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## Newsletter

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### Philadelphia's New Fair Criminal Record Screening Standards Act

*By: Michael Mattioni, Esquire*

On December 15, 2015 Mayor Michael Nutter signed a bill amending Philadelphia's Fair Criminal Record Screening Standards Act ("Act") which was enacted in 2011. The Amendments were passed to reduce barriers to unemployment for citizens seeking to return to employment after convictions for crimes. The Act, which is often referred to as the "Ban the Box" law prohibits employers from inquiring into the criminal backgrounds of prospective employees until a conditional offer of employment has been made. Employment applications cannot ask any questions regarding the criminal past of prospective employees. The goal is to require employers to consider the whole person when offering employment.

Among other requirements, an employer cannot automatically exclude any applicant with a criminal conviction from a job or class of any jobs. A prospective employee may only be excluded from employment based upon an individualized examination of the position the prospective employee is seeking and a determination that the applicant would pose an unreasonable risk to the operation of the business, or to co-workers or customers and that exclusion is compelled by business necessity. An employer must consider an applicant's specific record and the particular job sought and conduct an individualized assessment of the risk presented by the employee.

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### In this Newsletter

**Philadelphia's New Fair Criminal Record Screening Standards Act**

~ and ~

**The Redskins, The Slants, and Trademark Law**

~ and ~

**New Year's Resolution: Get a Will**

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The Act limits consideration of criminal record information to the past seven years, excluding periods of incarceration. In the event an applicant is rejected for employment based upon criminal record information, the employer must provide a copy of the criminal history report and allow the applicant ten days to provide evidence of inaccuracy or an explanation regarding the criminal record.

The Philadelphia Commission on Human Relations ("Commission") is authorized to administer and enforce the Act. The Commission is authorized to promulgate regulations in furtherance of its duties.

Any person who believes they have been injured in violation of the Act shall have 30 days from the violation to notify the Commission. The Commission is provided specific powers to redress such violations. These powers include ordering:

- An Order requiring the respondent to cease and desist such unlawful practice;
- An injunction or other equitable relief;
- Payment of compensatory damages;
- Payment of punitive damages, not to exceed \$2,000.00 per violation;
- Payment of reasonable attorneys' fees.

If within one (1) year after the filing of a Complaint with the Commission, the Commission notifies the applicant that it is not acting, the applicant shall be permitted to bring an action in Court. The action must be brought within two (2) years after the date of notice from the Commission dismissing the Complaint. A Court shall be permitted to grant compensatory and punitive damages, reasonable attorneys' fees, court costs and such other remedies as the Court may deem appropriate.

The Act also requires employers to post a summary of its contents in a conspicuous place or an employer's website and premises where applicants and employees will be most likely to notice and read it. The Act, as amended, will take effect March 15, 2015.

The Act creates new requirements for all employers when seeking to hire new employees. Care must be taken to insure compliance with the Act and meeting the requirements of employers when seeking to hire new employees. All employers in Philadelphia must comply with

**Our Attorneys:  
Presentations, Seminars  
and Honors**

On Thursday, March 31 from 1 - 2:30 pm, Michael Mattioni and Josh Kobylarz will be presenting a webinar on Pennsylvania Zoning and Land Use. During this presentation, attendees will learn about the current issues impacting Pennsylvania land law.

This webinar will focus on the zoning appeals process: how to start, when to appeal, who has the right to appeal and contest an appeal, and presentations to zoning boards. Other issues include the importance of counsel and other professionals that are crucial to a successful zoning application and appeal.

***If you have any questions or would like to talk to Michael or Josh about this subject, please email at [mmattioni@mattioni.com](mailto:mmattioni@mattioni.com)***

the requirements of the Act; there are no exceptions.

This article is a summary of some of the provisions of the Act. The Act has many requirements for employers and employees. Anyone with questions regarding the Act should meet with a professional, as every situation is different.

