

A quarterly publication of Wiles, Boyle, Burkholder & Bringardner, Attorneys at Law.



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## HAPPY HOLIDAYS

### Topics this issue:

Skiing Liability

Featured  
WBBB Attorneys

Trustee  
Responsibilities  
And Trust  
Beneficiary Rights

Condominiums In  
Ohio Are Now More  
Flexible Than Ever

### Firm Receives Top Ranking

We are proud to be included  
in this year's Martindale-  
Hubbell Bar Register of  
Preeminent Lawyers.

Fewer than 5% of all law  
firms qualify for this listing,  
making it the definitive  
guide to America's leading  
lawyers and law firms.

### Ohio Super Lawyers 2007

The firm is proud to recognize  
Bruce H. Burkholder  
Michael L. Close  
Mark J. Sheriff  
as Ohio Super Lawyers for  
2007. Super Lawyers are  
nominated by their peers, and  
only 5% of Ohio attorneys  
receive this high honor.



## The Peaks And Valleys Of Skiing Liability In Ohio

### Rights and Responsibilities For Skiers and Ski Resorts

The next time you are wearing your skis and standing at the top of a mountain preparing to descend a double-black diamond, you might want to consider what legal responsibilities others owe to you and what legal responsibilities you owe to others.

The Ohio Legislature has determined that skiing is inherently hazardous, and therefore, has limited the liability of Ohio ski resorts for injuries sustained by skiers. Under Ohio law, a skier "expressly assumes the risk of and legal responsibility for injury, death, or loss to person or property that results from the inherent risks of skiing..." The applicable statute lists several risks inherent to skiing, including, but not limited to, surface or subsurface snow or ice conditions, bare spots, rocks, trees, lift towers, tramways, poles, fences and buildings.

However, Ohio law does set forth several statutory responsibilities belonging to ski resorts, including, but not limited to, marking trail maintenance vehicles, hydrants and tramways. Nevertheless, as long as ski resorts satisfy their limited statutory requirements, they generally cannot be held liable to skiers for their actions or the actions of others using their ski resort.

Skiers, on the other hand, do owe certain responsibilities to other skiers, and can be held responsible for injuring other skiers. Ohio statutory law sets forth several responsibilities

belonging to skiers, including, but not limited to, the following:

- To know the range of the skier's ability to negotiate any slope or trail, to ski within the skier's ability, to ski only on designated slopes and trails, to maintain control of speed, to heed all posted warnings;
- To refrain from acting in a manner that may cause or contribute to the injury of another person, to refrain from causing collision with any person or object; and
- When involved in a skiing accident in which another person is involved who needs medical or other assistance, to obtain assistance for the person, to notify the property authorities, and to not depart from the scene of the accident without leaving personal identification.

The foregoing law only applies to Ohio. Therefore, those skiers that travel to other states to ski must refer to the law in those particular states in order to determine their rights and responsibilities.

Although Wiles, Boyle, Burkholder & Bringardner does not provide skiing lessons, it can counsel you regarding your rights and responsibilities should you be injured or injure someone while skiing. If you have any questions regarding your rights and/or responsibilities relating to skiing, please contact our law firm.

By Mark Melko

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**Featured Attorneys**



**Mary Ten Eyck Taylor**

Mary is an estate planning specialist with significant experience in tax, probate, trust and elder care law.

She graduated magna cum laude from Russell Sage College and received her law degree with honors from Capital University Law School. She serves on the professional board of the Columbus Foundation and is a member of the Columbus, Ohio State and American Bar Associations.

Mary lives in Bexley with her dog, Rose, the best darn boxer in the land. In her spare time she enjoys a variety of sports, both doing and watching.



**William B. Benson**

As a litigator, Bill specializes in product liability and transportation law.

He is a graduate of Miami University and earned his law degree from Capital University Law School. Recently Bill was named panel counsel for the Zurich Insurance Companies, North America's Liability Catastrophic Injury Council.

Bill and his wife, Pam, have four children and he spends much of his spare time coaching them in football, basketball, baseball and soccer.

## To Be Or Not To Be – A Trustee – That Is The Question

Are you serving as a Trustee of someone else's trust or have you been named to serve as Trustee when someone dies? If you answered yes to either one of these questions, I encourage you to look over the questions below and then contact one of the Wiles, Boyle, Burkholder & Bringardner attorneys who have in depth trust experience. As a Trustee, you will likely need legal advice to fully understand what your duties are as a Trustee and how to protect yourself from an inadvertent act that might create liability for you. There are certain questions that a Trustee must ask:

- Were you told that by serving as a Trustee, your own personal assets and wealth could be at risk if you make bad decisions as a Trustee?
- Were your duties and responsibilities explained to you?

- Have you read and do you thoroughly understand all of the provisions of the trust agreement in which you are named as the Trustee?
- Are you knowledgeable about the rules and laws governing Trustees as to the types of permissible investments?
- Are you sufficiently comfortable evaluating all the different types of investment products and making significant investment decisions?
- Are you recording the time you have contributed while serving as the Trustee and are you being adequately compensated considering the risks and responsibilities?
- Do you know how long you are expected to serve as Trustee and if and when and how you can resign?
- Did you know that effective January 2007, Ohio has a new trust code with several new laws and regulations governing Trustees?

Trusts are a very common estate planning device used to save taxes, take care of children, and provide your family with some long term management and care of your assets. As a Trustee, you are accountable to every single beneficiary in the trust, the IRS, the applicable supervising court and others.

Are you a Trust Beneficiary? If you are, you have both rights and responsibilities, and it is important to know both. Trust agreements have some provisions that are common to most trusts but otherwise, each Trust is unique to the family. Please let us help you through the maze of Trustee's responsibilities and eliminate the mystery of your rights as a trust beneficiary.

By Mary Ten Eyck Taylor

## Condominiums In Ohio Are Now More Flexible Than Ever

Do you remember when "condominiums" would only conjure up the image of new residential construction? In central Ohio in recent years, there have been numerous types of condominium developments in addition to new residential construction. Real estate owners and developers have utilized the Condominium Statute to create condominiums for various uses, including: office; warehouse; residential; and mixed use (retail/residential/office), and sometimes using conversions (e.g. converting an existing "double" or apartments into separate units). In short, condominiums are flexible.

A condominium development consists of multiple units in one or more buildings where each unit is individually owned, but shares and owns with other units common elements such as the exterior structure, grounds and some-

times hallways, stairwells and recreational facilities. Units may be attached or free standing. Developers create a declaration and bylaws to establish the rights, duties and obligations of the owners of the various units. Typically, the declaration and bylaws will establish not only the common elements, but also exterior or interior limited common elements such as patios, planting areas, walkways or parking areas, limited to the exclusive use one unit or less than all units.

Recent changes to Ohio condominium law separately define and distinguish a "residential unit" from a "commercial unit" and define the ownership rights in each of these types of units. Additionally, the recent changes in Ohio condominium law permit a developer to create "convertible units", which are units that can be enlarged

or contracted depending on the need of the condominium developer. For example, in a warehouse condominium, the developer may not know at the outset of development what the exact size will be of the various units or bays to be sold to prospective buyers. Interior space can be initially established as one unit and later converted to smaller separate units as the development progresses and the market for unit sizes is determined. Commercial condominiums offer the flexibility of permitting the unit sizes to change as needed by the developer.

Because the statute is technical, detailed attention to preparation of documents is essential to maximize flexibility. If you are interested in learning more about condominium development or ownership, please contact Dan Bringardner.

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