

The Dilemma of Employee Job References

In today's world, an employer must carefully screen job applicants and, to the extent possible, check job references to ensure that a potential applicant is not a danger to third-parties and/or co-workers. Thorough investigation of job applicants is required by Florida Statutes to ensure oneself from liability for negligent hiring or retention. However, most employees, to protect themselves from liability for negative employee references, provide as little information as possible. This month's column attempts to provide some guidance to employers in furnishing employee references.

As a general rule, an employer is not required to furnish a reference to a former employee's potential employer. Where, however, an employer furnishes a reference that is "knowingly false," the employer may be held liable for defamation and/or tortious interference with business relations. Therefore, if an employer does choose to provide such references, it is important to follow a uniform policy. For instance, the employer may elect to only provide the most basic information to prospective employers such as: dates of employment, job title(s) and/or salary. In addition, the employer should designate one person at the business to provide such references and other employees should be trained to refer all reference requests to the designated person. The designated reference person should be concerned not only with the content of the reference, but also the manner in which the information is relayed (for instance, a negative tone of voice may be

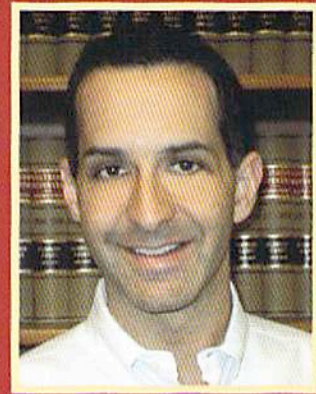
more harmful than a negative reference). In order to further insulate itself from liability, the employer may also wish to have employees sign, either at employment inception or during the exit interview, a waiver of liability form which allows the employer to furnish references and other information to prospective employers.

If an employer chooses to furnish more than the very basic information previously set forth the employer must be prepared to provide all of the good and bad information that it possesses on the former employee. This is required to avoid employer liability for a misleading or untruthful reference. For instance, employers have been held liable where they fail to disclose the violent nature of a former employee and that employee later engages in violent behavior at his subsequent employer to the detriment of co-workers or third-parties.


Finally, employers should be aware that they were given some protection, by the Florida Legislature, with regard to employee references. Specifically, Florida Statutes § 768.095, provides that an employer will be immune from liability for its provision of employee references so long as they are not knowingly false or in violation of the Florida Civil Rights Act. Notwithstanding this statute, an employer should still exercise caution in furnishing references since whether a statement was knowingly false could be subject to interpretation. In addition, an employer should be especially cautious as to the type of reference provided where a former employee

has filed an administrative charge (with the EEOC or otherwise) complaining of civil rights violations.

As usual, this column addresses general issues that may vary based upon your business. Any detailed questions about your specific situation should be addressed with legal counsel.



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Commercial Real Estate Outlook

By Mark L. Huard

The collective scramble for commercial real estate properties has continued into the fourth quarter of 2004. The flight of capital from equity markets, along with historically low interest rates has fueled demand for income producing properties. Caught in the squeeze is the small business owner seeking to relocate his company to owned instead of leased space.

With a favorable lending environment, business owners have been able to pay the record high sales prices for facilities. Interest rates, however, seem poised to increase during 2005 and beyond. What will the impact on the small business owner's ability to move into his or her own building?

The 5 year US Treasury Bond Yield, is a good benchmark to measure potential increases to loan rates. It is anticipated to increase from its current level near 3.5%, to near 5.0% by the end of 2005. This could equate to an almost 25% increase to interest cost on an annual basis.

Based on financing 80% of the cost of a \$1,000,000 purchase (i.e. 4,000 +/- SF of office space), with a 5 year fixed rate loan and 20 year amortization, rates could be at 8.0% vs. 6.5% in the current market. This would increase monthly Principal and Interest payments from \$5,964/month to \$6,691/month.

Most commercial lenders utilize a ratio of debt service coverage as the primary means of qualifying borrowers, which could mean fewer buyers may find themselves eligible to borrow. The good news is a downward shift in the demand curve of buyers may result in a moderation of price increases for office/warehouse space.

Additional barriers to entry exist, most notably a \$200,000 down payment for our example above.

If you are considering the purchase of owner occupied property, consult you CPA to determine tax benefits that may further maximize your company's cash flow. It is also prudent to consult with your attorney to determine the appropriate ownership structure.

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