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### What's Inside Spring 2014

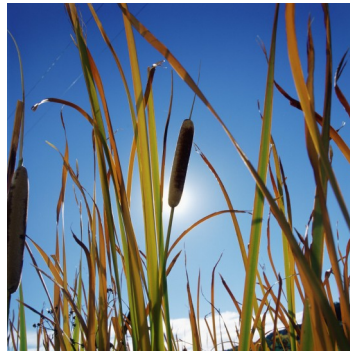
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# Legal Bytes

## Your Dismal Swamp is Really a Protected Natural Resource

By John L. Maier



Put your sweaters and blankets away and dig deep into your drawer to find your landscaping clothes. Spring is here and with it the song of birds, warmer weather and longer days ... it's time to feel the warm sunshine and get your hands dirty. Now is the perfect time to take care of some landscape clean up; maybe that area full of muck and shallow water, with cattails around the edge. If you are wondering if you can fill in that space and use it for a swing set you'd better do your research.

Filling in that swampy spot, which ecologists call a "wetland" is going to get you into trouble. Wetlands are important environmental areas and are protected by law. They provide areas for wetland plants and animals to thrive, and for groundwater to be filtered and "recharged". You can't just choose to fill them in, and build over them. In a sense, you are lucky because your home is already built. Many people will buy property not even realizing that wetlands exist on it, and find out that rules and regulations operate to prevent not only filling and developing that part of the property, but also require setbacks from wetland boundaries. That could mean that the presence of wetland on your neighbor's property will affect your ability to build on your own property. So, before you buy, or plan to build on property you already

own, check out the resources in your own community that will give you a "heads up" where wetlands may exist in and about the property you are interested in. Wetland Inventory Maps are available at the County Land Use and Resource Management [i.e., zoning] Office, and also at the Building and Zoning Departments of our local Town, Village and City Halls. County Soil Surveys, aerial photographs, and adopted land use plans are other sources to be consulted. If you aren't sure, there are wetland biologists who can be retained to check for you. After all, a few hundred dollars to "make sure" would be well worth it, as compared to the cost of buying property that cannot, and should not, be developed. More questions? Just give me a call, and be sure to add wetlands to your due diligence checklist.

GREEN GRASS  
AFTERNOON RAIN SHOWERS  
OPEN WINDOWS  
COLD ICE CREAM  
EVENING WALKS  
PICNICS IN THE PARK  
WARM SUNSHINE  
PRETTY FLOWERS  
HAPPY SPRINGTIME

## PLANNING FOR THE SALE OF YOUR BUSINESS: LEGAL CONSIDERATIONS

By John L. Maier

As an attorney who has assisted clients with the sale of their businesses or the purchase of new businesses, I have observed that the process of selling a business (any kind of business) can go more smoothly, and can result in more money for the seller, if the seller plans for the sale or otherwise considers certain legal issues in advance. I have set forth several areas of pre-sale legal planning that a seller should investigate well in advance of any sale to help maximize the value received.

**Advisors:** Prior to selling your business, visit with your accountant and attorney to discuss the specifics of your business and a general timeline and deal structure that you can expect.

**Type of Entity:** The type of entity, whether it is a corporation, sole proprietorship, limited liability Company, or partnership and the applicable tax-election, whether it be subchapter C, subchapter S or other pass-through classification, will have a great impact on the overall deal structure. You should meet with your advisors to understand the implications of these issues.

**Deal Process:** In the typical sale transaction, the following documents and steps are often utilized: (1) Since the seller will not want its financial information to be disclosed to others, the potential buyer often will be required to enter into a Nondisclosure Agreement pursuant to which the buyer agrees to keep the information confidential; (2) The buyer and seller often enter into a non-binding Letter of Intent pursuant to which the basic deal terms are agreed to and which restricts the seller from talking to other potential buyers while the "official" agreement is written; (3) The parties negotiate an acquisition agreement such as an Asset Purchase Agreement, which is the critical document containing the terms of the actual transaction; and (4) Ancillary documents such as a Non-Compete Agreement, Promissory Note, Security Agreement, Escrow Agreement and Consulting Agreement may be utilized as well. Review the process with your attorney.

**Deal Structure:** Typically a business is sold either through the sale of the stock in the company or through the sale of its assets.

Often, the buyer prefers an asset purchase transaction to attempt to isolate and leave the unwanted liabilities with the seller and to receive a step-up in the basis of the assets purchased. Conversely, a stock purchase is usually easier to write up and close on.

**Review Documents:** Meet with your attorney and review sample documents that would govern a potential transaction. For example, in an asset purchase agreement, the seller will be expected to make certain representations to the buyer relating to the business such as litigation, taxes, compliance with law, financial statements and ownership of assets.

