

UPDATES

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WHAT WE DID WITH OUR SUMMER

Much has happened at Frascella & Pisaurro, LLC since of our firm newsletter first debuted this Spring. Recently, I had the honor of co-writing "Lawyers, Guns and Twitter- Who owns your Twitter Account" with Glenn Gabe of G-Square Interactive. This article, which appeared online at the *Search Engine Journal*, examines the legal ownership of an employees' twitter account. In June, I gave a presentation on "Starting and Running Your Own Business" with Rebecca Machinga, a CPA as WithumSmith +Brown. Lastly, I was interviewed for Fox News on the then

pending "Cash for Clunkers" program.

Much more continues to happen. Our firm's website, for example, is currently being re-vamped both to make it easier to navigate and, more importantly, to provide more useful information to our clients and visitors. Hopefully that project will be completed in the next



Our home in Princeton, NJ.

couple of months. – expect to read all about it when our next newsletter come out early next year.

REAL ESTATE CREDITS AND REBATES

The "first time home buyer" tax credit is set to expire on December 1, 2009. Under this program, if you were a first time home buyer, you could be entitled to a tax credit of up to \$8,000 – provided you closed before December 1, 2009. Although this program does have some benefits and may, in fact, have spurred the housing market during this period, there are two downsides to this tax credit. First, and most obviously, it is about to expire. Second, the

credit applied only to people who had never bought a home before. Buyers closing after the expiration date or who have already purchased a home in the past, are out of luck.

There is also a NJ Smart Start Program that could provide up to 4% of the closing costs of first time home buyer.

However, there are a few programs - both state and federal - that do not

expire this year and are available to both the first time home buyer as well as existing home owners. In addition to tax benefits, these programs also aim to make your home more affordable – and more energy efficient – in the long run.

There are two federal programs available to home owners.

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REAL ESTATE CREDITS & REBATES - CONT'D FROM P. 1

· The Federal Government is providing a 30% tax credit on the cost of energy efficiency upgrades - up to \$1,500. If you buy qualified energy star items in 2009 or 2010 you can receive this credit. This includes: windows and doors, insulation, roofs (metal and asphalt), HVAC, water heaters (non-solar), and biomass stoves.

· There is also a federal tax credit of 30% - with no cap - for qualified geothermal heat pumps; solar panels, solar water heaters, small wind energy systems and fuel cells. This tax credit can be used *in addition* to the efficiency tax credit and is available until 2016.

The State of New Jersey also provides incentives to improve your home:

· State-offered rebates for energy efficient washers,

dehumiders, A/C systems, water heaters, heat pumps, furnaces, etc.

· A \$30 rebate for recycling your old but working refrigerator.

· A \$125 energy audit program through the State which can pinpoint additional efficiency steps, such as air sealing, to reduce costs of heating and cooling your home.

· Rebates on the installation of Class 1 renewable systems including: solar, wind and biomass. The dollar amount of the rebate depends on the type of system and the amount of energy it generates.

· Finally, once you have your renewable energy system installed it generates not only energy but “cash back” through the creation of renewable en-



ergy credits (REC) or solar renewable energy credits (SRECS). These S/RECS are then sold on the market for purchase by utilities and others. The SRECS prices have averaged a low of 443.24 per 1,000 kilowatts generated to a high of \$527.12 this year.

As you can see, even if you were not able to take advantage of the first time home buyer tax credits there are other tax credits and rebates available to help make your current home more comfortable to live in and less expensive to keep.

By- Mike Pisauro.

Federal Tax credits of up to 30% for qualified renewable energy systems

COMPANY'S COMPUTER USAGE POLICY RESTRICTED

The Appellate Division recently overturned the Trial Court's decision in Stengart v. Loving Care Agency, Inc. I wrote about this case back in March in "Why it's important to establish a computer usage/electronic communication policy." Stengart, the Plaintiff had sent her attorney emails using her own personal web based email account, but used the employer's computer. After the filing the lawsuit

against her employer, the employer was able to forensically recover the emails to the attorney. The Ms. Stengart sought to force the employer to return the emails and disqualify the employer's law firm based upon violating the attorney client privilege. The Trial Court held that emails sent by an employee to her attorney using her employer's computer and network was the "property" of the employer

and could be used by the employer in the litigation against it by the former employer.

The Appellate Division reversed this decision and held that an employer's right to the content of an employee's communications was not unfettered and would not be upheld when it had "no bearing on the employer's legitimate inter-

Employer's right to monitor an employee's communications is not unfettered . . .

