

DOING BUSINESS QUESTIONNAIRE

U.S.A.

ILLINOIS

prepared by

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I. Background

Please list a few useful numbers and web sites such as the Secretary of State and the clerks of the State and Federal Courts.

	Website	Phone
Administrative		
Governor	http://www.illinois.gov/gov	(312) 814-2121
Secretary of State	http://www.cyberdriveillinois.com	See website for directory
Comptroller	http://www.ioc.state.il.us	See website for directory
Office of Administrative Hearings	http://www.cyberdriveillinois.com/departments/admin_hearings/home.html	(312) 793-3722
Illinois Online	http://www.illinois.gov	See website for directory
Illinois State Auditor's Office	http://www.auditor.illinois.gov/default.asp	(312) 814-4000
Legislative		
Senate	http://www.ilga.gov/senate/	(312) 886-3506

House of Representatives	http://www.ilga.gov/house/	(773) 533-7520
Illinois Legislative Council	http://www.ilga.gov/commission/lrb_home.html	See website for directory
Illinois Legislature Online	http://www.ilga.gov/	See website for directory
Judicial		
United States Federal District Courts		
Northern District	http://www.ilnd.uscourts.gov/home/	See website for directory
Southern District	http://www.ilsd.uscourts.gov/	See website for directory
Central District	http://www.ilcd.uscourts.gov/	See website for directory
United States Federal Bankruptcy Courts		
Northern District	http://www.ilnb.uscourts.gov/	See website for directory
Southern District	http://www.ilsb.uscourts.gov/	See website for directory
Central District	http://www.ilcb.uscourts.gov/	See website for directory
Illinois State Courts		
Illinois Supreme Court	http://www.state.il.us/court/	(217) 782-2035

Please also explain how the state statutes are designated.

The Illinois Compiled Statutes ([ILCS](#)) are divided into subject matter chapters, and further subdivided into acts and sections. A citation to Chapter 810, Act 5, Section 9-101 of the Illinois Compiled Statutes would read “(810 ILCS 5/9-101)”. Illinois statutes shall generally be cited to the Illinois Compiled Statutes but citations to the session laws of Illinois shall be made when appropriate. Prior to January 1, 1997, statutory citations may be made to the Illinois Revised Statutes instead of or in addition to the Illinois Compiled Statutes.

II. Business Entities

1. What are the common forms of business entities?

- a. Corporation (S Corporation)
- b. Limited Liability Company
- c. Limited Liability Partnership
- d. Limited Partnership (Limited Liability Limited Partnership)
- e. General Partnership
- f. Sole Proprietorship

2. What are the requirements for formation of each?

a. *Corporation (S Corporation):*

Registration as a corporation in Illinois requires articles of incorporation to be filed with the Secretary of State of Illinois ([Form BCA 2.10](#)). The articles of incorporation *must* include: (a) the name of the corporation; (b) the name and address of the corporation's registered agent and office; (c) the purpose of the corporation; (d) the number and type of shares the corporation is authorized to issue and the consideration received for such shares; and (e) the name and address of each incorporator. The articles of incorporation *may* include: (x) the name and address of each initial director; (y) provisions with respect to (i) managing and regulating the affairs of the corporation; (ii) defining the rights, powers and duties of the corporation's officers, directors and shareholders; (iii) authorizing or defining the preemptive rights of a shareholder to acquire shares; (iv) valuing and describing the property owned by the corporation; and (v) providing for a revised voting requirement; and (z) provisions related to director indemnification and liability. The corporation must also obtain a federal employer identification number ("FEIN"). If a corporation intends to be an S corporation (in order to generally avoid corporate-level federal income tax), it must make such election with the Internal Revenue Service.

Organization of a corporation requires the following actions: (a) if there are no pre-incorporation subscribers and the initial directors are not named in the articles of incorporation, then a meeting of the incorporators will be required for the purpose of naming the initial directors; or (b) if there are pre-incorporation subscribers and the initial directors are not named in the articles of incorporation, then a meeting of the shareholders will be held for the purpose of (i) electing initial directors; and (ii) adopting bylaws of the corporation if so required or determined. The initial board of director meeting will be held for the purpose of (x) adopting the bylaws if shareholders have not adopted them; (y) electing officers; and (z) transacting any other business. Written consents can generally (unless expressly prohibited in the articles of organization or bylaws) be executed in lieu of holding an actual board meeting.

b. *Limited Liability Company:*

Registration as a limited liability company in Illinois requires articles of organization to be filed with the Secretary of State of Illinois ([Form LLC 5.5](#)). The articles of organization *must* include: (a) the name of the limited liability company; (b) the address of the principal place of business where records of the limited liability company are kept; (c) the name and address of the limited liability company's registered agent and office; (d) the purpose of the limited liability company; (e) election as to whether the limited liability company is member or manager managed and the names and addresses of each manager or member, as applicable; and (f) the name and address of each organizer. The articles of organization *may* include: (y) any agreed upon dissolution date of the limited liability company; and (z) any additional provisions for the regulation of the internal affairs of the limited liability company.

Organization of a limited liability company should require the adoption of an operating agreement, which governs relations among the members and managers and between the member, managers and the limited liability company.

c. *Limited Liability Partnership:*

Registration as a limited liability partnership in Illinois requires a statement of qualification to be filed with the Secretary of State of Illinois ([UPA Form 1001](#)). The statement of qualification *must* include: (a) the limited liability partnership's FEIN; (b) the name of the limited liability partnership; (c) the address of the limited liability partnership's executive office; (d) the name and address of the limited partnership's registered agent; (e) the number, names and addresses of partners; and (f) a brief statement of the business in which the limited liability partnership engages.

Organization of a limited liability partnership should require the adoption of a limited liability partnership agreement, which governs relations among the limited liability partners and between the limited liability partners and the limited liability partnership.

d. *Limited Partnership (Limited Liability Limited Partnership):*

Registration as a limited partnership in Illinois requires a certificate of limited partnership to be filed with the Secretary of State of Illinois ([Form LP 201](#)). The certificate of limited partnership *must* include: (a) the name of the limited partnership; (b) the address where records such as a partner list, tax filings and partnership agreements are kept; (c) the limited partnership's FEIN; (d) the name and address of the limited partnership's registered agent; (e) the purpose of the limited partnership; and (f) the name and address of the general partner. The certificate of limited partnership *may* include: (y) the aggregate dollar amount contributed by the partners; and (z) a brief statement of the partner's termination distribution rights. If a limited partnership intends to be a limited liability limited partnership it must identify such election on the certificate of limited partnership filed with the Secretary of State of Illinois.

Organization of a limited partnership should require the adoption of a partnership agreement, which governs relations among the partners and between the partners and the partnership. Whereas in a limited partnership the general partners are jointly and severally liable for the debts of the partnership, but the limited partners are generally not, in a limited liability

limited partnership the general partners are also protected by limited liability for the partnership's debts.

e. *General Partnership:*

No registration is required because a general partnership is formed when two or more persons carry on as co-owners of business for profit, whether or not the persons intended to form a general partnership. All partnerships are general partnerships unless they are properly registered as a limited partnership or limited liability partnership (and, if applicable, have both one or more limited partners and one or more general partners). However, when the general partnership's name is different from the owner(s) full legal name(s), the Illinois Assumed Name Act requires the general partnership to register with its local county clerk's office for registration under the Assumed Name Act.

