



ILLINOIS LEGISLATION EFFECTIVE IN 2010

Public Act 96-123 (Senate Bill 229): Created a new Act titled the “Banking Convenience Account for Depositors Act.” Authorizes (but does not require) depository financial institutions to offer “convenience accounts.” Provides that a convenience account would have a primary owner (“DEPOSITOR”) but would also have a second person who may from time to time make deposits into the convenience account and who is allowed to withdraw funds from the account (“CONVENIENCE DEPOSITOR”). Provides that the account shall be titled in both the name of DEPOSITOR and the name of CONVENIENCE DEPOSITOR. Provides that all funds in the convenience account or added to the convenience account are legally owned by DEPOSITOR and that CONVENIENCE DEPOSITOR’S authority to withdraw funds shall not be construed as a gift of one-half interest by DEPOSITOR, a joint account relationship, or the creation of a right of survivorship in CONVENIENCE DEPOSITOR upon the death of DEPOSITOR. Provides that DEPOSITOR may notify the bank in writing that the bank is no longer authorized to honor withdrawals made by CONVENIENCE DEPOSITOR, but until receipt of such written notice from DEPOSITOR the bank is not liable for withdrawals initiated by CONVENIENCE DEPOSITOR. Provides that the bank is not liable if it continues to honor withdrawals by CONVENIENCE DEPOSITOR after the death of DEPOSITOR, until such time as the bank has received written notice of DEPOSITOR’S death. [NOTE: Compare to Section 4-405 of the Uniform Commercial Code regarding the authority for a bank to honor checks following the death of the accountholder.] Following DEPOSITOR’S death, the bank may make payment of funds in the convenience account to DEPOSITOR’S executor/executrix, administrator or estate representative unless otherwise instructed by a court order prior to making such payment. The Act is to be repealed on January 1, 2015. **{Effective date: January 1, 2010}**

Public Act 96-261 (House Bill 2352): Created the Credit Card Marketing Act of 2009 to regulate agreements between institutions of higher education (including colleges, junior colleges, community colleges and vocational schools) and credit card issuers (including financial institutions). Requires any institution of higher education that enters into a credit card marketing agreement (either directly or through its affiliates, student groups or alumni associations) to

make a financial education program available to all students and to publicize on its web site financial education information pertaining to the consequences of credit card debt (for example, interest computations, misleading low introductory rates, length of time to pay off balance if making only minimum payments, etc.). Requires that an institution of higher education make disclosures on its web site and to the Illinois Board of Higher Education whenever the institution of higher education (or any of its affiliates, student groups or alumni associations) has received funds or other consideration for distributing credit card applications to students. Prohibits the use of marketing activity that includes offers of gifts, coupons, etc. as inducements to encourage students to complete credit card applications. Prohibits an institution of higher education from providing a credit card issuer with personal information about a student (name, address, phone number, e-mail address, social security number, etc.) for the purpose of marketing a credit card to any student under the age of 21. Authorizes the Illinois Attorney General to enforce the provisions of this Act, including granting the Attorney General the authority to issue subpoenas to any persons or entities that might have information relevant to the investigation. **{Effective date: January 1, 2010}**

Public Act 96-479 (Senate Bill 188): Amended the Trusts and Trustees Act to provide that a trust may be converted to a “total return trust” by an agreement between the trustee and: (1) all primary beneficiaries, either individually or by their respective representatives; or (2) all beneficiaries currently eligible to receive trust income or principal AND all beneficiaries who are presumptive remaindermen, either individually or through their respective representatives. [NOTE: A “total return trust” is defined in the Act as a trust for which the trustee may invest and manage trust assets “seeking a total return without regard to whether that return is from income or appreciation of principal.”] Provides that, in the absence of a conflict of interest, a representative with “a substantially identical interest” may represent and may bind a beneficiary who is a minor, disabled, or unborn person with an interest in the trust, unless such minor, disabled or unborn person is otherwise represented by a court-appointed guardian. Also provides that the acts of primary beneficiaries (or their representatives) and presumptive remainder beneficiaries (or their representatives) are binding upon other individuals who have a successor, contingent, or future interest in the trust. Provides that when a trust creates a beneficial interest for a charity or charitable purpose that is not specifically named or represented, the Illinois Attorney General may act on behalf of the charitable interest. Authorizes “nonjudicial settlement agreements” that are binding on all interested parties, if such agreements are consented to by the trustee and by all other persons whose consent would be necessary to achieve a court-approved settlement. Provides examples of potential topics for such nonjudicial settlement agreements, including interpretation of terms of a trust, approval of a trustee’s accounting, granting administrative powers to the trustee, determination of trustee’s compensation, etc. **{Effective date: January 1, 2010}**