(Continued on page 3)

SHOULD YOU REFINANCE?

For the past several months we have experienced an uptick in the real estate market. Contracts for the sale of existing properties and new homes have been coming to losing in substantially higher volume than the preceding year. This is not to say that we are anywhere near the sales vol-

ume of two or three years ago, but it is an encouraging economic sign. This is not to say that we are anywhere near the sales volume of two or three years ago, but it is an encouraging economic sign. Funds from lenders for purchases of new mortgages or refinancing appear to be loosening. The greater avail-

ability of funding together with current low interest rates has resulted in many people considering the refinance option.

A Word of Caution:

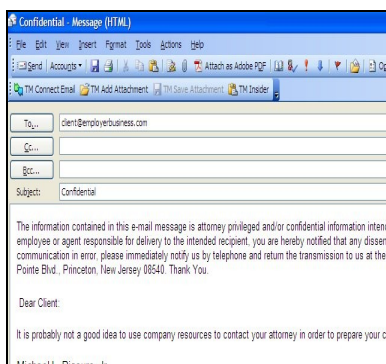
Refinancing often involves costs which can

(Continued on page 5)

COMPANY RESTRICTED — CONT'D FROM P. 2

ests.” The Court also discussed the competing interests between the expectation of privacy between client and attorney versus a company’s interest in monitoring its computer usage.

effect, to be unclear, confusing and conflicting.



While not controlling the Court’s decision, the Appellate Division was not clear that the computer usage policy, relied on by the Trial Court, was in place during the time frame the Plaintiff emailed her attorney. Further the Court found the policy, assuming it was in place, was confusing. For example the company acknowledged that employees could use computers for occasional personal use, but never defined or explained the boundaries of personal usage. Then the company provided that all computer usage would be not be private and was the property of the company. Overall the Court found the policy, assuming it was in

In its decision the Court affirmed the right of an employer to unilaterally set the rules and regulations of employee conduct, but noted that this right was not unlimited and had to be reasonable and related to the employee’s duties. Having affirmed employer’s policies in general, the Court had trouble enforcing the alleged computer usage policies of Loving Care because the policies did not seem to have a strong enough relationship to the employer’s legitimate interests. The Court was also concerned

that internet access has become so entrenched in our society that people routinely access bank records, file income tax returns, access medical records and other very confidential private activities. And Loving Care’s policy did not account for these realities. The employer had not provided a legitimate interest in ownership over these kinds of personal records.

The Court in reversing the trial court, wrote:

A policy imposed by an employer, purporting to transform all private communications into company property – merely because the company owned the computer used to make private communications or used to access such private information during work hours – furthers no legitimate business interest.

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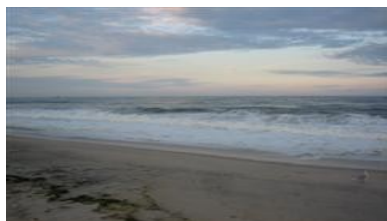
Before you can enforce a policy it must be in place and your employers must be aware of the policy.

STATE REGIONAL & NATIONAL FOCUS ON OCEANS

June, as national ocean month, has been a fairly busy one. Two weeks ago the Governors of NY, NJ, DE, MD, and VA met in NY to create the Mid-Atlantic Regional Council on the Oceans. Governor Corzine has just appointed members to the NJ Coastal and Ocean Protection Council. President Obama also has created an inter-agency task force. These are all laudable steps on addressing the dire condition of the Oceans. They are long overdue steps.

In 2003 and 2004 the Pews Ocean Commission and the U.S. Commission on Ocean Policy issued their reports on the health of our oceans. Without

going into great detail the cliff notes of these reports were that our oceans are in serious jeopardy and actions had to be taken to reverse course. It has been 5 to 6 years since those reports were issued and at least in NJ the course has not been reversed. There



might be debate on whether the continued degradation of our oceans has been slowed, but it clearly has not been reversed. There is still a

dead zone stretching along 100 miles of NJ's coast. Fishing stocks are still declining. Pollution is still running off compromised watersheds further deteriorating the health of our ocean. At the same time there is a push to increase exploration for fossil fuels and to install new renewable energy off our coast.

In order to help NJ address the Pews and U.S. Ocean recommendations, the New

Jersey Coastal Ocean Coalition issued a report called: Ocean Protection in New Jersey: A Blueprint for Success. After several

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NJ's Coastal Ocean and Protection Council law enacted on January 13, 2008

COMPANY RESTRICTED — CONT'D FROM P.3

While the Court agreed that companies have an interest to make sure their employers are not engaged in illegal activity using company property, and that the company had a legitimate interest in ensuring that its employees were not distracted from the company business, companies usually did not have an interest in the content of the personal communications.