Organization of a general partnership should require the adoption of a partnership agreement, which governs relations among the partners and between the partners and the general partnership.

f. *Sole Proprietorship:*

No registration is required for a sole proprietorship. The sole proprietorship is the simplest way of doing business, however, because the owner does not have a distinct existence separate from the corporation, the liability is unlimited. When the sole proprietorship's name is different from the owner(s) full legal name(s), the Illinois Assumed Name Act requires the sole proprietorship to register with its local county clerk's office for registration under the Assumed Name Act.

3. What are the less common forms of business entities, e.g., business trusts?

- a. Business Trust.
- b. Joint Venture.

4. What are the requirements for formation of each?

a. *Business Trust:*

A business trust is an unincorporated business organization that does not require any filing with the Secretary of State of Illinois, rather a business trust derives its status from the voluntary action of the individuals who form it. A business trust is similar to a traditional trust in that its trustees are given legal title to the trust property to administer it for the advantage of its beneficiaries who hold equitable title to it. A written declaration of trust specifying the terms of the trust, its duration, the powers and duties of the trustees, and the interests of the beneficiaries is essential for the creation of a business trust. The beneficiaries may receive certificates of beneficial interest as evidence of their interest in the trust, which interests are freely transferable.

b. *Joint Venture:*

There are no substantive differences in Illinois between a partnership and a joint venture. Under Illinois law, a joint venture (unless implemented through the joint ownership of another form of business entity) is treated a partnership that exists for a specific enterprise or transaction, while a partnership exists to engage in certain types of businesses.

5. What is required to be filed with the State in order to be in good standing, e.g., names of officers, directors, partners, etc.?

a. *Corporation (S Corporation):*

In order for an Illinois corporation to remain in good standing the entity must file an annual report with the Secretary of State of Illinois and make payment of the corresponding annual franchise tax (See http://www.cyberdriveillinois.com/publications/pdf_publications/c179.pdf). The annual report *must* set forth: (a) the name of the corporation; (b) the name and address of the corporation's registered agent; (c) the principal address of the corporation; (d) the date of incorporation; (e) the names and addresses of the officers and directors; (f) the capitalization of the corporation; (g) the paid-in capital amounts; and (h) the calculation of the franchise tax.

b. *Limited Partnership (Limited Liability Limited Partnership):*

In order for an Illinois limited partnership to remain in good standing the entity must file an annual report with the Secretary of State of Illinois ([Form LP 210](#)). The annual report *must* set forth: (a) the name of the limited partnership; (b) the address at which the records of the limited partnership are kept; (c) the file number assigned by the Secretary of State; (d) the limited partnership's FEIN; (e) the name and address of the limited partnership's registered agent; and (f) a signature from the general partner stating that the general partner is in good standing.

c. *Limited Liability Partnership:*

In order for an Illinois limited liability partnership to remain in good standing the entity must file a renewal statement with the Secretary of State of Illinois ([UPA Form 1003\(D\)](#)). The renewal statement *must* set forth: (a) the name of the limited liability partnership; (b) the limited liability partnership's FEIN; (c) the effective date of the original registration; (d) the address of the limited liability partnership's executive office; (e) the total number of partners and the corresponding per partner fee; and (f) a brief statement of the business in which the limited liability partnership engages.

d. *Limited Liability Company:*

In order for an Illinois limited liability company to remain in good standing the entity must file an annual report with the Secretary of State of Illinois ([Form LLC 50.1](#)). The annual report *must* set forth: (a) the name of the limited liability company; (b) the name and address of the limited liability company's registered agent; (c) the state of organization and year of admission to Illinois; (d) the names and addresses of the manager(s) or each member

depending on how the limited liability company is managed; and (e) confirmation that the managers/members that are entities still have evidence of existence on file with the Illinois Secretary of State.

6. What industries are heavily regulated, e.g., banking, insurance?

In Illinois the industries of banking, insurance, health care facilities, utilities, professional associations, gaming, liquor and warehouse/storage are heavily regulated and have additional statutory requirements for conducting business in such industries.

III. Tax Matters

1. What are the applicable state law provisions regarding significant business and personal tax, such as:

a. *Corporate Income Tax:*

Illinois Income Tax Act, [35 ILCS 5/101](#).

b. *Stock or Franchise Tax:*

Business Corporation Act of 1983, Article 15, [805 ILCS 5/15](#).

c. *Sales and Use Tax:*

i. Use Tax Act, [35 ILCS 105/1](#).

ii. Service Use Tax Act, [35 ILCS 110/1](#).

iii. Service Occupation Tax Act, [35 ILCS 115/1](#).

iv. Retailers' Occupation Tax Act, [35 ILCS 120/1](#).

d. *Property Taxes, real and personal:*

Property Tax Code, [35 ILCS 200/1](#).

e. *Mortgage or Document taxes:*

Document taxes (i.e., stamp taxes) vary by county and municipality.

f. *Other Transfer Taxes:*

N/A

g. *Estate, Probate, Inheritance Taxes:*

Illinois Estate and Generation-Skipping Transfer Tax Act, [35 ILCS 405/1](#).

2. What, if any, are the other taxes of significance to business entities?

a. *Personal Property Tax Replacement Income Tax, [35 ILCS 5/201\(c\)](#):*

This is an additional income tax imposed on corporations (including S corporations), partnerships, and trusts for the privilege of earning or receiving income in, or as a resident of, Illinois.

b. *Local Tax Collection Act, [35 ILCS 720/1](#):*

Under this law, the Illinois Department of Revenue generally can agree with a county or municipality to collect, on its behalf, a local tax imposed by such county or municipality, unless the Illinois General Assembly has specifically required a different method. In order for the tax to be collected by the Department of Revenue, the subject of the tax must be similar to the subject of a tax imposed by the state and collected by the Department of Revenue.

c. *Telecommunications Excise Tax Act, [35 ILCS 630/1](#).*

IV. Property Law

1. What are the types of ownership estates in real property?

In most commercial and residential real estate transactions in Illinois, the estate transferred is either a fee simple absolute estate, a leasehold estate, a condominium interest or an easement.

Fee simple absolute is commonly described as the highest form of ownership recognized by law. It is an absolute and perpetual ownership interest in the real property. However, it is still possible to transfer a lesser fee simple ownership interest in real property in Illinois, such as a fee simple defeasible, fee simple determinable or a life estate interest. Each of these latter interests can, or will, expire upon the occurrence of some contingency, in which case the ownership interest will automatically revert back to the grantor or some pre-designated third party.

In the realm of residential leasing, Chicago's Residential Landlord and Tenant Ordinance ([Mun. Code Ch. 5-12-010](#)) is widely regarded as one of the most progressive landlord tenant ordinances in the country. Condominiums are governed in part by the Illinois Condominium Property Act ([765 ILCS 605/1](#)).

In addition, Illinois recognizes the following types of joint ownership: tenancy in common, joint tenancy and tenancy by entirety, but not community property. A grant of ownership of real estate to two or more persons is presumed to create a tenancy in common, unless a joint tenancy is specifically created. In the case of husband and wife, a tenancy by entirety may also be created. ([765 ILCS 1005/1c](#)).

