

Welcome to the first **Alexander & Cleaver E-Business Advisory**. The Advisory is intended to provide business ideas and advice to our clients and friends.

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Topics in this business newsletter discuss the laws, opinions, and other developments on a wide variety of issues. The laws of each jurisdiction may be different. The articles are presented for general reading and should not be relied upon as legal opinion or legal advice. We would be happy to answer further questions or discuss particular factual situations or problems with you in more detail. The Law Offices of Alexander & Cleaver is a full-service law firm that represents clients in a wide range of legal matters, lobbying, procurement and government relations services and association management.

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Business Insurance Protection – Optional or Requirement?

In assisting individuals with business plans, starting new businesses or advising those who may be purchasing an existing business, we are often asked about the insurance needs of the business. Having the appropriate insurance policies is an integral component of a successful business.

Insurance - it is a common word that covers many uncommon situations. For example, a local car dealer who promises a free car to a contestant who shoots a hole-in-one at a charity golf tournament typically obtains hole-in-one insurance from insurance companies that insure nothing save holes-in-one. A business may purchase trip insurance that insures against losing the cost of any prepaid expenses in the event last minute problems prevent a scheduled trip. Most businesses will never have to deal with such unique insurance coverage. However, businesses are required to obtain insurance for some of the risks of everyday business activities (for example workers' compensation insurance) or because they are contractually obligated to do so.

Traditionally, leases or mortgages impose obligations upon the business to maintain certain insurance coverage. These insurance requirements may include:

- General Comprehensive Liability at a Specified Coverage Amount (generally, One to Five Million Dollar minimum)
- Casualty/Fire/Theft (for the replacement cost of a structure)
- Plate Glass

Leases or liens governing equipment, inventory or other assets also generally require as a condition of compliance maintenance of a Casualty/Fire/Theft policy. This coverage is often for the full replacement value of the item. Those policies that are required for a lease, lien or mortgage usually provide for joint coverage for the owner or lessor and the benefit of the lien holder or lessor as co-insureds. These policies typically do not provide coverage for consequential or incidental losses incurred by the owner. Some insurance policies that are available for business losses, interruption, consequential or incidental losses include:

- Business Interruption
- Employee/Agent Negligence
- Officer/Director Liability
- Binding (employees for monies)
- Hazardous Waste/Toxic Substance/Environmental
- Property
- Home Office
- Vehicular
- Unemployment
- Casualty/Fire/Theft
- Professional Service
- Manufacturing (injury)
- Workers' Compensation

ADVICE: The business should consult with its legal counsel and insurance advisor annually, if not more frequently, to assure that the company's insurance needs are satisfied. For questions or comments contact our legal team at (301) 292-3300 or email us at acnews@alexander-cleaver.com

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Don't Let the Corporate Charter Lapse

Corporations beware! Maryland's highest court, the Court of Appeals, recently handed down a ruling that emphasizes the need for Maryland companies to take the necessary steps each year to assure that their corporate charters remain in good standing. Each year, Maryland corporations are required to pay certain taxes and file annual reports with the State Department of Assessments and Taxation by September 30 of each calendar year¹. Any corporation failing to complete either one of these requirements in a timely manner runs the risk of having its charter forfeited. Once a charter is forfeited, legally, the entity ceases to enjoy the benefits and powers previously conferred on it by virtue of being a Maryland corporation in good standing, including the ability to sue for relief in a Maryland court.

In the case of *Dual Inc. v. Lockheed Martin Corp, et al.*², Dual Inc.'s charter was forfeited at the time that it initially attempted to file suit against Lockheed Martin. Dual Inc.'s charter was subsequently revived and Dual Inc. attempted to file an amended complaint against Lockheed Martin Corp. The lower court refused to allow the amended complaint to be filed and the Court of Appeals agreed, ruling that even though the original suit, filed while Dual Inc.'s charter was forfeited, was timely based on the statute of limitations for bringing such actions. The suit in its entirety was dismissed because Dual Inc.'s charter was forfeited at the time the original, timely complaint was filed.

In other words, once Dual, Inc. allowed its charter to forfeit, it no longer retained the power to sue as a corporation, and revival of the corporate charter would not restore corporate rights (such as the right to sue) that were lost during the period that the charter was in forfeiture. The fact that the Dual Inc.'s charter was later revived could not restore its right to sue as a corporation because the statute of limitations on bringing the underlying action had expired by the time the amended complaint was filed.