Public Act 96-615 (Senate Bill 266) and Public Act 96-768 (House Bill 574): Created the “Public Interest Attorney Assistance Act,” directing the Illinois Student Assistance Commission (“ISAC”) to administer an education loan repayment program (subject to appropriation) for the benefit of “public interest attorneys” who qualify for financial assistance under the program. Defines “public interest attorneys” to include Assistant State’s Attorneys, Assistant Attorneys

General, Assistant Public Defenders, civil legal aid attorneys, assistant public guardians, attorneys employed by the Illinois Guardianship & Advocacy Commission, and attorneys employed by the Illinois General Assembly or Legislative Reference Bureau. Provides that ISAC can establish rules to administer the program, including an application process, eligibility requirements, maximum amount of assistance (up to \$6,000 in any year and \$30,000 during the public interest attorney's career), and prioritization among applicants when there are not sufficient funds to make available to all qualified applicants. Provides that the financial assistance shall be in the form of a "forgivable loan," and that forgiveness of the ISAC loan is conditioned on the applicant maintaining employment as a public interest attorney for at least one year and making his/her own matching school loan payments during the year (i.e., he/she must make personal school debt payments in an amount at least equal to the amount of financial assistance received from ISAC during that year). Provides that any public assistance attorney who becomes ineligible during the term of the ISAC loan must repay the outstanding amount of the loan. **{Effective date: January 1, 2010}**

Public Act 96-645 (Senate Bill 2111): Amended the Title Insurance Act to prohibit a title insurance company, title insurance agent, and independent escrowee ("Agent") from disbursing funds out of escrows, settlements, or fiduciary accounts in an amount of \$50,000 or more received from a party to a real estate transaction unless the funds are in the form of: wired funds unconditionally held by and credited to the fiduciary account of the Agent; a check issued by the State of Illinois, the United States, or a political subdivision of this State or of the United States; a check drawn on the fiduciary account of the Agent, provided that the Agent has reasonable grounds to believe that sufficient funds are available in the account at the time of disbursement; or "collected funds" (i.e., funds deposited, finally settled, and credited to the Agent's fiduciary account). Allows the Agent to make disbursements out of escrows, settlements, or fiduciary accounts in an amount less than \$50,000 received from a party to the real estate transaction if the funds are in any form acceptable above for amounts of \$50,000 or more or in the form of: currency of the United States; cashier's checks, certified checks, money orders, official bank checks, or teller's checks drawn on or issued by any financial institution (chartered by any state or by the United States) and unconditionally held by the Agent; personal checks in an aggregate amount not exceeding \$5,000 per closing, provided that the Agent has reasonable grounds to believe that sufficient funds are available in the account upon which the check is drawn at the time of disbursement; or a check drawn on the trust account of any lawyer or real estate broker licensed in Illinois, provided that the Agent has reasonable grounds to believe that sufficient funds are available in the account upon which the check is drawn at the time of disbursement. **{Effective date: January 1, 2010}**

Public Act 96-654 (House Bill 236): Amended the Mechanics Lien Act to require that a contractor for improvements of an owner-occupied single family residence must give written notice to the owner within 10 days after recording a lien against the property. Defines service of the notice as the time at which the notice is either sent or personally delivered. Provides that if timely notice is not given by the contractor and the owner suffers some damages as a result of the placement of the lien prior to the eventual service of the notice, the lien is extinguished to the extent of such damages. Clarifies that these provisions apply to contractors and not to

subcontractors, and that these provisions only apply to contracts entered into after the effective date of Public Act 96-654. **{Effective date: January 1, 2010}**

Public Act 96-726 (Senate Bill 1579): Will create the “Community Association Manager Licensing and Disciplinary Act” to provide extensive authority for the Illinois Department of Financial & Professional Regulation (“IDFPR”) to license, regulate, and investigate the professional services of community association managers. Defines “community association” as an association in which membership is necessary to own an interest in a condominium, cooperative, villa, townhouse, or other residential unit that is part of a residential development plan and that is authorized to impose an assessment, rents, or other costs that may become a lien on the unit. Requires that a community association manager (“Manager”) or Community Association Management Agency that provides professional management services for more than one community association must maintain separate accounts for each association (or, with the consent of the associations, may combine the accounts of multiple associations, provided that the funds belonging to each association are separately accounted for). Prohibits the commingling of community association funds with the funds/accounts belonging to the Manager or Community Association Management Agency. Community association accounts shall be custodial accounts held in the name of the community association, or held in the name of the Manager or Community Association Management Agency as agent for the community association. Provides that improper commingling of personal funds with funds of the community association constitutes grounds for disciplinary action (revocation or suspension of license, fine, probation, etc.) by IDFPR against the Manager. **{Effective date: July 1, 2010}**