*Michael Mattioni, Esquire is President of the law firm Mattioni, Ltd., where he practices in the tax, business, real estate development, land use and zoning areas of the firm. If you would like more information about this article, please contact Michael at [mmattioni@mattioni.com](mailto:mmattioni@mattioni.com)*

### The Redskins, The Slants, and Trademark Law

*By: Josh Kobylarz, Esquire*

Even if you are not a fan of the NFL, you are probably familiar with the ongoing dispute over the Washington Redskins' name. In July 2015, a United States federal district court judge ordered the cancellation of the team's trademark registration because the name offends Native Americans and is ineligible for protection under the Lanham Act. The issue is currently before the United States Court of Appeals for the Fourth Circuit. But let's take a step back.

The Lanham Act governs the registration of trademarks, which provide various legal rights to trademark holders. Some of the most recognizable trademarks worldwide are McDonald's golden arches and Nike's "swoosh." Trademark protection prevents other companies from using those symbols to piggyback off of the reputation of other companies and provides legal remedies in the event that other companies do it anyway. However, Section Two of the Lanham Act excludes the registration of marks that are "scandalous, immoral, or disparaging," including marks that most of a referenced group perceive as disparaging a religion, nation, ethnic group, belief system or the like. The federal judge who ordered the cancellation of the Redskins trademark used Section Two to justify the mark's cancellation.

In a similar, contemporaneous case, The Slants, an Asian-American rock band, challenged the denial of a trademark for its band name, which was also denied based on Section Two of the Lanham Act. Unlike the Redskins, The Slants received a favorable ruling in the United States Court of Appeals for the Federal Circuit, which held that the exclusion of "disparaging" marks from trademark protection

Anna Haslinsky served on the Publicity Committee for the Young Friends of the Art Museum Pop Party event that was held on February 27.

This event raised \$79,000 that will benefit many programs in the field of art. About 450 young professionals attended in celebration of "International Pop" at the Museum of Art, the only East Coast venue for the exhibition, here until May 15.

Anna graduated cum laude with her BA in Art History in 2011 from Roanoke College, which is why she continues to stay dedicated to this important cause.

violated the First Amendment. The court held that the First Amendment forbids the government from denying registration because it finds the speech likely to offend others. Moreover, although it does not ban speech, as people are permitted to use unregistered marks, Section Two discourages people from using disparaging marks, and thereby suppresses speech, by depriving them of important trademark protections.

There are several other legal battles presented by this case, including: whether denial of trademark protection is "viewpoint-based," meaning whether the government is denying protection because it disapproves a message; whether the speech is "commercial speech" or "government speech"; whether trademark protection is a government subsidy; whether the government can exclude disparaging marks because it does not want to be associated with them; and whether the government has a compelling interest in fostering racial intolerance.

The court found in favor of The Slants on all of these issues. It found that Section Two permits the government to deny trademark protection based on messages it disapproves and grant trademark protection based on marks it approves, making it viewpoint based. The government argues that its denial of trademark protection is based on national consensus, and is therefore neutral. The court shot down the government's "commercial speech" and "government speech" arguments by stating trademarks are denied based on their expressive qualities, not commercial nature, and that providing trademark protection does not mean the government "endorses" a product. For example, providing trademark protection for Coke and Pepsi does not mean the government prefers those brands of cola over others. The court likened this to copyright protection, which it does not consider government speech. The court argued that providing copyright protection to Fifty Shades of Grey does not make the book "government speech" nor do citizens consider it such.

The court found that trademarks are not a subsidy because the government is not seeking to portray or communicate any message by registering trademarks. According to the court, the government's desire not to be associated with disparaging remarks is not a legitimate interest to be protected. Lastly, with regards to racial intolerance, the court held that the government has an interest in combating racial discrimination but not an interest in fostering racial tolerance that is strong enough to permit suppressing

## MEET OUR ATTORNEYS

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speech.

