



**“MY BUSINESS™”**



By Laurna A. Jozwiak

You've spent years building up your business. You've developed your product or service, come up with the perfect name for it, and spent lots of time, money and effort making that name a recognizable and valuable business asset. You'd do anything to protect that effort, and stop someone else from capitalizing on your hard work, right?

If so, you need to seriously consider protecting your business's trademarks through federal registration with the U.S. Patent and Trademark Office (USPTO).

Common law trademark rights

develop with actual use of the mark in commerce, and do provide some trademark protection, even without federal registration. Why bother to register your mark?

Federal registration provides a number of benefits: 1) constructive notice, across the nation, of the trademark owner's claim; 2) evidence of ownership; 3) a method for trademark owners to use the courts to enforce their rights; and 4) the right to use the ® mark in connection with your trademark. Owners may use ™ and ℠ after their trademark or service mark, but only federally registered trademarks can use ®.

Despite the benefits of federal registration, not every trademark qualifies. First, the mark must be available. Second, the

mark must be protectable. Not every mark can be registered, such as marks that are merely descriptive, generic or are simply a surname. And third, the mark must be used in interstate commerce, or you must have a good faith intent to use the mark in interstate commerce soon.

Marks not used in interstate commerce may be registered with the state but do not qualify for federal registration.

Once a mark is registered, the work is not over. One of the most important aspects of trademark registration is keeping the mark alive. You must take steps between the fifth and sixth year after registration, again between the ninth and tenth year after registration, and then every ten years thereafter

to maintain your registration.

FOS can assist you with your trademark, including “clearing” the mark to see if it is available for registration; deciding how best to protect the mark; filing the application and communicating with the USPTO regarding any proposed changes or challenges; and making sure that your trademark **remains** valid.

**COMMON SYMBOLS**

™ = TRADEMARK

℠ = SERVICE MARK

® = REGISTERED TRADEMARK



**FOS ON THE MOVE**

FOS shareholder Mike Hanrahan will speak on the topic “Pretrial Discovery Response to *Daubert* Challenges” at the annual Wisconsin Bar Association Litigation, Dispute Resolution and Appellate Practice Institute, on June 12, in Wisconsin Dells.

FOS shareholder Greg Ricci will be a panelist at the Milwaukee Bar Association's June 29 program titled “LLCs: From Formation to Special Uses”.

FOS shareholder Matt O'Neill was a panelist at the April 19, Wisconsin Department of Justice, presentation titled “Current Issues in Campaign Finance Law.” On April 26 Matt presided as president at the Eastern District of Wisconsin Bar Association's Annual Meeting.

FOS shareholder Al Young was a panelist at an estate planning seminar hosted by Town Bank on May 17.

FOS attorneys frequently speak to small and large groups of lawyers and non-lawyers, regarding matters involved in their respective practice areas. If you are interested in having an FOS attorney speak to your group, contact your FOS attorney at (414) 273-3939.



## NEW LANDLORD/TENANT LAWS—BE FOREWARNED AND FOREARMED



By Francis  
J. Hughes

Many FOS clients own rental properties, and are, therefore, subject to Wisconsin’s landlord/tenant laws. In March, several provisions of those laws were significantly changed. These changes, effective April, 2012, will have immediate impact.

Some changes favor landlords. A municipality may no longer impose a moratorium on evictions. This negates ordinances that, for example, prevent evictions over the holidays, or during the broader winter season.

Where a tenant abandons the premises, a landlord may immediately dispose of the tenant’s abandoned property (with certain exceptions), so long as he has given written notice to the tenant, when the lease (or renewal) is entered into, of such intent.

In addition, a landlord who has filed an eviction action for a tenant’s failure to pay rent can now accept past due rent without having the eviction action dismissed solely because of that acceptance.

Where a tenant holds over after

the termination of the lease, a landlord is now entitled to receive holdover damages, of at least double the daily rent, for the holdover period until the tenant vacates the premises.

Other provisions impose additional restrictions on landlords. The harshest provision states that practices in violation of the landlord/tenant law may constitute unfair methods of competition or unfair trade practices.