ADVICE: The message for Maryland corporations is clear - corporations stand to lose the powers and protections afforded them if corporate charters are permitted to lapse. For questions or comments contact our legal team at (301) 292-3300 or email us at acnews@alexander-cleaver.com.

¹ Maryland Code Annotated, Corps. & Assocs. §3-503.

² Dual, Inc. v. Lockheed Martin, et al., 383 Md. 151, 857 A.2d 1095 (2004).

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Are You Paying Too Much For Your Commercial Real Property?

Commercial real property owners or lessors in Maryland have the right to challenge the tax assessment levied upon their commercial real property. The State of Maryland has an administrative assessment appeal process that governs three instances in which appeals of commercial real property assessments are allowed. A commercial real property assessment may be appealed:

- \$ by filing a Notice of Appeal within 45 days of receipt of an assessment notice (generally, assessments of commercial real property are conducted every 3 years).
- \$ by filing a Petition for Review by January 1 of each year during the 3 year period in which the current assessment applies.
- \$ by filing a Petition for Review within 60 days of a purchase or transfer of commercial real property provided the transfer or purchase is after January 1st but before July 1st of that year.

Once an Appeal or Petition for Review is filed, a personal or telephone hearing will be scheduled at the supervisor's level. The hearing is informal and brief and is provided to give the commercial real property owner an opportunity to present evidence explaining the inaccuracy of the existing assessment. The owner is entitled to obtain a copy of the Assessor's worksheet used in calculating the assessment. For this hearing, the owner should submit any documents and expert valuations that focus upon the following:

- \$ Any inappropriate property characteristics used or mathematical errors made in calculating the assessment.
- \$ Property income data that differs from the income data utilized to calculate the assessment.

- \$ Examples of appropriate sales comparable properties in relation to the property.
- \$ Other valuations methods asserted to be appropriate.
- \$ Reasoning as to why the assessed value is not indicative of the market value of the property.

After the hearing is completed, the commercial real property owner or lessor will receive a final notice of assessment from the Supervisor of Assessments.

If the real property owner believes the assessment is still incorrect, then an appeal may be filed with the Property Tax Assessment Appeals Board within 30 days of the final notice. At the hearing before the Board, the property owner or lessor is provided an opportunity to present any appropriate evidence and expert valuations challenging the assessment. The owner or lessor is also entitled to obtain data regarding the comparable properties utilized by the Assessor in establishing the assessment upon request.

Upon final determination of the Board, if it is still believed the assessment is incorrect, the owner or lessor may appeal the assessment to the Maryland Tax Court, which will conduct an administrative hearing. Again the appeal must be filed within 30 days. If the owner or lessor disagrees with the Maryland Tax Court decision, then appeal is made through the judicial system beginning with the Circuit Court for the County where the real property is located.

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Are You Legally Healthy?

This is a good time to determine if you personally are legally healthy. As you may schedule an annual physical check-up, you should also schedule an annual legal check-up. A legal check-up has the same premise as a physical check-up, to review your history, determine your current status, and determine a plan or strategy to address any ailments in your current legal condition. A legal check-up includes some of the following assessments:

- Do you have a valid existing [Last Will & Testament](#)? If so, when was it last reviewed? Regardless of how expertly your Will may have been prepared and coordinated with your estate plan, your Will should be reviewed frequently to take into account any changes in your estate, beneficiaries, or objectives. Revisions may be required as a result of changes in your family; death or changes in circumstances of a designated heir, guardian, trustee, custodian or executor; changes in tax laws; changes in your financial status, retirement, or inheritance of property. Do you also have a need for other dispositive documents?
- Do you have a valid existing [Advanced Medical Directive or Declaration/Living Will](#)? A Declaration or Living Will is a limited type of advanced directive which records your wishes regarding the application or withholding of life sustaining procedures when you are in an imminent terminal condition and/or comatose/vegetative state and unable to make those decisions at that time. A broader advance medical directive provides your health care instructions regarding an end-stage condition, like advanced Alzheimer's Disease, where you are in an incurable condition resulting in complete physical dependency.
- Do you have a valid existing [Health Care Power of Attorney](#)? A Health Care Power of Attorney designates an individual of your choice to make your health care decisions in the event that your physical condition prohibits you from doing so. This document is crucial in times when unexpected conditions arise that cannot possibly be anticipated.
- Do you have a valid existing [Durable Power of Attorney](#)? Just like a Health Care Power of Attorney designates an individual of your choice to make health care decisions, the Durable Power of Attorney designates an individual of your choice to administer your financial affairs in the event that your physical condition prohibits you from doing so.
- Have you made [Pre-Need Arrangements](#), such as the purchase of a cemetery plot, burial or cremation arrangements, or other services to be provided upon your death? Have these contracts and materials been reviewed by your counsel to determine if your wishes are being met, to determine what is in fact covered and what other services may be needed? Such pre-need contracts alleviate the emotional and financial burden upon family and friends of having to make those arrangements at a difficult time.
- When was the last time your [Homeowner's Insurance Policy](#) was reviewed?

