

2024

BUSINESS IN 2023

WEEKLY WEBINAR SERIES

2022

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2020



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Introduction



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TODAY'S AGENDA

Adam Mastroleo – (12:00PM-12:05PM)

- Introduction / Agenda

Thomas Eron and Erin Torcello – (12:05PM-12:25PM)

- Significant NLRB Developments

Mario Ayoub – (12:25PM-12:35PM)

- New EU-U.S. Data Privacy Framework

Sabrina Salama – (12:35PM – 12:45PM)

- The Practical Effect of the Uniform Partition of Heirs Property Act

Significant NLRB Developments



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Cemex Construction: The New Union Representation Process



- Traditional union organizing procedure
- *Cemex* Holding:

After the union demands recognition, the employer **must** either:

- recognize and bargain with the union, or
- file an NLRB petition for an election within two weeks

If an election petition is filed but the employer is found to have committed ULPs, Board will dismiss the election petition and issue a bargaining order.

Cemex: Likely Consequences

- Appeals will take time
- Retroactive – *Cemex* currently in effect
-  elections & employee free choice
-  significance of union authorization cards
- Shift the burden to the employer to act promptly

“Quickie” Election Rules

- On top of *Cemex*
- Shorten the time between petition and election
- Require the employer to act more quickly on posting notice, employee list and statement of position
- Reduce issues for pre-election hearing
- Effective December 26, 2023
- Apply to both union (RC) and employer (RM) petitions

Bottom Line: NLRB changes place a premium on employer preparation

NLRB Developments: Pop-up Webinar

Thursday September 7, 2023 @ 1:00 pm

In-depth discussion of:

- Cemex, Election procedures & other Board action
- New Legal risks
- Implications for Employers

When is individual conduct protected by NLRA?

- NLRA protects concerted protected activity
- BUT, employee acting alone can be engaged in concerted activity
 - E.g., employee complaint about CBA violation
- What about non-union setting?
 - No pre-existing group activity
 - Trump Board: examine objective factors –
 - Biden Board (August 2023) – holistic, totality of the circumstances
 - Including subsequent events
 - Expanding the scope of who is protected and when

Collective Bargaining: Employer actions after CBA expires

Setting

- Parties engaged in negotiations for a successor CBA.
- CBA expires; no extension.
- Employees continue working; no job action.
- Expired CBA has management rights or other provision allowing discretionary changes to terms of employment.
- Past practice exists.
- E.g., changes in work schedules, annual health benefit plan adjustments, etc.

Collective Bargaining: Employer actions after CBA expires

Tecnocap, LLC

- Significant limitations on employer's ability to act.
- Employer must show:
 - "consistent with longstanding past practice" and
 - not subject to employer discretion.
- Tecnocap CBA:
 - Normal work schedule 3 eight-hour shifts; 5 days/week
 - Management may adjust schedules based on production needs
 - Past practice of changing schedules based on production

Collective Bargaining: Employer actions after CBA expires

Tecnocap, LLC

- Significant limitations on employer's ability to act.
- NLRB: Changes to work schedules during CBA hiatus unlawful.
Exercise of employer discretion requires bargaining.
Disregards negotiated terms of parties' agreement.
- Asymmetric rule -- union "waiver" expires with CBA.
- Bolsters unions' bargaining power.
- Bargaining strategies and proposals will need to adapt to the new landscape.

New EU-U.S. Data Privacy Framework



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Background

- **GDPR Article 44:** prohibits the transfer of EU personal information to third countries without appropriate safeguards.
 - Standard contractual clauses
 - Binding corporate rules
 - Adequacy decisions
- Examples of transfers:
 - Company shares HR data of EU employees with their U.S. office
 - U.S. based marketing company processes customer information on behalf of a European retailer

Background

- **July 2020:** CJEU invalidated the EC's adequacy decision for the EU-U.S. Privacy Shield Framework, on which more than 5,000 U.S. companies relied on to conduct trans-Atlantic trade in compliance with EU data protection rules.
- **March 2022:** EC and U.S. agree to reform U.S. intelligence gathering surveillance practices. President Biden signed EO establishing administrative safeguards to protect the legitimate privacy interests of individuals.

Background

- **December 2022:** EC adopted a draft adequacy decision on the EU-U.S. Data Privacy Framework
- **July 2023:** EU approved the framework

The New Framework

- Framework introduces new rules and binding safeguards to limit U.S. intelligence authorities access to data based on necessary and proportionate principles to protect national security.
- An organization that wants to make transfers under the DPF must self-certify with the U.S. Department of Commerce.
- This certification includes a commitment to adhere to certain principles.

