



RAISING THE BAR

Recent Awards

- Oklahoma Super Lawyers names 38 GableGotwals attorneys to list and three attorneys to the Top 50 List.
- Forty-four GableGotwals attorneys Named to 2015 Best Lawyers® in America list.
- Best Lawyers® in America named 13 GableGotwals attorneys as Lawyer of the Year. Twenty-three GableGotwals attorneys have been honored as Lawyers of the Year since the program's inception in 2009. In addition, nine attorneys have been honored with the award in more than one year, which is very unusual.
- GableGotwals had been named one of the 2014 Best Places to Work in Oklahoma for the fifth year in a row in the small/medium category. Overall, only 18 small/medium and 17 large companies were selected to be honored. GableGotwals has been the only law firm recognized the last five years.
- GableGotwals named 2014 "Best of the Best" Law Firm by Oklahoma Magazine.
- Jake Krattiger, OKC attorney, honored at 30/30 NextGen Awards.
- Adam Doverspike, Tulsa attorney, has been appointed by the US Commission on Civil Rights to its Oklahoma Advisory Committee.
- Diana Vermeire, OKC attorney, selected as Top 20 Under 40 by the Business Times of Edmond.
- Philip Hixon, Tulsa attorney elected as Vice Chair of the Will Rogers Memorial Commission.
- Jeff Curran, OKC attorney, has been elected to the Oklahoma County Bar Association Board of Directors and named Vice President of the Board of Directors for The Children's Center Rehabilitation Hospital.

Oliver Howard Fellow of the American College of Trial Lawyers



GableGotwals attorney Oliver S. Howard has been given the distinct honor of being inducted as a Fellow of the American College of Trial Lawyers. Oliver is the sixth member of GableGotwals to be admitted as a Fellow. Other Firm members include David L. Bryant, Sidney G. Dunagan, James M. Sturdivant, Jack N. Hays (deceased) and Charles C. Baker (retired). The American College of Trial Lawyers was founded in 1950 as an organization to recognize the very best of the courtroom bar. The Fellows of the College must have proven themselves in actual trial practice. There is an intensive vetting process and membership is by invitation only to persons who have distinguished themselves in trial practice for at least 15 years and who are recognized leaders in their local communities. The College looks for lawyers who are considered by other lawyers and judges to be the best in their states or provinces, lawyers whose ethical and moral standards are the highest, and lawyers who share the intangible quality of collegiality.

Banking Compliance Support Line Offered

GableGotwals is offering federal bank compliance services to members of the Community Bankers Association of Oklahoma (CBAO). Community banks in Oklahoma and across the nation are reeling from excessive regulation and are searching for ways to comply while still remaining competitive and supportive of the communities they serve. CBAO member banks can call or email GableGotwals on general federal compliance issues to receive support and answers at no charge to the bank.

Tom Vincent stated, "GableGotwals understands that Oklahoma community banks are facing an increasing amount of regulation without the size and infrastructure to hire in-house attorneys and former regulators to navigate these issues. Our Firm sees this relationship with CBAO as a practical way to minimize compliance costs to its members and give them more time and energy to do what they do best, serve their customers and their communities."



A blog by Leslie Lynch

Employment Law Posters to be Displayed in the Workplace – Some New and Some Old

When the Oklahoma legislature revamped Oklahoma’s anti-discrimination laws in mid-2013, one of the new requirements imposed (and enforced by the Oklahoma Attorney General’s Office of Civil Rights Enforcement) was a requirement that all Oklahoma employers display a poster explaining Oklahoma’s prohibition on discrimination in employment because of “race, color, religion, national origin, disability, age, sex or genetic information.” Unlike federal law which applies only to employers of certain sizes (for example, Title VII applies to employers with more than 15 employees), the Oklahoma law applies to all Oklahoma employers without regard to the number of people employed. Since many Oklahoma employers appear unaware of the new state law posting requirement, a quick review of the posters generally required by federal and state law was developed.

By 2014, most if not all private employers are used to displaying the federally required “EEO is the Law” poster, minimum wage poster and the Family and Medical Leave Act poster. The first poster informs employees of their federal right to employment free of discrimination based on race, color, religion, sex, national origin, disability, age and genetics. The first poster also explains the federal prohibition against retaliation based upon the exercise of an employee’s protected right and informs employees of the enforcement mechanism. The second poster informs employees of the federal minimum wage (currently \$7.25 per hour), overtime requirements and a mechanism to lodge an official complaint against their employer. The third poster informs certain employees of their right to take up to twelve (12) weeks of unpaid leave under specified circumstances.

Private employers may also be required, under Federal Law, to display posters informing employees of their rights under the Employee Polygraph Protection Act. Another posting requirement is promulgated by OSHA and relates to “Job Safety and Health.” Employers must also display a poster informing covered employees of their rights under the Uniformed Services Employment and Reemployment Rights Act. There are several other poster requirements under federal law that may or may not be applicable to a particular employment situation. The federal Department of Labor has a helpful tool to navigate the federal posting requirements at www.dol.gov/elaws/posters.htm.