Tenants-in-common each hold two or more discrete fractional interests in certain real property. Thus, when a co-tenant dies, the tenant's undivided interest passes per his or her will or to his or her heirs, and tenants-in-common can each sell, convey, mortgage or transfer their interest without the consent of the other co-tenants. The amount of each fractional interest is generally specified in the deed. If not specified, the fractional interests are presumed to be proportionately equal. The administration of the property is often governed by a Tenants-In-Common ("TIC") Agreement.

In a joint tenancy, title is held as though all tenants collectively hold a single ownership unit. Thus, the death of one of the joint tenants does not divide the ownership unit; it only reduces by one the number of people who own the unit. This is known as the right of survivorship. A principal advantage of joint tenancy is that it allows the surviving joint tenants to avoid probate, death, or transfer taxes.

A tenancy by the entirety applies only to the ownership of a primary personal residence by husband and wife. A tenancy by the entirety has the benefits of a right of survivorship, and also provides some additional protection against creditors. A home held by a married couple as tenants by the entirety may only be reached by creditors of joint debts of a husband and wife.

Finally, another means of property ownership available in the state is an Illinois land trust. In an Illinois land trust, legal and equitable title is held by the trustee. However, the right

of possession and the power to use, convey and manage the property is retained by the beneficiary pursuant to the trust agreement. Through the trust agreement, a successor beneficiary or co-beneficiary can also be designated. In some instances, a lender is named as a co-beneficiary and given consent rights over any conveyance of the property as a form of collateral. The land trust can be a useful tool for keeping the identity of the true owner of a property confidential, as well as providing estate planning advantages typical of a trust. Illinois land trusts are governed, in part, by [765 ILCS 405-435](#).

2. What are the common forms of deeds?

General warranty deed, special warranty deed and quit claim deed. A general warranty deed provides the greatest amount of protection to the purchaser because the seller pledges or warrants that he or she legally owns the property and that there are no outstanding liens, mortgages, or other encumbrances against it. A warranty deed is effectively a guaranty of title, and the seller may be held liable for damages if the buyer discovers that the title is defective.

Special warranty deeds provide an intermediate approach. The seller pledges or warrants that he or she legally owns the property, and further warrants that there are no outstanding liens, mortgages, or other encumbrances against it, except those expressly enumerated in the deed, but such warranty only applies with respect to the time in which the grantor owned the property. Thus, if the seller caused or allowed a defect in title, the seller may be held liable, but the seller would not be held liable for encumbrances arising through the acts of a previous owner.

A quitclaim deed gives the buyer the least amount of protection of any type of deed. A quitclaim deed is a deed that relinquishes to the buyer whatever interest the seller may have in the property, but the buyer takes a risk by accepting a quitclaim deed because it offers the buyer no warranty that the title is valid.

3. What type of estate is created by the grant of a mortgage?

Illinois was an “intermediate” state which recognized the title and the lien theory of real property security instrument; however, recent cases bring IL closer to the lien theory. Trust deeds can be used in place of mortgages. A trust deed in the nature of a mortgage is subject to the same rules as a mortgage.

4. What special provisions should or must be included in mortgages?

A few of the more significant provisions of an Illinois mortgage are: (a) provision addressing the treatment of any future advances under the note, or disbursements on a revolving credit line, secured by the mortgage, if applicable; (b) waiver of any appraisal, valuation, stay or extension laws; (c) statement that in the event that any provision in the mortgage shall be inconsistent with any provisions of the Illinois Mortgage Foreclosure Law, [735 ILCS 5/15-1101](#), (as amended from time to time the “IMF Law”), the provision of the IMF Law shall take precedence over the provisions of the mortgage (but the IMF Law shall not invalidate or render unenforceable any provision which can be fairly construed in a manner which is consistent with the IMF Law) and, specifically, that if any of the rights and remedies provided to the lender in the mortgage are more limited than those provided in the IMF Law, the provisions of the IMF Law shall govern; (d) if applicable, representation and warranty by the borrower that the

the county where the property is located. If the clerk accepts the documents, the clerk will file a copy of the document in the county records. The original (with the recording information stamped on it) will be returned to the party specified in the document.

Note that the Registered Titles (Torrens) Act was repealed in Illinois as of January 1, 1997 ([765 ILCS 40/4](#))

7. Describe the mechanics lien process.

Mechanics liens in Illinois are governed by the Illinois Mechanics Lien Act, [770 ILCS 60/0.01](#) (the “IMLA”). Since mechanics liens are a purely statutory creation, the requirements of the IMLA must be strictly complied with in order for such a lien to be valid. In general terms, any person who shall, by contract, express or implied, with the owner of a lot or tract of land, or with one whom the owner has authorized or knowingly permitted to contract to improve the lot or tract of land, furnish labor materials, fixtures, apparatus, or machinery is entitled to a lien. The lien attaches as of the date of the contract to perform and the lien is enforceable provided it is perfected in accordance with the IMLA.

At any time after entering into a sub-contract but, within 90 days of the completion of their performance, subcontractors and laborers and material-men must give written notice of their claim and the amount due by either registered or certified mail with return receipt requested and delivery limited to addressee, or by personally serving the same on owner, agent, architect, or construction superintendent (or file with Registrar if a Torrens Title) unless the contractor included claimant in his statement to owner under the provisions of [770 ILCS 60/5](#). Also, such notice should be served on the lending agency, if known, in addition to the owner of record.

A contractor must record its claim against the owner (or the owner’s representative) with the recorder of deeds within 4 months after the last work was performed or material furnished for the project in order for its lien to be perfected as against third party claimants. The contractor must then institute a suit to enforce its lien within 2 years of the completion of the contract. Note that this two-year time period for filing suit may be accelerated by a demand made pursuant to [770 ILCS 60/34](#) (in which case the lien claimant must initiate suit to enforce its lien within 30 days or forfeit its lien). The claim of a mechanics lien relates back to the date of the general contract. Thus, for the period between the execution of the contract and the actual recordation of the mechanics lien, the lien claimant has priority over all others, even those whose interests appear of record prior to the recordation of the mechanics lien claim. In addition, a mechanics lien will have priority over a mortgage recorded even before the contract was executed *to the extent* that the contractor can prove that its work enhanced the value of the property. [770 ILCS 60/16](#).

Any agreement to waive a contractor’s right to enforce or claim a lien under the Mechanics Lien Act will be unenforceable as against public policy. [770 ILCS 60/1\(d\)](#). However, a contractor or sub-contractor may waive its mechanics lien rights by way of a lien waiver. Waivers may be made on a full or partial basis. A “waiver of lien to date” waives a party’s right to lien for all amounts owed to that party under the contract as of the date stated in the lien waiver. A “waiver of lien to amount paid” waives a party’s right to lien for the specified amount that the party has been paid. A “final waiver of lien” fully waives a party’s right to file a

mechanics lien for any amount due under its contract for the construction project, including all amounts due for extras and change orders. Note, however, that a lien waiver does not waive a contractor's right to pursue its other remedies under the law.

8. How are liens created in personal property?

Illinois follows the Uniform Commercial Code ([810 ILCS 5/1-101](#)) for creating, perfecting and determining priority of liens on personal property. In addition, [Chapter 770](#) of the ILCS contains several acts covering more specific situations in which liens in personal property might arise (innkeepers' liens, self-service storage facility liens, etc.).