The New Framework

- **Purpose Limitation and Choice:** Personal data must be collected lawfully, fairly and for a specific purpose.
- **Processing Special Categories of Data:** The DPF places certain obligations on participants in relation to the collection and processing of special category data.
- **Data Accuracy, Minimization, and Security:** Organizations must take specific steps to ensure personal data is accurate, necessary for the purpose of processing, maintain in a secure manner provides protection against unauthorized or unlawful processing.

The New Framework

- **Transparency:** Data subjects must be informed of DPF organizations data processing activities including the purpose for processing, the parties that have access to personal information, and their individual rights, among other disclosures.
- **Individual Rights:** Data subjects must be informed of their rights in relation to processing of personal data and must be able to exercise those rights with participating organizations.
- **Onward Transfers:** DPF organizations will be responsible for any onward transfer of personal data and may need to implement certain contractual obligations with third parties receiving personal data.

The New Framework

- **Accountability:** As the DPF operates as a voluntary self-certification, organizations must implement appropriate technical and administrative measures to ensure compliance with the principles.
 - Workforce training
 - Internal policy and procedure creation
 - Outside compliance review

Enforcement

- Individuals can submit a complaint to their own national data protection authority, who will then transfer it to the United States and continue to provide updates to the individual on the progress of their complaint.
- Complaints will first be investigated by the so-called ‘Civil Liberties Protection Officer’ of the U.S. intelligence community, who is responsible for ensuring compliance with regulations protecting privacy and fundamental rights.
- EU individuals may appeal the decision of the Civil Liberties Protection Officer to the newly created Data Protection Review Court (DPRC), composed of impartial members from outside the U.S. government.

Limitations

- DPF only applies to organizations regulated by the Federal Trade Commission or the U.S. Department of Transportation.
- DPF may be subject to legal challenges just like the Safe Harbor Framework and the Privacy Shield. The U.S. intelligence community's expansive powers remain a concern for some European organizations, and we expect to see legal challenges to invalidate the DPF brought in the CJEU.

The Practical Effect of the Uniform Partition of Heirs Property Act



Sabrina J. Salama

Associate

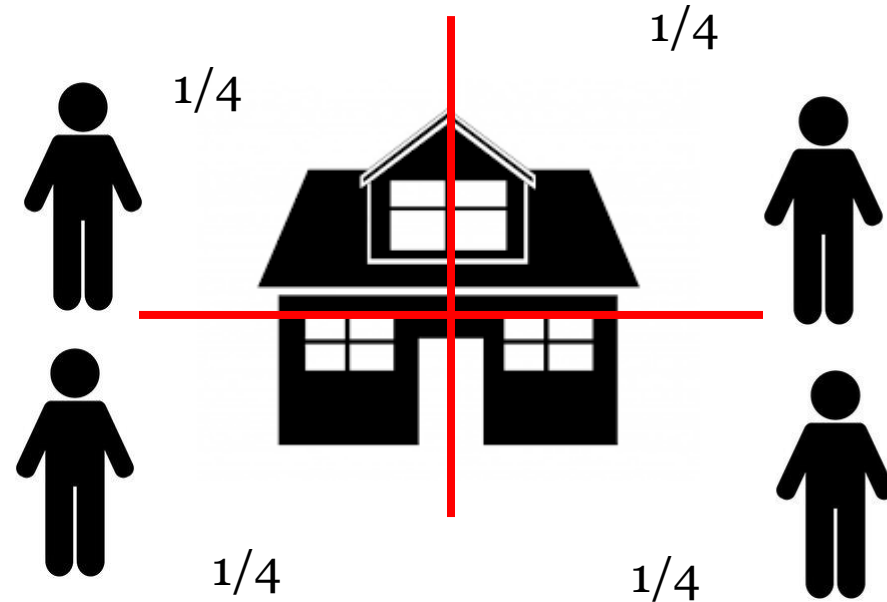
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Prior to the Passing of the UPHPA