In addition to the requirements of federal law, Oklahoma law requires private employers to display additional information for employees. Those topics include: Unemployment Insurance, Oklahoma Minimum Wage, Anti-Discrimination Notice, Child Labor Law and Workers’ Compensation. Oklahoma has two online tools to assist employers, too. www.ok.gov/oesc_web/Services/Workforce_Services/Labor_Law_Posters.html and www.ok.gov/odol/Workforce_Protection/Wage_and_Hour_Services/Workplace_Posters/.

Failure to comply with the posting requirements can result in the assessment of monetary penalties among other sanctions.

Leslie Lynch is an attorney in the Oklahoma City office and practices litigation in a variety of areas including employment, energy and insurance law. She can be reached at 405.235.5564 or llynch@gablelaw.com



A Journal Record Viewpoint by LeAnn Ellis

Gavel to Gavel: Using the Power



Business owners may encounter a situation where they want to purchase property, but the titleholder is incapacitated or unavailable for a real estate closing due to vacation or military deployment. In these cases, Oklahoma law recognizes the use of a power of attorney in real estate sales and leases. A power of attorney is a written document that allows an individual to appoint another individual or an institution,

such as a bank, as an agent to handle business transactions. In order to be effective in real estate transactions, the power of attorney should specifically authorize the agent to sell real estate owned by the individual.

Oklahoma has enacted both a simple power of attorney and a durable power of attorney statute. Both statutes allow an agent to convey real estate by deed. A simple power of attorney allows an individual to grant an agent specific powers over financial matters and real estate. A durable power of attorney usually grants the agent broad powers over the individual's assets and business affairs. Unlike a simple power of attorney, a durable power of attorney is effective even if the individual granting a power is affected by subsequent disability or incapacity. In order to be valid, an individual must sign a power of attorney before becoming incapacitated. If the owner of the property does not have legal capacity to sign a power of attorney, then a guardianship, which is supervised by a court, will likely be necessary to sell the real estate.

For a power of attorney to be effective for a real estate conveyance, an individual's signature should be notarized and witnessed by two disinterested people and the original document must be filed in the county where the land is situated. If an original power of attorney is not filed of record or the document is not properly notarized, then Oklahoma statutes provide that the defect may be cured and the document rendered valid if the document has been filed for at least five years.

Because powers of attorney statutes vary from state to state, it is recommended that a closing company and/or legal review be utilized to ensure that marketable title is properly conveyed.

“In order to be valid, an individual must sign a power of attorney before becoming incapacitated.”

LeAnn D. Ellis is an attorney in the Tulsa office and a fellow of the American College of Trust and Estate Counsel. She can be reached at 918-595-4814 or lellis@gablelaw.com



Q&A with The Oklahoman:

The Oklahoman talks with Dean Couch regarding the U.S. Supreme Court accepting maximum limit period for filing pollution lawsuits.

Recent high court case involves environmental damages and when lawsuits against polluters must be filed.

Q: The U.S. Supreme Court decided a case, *CTS Corp. v. Waldburger*, in June concerning toxic torts, environmental damages and when lawsuits against polluters must be filed. Lawsuits regarding water contamination are nothing new. Why is this ruling significant?

A: In this case, the U.S. Supreme Court accepts a maximum time period in which a lawsuit can be filed against a polluter after the pollution event, even if the pollution isn't discovered until after the maximum time period to file the lawsuit. The result respects a state's right to adopt a state law that limits citizens' ability to file lawsuits against polluters.

Q: What deadlines does the Superfund law set for filing an environmental lawsuit?

A: The federal Superfund law about hazardous substances and wastes didn't provide separate authority to file a lawsuit in federal court for personal injury or property damages against a polluter. Instead, the federal law relied on existing state laws about those kinds of pollution damage lawsuits. The federal law does include a specific statement to say that personal injury or property damages lawsuits filed under state law caused by hazardous substances pollution must be filed within the statute of limitations period prescribed by state law, but with a slight twist. The federal law also said that the time frame to file a lawsuit starts when the person damaged "knew or reasonably should have known" that the damages were caused by the hazardous waste pollution. However, in this case, the Supreme Court noted that the North Carolina state law at issue was a statute of repose and not a statute of limitation.

Q: How does a statute of repose differ from a statute of limitation?

A: A statute of repose sets a maximum time period for when a lawsuit must be filed after an event occurs. A statute of repose applies whether or not injury or damage has been discovered. The cause of action is said to be extinguished after the statute of repose period passes. This is different from a statute of limitation where it is said that a cause of action may exist, but the lawsuit must be filed by a certain date. If landowners discover after the end of a statute of repose period that their groundwater is polluted by acts of a previous owner, the landowners lose the cause of action and will not be able to maintain a lawsuit at all, even if they file within a short time after discovering the pollution. Statutes of repose usually include a lengthy time period, such as North Carolina's 10-year period involved in this case. Statutes of repose are often seen as a way to clear out all potential liability for an event that occurred a long time ago.