Ultimately, the Federal Circuit's opinion is not binding on the Fourth Circuit, where the Redskins appeal is pending. Thus, the Fourth Circuit could decide that Section Two is constitutional and uphold the cancellation of the Redskins' mark. Ultimately, the Supreme Court will probably make the final call sooner rather than later because the United States government will likely ask the Court to make a ruling. One thing is for sure, the battle will continue into the foreseeable future. Should names like the Redskins and The Slants be denied trademark protection; what do you think?

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### New Year's Resolution: Get a Will

*By: Jennifer Popelack, Esquire*

It's a new year and with that comes an opportunity to sit back and evaluate your estate plan (or lack thereof). It's a subject no one likes to talk about. One of the most common reasons I hear from my clients as to why they don't have a Will is "I don't like to think about my death." Though my personal favorite is "I'm not going to be here anyway, my family will just have to figure it out." Unfortunately, your death is inevitable and making a Will is not so complicated that you should totally write it off. Your death will be hard enough on the ones you leave behind, so why not spend a little bit of time now to make it a little easier for them then.

Let's first examine what happens if you don't have a Will. If you die without a Will (known as intestacy), the law of the State in which you were domiciled at the time of your death will dictate who inherits your estate. The common misconception that if you die without a Will then the State will get all of your money is completely untrue. The only way the State will get your assets is if you have absolutely no blood relatives at your death (though the State may of course get some of your money via death taxes).

Unlike what many people believe, your spouse does not automatically inherit your entire estate upon your death. Instead, if you die while married, have no children and have one or two of your parents living, your spouse and parents will both inherit a portion of your estate. If you die while married and you or your spouse have children that are not

## PRACTICE AREAS

- ADMIRALTY AND MARITIME
- BUSINESS, FINANCE, AND CORPORATE
- CIVIL LITIGATION
- EMPLOYMENT AND CIVIL RIGHTS
- ENVIRONMENTAL
- ESTATE PLANNING, TRUSTS, AND ESTATE ADMINISTRATION
- INSURANCE
- LONGSHORE & HARBOR WORKERS' COMPENSATION ACT
- WORKERS' COMPENSATION CLAIMS
- REAL ESTATE
- PERSONAL INJURY

children of that relationship, your spouse will only inherit a portion of your estate. In the circumstance where you are married with children and neither you or your spouse have children from another relationship, your spouse will, by law, inherit your entire estate if you die without a Will. However, nowadays this situation is becoming less and less common due to high rates of divorce and births out-of-wedlock.

Next, let's consider what actually goes into a Will. There are two main subjects: (1) disposition of your assets; and (2) the filling of important positions. The disposition of your assets tends to be the easier part to decide. Do you want to leave everything to your spouse? If you're not married, are you leaving everything equally to your children? If you have an estranged relationship with a child or other relative, are you leaving them less or nothing at all? In filling important positions, you need to determine who you want to name as your Executor (the person who administers your estate and sees to the collection of your assets, payment of your debts and distribution to your beneficiaries). If you have minor children, who do you want to name as their Guardian in the event that both you and their other parent is deceased? Do you want to establish a Trust for your minor children, and if so who should be the Trustee? These are all questions that must be considered in drafting your Will.

If you already have a Will, it is a good idea to revisit it every now and then, especially if you have had any life changing events recently, including marriage/divorce, birth of a child or grandchild, death of a relative who is named in your current Will, or changes in your wealth.

Regardless of your life circumstances, you should consider meeting with an attorney to draft a Will, whether it be simple or complex, to insure that your loved ones are cared for upon your passing.

*This article provides a broad and general overview of estate planning. It does not provide legal advice. Anyone seeking to establish or revise his or her estate plan is encouraged to seek advice from the appropriate professional as every situation is different.*

*Jennifer is a Senior Associate in the law firm of Mattioni, Ltd., where she concentrates her practice in estate planning, estate administration, commercial litigation and real estate. If you would like more information about this article, please contact Jennifer at [jpopelack@mattioni.com](mailto:jpopelack@mattioni.com)*

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