9. Are there significant non-uniform provisions of your State's version of Article 9 of the UCC?

There are no significant non-uniform provisions of UCC Article 9 in Illinois ([810 ILCS 5/9-101](#)) with regards to creating, perfecting and determining priority for security interests in the property covered by the UCC. However, in Illinois, Article 9 does contain certain minor variations and additional provisions regarding the treatment of crops and farm products, Illinois land trusts and certain governmental transactions. Note that in Illinois, Article 9 does not exclude an assignment of a deposit account in a consumer transaction.

V. Environmental Law (Illinois)

1. What agency or agencies regulate environmental compliance?

The [Illinois Environmental Protection Agency](#) (the “Illinois EPA”) has the primary responsibility for enforcing state statutes and regulations and, where delegated authority by United States Environmental Protection Agency, federal environmental programs. In addition, the [Illinois Pollution Control Board](#) (the “Board”) promulgates the Illinois environmental regulations enforced by Illinois EPA and also adjudicates many types of environmental enforcement claims. The Board also hears appeals from Illinois EPA permitting decisions. The [Illinois Department of Natural Resources](#) enforces environmental policies related to natural resource damages. Finally, the [Office of the State Fire Marshal](#) regulates many aspects of Underground Storage Tank compliance.

2. What steps are necessary to accomplish the sale of:

a. Real Estate

For most real estate transactions, there are no mandatory statutory requirements or disclosures for real estate transactions requiring disclosure to regulatory agencies outside of those contractual provisions negotiated between the parties. The standard residential real estate contract disclosure form required to be given to the purchaser by the Residential Real Property Disclosure Act ([735 ILCS 77](#)) contains many environmental items, however, and there are specialized radon and asbestos disclosure requirements that might be applicable to particular properties.

b. An ongoing business?

Other than the usual environmental due diligence negotiated between the parties, the sale of an ongoing business often raises questions related to whether the business is in compliance with its environmental permits. If the business is sold, there also are issues related to the transfer/re-issuance of the permits to the new entity.

3. What is the time necessary to obtain such approvals?

Some environmental permit transfers require 30-day advance notice to the applicable regulatory agencies.

4. What are the administrative enforcement or appeal processes available?

Almost all state enforcement claims are reviewed by appeal to the Board. In rare instances, the Illinois EPA pursues enforcement through civil or criminal litigation filed in the Illinois Circuit Court. In those instances, appellate review is provided in the Illinois Appellate Courts and Illinois Supreme Court.

VI. Labor and Employment

1. Are there whistle blower or similar laws?

The Illinois “Whistleblower Act,” [740 ILCS 174/1](#) (the “Whistleblower Act”), prohibits employers from:

- a. adopting any “rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency if the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation”;
- b. retaliating against employees “for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation”; and
- c. retaliating against employees “for refusing to participate in an activity that would result in a violation of a State or federal law, rule, or regulation.”

Violation of the Whistleblower Act is a criminal misdemeanor. Violations of certain provisions may also give rise to civil liability. An employee bringing a claim can seek reinstatement, back pay, actual damages, attorneys' fees, and litigation costs. The Whistleblower Act does not provide for punitive damages.

2. Are there State anti-discrimination laws that supplement or complement federal laws?

- a. *Equal Pay Act*, [820 ILCS 112](#) (the “EPA”):

The EPA prohibits employers with four or more employees from paying unequal wages to men and women for doing the same or substantially similar work, requiring equal skill, effort, and responsibility, under similar working conditions for the same employer in the same county, except if the wage difference is based upon a seniority system, a merit system, a system measuring earnings by quantity or quality of production, or factors other than gender.

- b. *Progress of Women and Minorities in the Workforce Act*, [20 ILCS 1505/1505-20](#) (the “PMMWA”):

The PMMWA promotes the material, social and intellectual prosperity of working men and women in Illinois by increasing public education and awareness of workplace equity and diversity, and responsibly monitoring the employment progress of women and minorities in the Illinois workforce through accurate, comprehensive and informative reporting.

- c. *Victims' Economic Security and Safety Act*, [820 ILCS 180](#) (the “VESSA”):

The VESSA provides that employers (defined in [820 ILCS 180/10](#) as the State or any agency of the State, any unit of local government or school district, or any person that

employs at least 50 employees) may not discharge or discriminate against an employee who is a victim of domestic violence or who has a family or household member who is a victim of domestic violence, for taking up to a total of 12 workweeks of leave from work during any 12-month period to address the domestic violence.

d. *Displaced Homemakers Assistance Act*, [20 ILCS 615/1](#) (the “DHAA”):

The DHAA promotes economic self-sufficiency by offering easily-accessible job readiness services and life skills preparation to displaced homemakers who face numerous barriers to education, training, basic skills learning, and sustainable employment.

3. What are the basic laws regarding wages, vacation pay and sick pay?

a. *Minimum Wage*:

The minimum wage in Illinois is \$7.75, effective July 1, 2008 and will increase by an additional 25 cents in each of the following two years to \$8.00 on July 1, 2009; and \$8.25 on July 1, 2010. Tip credit can offset the minimum wage by no more than 40%. [820 ILCS 105/3](#).

b. *Overtime*:

In Illinois, nonexempt employees working more than 40 hours per week are entitled to time and a half for the additional hours. [820 ILCS 105/4a](#).

c. *Payments*:

In Illinois, wages must be paid no later than 13 days after the semimonthly or biweekly pay period in which they were earned (or 7 days if the pay period is weekly; 21 days if monthly, which is only permissible for certain executive, administrative and professional employees). [820 ILCS 115/1, 4](#). No amount may be deducted from an employee’s pay without freely given written authorization from the employee at the time of the deduction.

d. *One Day Rest in Seven Act*:

Most employees must be given at least 24 consecutive hours of rest in each calendar week and a meal period during any shift lasting 7½ hours or longer. [820 ILCS 115/2, 140/3](#).

e. *Vacation and Sick Pay*:

No Illinois law addresses these issues; therefore they are discretionary or contractual issues.

4. Is there a State family leave law?

a. *Illinois School Visitation Rights Act*, [820 ILCS 147](#):

An employer must grant an employee up to eight hours total leave during any school year (no more than four of which may be taken in one day) to attend school conferences or classroom activities for the employee's child if the conferences or activities cannot be scheduled during nonworking hours. School visitation leave may not be taken unless the employee has exhausted all accrued vacation leave, personal leave, compensatory leave and any other leave that may be granted to the employee, except for sick leave and disability leave. An employer is not required to grant school visitation leave to an employee if granting the leave would result in more than five percent of the employer's work force or work force shift taking school visitation leave at the same time.

b. *Family Military Leave Act, [820 ILCS 151](#) (the "FMLA"):*

The FMLA is designed to ensure that close family members of persons called to active military duty have an opportunity to spend time with their spouses or children before deployment without the risk of losing their jobs. Employees who have worked for the same employer for at least 12 months and for at least 1250 hours in the last year, are entitled to take unpaid, job-protected leave to visit with a spouse or child who has been called into military service for a period lasting longer than 30 days. While on leave, employers must continue any benefits at the employee's expense. Employers with between 15 and 50 employees must provide up to 15 days of leave during the time federal or State deployment orders are in effect. Employers with more than 50 employees must provide up to 30 days during such time. The FMLA also covers independent contractors.

c. *Blood Donation Leave Act, [820 ILCS 149](#):*

In Illinois, employers must provide up to one hour of paid leave ever 56 days for blood donation.

