

## PACIFIC BUSINESS NEWS

# THE BUSINESS OF LAW

EXPERT LEGAL ADVICE FOR HAWAII'S SMALL BUSINESS

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PACIFIC BUSINESS NEWS

### TOPIC

#### Simple Things Make A Difference - Like organizing important documents.

Disability or death is often sudden. During serious illness, time is precious – it's no time to finally get organized. Financial disarray can prove costly, so prepare in advance.

Your family will need to know what income you receive and what bills to pay. They don't need old records – bills paid long ago such as utilities - nor old statements for closed accounts or cancelled checks.

Eventually, your family needs to know what you currently own and who you owe, and locate all documents pertaining to both. These are the important documents, so separate them.

Records of things you once owned are history. You can keep them, but mark them worthless. If your family finds evidence of something you sold long ago - an insurance policy, stock certificate, property in Florida - what do you think they will do? They will spend hours (and money) looking for value and finding none.

Worse, if current and historic documents are mixed, items of real value will be missed and escheat to the state.

Professional fees compound with disarray. Your family will hire professionals to prepare tax returns or an inventory to file with authorities. Getting it right is important, and amending filings for after-discovered assets is costly.

When you are gone, we cannot ask you questions. Put what your family needs to know to paper, and make what is important, obvious.

### TOPIC

#### Does Hawaii's Civil Union Act require benefit plans to cover parties to civil unions if they cover spouses?

The answer isn't clear. Section 4 of Act 444 provides that, "A party to a civil union shall be included in any definition or use of the terms "spouse", "family", "immediate family", "dependent", "next of kin" and other terms that denote the spousal relationship, as those terms are used throughout the law."

Let's assume Act 444 isn't vetoed and becomes law. It's clear that Section 4 would require any use of "spouse" in the Hawaii Revised Statutes to include "party to a civil union." It is also fairly clear that any use of "spouse" in a Hawaii government benefit plan would also have to include, "party to a civil union". But it is not clear that Section 4 requires (or may require) the term "spouse" in an ERISA benefit plan (or a non-ERISA benefit plan that is a church plan) to include "party to a civil union."

Suppose an ERISA benefit plan does not define, "spouse"? Then what? Does the benefit plan follow Act 444 or the Federal Defense of Marriage Act (which limits "spouse" to opposite sex partner in a marriage)? If the administrator of the plan has retained the discretion to interpret the plan, then there is a good argument that it is up to the plan administrator to follow either Act 444 or DOMA. On the other hand, if the benefit plan provides a definition of "spouse" (perhaps including indirectly, by having adopted either Hawaii or Federal law for interpretive purposes), then there is a good argument that that definition controls, regardless of the definitions in Act 444 and DOMA. Are the potential conflicts among benefit plans, State law, and Federal law a bad thing? Not necessarily—any major social change involves testing issues like this.

### TOPIC

#### What To Know Before Making A Campaign Contribution

Now that campaign season is upon us, you may be asked to contribute to various candidates running for state office. Here are five things you should know before writing that check or using that credit card. You should also review the Campaign Spending Commission's website at [www.hawaii.gov/campaign](http://www.hawaii.gov/campaign) for further information.

**1. Contribution limits.** Generally \$2,000, \$4,000, or \$6,000 per election period, depending on the office being sought. An election period is the two or four-year period between general election days, depending on the office being sought. Contributions made by a company that an individual controls may also be counted towards that individual's limit.

**2. Prohibited contributions.** Foreign nationals and foreign corporations may not contribute, and neither may individuals or companies with certain contracts with the state or county. False name and anonymous contributions are not permitted.

**3. Public disclosure.** If you contribute more than \$100 in the aggregate to a candidate, your name, address, occupation and employer will be publicly disclosed on the candidate's report.

**4. Reporting requirements.** If a company contributes over \$1,000 in an election period, that company becomes a non-candidate committee and must begin filing reports with the Commission.

**5. Candidate's position.** You should check where a candidate stands on issues important to you by checking his/her website or simply asking.

### TOPIC

#### Be the Legal Expert in Your Area of Practice

Every month, Pacific Business News will publish the Business of Law page – Each column is aimed at providing expert legal advice and solutions for Hawaii's Small Businesses.

This column is formatted by way of question and answer or challenge and solution. It will specifically address an attorney's expertise in his or her area of practice. This is an excellent opportunity to be positioned as the authority as well as brand the attorney's talent and the firm's team. Be a part of this growing community of experts by contributing to this column in the Pacific Business News Business of Law page program.

**Next issue will run on July 16th. Call 955-8050 for more details and the value-based rate information.**

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UNDERSTAND HOW HAWAII WORKS

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