This is a major potential pitfall, since this could subject a landlord to double damages and attorneys fees, even for a “minor” violation, such as a mis-drafted or mis-served notice.

Another change is that a landlord must now provide a tenant, upon occupancy, with a standardized form, for an itemized description of the property’s condition, which the tenant must return within 7 days.

The law is confusing as to whether both the landlord and the tenant must complete the form. For now, the best practice would be for the landlord to complete it and the tenant to note any differences within the 7 days.

The new law also requires a landlord, before entering into a lease and accepting a security deposit or earnest money, to disclose building or housing code violations. This requirement applies if the violation is one of which the landlord has actual knowledge, affects the leased property or a common area, presents a significant threat to the tenant’s health or safety, and has not been corrected.

The new law also simplifies the timing for returning a security deposit, and specifies what a landlord can withhold from the deposit.

One section of the new law allows the court to hold that, if one provision of a rental agreement is unenforceable, the remaining provisions may be enforced. Previously, if one provision was unenforceable, the entire agreement was void.

This is potentially inconsistent with the new law’s codification of an administrative rule which prohibits certain specific agreement provisions, now including termination after a crime on the leased property.

Under this latter provision, if a lease contains an illegal provision, the entire lease is voided. The courts will likely deter-

mine how these two laws intersect, absent an amendment to clarify them.

While most of the changes affect residential tenancies, the following also apply to commercial leases: the moratorium on evictions, severability of agreement provisions, disposition of abandoned property, withholding and return of security deposits, damages for holdover tenants, acceptance of past due rent, and the making of statutory violations an unfair practice.

Given the quickness with which the new law was passed, it is likely that further amendments will be made as inconsistencies or omissions are discovered as the law is implemented.

If you have existing tenancies which may be affected by the new law, contact FOS for help in navigating the “dos and don’ts” of the new landlord/tenant laws.

Don’t forget Federal and State offices will be closed Wednesday, July 4th, and Monday, September 3rd (Labor Day). FOS will also be closed those dates.

## WISCONSIN LAW JOURNAL HONORS DIANE SLOMOWITZ



FOS congratulates shareholder Diane Slomowitz for being named one of the 2012 Women in the Law by the *Wisconsin Law Journal*. Diane will be honored at a dinner to be held June 21 at the Pfister Hotel.

Diane specializes in appellate motions and briefs, legal research, and legal writing. If FOS has represented you as to potential or actual litigation, Diane has likely researched and/or drafted motions and briefs on your behalf. In addition to her FOS duties, Diane writes a regular column titled “Briefs for the Brief Writer” for the *Wisconsin Law Journal*.

## EMPLOYMENT DISCRIMINATION CLAIMS REMAIN A VIABLE THREAT TO EMPLOYERS



By Diane  
Slomowitz

You're finishing a staff meeting, when one of your managers says, "Isn't that new discrimination law great? Employees can't sue us anymore except for back pay. Once the agencies finish, that's it. What a relief!"

Not so fast. Governor Walker did recently sign into law a bill which limits an employee's ability to sue for discrimination in state proceedings. That, however, is the beginning, not the end, of the story.

Typically, an employee claiming discrimination files a complaint with the federal Department of Labor and/or the Wisconsin Department of Work-

force Development. After investigating the claim, the agency issues a determination letter as to whether probable cause exists for the claim. Agency rulings can be challenged in the courts.

Historically, employees have sought back pay, compensatory damages and punitive damages from the employer.

The new law changes the location, but not necessarily the substance, of an employee's claim. Under the law, an employee can no longer obtain compensatory or punitive damages in state proceedings.

The employee, however, has not lost those remedies entirely. If the employee wants to seek those remedies, the employee must now go through the federal system.

What is the new law's practical effect? It will increase the number of federal discrimination claims and decrease the number of state claims.

However, the federal courts generally are more expensive and take longer to resolve claims than the state courts. So, an employee claiming compensatory and punitive damages will face a more complicated process in the federal system.

In addition, while scores of counties exist in which a state claim may be filed, there are only two Wisconsin federal districts, the Eastern and Western Districts (the Eastern District having two divisions).

