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Legal Briefs

Congratulations to Gabriel A. Riveros, Esq. for becoming a licensed member of the DC Bar.

We welcome Rebecca Silvia to C&B. Read about her on our website.

Mid-Atlantic AAA reports the *national* average price of gas for regular, self-serve is \$3.09 per gallon, although Maryland is seeing up to \$3.17 a gallon in some places.

In a recent letter from a new client, Mr. Barr was told: "I will definitely recommend you to anyone looking for outstanding, friendly and superb legal service." Kelly Willoughby

Legal Dos and Don'ts for Real Estate Professionals

As a licensed real estate professional you should know that as a condition to becoming and staying licensed in Maryland you must abide by the Maryland Real Estate Broker's Act (MREBA) and the Code of Ethics found in the Code of Maryland Regulations (COMAR). Both create certain legal duties and obligations that may be addressed at either the Maryland Real Estate Commission or in a court of law. This is not the same as the Maryland Association of Realtors Code of Ethics which is not law, but just additional ethical duties created by local boards and association committees. The MREBA and COMAR Code of Ethics, may also give rise to civil liability based on violations of those provisions where private litigants are concerned.

So what are these legal do's and don'ts? For starters, under the MREBA, a licensed real estate professional must refrain from (a) directly or through another person willfully make a misrepresentation or knowingly make a false promise; (b) intentionally or negligently fail to disclose to any person with whom dealing, a material fact that they knew or should have known and that relates to the property being dealt with; (c) engage in conduct that demonstrates bad faith, incompetency, or untrustworthiness or that constitutes dishonest, fraudulent or improper dealings; and (d) with actual knowledge of the violation, associate with any other licensed real estate professional in a transaction or practice that violates any provision of the MREBA.

In addition, under the COMAR Code of Ethics, a licensed real estate professional shall (a) protect the public against fraud, misrepresentation or unethical practices; (b) make every reasonable effort to ascertain all material facts and in order to fulfill the obligation to avoid error, exaggeration, misrepresentation, or concealment of material facts; (c) not be a party to the naming of false consideration in any document; and (d) protect the interests of the client and provide absolute fidelity primarily to the clients' interest.

These are just some of the legal do's and don'ts arising under the MREBA and COMAR Code of Ethics. At [COVER & BARR, LLC ATTORNEYS AT LAW](#) our attorneys are experienced real estate attorneys who have successfully represented real estate professionals with consistent favorable results. For more information about our firm, please visit our web site. [▶](#)

BARR WINS FOR WALMART!

Firm principal, John R. Barr, successfully defended a decision of the Board of Appeals of Charles County, Maryland to grant a special exception enabling Wal-Mart's Sam's Club store in Waldorf, Maryland to sell gasoline.

The decision of the Board of Appeals was appealed by a competing gasoline station. The appeal disputed, among other things, whether the studies, reports and testimony of experts were sufficient to carry the burden of proof in the special exception requirements. The appeal was particularly difficult to review because of a burdensome ordinance that requires proof of facts, prima facie determination of lack of need, and minute detail as to available facilities for motorists.

Barr had anticipated an appeal by competing businesses and was prepared to provide the Court with an exhaustive brief. The brief defended the Board's Decision and Order, both on the law and the facts as presented, parts of which were adopted by the Court in its favorable ruling for Coover & Barr's client.

CAN A MECHANIC'S LIEN BE ESTABLISHED FOR DESIGN AND PERMITTING SERVICE? IT DEPENDS! by Gabriel A. Riveros, Esq.

The once settled law said that a design professional must satisfy two (2) requirements in order to be able to assert a lien for work furnished. First, plans must have been **(A) prepared** by the design professional; and **(B) supervised** by the design professional for work furnished for or about the building that incorporates those plans. Those dual requirements that applied to design professionals such as architects, engineers and those providing like-kind services may have been substantially altered and expanded!

Recently, the Maryland Legislature passed HB 1060 in the 2006 Legislative Session, signed by the Governor, and that amended Maryland Code Ann. Real Property Article § 9-102(a) by adding the following language:

"Every building erected and every building repaired, rebuilt, or improved to the extent of 15 percent of its value is subject to establishment of a lien in accordance with this subtitle for the payment of all debts, without regard to the amount, contracted for work done for or about the building and for materials furnished for or about the building, including... *the provision of building or landscape architectural services, engineering services, or land surveying services...*" [emphasis added]

Significantly, a plain reading of the above amended statutory text indicates that all the design professional need provide in order to be able to assert a lien is their "services". This would suggest a modification of the prior dual requirement of (A) preparation of plans; and (B) supervision of the work furnished for or about the building that incorporates those plans. Whether or nor design or permitting services can be considered lienable items therefore hinges on what is meant by "services"?

While not explicitly defined in the statute, implicitly the suggestion of services could include work that is characteristic of building architects, landscaping architects, engineers or land surveyors to the project at hand, so long as it is related to the construction of a building. If a contract is involved which defines "services" than the question is simplified somewhat-look at the contract's definitions, if any. If it is not defined, than the question becomes what is the ordinary and customary industry definition and practice as to what constitutes "services"? Since architectural services routinely involve the planning, design and permitting stage before a building is actually on the lot, the 2006 amendment appears to substantially alter and expand the prior school of thought that said a building was required on the lot before such incidental work could become the subject of a mechanic's lien, and which may now include pre-construction design and permitting services!

Contact [COOVER & BARR, LLC ATTORNEYS AT LAW](#) for experienced counsel and full protection of your legal rights. ►

"FOR SALE" SIGNS STAYING OUT LONGER

The 5 year housing boom appears to be at an end. Sales of new and existing homes have been falling. One contributing factor, according to Martin Crutsinger, of the Baltimore Sun, is rising interest rates. With an overall slowdown in the economic growth last quarter, even a moderate slowdown in housing could have a huge impact on our economy, since the housing market has greatly contribution to our growth in recent years. While economist stop short of predicting a full blown bust in the housing market, unsold homes have hit a record level and is likely to place even more pressure on housing prices in the near future.