5. What is the current law with respect to wrongful discharge?

Illinois is an at-will employment state, but an employee may be able to succeed on a claim for retaliatory discharge if certain elements are present: a) Employee is discharged, including any involuntary termination; b) Discharge is motivated in whole or in part by the employee's protected activities; and c) Employee's conduct is protected by a clearly mandated public policy. Protected public policy is typically found in the areas of crime prevention and public safety. In some circumstances policies associated with social and economic regulation have been recognized. A public policy is most "clearly mandated" if the activity is protected by statute or arises from a statute. The most clear pronouncement of public policy is legislation. Some examples of protected public policy are a statute such as seeking benefits under the Workers' Compensation Act, a federal law if an Illinois public policy is implicated, if the plaintiff has reported possible criminal activity to an outside agency, health and safety issues, accounting practices which violate federal securities laws, reports concerning ethical violations, such as an Attorney Registration & Disciplinary Commission ("ARDC") report, civic duties such as jury duty, employees' statutory rights such as filing health insurance claims, and individual rights such as the right to sue an employer for defamation.

6. Are polygraphs, drug tests or other pre-employment screenings permitted?

Generally, yes. Employers may require medical examinations of (a) potential employees after the employer has provided a job offer, or (b) current employees. The purpose of the medical examination must be “job-related or consistent with business necessity.” In other words, there must be a reasonable basis for requiring the examination. If an employer gives a medical examination to a job applicant, the employer must give medical examinations to everyone applying for that position. As with any employment-related activity, the employer must provide reasonable accommodations for medical examinations. The Medical Examination of Employees Act ([820 ILCS 235](#)) prohibits employers from requiring employees or prospective employees from paying the cost of such examination.

Illinois does not prohibit pre-employment screening and the Illinois Human Rights Act ([775 ILCS 5](#)) provides that a drug test is not a prohibited medical examination and “nothing in [the Human Rights Act] shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.”

7. What provisions are enforceable and unenforceable in non-competition agreements and restrictive covenants?

There is no statute of general application in Illinois regarding the enforceability of restrictive covenants. There are special rules for broadcasters, attorneys, physicians, government contractors.

Generally, Illinois courts will find a restrictive covenant enforceable if the terms are reasonable and necessary to protect a legitimate business interest of the employer. Whether a legitimate business interest exists usually requires either (a) near-permanent customer relationships and that the employee’s employment was a but-for cause of the contact with the customers; or (b) the employee’s acquisition of trade secrets or other confidential information and tried to use such information for his own benefit. Restricted geographic areas should be coincident with where the employer is doing business. Temporal restrictions should be related to the legitimate business interest, such as the time required to acquire and maintain clients. Activity restrictions will be considered in light of the interest being protected. Courts in Illinois may “blue pencil” provisions which are unenforceably overbroad.

8. What are the State law requirements in the case of a plants closing or other mass layoff?

Illinois has a Worker Adjustment and Retraining Notification Act ([820 ILCS 65](#)) (the “Illinois WARN Act”) similar to the federal law of the same name ([29 U.S.C. 2101](#)). The Illinois WARN Act requires employers to give 60 days notice to employees and their unions, the Illinois Department of Commerce & Economic Opportunity’s Bureau of Workforce Development and the Illinois Department of Labor, of a plant closing or mass layoff. There are two significant differences between the Illinois WARN Act and its federal counterpart: (a) the Illinois law applies to employers with 75 or more full-time workers (compared to 100); and (b) the trigger for the application of the Illinois law is that 25 or more full-time employees are laid

off if they constitute one-third or more of the full-time employees at the site, or 250 or more full-time employees are laid off (compared to 50 and 500).

9. For what employment related obligations can officers and directors be held liable?

Generally, officers, directors and shareholders are not liable for the corporation's debts, but in Illinois, a number of exceptions have been found. Some notable examples are:

a. *Illinois Business Corporation Act:*

The Business Corporation Act ([805 ILCS 5/1.01](#)) holds directors personally liable under certain specific circumstances, such as: (a) assenting to a dividend or distribution that causes the corporation to become insolvent; (b) failing to notify all creditors of the corporation's dissolution; and (c) carrying-on the corporation's business after dissolution, other than as necessary for winding-up the corporation.

b. *Alter Ego Theory:*

Under this equitable theory, a plaintiff may "pierce the corporate veil" and recover a corporate debt directly from a person who treats the corporation as his "alter ego."

c. *Breach of Fiduciary Duty:*

Individuals who control a corporation have fiduciary duties to the corporation and its shareholders.

d. *Torts:*

An officer may be individually liable for torts of the corporation in which the officer actively participates.

e. *Crimes:*

An officer, director, or shareholder can be held personally accountable for conduct which is an element of a criminal offense and which, in the name or on behalf of a corporation, she performs or causes to be performed, to the same extent as if the conduct were performed in her own name or behalf.

f. *Actions after Dissolution:*

Officers can be held personally liable for entering into contracts on behalf of the corporation after dissolution, and for debts incurred by the corporation during a period of dissolution.

g. *Kickbacks and Bribes:*

Officers or directors who engage in commercial bribery or receive a commercial bribe may be personally liable to the corporation for treble damages and attorneys' fees.

h. *Failure to Pay Wages:*

Corporate officers who knowingly permit the corporation to violate the Illinois Wage Payment and Collection Act ([820 ILCS 115](#)) may be deemed to be the employer of the employees of the corporation.

i. *Failure to Pay Taxes:*

Corporate officers may be held personally liable for non-payment of corporate taxes if they are required to collect, truthfully account for, and pay over any tax.

j. *Refusal to Allow Shareholder to Examine Corporate Records:*

An officer of a corporation who refuses to allow a shareholder to examine the corporation's books and records for any proper purpose may be liable to the shareholder for an amount of up to ten percent of the value of the shares owned by the shareholder, plus other damages.

k. *Statutory Liability:*

Statutes may impose personal liability upon corporate officers and directors. A person who controls a corporation may be personally liable under the Franchise Disclosure Act of 1987, or for failure to procure workers' compensation insurance.

VII. Intellectual Property

1. What are the State laws applicable to trade secrets?

Illinois has adopted the Illinois Trade Secrets Act, [765 ILCS 1065](#) (the “ITSA”), based on the Uniform Trade Secrets Act. The statute defines “trade secrets” broadly, outlines the requirements for keeping such matters confidential, and also provides various remedies for misappropriation including injunctive relief, damages, attorney's fees and provisions for the maintenance of secrecy during trial.

Specifically, as defined by the ITSA, a trade secret is “information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that: (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.” [765 ILCS 1065/2](#).