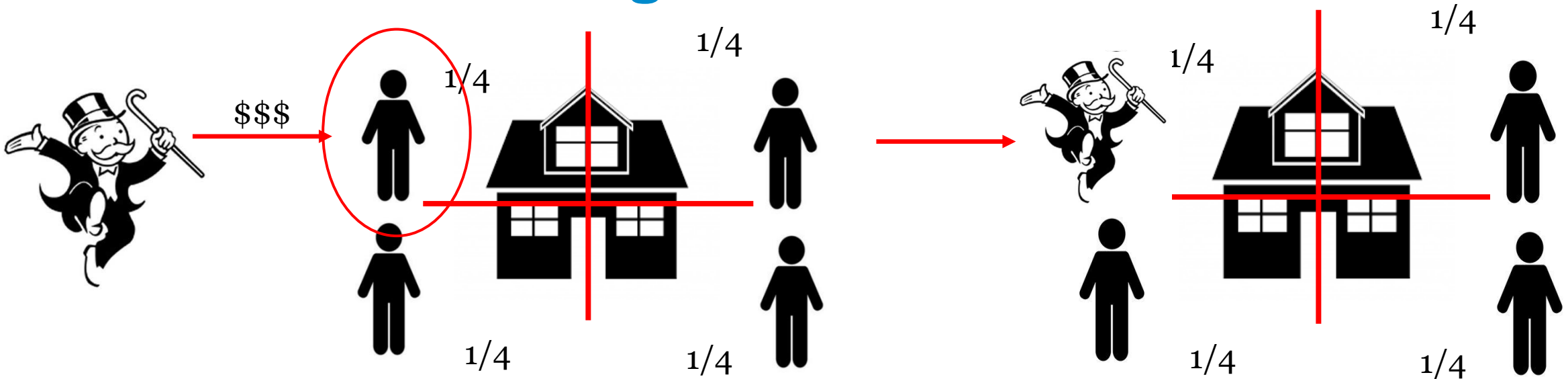
- Foreclosure crisis hit its peak in 2010 when bank seized more than a million homes
- Impacted low-income Americans who have not be able to recover
- Property values in NYC are rapidly growing—leaving homeowners asset rich but income poor

Prior to the Passing of the UPHPA



- Where multiple owners held real property as tenants in common, any one co-owner could try to force a sale of the property by filing a partition action under the RPAPL

Prior to the Passing of the UPHPA



- Predatory real estate spectators have used this information to purchase a stake in that real property and use their stake to file a partition action
- This forces a sale of the property at a price far lower than the value of the property

The Solution: the UPHPA

- Based on these issues, former Gov. Cuomo passed New York State's version of the UPHPA (RPAPL 993)
- Designed to protect heirs property → real property held in tenancy in common in which
 - There is no agreement binding all co-tenants which governs the partition of the property;
 - At least one of the co-tenants acquired title from a relative;
 - The property is used for residential or agricultural purposes; and
 - Either 25% of the interests derive from a familial relationship, OR any co-tenant who acquired title from a relative resides in the property

It's Heirs Property—Now What?

- UHPA applies, unless all of the co-owners agree otherwise
- Co-owner requesting partition must give notice to all co-owners
- Parties must attempt to resolve the action among themselves
- Mandated settlement conference to ensure negotiations in good faith
 - Overseen by referee or judicial hearing officer
 - If determined co-owner is acting in bad faith → partition action dismissed

Protecting the Value of the Property

- Court to order independent appraisal to determine the property's fair market value unless co-tenants agree to value of the property or to another valuation method OR value of the appraisal outweighed by the cost
- Appraiser to file appraisal with court
- Court sends notice of appraisal to all parties within 10 days
- Hearing to determine fair market value 30 days after notice sent

Rights of the Co-Owners

- Any co-owner may exercise a right of first refusal to buy out the interest of the co-owner seeking partition for a proportional share of the court-determined market share
- If no exercise of first refusal right, court must first consider partition-in-kind
- If partition-in-kind is not viable, then court to order partition-by-sale
 - Property to be offered on the open market at court-determined value
 - Reasonable amount of time on market
 - Commercially reasonable manner

Bottom Line of UPHPA in NY

- Goal of the UPHPA is to allow relatives holding fractional interests to acquire full ownership or receive full value from their share
- Little caselaw interpreting the UPHPA
- Overall impact

The UPHPA in Other States

- It has been adopted in 18 other states: AL, AR, CA, ST, FL, GA, HI, IL, IA, MS, MO, MT, NV, NM, NY, TX, VA, and Virgin Islands
- Pending legislation in 8 other states

Your Questions



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New York Employment Law: The Essential Guide

NYS Bar Association Members can buy the book from the bar [here](#).

Non-NYS Bar Association Members can purchase through Amazon [here](#).

Thank You

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It is not to be considered as legal advice.
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