 1, 2020, the Code provides much less stringent requirements. The trustee has no duty to provide information concerning the trust to any beneficiary, and only has the obligation to account annually to the current beneficiaries who are entitled to the income from the trust. Upon the termination of a trust that became irrevocable prior to January 1, 2020, the trustee must provide a final account (from the date of the last current account to the income beneficiaries) to the beneficiaries entitled to actually receive a distribution of the residue of the trust.

The Code imposes other duties on the trustee, such as the obligation to provide updated contact information to certain beneficiaries, and other matters that are not covered in this article. If you have created a trust or are a trustee of a trust and have questions regarding your new (or existing) duties under the new Illinois Trust Code, please contact [Andrew Bell](#) or one of SFNR's other estate planning attorneys.