



Chris Griswold, P.C.  
A Business Transactions Firm

# NEWS FROM THE FIRM

November 2009

## Memberships

- OK, TX & American Bar Associations  
*Licensed in all OK & TX State Courts*
- International Council of Shopping Centers
- Commercial Real Estate Council of Oklahoma City
- Urban Land Institute
- Oklahoma Renewable Energy Council
- CCIM Chapter of Oklahoma

## Links & Resources

- Commercial Real Estate Council of OKC  
[www.crecokc.com](http://www.crecokc.com)
- International Council of Shopping Centers  
[www.icsc.org](http://www.icsc.org)
- Urban Land Institute  
[www.uli.com](http://www.uli.com)
- Oklahoma Renewable Energy Council  
[www.ocgi.okstate.edu.orec](http://www.ocgi.okstate.edu.orec)

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## Message from Chris....

**Loan Documents.** The first time that most commercial transactions become written words on a page, or, in laymen's terms, "*real*," is in the loan documents. Up until that time, the more important terms, conditions and potential parties to the transaction have manifested themselves only as a loose myriad of ideas, concepts and thoughts. Accordingly, loan documents act as one of the first available tools that the parties, the attorneys, the investors and others can use to analyze the profitability, efficacy, and, in some cases, even the legality of a deal. Read more below...

## Using Loan Documents To Avoid Errors & Oversights

Some people view the process of loan document preparation as a mere "required step" in the process. However, it's not as perfunctory as it is prologue for a good, sound and well-planned business transaction. *As a commercial transactions attorney who regularly prepares loan documents for deals, I'd like to show you how to use the information contained within loan documents to avoid certain errors and oversights....*

**Borrower Liability & Bank Protection.** Sometimes when preparing loan documents, I notice that the document prep file sets forth the borrowing entity as a "real person" as opposed to some incorporated legal entity (i.e., an LLC, a C-Corp, etc...). While this may sometimes be desirable, oftentimes it isn't for either the borrower **or the bank**. Why? As regarding the borrower, if you take out a loan in your personal name, you're personally liable for that loan. Just because you "*intended*" to incorporate later on, or, in the alternative, you had "*agreed*" with your other business partners that the entity you all *will form in the future* would ultimately be responsible for loan repayment - it doesn't change the fact that you're personally liable. As regarding the bank, even though it has a personal guarantee from the borrower (which is redundant protection since the borrowing entity is the same individual), it still leaves the bank worse off. Why? The bank won't have the incorporated entity (or any of the entity's assets, including the other business partners' assets) on the hook for repayment.

**Business Continuity.** The life of the loan is probably for a good number of years. However, assuming you have already incorporated some legal entity prior to applying for the loan, does your operating agreement or bylaws address the death, departure or disassociation of any of your business partners? If not, you may be out of business or the bank may have no meaningful collateral - *or probably both*.

**Legality.** Sometimes, having an incorporated legal entity for a certain type of business isn't even legal. Example: In Oklahoma, a liquor store or wholesale distributorship cannot be owned by *corporations (S or C-Corp), LLC's, business trusts or secretive partnerships*. Rather, they must be owned by real persons, family trusts and non-secretive partnerships. FYI: The ABLE Commission has recently brought suit against approximately 25 entities regarding this little known point of law. Don't let this happen to your business or your bank.

## What My Clients Are Saying....

"Chris has always been proactive and professional. He takes the time to work with us and tailors his approach to our situational needs. My favorite thing about Chris: he will let me know if there is an easier and less expensive approach to a problem. We look forward to working with him well into the future..."

*Carl Milam / Western Concepts Restaurant Group / Oklahoma City, OK*

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