The statute creates a cause of action for any misappropriation by improper means of information constituting a trade secret. Under the ITSA, “misappropriation” constitutes “(1) acquisition of a trade secret of a person by another person who knows or has reason to know that the trade secret was acquired by improper means; or (2) disclosure or use of a trade secret of a person without express or implied consent by another person”, while “improper means” is defined to include “theft, bribery, misrepresentation, breach or inducement of a breach of a confidential relationship or other duty to maintain secrecy or limit use, or espionage through electronic or other means.” [765 ILCS 1065/2](#).

As in other states, reverse engineering or independent development does not constitute improper means.

2. What are the State laws applicable to trade names?

Like other states, Illinois governs by statute trademarks, service marks and trade names. The Trademark Registration and Protection Act, [765 ILCS 1036](#) (the “TRPA”), provides for registration, maintenance and enforcement of trade names and trademarks.

The TRPA defines what matter may constitute a registerable trademark, outlines the process for securing registration, the duration of the registration, requirements for renewal, and abandonment. Generally, in Illinois a mark can be any designation that does not constitute immoral, scandalous or deceptive matter, does not disparage or falsely associate with any living individual, is not a flag, coat of arms or insignia of any state or federal government, is not confusingly similar with any other source identifier, and is used with goods or services to identify source.

Further, infringement is defined as using, without the owner’s consent, “any reproduction, counterfeit, copy, or colorable imitation of” a registered trademark, where such use with similar goods or services is likely to cause confusion, mistake or to deceive as to source. Remedies under the TRPA include actual damages (profits derived or all damages suffered) and punitive damages (allowing courts discretion to treble monetary awards), as well as injunctive relief.

Of course, creating and maintaining enforceable rights in a trademark, service mark or trade name does not require formal registration in Illinois according to the statutory framework. Rather, enforceable rights develop from use of a mark or trade name in commerce, in connection with particular goods or services. [765 ILCS 1036/80](#).

Apart from the TRPA, Illinois has also enacted the Counterfeit Trademark Act, [765 ILCS 1040](#), making any counterfeit use of a trade or service mark a Class A misdemeanor, as well as the Registered Container Trade Mark Act, [765 ILCS 1050](#), prohibiting the use, sale, and filling with commodities any container on which a trademark has been affixed without the trademark owner's consent, as well as the defacing or removing of the trademark from the container.

3. Are there other State laws that apply to intellectual property?

In addition to the statutes governing trademarks and trade secrets, Illinois has also enacted the following laws addressing other intellectual property:

a. *Patents:*

i. ILLINOIS FAIR INVENTION DEVELOPMENT STANDARDS ACT, [815 ILCS 620](#) (the "IFIDSA"). The IFIDSA prohibits false and misleading advertising and other unfair practices in the field of idea and invention development in order to protect the public against fraud and deceit, as well as to foster innovation and competition. In so doing, the law requires that firms engage in invention development make certain contractual disclosures including, *e.g.*, notices in invention development service contracts, fee disclosures and specific ownership provisions in contracts between invention developers and customers such as prohibiting developers from acquiring title to their customer's inventions made as part of an invention development contract. The IFIDSA further renders any contracts for invention development services that fail to meet the statutory requirements void and unenforceable.

ii. EMPLOYEE PATENT ACT, [765 ILCS 1060](#). Illinois law allows employees to retain rights in their inventions under certain conditions. The Employee Patent Act does not create patents rights (which are exclusively governed by federal law), but rather ensures that employment agreements in Illinois do not abrogate employees' rights to such protection under appropriate circumstances.

b. *Copyright:*

i. MUSIC LICENSING FEES ACT, [815 ILCS 637](#) (the "MLFA"). The MLFA regulates contracts between performing rights societies such as ASCAP and BMI, and business proprietors, mandating precise requirements and notices.

A. Licensing Negotiations. Before contract formation, performing rights societies must provide proprietors: (i) rates and royalties schedules; (ii) the opportunity to review the most current available list of the members or affiliates represented by the society at the proprietor's

request; and (iii) notice that it will make available, upon written request of any proprietor, at the sole expense of the proprietor, the most current available listing of the copyrighted musical works in the performing rights society's repertory.

B. Royalty Contract Requirements. The MLFA further mandates precise requirements for royalty contracts with performing rights societies including, *e.g.*, that they be in writing, signed by the parties and include certain minimum information (proprietor's name and business address; name of performing rights society; duration of contract).

C. Improper Licensing Practices. Finally, the MLFA prohibits as improper licensing practices any collection of royalties by performing rights societies apart from those expressly provided for by the statute, and further provides remedies for violations of the MLFA.

ii. UNLAWFUL USE OF RECORDED SOUNDS OR IMAGES, AND AUDIO VISUAL RECORDINGS, [720 ILCS 5/16-7](#), [5/16-8](#). These statutes criminalize as Class 4 misdemeanors: (a) intentional, knowing or reckless transfer of recorded sounds or images, without the owner's consent; as well as (b) the intentional, knowing, reckless or negligent for profit manufacture, advertisement or offering for sale, sale, distribution, transport, vending, circulation, performance, lease, or possession for such purposes of unidentified sound or audio visual recordings.

c. *Miscellaneous:*

i. RIGHT OF PUBLICITY ACT, [765 ILCS 1075](#) (the "RPA"). Illinois law protects individuals' right to exercise control over the use of their identities for commercial purposes. The statute recognizes a private right of publicity under state law separate from the particular work in which the person's image or likeness may be captured so as to avoid preemption by federal copyright law.

The RPA acknowledges such right of publicity as a personal property right, transferable and divisible through appropriate legal instruments, and provides for enforcement including both actual and punitive damages, injunctive relief, attorneys fees and costs.

ii. ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT, [815 ILCS 505](#) (the "ICFDBPA"). Illinois law makes unlawful various unfair methods of competition and unfair or deceptive business practices, providing for both injunctive relief as well as damages. The ICFDBPA is also a vehicle for seeking monetary relief for acts defined in the companion Uniform Deceptive Trade Practices Act.

iii. ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT, [815 ILCS 510](#). This law enumerates a number of specific practices that, conducted in the course of a person's business, vocation, or occupation, give rise to injunctive relief without proof of monetary damage, loss of profits or intent to deceive.

4. How do such laws interact with federal laws relating to intellectual property?

Since both state and federal law govern different intellectual properties, Illinois statutes and common law generally supplement those areas preempted by federal law while independently regulating those aspects of intellectual property left to the states.

[Art. I, § 8](#) of the United States Constitution vests in the United States Congress the power to regulate patents and copyrights. As a result, [Titles 17](#) and [35](#) of the U.S. Code govern exclusively these types of intellectual property. Of course, because patents and copyrights are forms of tangible property, state laws regulate ancillary considerations such as contractual aspects surrounding title, licensing and disposition.

Trademarks, meanwhile, are governed in parallel on the state and federal level. While the Lanham Act, [15 U.S.C. 1051](#), governs trademarks and unfair competition in interstate commerce, trademark rights first arise from use at common law. Accordingly, trademark owners can secure separate and independent rights under both Illinois and federal law.

Finally, since there is no uniform federal law governing trade secrets, this form of intellectual property is regulated exclusively under state law. The Illinois Trade Secrets Act was enacted to specifically provide such protection and enforcement.