So, for many parties, bringing or defending a federal claim, which may end up in federal court, will not be as convenient

as proceeding through the state.

Time will tell whether the new law will reduce discrimination claims seeking compensatory and/or punitive damages in addition to back pay.

One thing, however, is certain. Discrimination claims remain a potential threat to employers. Prevention, through sound policies and procedures, is still the best course.

If you are involved in a discrimination action claim, FOS stands ready to help.

### FOS WELCOMES KAREN NIMZ



FOS welcomes legal assistant Karen Nimz. Karen previously worked with FOS of counsel attorney Ken Barczak.

Experienced in all facets of law firm support services, Karen has particular expertise in the areas of probate and estate planning as well as corporate legal support. Karen is a notary public, and as such, she often assists with the execution of estate planning and other related documents.

The next time you meet with your FOS counsel, stop by and say hello to Karen.

## WALK OR RUN FOR KAREN FOX

On September 23, 2012, FOS will participate in its first annual walk/run in Milwaukee's Susan G. Komen Race for the Cure. The FOS team's nickname is "The Karen Fox Trotters" in honor and memory of our dear Karen Fox.

The Komen Race for the Cure has been a major player in the fight against breast cancer for over 30 years. In addition to funding medical research, the organization provides education and support for those diagnosed with, treated for and surviving the disease. The Komen Foundation also provides support for those caring for someone diagnosed with or otherwise impacted by breast cancer.

Help us salute Karen by participating in this worthwhile event. As Karen would say, "Run, walk, skip...Just smile while you're doing it!" To join or support our team, go to [www.komenmilwaukee.org](http://www.komenmilwaukee.org). Search for "The Karen Fox Trotters" team in the "Komen Race for the Cure" area of the website, or call Judy Janetski at (414) 273-3939 for more information.

If there is a topic you would like to have covered in this Newsletter, please e-mail [info@foslaw.com](mailto:info@foslaw.com) or contact Judy K. Janetski at [jkjanetski@foslaw.com](mailto:jkjanetski@foslaw.com) or call Judy at (414) 273-3939.





622 N. Water Street  
Suite 500  
Milwaukee, WI 53202  
Phone: 414-273-3939  
Fax: 414-273-3947  
www.foslaw.com

Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you have any questions about these articles or any other legal topics, please call us at (414) 273-3939.

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## PROTECT YOUR IDENTITY BEFORE IT'S SOMEONE ELSE'S

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*By Peter J. White*

Imagine that you're about to purchase a ticket for a cruise you've been waiting for all year, only to have your credit card denied because it's over the limit, even though you don't remember making any purchases.

Or, you're about to apply for a loan for that dream home, only to be denied by the bank, because your credit score is inexplicably low.

These surprising and head-scratching denials point to one thing: identity theft.

The Federal Trade Commission estimates that as many as 9 million Americans have their identities stolen each year. Identity theft can take many forms. Identity thieves may rent an apartment, obtain a credit card, or establish a telephone account in your name by using personal information without your permission.

There are several common ways that thieves obtain information to steal an individual's identity. They rummage through trash looking for bills containing personal information. They steal credit or debit card numbers by using a special storage device when processing a card. They pretend to be financial institu-

tions and send emails to get an individual to reveal personal information.

Once personal information is obtained, identity thieves use it in any number of ways. In some instances, they open new credit card accounts and do not pay the bills. They open bank accounts and write bad checks. They clone debit cards and make withdrawals from the real owners' accounts.

Indicators of identity theft include unexplained debts and accounts, inaccurate information on credit reports, failing to receive bills, being denied credit, and receiving calls from debt collectors for purchases you didn't make.

To help protect your identity, regularly monitor your accounts for anything out of the ordinary. Refrain from providing any personal information over the phone or to people you do not know. Shred documents containing personal information before throwing them away. Be wary of people behind you at an ATM, and shield your PIN from their view.

These methods do not guarantee that your identity will not be stolen. If you think you have become a victim of identity theft, don't wait until serious financial and emotional damage has been done. Contact FOS to help reclaim your life.