Dean Couch is an attorney in the Oklahoma City office and served for almost 30 years as the general counsel for the Oklahoma Water Resources Board, the state's primary governing authority for most water matters. He can be reached at 405-235-5596 or dcouch@gablelaw.com



Q&A with The Oklahoman:

The Oklahoman talks with Stephen Schuller about how new exemptions can benefit property owners in Oklahoma.

New property tax exemption for expenditures for repairs of damage from storms, tornadoes, fires and other disasters.

Q: On the last day of this year's legislative session, the Legislature passed House Bill 3188 that provides a significant tax benefit to Oklahoma property owners, and which carves out a property tax exemption for expenditures for repairs of damage from storms, tornadoes, fires and other disasters. How does HB 3188 change the law?

A: Under the Oklahoma Constitution, property that is subject to ad valorem taxes is assessed at a percentage of its fair market value as determined by the county assessor. But because of a 2012 constitutional amendment, that valuation may increase by no more than 5 percent each year or 3 percent for agricultural lands and properties qualifying for the homestead exemption. The 5 percent cap does not apply if, during the previous year, the property is sold or transferred to another owner or if improvements are made to the property. House Bill 3188 changes the definition of "improvements" to specifically exclude repairing damage to a structure caused by weather (rain, winds, tornadoes, hail), fire or any other "natural disaster" or event (earthquakes come to mind nowadays), even if the repairs were funded by insurance proceeds. This means "improvements" of that nature can't be used to exceed the 5 percent cap.

Q: What constitutes an improvement and how does that change under this new law?

A: An improvement is defined by statute as a "valuable addition" that's more than simply normal repairs, replacements, maintenance or upkeep. Before HB 3188, that meant essentially that any changes or "improvements" to the property that added to its value are considered in the county assessor's valuation for property tax purposes. The new law carves out a specific exception for repairs of damage from storms, tornadoes, fires and other disasters unless new square footage is added.

Q: Does HB 3188 apply to commercial properties or only residential properties?

A: The new law applies to all real property — business and residential.

Q: How does this new law benefit a business that suffers facility damage?

A: If a building or other structure is damaged by any of the events previously discussed, the property can be repaired without risking a property tax increase that would result from the repairs' constituting an "improvement" of the property. Under prior law such "improvements" would have allowed the valuation increase for property tax purposes to exceed the 5 percent cap.

Q: If a business adds additional space during the rebuild, how is that new space assessed?

A: If the square footage of the structure is increased, then the county assessor is authorized to take the additional square footage into account in determining the increase in the value of the property. But the county assessor has to consider the additional square footage separately from the rest of the structure; the rest of the structure is still limited to the 5 percent valuation increase mandated by the constitutional amendment.

Stephen Schuller is an attorney in the Tulsa office and has represented clients in all aspects of the acquisition and sale of real estate, oil and gas properties and investments, and other major business assets. He can be reached at 918-595-4800 or sschuller@gablelaw.com

GableGotwals Welcomes Two New Associates to the Firm



Joshua Merrill



Michael Lambert

Joshua Merrill and Michael Lambert joined GableGotwals in September upon completion of law school. Josh's primary focus will be on transactional law in the Tulsa office, while Michael will focus his practice on general litigation in the Oklahoma City office.

Prior to joining GableGotwals as an associate, Josh served as a summer associate with the Firm. Prior to that, Josh worked as a contracts law clerk for the University of Oklahoma College of Continuing Education and a teaching/research assistant at the University of Oklahoma College of Law. Josh received his J.D. from the University of Oklahoma College of Law in May 2014 after graduating from Oklahoma State University with a BS in Business Administration and Accounting in 2011. While in law school, Josh served as the managing editor of the American Indian Law Review and on the Board of Advocates.

Michael graduated magna cum laude from the Oklahoma City University School of Law in May 2014 after receiving a B.A. in Political Science from the University of North Texas. While in law school, Michael was a member of the OCU Law Review's Articles Committee, served as a judicial extern for the Oklahoma Supreme Court, and received the J. William Conger Distinguished Graduate Award. He also worked as a student instructor teaching a review course in civil procedure to first-year students. Michael was a member of Phi Delta Phi and volunteered for a number of organizations including Oklahoma Legal Aid's "Make-A-Will" Clinic.

GableGotwals is a full-service law firm of over 90 attorneys representing a diversified client base across the nation. Though Oklahoma-based, our connections and reach are global. Fortune 500 corporations, entrepreneurs, privately owned companies, foundations and individuals entrust us every day with the stewardship and strategic management of their legal challenges. GableGotwals is well known for its high quality legal services provided by a highly experienced group of litigators and transactional attorneys who have been recognized by Chambers USA, Best Lawyers In America, Oklahoma Super Lawyers and a number of federal, state and county bar associations.

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