VIII. Dispute Resolution

1. Describe the court structure of your State.

The trial court of general jurisdiction in the State of Illinois is the Circuit Court. There are 23 Circuit Courts in Illinois, five of which cover single counties (Cook, DuPage, Lake, McHenry and Will) and the remainder of which cover between 2 and 12 counties. The Circuit Courts may hear almost any cases, except for redistricting of the general assembly and ruling on the ability of the governor to serve or resume office.

The first level of appellate courts in Illinois is comprised of 5 districts, along with a Workers Compensation Commission Division which is integrated with the general districts. The First District covers only Cook County and is located in Chicago, IL. The other 101 counties in Illinois are divided among the remaining four district courts. The Second District is seated in Elgin, IL; the Third District is seated in Ottawa, IL; the Fourth District is seated in Springfield, IL; and the Fifth District is seated in Mt. Vernon, IL.

The highest court in the State of Illinois is the Illinois Supreme Court.

2. Please identify any specialized courts.

None.

3. Is there an automatic stay of judgment during the appeal period or must a stay be sought and granted?

Timely post-judgment motions will automatically stay enforcement of the judgment, pending resolution of the motions. [735 ILCS 5/2-1202](#). Judgments for money shall be stayed if timely notice of appeal is filed and an appeal bond or other form of security is presented to, approved by and filed with the court. Judgments that are non-monetary in nature may be stayed by a court, upon notice, motion and an opportunity for all parties to be heard. [Illinois Supreme Court Rule 305\(a\) and \(b\)](#). Requests for stay of judgment should first be made in the circuit court, but may be made in the reviewing court if the movant can show that application is not practicable in the trial court or that the trial court has denied the motion. [Illinois Supreme Court Rule 305\(d\)](#).

4. Are bonds or other forms of surety required (a) for appeals or (b) in connection with other actions?

Bonds or other security can be required where a stay of judgment is sought pending resolution of an appeal. [Illinois Supreme Court Rule 305](#). Bonds may also be required in the Circuit Courts in certain proceedings, such as foreclosure actions where a receiver is appointed or where a creditor plaintiff enforces the right of attachment.

5. How are legal actions commenced?

A complaint is filed with the Clerk of Court in a Circuit Court having appropriate jurisdiction, along with the appropriate fees. A summons is issued, and the summons and complaint are served upon the defendant(s).

6. Are there rights and remedies available to a plaintiff pre-judgment?

Yes, in certain instances. For instance, a plaintiff creditor may enforce a right of attachment. As another example, plaintiffs may seek and obtain temporary restraining orders and preliminary injunctions, prior to final judgment in certain matters.

7. Do the Federal Rules of Civil Procedure apply to state court actions?

No. Illinois has its own Rules of Civil Procedure, which may be found at [735 ILCS 5/2-201](#).

8. What is the discovery process?

Discovery in Illinois courts is governed generally by [Illinois Supreme Court Rule 201](#). Absent leave of court, discovery may not be initiated until after the time by which all defendants appear or are required to appear. Discovery methods may occur in any sequence, unless otherwise ordered by the Court, and may include: (a) depositions by oral examination or written questions; (b) written interrogatories to parties; (c) discovery of documents, objects and/or tangible things; (d) inspection of real estate; (e) requests to admit; (f) physical and/or mental examination of person; and/or (g) subpoenas of third parties for deposition or production of documents, objects and/or tangible items.

9. How are cases assigned, geographically and by judge?

Cases are generally assigned to judges on a random rotation within the division that is appropriate for the case. For instance, a case seeking injunctive relief will, depending on the Circuit Court's specific divisions, usually be assigned to a judge in the Chancery Division. A case seeking monetary damages will be assigned to a judge in the Law Division.

10. What is the average length of time from commencement of an action to trial?

It depends on many factors, including, but not limited to, the nature of the case, the number of parties involved, the amount of motion practice and discovery, the court's docket and which circuit the case is tried in. While each case is unique, it is common for cases to take at least one year to get through the initial trial, and in some cases it takes much longer.

11. What is the expected cost of litigation?

It depends on many factors, including, but not limited to, the nature of the case and the amount of motion practice and discovery.

12. What procedures exist to encourage pre-trial resolution, e.g., imposing costs on the losing party, offers of judgment, ADR, etc.?

Parties may independently agree to conduct mediation or arbitration to attempt to resolve their dispute. Absent agreement between the parties, Illinois courts do not have the ability to order mediation or arbitration, although judges will often encourage the parties to consider such alternative dispute resolution methods. Illinois Rules of Civil Procedure do not recognize a procedure by which a party may make an offer of judgment.

13. Describe the foreclosure process: procedure, extent of court involvement, time, cost, defenses, ability to evict occupants, etc.

Foreclosure actions in Illinois are governed by the Illinois Mortgage Foreclosure Act, [735 ILCS 5/15-1101](#), which sets forth the general process for foreclosures. Each Circuit Court may also have its own local rules and procedures, which can vary considerably. When a borrower has defaulted on a loan, the lender may file a foreclosure action in the Circuit Court of the county in which the property being foreclosed against is located. Generally, after the lender obtains minutes of foreclosure from a title company, a complaint for foreclosure is drafted and filed in the appropriate court. The complaint will be personally served upon any known defendants. Service against unknown and unrecorded claimants, tenants and owners occurs by publication in a local newspaper. Once the defendants are served, foreclosure actions generally proceed in a fashion similar to other litigation, although there are some procedures which allow for expedited judgments where there is no dispute about material facts such as default, failure to cure and right to foreclose against mortgaged property. Once a judgment of foreclosure is entered, there is usually a period of redemption, unless the borrower waived such rights in the loan documents. If the redemption period expires without satisfaction of the amounts owed, a judicial sale of the property will be ordered.

In some instances, while the foreclosure proceedings are pending, the lender may take possession of the property or a receiver might be appointed. When the property at issue is residential, the Court will appoint a receiver or give possession to the lender only in very rare instances. When the property is non-residential, an order granting possession to the lender or appointment of a receiver is more likely to occur.

How long a foreclosure action will take and how expensive it will be depends on a variety of factors, such as number of defendants, motion practice and discovery and which circuit the proceedings take place in.

14. What are the limitation periods for common causes of action, e.g., tort, intentional tort, contract?

Statute of limitations vary considerably, depending on the nature of the cause of action. Many limitations periods may be found at [735 ILCS 5/13-101](#). Common law fraud is generally 5 years after the cause of action accrued ([735 ILCS 5/13-205](#)); oral contracts are generally 5 years after the cause of action accrued ([735 ILCS 5/13-205](#)); written contracts are generally 10 years after the cause of action accrued ([735 ILCS 5/13-206](#)); legal malpractice is generally 2 years, but can in no event be brought more than 6 years after the injury occurred ([735 ILCS 5/13-214.3](#));

medical malpractice is generally 2 years, but can in no event be brought more than 4 years after the injury occurred ([735 ILCS 5/13-212](#)); personal injury suits is generally 2 years after the cause of action accrued ([735 ILCS 5/13-202](#)); and property damages is generally 5 years after the cause of action accrued ([735 ILCS 5/13-205](#)).

15. How broadly do your courts interpret jurisdiction?

As broadly as the Illinois Constitution and the Rules of Civil Procedure allow. How each Circuit Court interprets its jurisdiction within the parameters set by law varies from court to court, depending on the facts and circumstances of each case.