Public Act 96-844 (House Bill 1015): Amended the Real Estate Appraiser Licensing Act of 2002 to enact new framework for the licensing, supervision and discipline of appraisers in Illinois by the Illinois Department of Financial & Professional Regulation (“IDFPR”). Maintains an exemption in that Act for an employee, officer, or director of a financial institution or any person hired by a financial institution if the appraisal/evaluation of the real estate is for the sole use of the financial institution in a transaction for which federal banking regulations do not require the use of a State certified or State licensed appraiser. **{Effective date: December 23, 2009}**

Senate Bill 1682: Would amend the Illinois Funeral or Burial Funds Act and the Illinois Pre-Need Cemetery Sales Act by creating a new Pre-Need Funeral Consumer Protection Fund and adding other requirements on licensees who sell pre-need funeral contracts to consumers. Will require that a seller of the pre-need funeral contract (for example, a funeral director or funeral home) must designate a professional, regulated corporate fiduciary to maintain the trust that is funded by the purchaser; prior to this change, the seller could maintain the trust account as trustee for the purchaser, provided that the seller managed proceeds of less than \$500,000 as trustee. **{Effective date: January 31, 2010, if an amendatory veto establishing that effective date is certified by Governor Quinn}**

Also, just for your information:

Public Act 96-130 (House Bill 71): Amended the Illinois Vehicle Code to make the composition, sending or reading of a text message, e-mail or instant message while operating a motor vehicle a moving traffic violation. Creates exceptions for: global positioning systems, navigation systems or a device that is “physically or electronically integrated into the motor vehicle;” use of electronic communications for the sole purpose of reporting an emergency situation and communicating with emergency personnel; use of an electronic communications system in voice-activated or hands-free mode; use of an electronic communications system while parked on the shoulder of the road; and use of an electronic communications system while stopped during traffic obstruction with the car in neutral or park. **{Effective date: January 1, 2010}**

Public Act 96-131 (House Bill 72): Amended the Illinois Vehicle Code to ban the use of wireless telephones while operating a motor vehicle at any time in a school zone or on a highway in a “construction or maintenance speed zone.” Creates exceptions for use of a wireless telephone to contact or communicate with emergency personnel and for use of a wireless telephone in voice-activated mode. **{Effective date: January 1, 2010}**

Public Act 96-649 (Senate Bill 1390): Made numerous amendments to the General Not for Profit Corporation Act of 1986 affecting the corporate governance of such not-for-profit corporations. Provides that communications sent by electronic means shall constitute “written” communications under the Act unless the articles of incorporation or by-laws say otherwise (current law requires the articles of incorporation or by-laws to affirmatively permit electronic communications to be considered as “written” communications). Allows mail or e-mail balloting and voting on issues that otherwise would be voted upon at an annual or special meeting, provided that voting remains open for at least five days after ballots are delivered (at least 20 days if the issue to be voted upon involves removal of a director, merger, consolidation, dissolution, or lease or exchange of assets). Requires that any action taken (by mail or e-mail) in the absence of an annual or special meeting must be approved by the majority of members casting votes (or a super-majority if so required by the Act, articles of incorporation or by-laws) and that the number of members casting votes would constitute a quorum had a meeting actually been held. Specifically permits the election of directors by such mail or e-mail procedures, unless otherwise prohibited by the articles of incorporation or by-laws. Authorizes any voting member to have access, at a reasonable time, to the corporation’s books and records of account and minutes “for a proper purpose.” Requires that a voting member seeking such access must make a written demand specifying the records to which he/she seeks access and his/her “proper purpose.” If the corporation refuses access to the voting member, the voting member may go to circuit court seeking to compel access. The burden of proving a “proper purpose” is on the voting member if he/she is seeking access to “books or records of account”; if the voting member is seeking access to “minutes,” the burden of proof is on the not-for-profit corporation to demonstrate that the voting member does not have a proper purpose. **{Effective date: January 1, 2010}**

For further information or to obtain a copy of any of these new laws, please contact CBAI General Counsel Jerry Cavanaugh by phone (1/800-736-2224 from within Illinois) or by email (jerryc@cbai.com).