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- ✓ Have you retained domestic assistance (maid, nanny, home improvement contractor, tutor, landscaper, occasional in home assistance) and is that domestic assistance properly covered under your homeowner's policy?
- ✓ If you have retained domestic assistance, what are your responsibilities relating to employment taxes, worker's compensation, etc.? Do you have a contract for services setting forth the rights and responsibilities of yourself as employer and your employee?
- ✓ Do you work from home (telecommute) and is that in-home work properly covered under your homeowner's policy or another insurance policy?
- ✓ Have you made any purchases such as computers, hi-tech equipment, jewelry, etc. that require additional riders to your existing insurance? Some policies specifically exclude high costs items unless they are set forth in the policy or on a separate rider.
- Have you become a volunteer or compensated member of a board, committee, organization, or association, where you may need [director or officer's errors and omissions insurance](#)?
- When was the last time your [auto insurance policy](#) was reviewed? Do you know and understand what your vehicular insurance covers? How much personal injury protection do you have and does that protection adequately compensate you in the event of accident? Is there a new driver in your home? Have you purchased a new vehicle? Are your uninsured/underinsured motorist benefits adequate? Do you need an umbrella policy?
- Do you have an [employment contract](#), are you being asked to execute an employment contract or should you be requesting an employment contract? If so, has the employment contract been reviewed by your own legal counsel? Are you entitled to other benefits, are your rights protected, what restrictions if any are placed on your future employment activities?
- Do you have [disability insurance](#) and if so do you have a clear understanding as to when in fact the insurance provides coverage and to what extent? Is there a need to upgrade this insurance? Many disability policies have a 90 day waiting period prior to the commencement of benefits. Do you have the funds to meet your needs during this time period or do you need additional coverage for this period?
- Are you [purchasing or selling a home, car, or major asset](#)? If so, have you had any contract, loan or other related documents negotiated and/or reviewed by your counsel?
- Do you have minor children? If so, are you aware of the [legal ramifications of the actions of your minor children](#)?
- These and other legal matters should be reviewed periodically with legal counsel.

ADVICE: An annual legal check-up can prove invaluable in avoiding future headaches and legal complications for both you and your loved ones. The Law Offices of Alexander & Cleaver look forward to assisting you in becoming and staying legally healthy. For questions or comments contact our legal team at (301) 292-3300 or email us at acnews@alexander-cleaver.com.

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Did you know Alexander & Cleaver can assist you with...

- Administrative Law (Boards and Commissions)
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- Association Representation
- Business Economic Development and Grants
- Campaign Finance Compliance
- Corporate Government Ethics Law Compliance
- Civil Litigation
- Corporate / Business Legal Matters
- Criminal Law – DWI – Traffic Case Defense
- Defense EEOC, HRC Matters
- Energy and Public Utility Law
- Family Law
- Insurance Disputes
- Land Use, Zoning and Development
- Lobbying and Government Relations
- Local Counsel Opinions/Transactions
- Marketing Representation
- Medical Licensing Boards (BPQA) Representation
- Municipality Representation
- Minority Business Certification
- Nonprofit Representation
- Personal Injury – Auto Accident – Wrongful Death
- Procurement Matters
- Professional Licensing Boards Representation

Do you need a legal compliance seminar? Call any member of our firm for more information or to arrange a seminar. Attorney Denise Bowman just concluded a two day seminar on state, county, and local jurisdiction ethics compliance.

Alexander & Cleaver has licensed attorneys in Maryland, Washington D.C., Virginia, and Pennsylvania. For questions or comments contact our legal team at (301) 292-3300 or email us at acnews@alexander-cleaver.com.

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