16. Are punitive damages available? What are the standards and limitations?

Yes. Standards and limitations vary depending on the nature of the claim.

17. Is there an “unfair trade practice” or similar law that permits damages to be multiplied?

The Business Opportunity Sales Law of 1995 allows for treble damages in certain instances. [815 ILCS 602/5-120](#).

18. What are the procedures for pro hac admission?

[Illinois Supreme Court Rule 707](#) provides that, upon the discretion of any court in the state, attorneys who are not otherwise admitted to practice in Illinois may be admitted *pro hac vice* to participate or argue in any cause in which he or she is employed. Local rules in each of the Circuit Courts further govern such admission.

19. Is there a reputation or description that applies to your juries generally?

Descriptions or reputations of juries vary from circuit to circuit.

IX. Creditor's Rights

1. How are judgment liens created and enforced on real and personal property?

To turn a judgment entered by a court into a judgment lien against real property, a judgment creditor files a transcript, certified copy, or memorandum of the judgment (which is a copy of the judgment order signed by a judge or attested to by the clerk of court in which the judgment was entered and showing the court in which entered, date, amount, number of the case in which it was entered, name of the party in whose favor and name and last known address of the party against whom entered) in the office of the recorder in the county in which the real estate is located. To create a judgment lien against personal property, a judgment creditor files a notice of judgment lien and a memorandum of judgment with the Secretary of State of the State where the judgment debtor resides.

The judgment lien secures payment of the judgment and statutory interest that accrues while the judgment remains unsatisfied by "clouding" title to the property. Judgment liens against real and personal property are generally satisfied by the sale proceeds when the judgment debtor sells the property subject to the lien. Alternatively, a judgment creditor may file a lawsuit to foreclose on the judgment lien, which results in a forced sale of the subject property. Foreclosure sale proceeds will be used to satisfy the judgment lien, but only after application of such proceeds to superior liens (such as a mortgage on real property) and foreclosure costs, as well as after applicable exemptions. If the judgment debtor's equity interest (fair market value less the amount still owed on the property) is less than the available exemptions, there cannot be a forced sale of the property.

2. What are the exemptions available to individuals?

Various exemptions are available to individuals in Illinois to protect all or a portion of certain of their assets against collection activities. [735 ILCS 5/12-901](#) to [5/12-1006](#). Homeowners in Illinois are eligible for a homestead exemption of \$15,000, which amount is doubled for married couples (provided that each spouse holds a formalized ownership interest in the property) and for surviving spouses. So, in the event of a foreclosure sale of real property, the judgment debtor may keep the first \$15,000 (or \$30,000 for married couples or surviving spouses) of the sale proceeds.

Various personal property exemptions also exist, such as the first \$2,400 of an individual's interest in one vehicle and the first \$1,500 of tools of trade used in an individual's business. All necessary clothing, school books, family pictures, qualified retirement accounts, workmen's compensation awards, social security and unemployment benefits, and insurance proceeds paid to a dependent of an insured are exempt from collection by a creditor. Illinois courts also recognize various other remedial statutory provisions, such as a limitation on the amounts of an individual's unpaid wages that may be deducted by an employer to satisfy a judgment against that individual, depending on the person's income level. A "wildcard" exemption is also available to protect up to \$4,000 of other personal property.

3. How are foreign judgments enforced?

Illinois has generally adopted the Uniform Enforcement of Foreign Judgments Act ([735 ILCS 5/12-615 to 12-626](#)), which provides that a judgment, decree or order of a court of the United States of any other court is entitled to full faith and credit in the State of Illinois.

A judgment creditor may enforce a foreign judgment by filing with the office of the circuit clerk of any county an authenticated copy of the foreign judgment and an affidavit showing the name and last known post office address of the judgment debtor and the judgment creditor. The clerk of the court and the creditor are required to mail a written notice of the filing of the foreign judgment to the judgment debtor at the address given and submit proof of the mailing for the court's docket. The notice must include the name and post office address of the judgment creditor and, if the judgment creditor has an attorney in Illinois, the attorney's name and address.

The clerk shall treat the foreign judgment in the same manner as a judgment of the circuit court for any county of this State. A foreign judgment filed in this manner has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating, or staying as a judgment of a circuit court for any county in the State and may be enforced or satisfied in like manner.

4. What are personal exposures of officers and managers of corporations and LLCs?

As a general rule, officers, directors, members, and managers are not liable for corporate debts. Exceptions arise under at least four common scenarios that expose officers or managers to personal liability.

a. First, a person may voluntarily assume liability in the form of a personal guarantee of the corporate debts. Such guarantees are common in small businesses that could not otherwise obtain financing. It is also common for landlords to require a personal guarantee even when the tenant is a corporation or LLC. An inadvertent personal guarantee of corporate liability may occur when an officer or manager fails to clearly indicate in what capacity or role he is entering into agreements or making promises on behalf of the corporate entity.

b. Second, an officer or manager may be liable for corporate debts if he fails to keep separate his individual and corporate personalities. Known as "piercing the corporate veil" or reaching an "alter ego," creditors may recover corporate debt from an officer or manager where there is such unity of interest and ownership that there is no distinction between the individual and corporation or where injustice would result if the corporate existence was recognized. In almost all such cases there is either commingling or diversion of assets. In other cases, there is a failure to observe corporate formalities, a lack of corporate books and records, or inadequate capitalization.

c. Third, there is statutory liability for officers, directors, and members for consenting to a distribution that causes the corporate entity to

become insolvent or unable to pay its debts as they become due. Liability may also arise where an improper distribution is knowingly received and accepted.

d. Fourth, the actions of officers, directors, and members may result in exposure or liability for corporate debts. Personal liability arises from criminal conduct, corporate torts in which the individual actively participates, commercial bribery, failure to maintain workmen's compensation insurance, failure to pay payroll taxes, carrying on the corporate entity's business after dissolution, or otherwise breaching fiduciary duties of care and loyalty to the corporation and shareholders.

Individuals may limit their personal liability, and strengthen the valuable protections of corporations and LLCs, by avoiding personal guarantees, ensuring that the business is adequately capitalized, observing corporate formalities, keeping personal and business matters and accounts separate, and conducting themselves in an ethical manner. Carrying business insurance may also provide a source of payment for defending potential claims of wrongdoing.

5. Are there any unusual theories under which third parties, e.g., affiliated entities, lenders have been held liable for the debts of others such as “deepening insolvency,” “joint venturer,” etc.?

Illinois law, like that in most States, is still unclear as to applicability and strength of theories under which third parties may be held liable for the debts of others as a consequence of the third parties' actions. Some courts have held that the theory of “deepening insolvency” may be used, not as an independent cause of action, but to measure damages in an action for breach of the fiduciary duty of loyalty. Such theory may give pause to officers, directors, private equity investors, accountants, financial advisors and other professionals, and even lending institutions that they may be at risk for liability should a court determine that they contributed to mismanagement or control of a distressed business or misrepresentation of a distressed business's financial condition such that the existence of the company was artificially prolonged, to the detriment of the creditors, for the purpose of recouping an investment or earning and receiving fees. Such parties should remain cognizant of creditors' interests when there is any doubt as to the solvency of the company and consult with experienced counsel with respect to their rights and duties.

June 1, 2009