The difficult thing with this ruling is that the Court did not explain the contours of what an employer

could and could not do in monitoring an employee's computer usage. Instead the Court hinted that this area maybe worthy of legislative direction. Until the legislature acts, the questions for employers are many. Would a Court make a distinction between a company's claimed ownership over confidential private information versus a company's monitoring of an employees computer usage. If a company can monitor but not retain, a record of employees' computer activity, how can a company defend a disciplinary or firing decision if it cannot retain

the proof? Also would a court enforce a complete banned on an employee's use of a company computer system for personal usage?

While the enforceability of any computer/electronic usage policy will be open for interpretation by the Courts, it is still better to have a well crafted policy in place than not having one at all.

By- Mike Pisaurro

*We value our clients.
We are here to help meet
your need.*

SHOULD YOU REFINANCE - CONT'D FROM P.3

average between \$1,500 and several thousand dollars depending on the amount refinanced and the type of financing instrument selected.

Questions To Ask Your Mortgage Broker:

1. If considering a Fixed Rate mortgage what are the estimated closing costs, including attorney fees, title insurance, application fees, appraisal fees, etc.

2. If going from an existing Fixed Rate mortgage to a new Fixed Rate mortgage what is the difference in rate and what is the difference in estimated monthly payments.

3. How long would the new mortgage have to be in place to justify the additional costs associated with a refinancing.

4. Which type of refinancing package is best for your future plans, fixed rate, variable rate or adjustable rate and

what are the pros and cons of each.

For most people home financing is the largest financial transaction of their lifetime. Choosing the right instrument for your needs is an important decision. Even small differences over the course of 15 or 30 years can have substantial impacts.

By- Tom Frascella

Does the savings on a refinancing justify the costs to refinance?

FOCUS ON OCEAN— CONT'D FROM P.4

years of lobbying, the COC successfully got passed and signed into law the Coastal Ocean Protection Council law. That law took effect on January 13, 2008. In part the law created a council to help the State look at the issues affecting the coast and how best to address the issues. It took over 18 months from the time Governor signed this legislation into law to when he made appointments to the council. It has been 18 months without the council working towards strategies on improving NJ's regulation of the ocean and coastal environments. It has been six years since the Pews report called for coordinated approaches

toward regulating this resource without any meaningful movement to correct the problem.

When Governor Corzine, entered into the Mid-Atlantic Regional Council on the Oceans he said: Any threat to these natural resources brings economic consequences that threaten jobs, local economies, and our economic well being. New Jersey is committed to working with our Mid-Atlantic partners to provide adequate safeguards and formulate a shared vision for the region's future.

This is not a new sentiment, but one that the State

asserted when the New Jersey's Coastal Area Facility Review Act was passed in 1973. I hope that New Jersey and the surrounding states are seriously but addressing the multiple threats to our oceans.

We need a mechanism to coordinate policy with our neighboring states because as we all know the water along our coast does not stay within the jurisdiction of anyone state, but it moves. It is the plan that the Council will help the States examine the issues on the regional level and help the

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“Any threat to these natural resources brings economic consequences that threaten jobs, local economies, and our economic well being.”

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FOCUS ON OCEANS— CONT'D FROM P.5

State address them in ways that are not counter-productive to each other.

Even more recently, the President created the Ocean Policy Task Force. One of the goals of the Task Force is to propose a national policy that will protect, maintain and restore the oceans, coastal and Great Lake ecosystems including the implementation of adaptive management; a way to coordinate interagency actions, and how to implement these proposals. The Task Force is also put together a recommendation for coastal and marine spatial planning. If I am reading this Memorandum right the goal for the Task

Force is to take the recommendations of the U.S. Commission on Ocean Policy and to figure out how to implement it.

These are very important concepts that I hope are more than catchy phrases to government. If these are no more than words than there will not be an improvement. These words must the announcement of actual action. For NJ, they must implement the Coastal and Ocean Protection Council and allow the council to get to work. For the Mid-Atlantic Regional Council on the Oceans the States must look how many of their regulations both water and land based affect the oceans and how

each State can complement their neighbor's work. Lastly, the Federal Task for can look at how to assist the States and Mid-Atlantic Regional Council on their missions as well as to provide a uniform framework across multiple agencies on how to cherish and protect this vital resource. We will see if actions do speak louder than words.

By- Mike Pisaurio