**Taxes:** Discuss with your attorney or accountant the tax consequences of the transaction so that you can maximize what you receive.

**Company Cleanup:** To attract and keep potential buyers interested, review your corporate records and minute book to make sure that they are complete and accurate. Are there personal assets that have become intertwined with the business?

**Contracts:** Inventory all of your material relationships and contracts. As part of the due diligence process, the buyer will expect lists and copies of these documents.

**Estate Planning:** Is your estate planning in order and what are the implications of the transaction on your estate plan?

**Business Valuation:** What are your expectations regarding how much you should receive in a sale? Discuss with your accountant and attorney the value of seeking a rough or more specific business valuation. Be realistic!

**Approval Process:** What approvals are necessary to sell your business? Have you entered into agreements or loans or mortgages that are implicated by a sale, restrict a sale, or require a third party to approve the sale? Speak with your attorney regarding the approval process necessary to complete the sale transaction.

**Conclusion:** As with most things, a little planning can help a seller maximize the value received and otherwise make easier what is often a difficult experience. If selling your business is a possibility or a goal, then planning ahead is a wise investment.

For help concerning the sale or purchase of a business, contact John L. Maier at Sweet & Maier, SC, in Elkhorn, WI. We are licensed in Wisconsin and Illinois, or for more information, please visit [www.wisclaw.com](http://www.wisclaw.com)





## Spring Forward, Fall Back

By Terri Maier



Well, we all just went through “the change” again! For those of you (like me) who wondered about it, the idea of daylight saving time was first conceived by Benjamin Franklin in 1784 during his stay in Paris. He published an essay titled “An Economical Project for Diminishing the Cost of Light” that proposed to economize the use of candles by rising earlier to make use of the morning sunlight.

The invention of Daylight Savings Time (DST) was mainly credited to William Willett in 1905 when he came up with the idea of moving the clocks forward in the summer to take ad-

vantage of the daylight in the mornings and the lighter evenings. His proposal suggested moving the clocks 20 minutes forward each of four Sundays in April, and switching them back by the same amount on four Sundays in September.

Willett’s daylight saving plan caught the attention of Robert Pearce who introduced a bill to the House of Commons in February 1908. The first Daylight Saving Bill was drafted in 1909 and presented to Parliament several times and examined by a select committee. However, the bill was opposed by many, especially farmers and thus the bill was never made into a law. Willett died in 1915 without getting the chance to see his idea come to life.

DST was first adopted to replace artificial lighting so they could save fuel for the war effort in Germany during World War I at 11:00pm (23:00) on April 30, 1916. It was quickly followed by Britain and many countries from both sides, including the United States. Many countries reverted back to standard time post-World War I, and it wasn’t until the next World War that DST would make its return to many countries in order to save vital energy resources for the war.

President Franklin D. Roosevelt instituted year-round DST in the United States, called “War Time” during World War II from February 9, 1942 to September 30, 1945. The law was enforced 40 days after the bombing of Pearl Harbor and during this time, time zones were called “Eastern War Time”, “Central War Time”, and “Pacific War Time”. After the surrender of Japan in mid-August 1945, the time zones were relabeled “Peace Time”.

Daylight saving was first recognized as an energy saving aspect during World War II when Double Summer Time was applied in Britain which moved the clocks two hours ahead of GMT during the summer and one hour ahead of GMT during the winter.

DST caused widespread confusion from 1945 to 1966 for trains, buses and the broadcasting industry in the US because many states and localities were free to choose when and if they would observe DST. Congress decided to end the confusion and establish the Uniform Time Act of 1966 that stated DST would begin on the last Sunday of April and end on the last Sunday of October. However, states still had the ability to be exempt from DST by passing a local ordinance

The US Congress extended DST to a period of ten months in 1974 and eight months in 1975, in hopes to save energy following the 1973 oil embargo. The trial period showed that DST saved the equivalent in energy of 10,000 barrels of oil each day, but DST still proved to be controversial. Many complained that the dark winter mornings endangered the lives of children going to school. After the energy crisis was over in 1976, the US changed their DST schedule again to begin on the last Sunday in April. DST was amended again to begin on the first Sunday in April in 1987. Further changes were made after the introduction of the Energy Policy Act of 2005

The DST schedule in the US was revised several times throughout the years, in which the DST schedule period lasted for about seven months from 1987 to 2006. The current schedule began in 2007 and follows the Energy Policy Act of 2005, which extended the period by about one month where DST starts on the second Sunday in March and ends on the first Sunday in November. Currently, most of the US observes DST except for Hawaii and most of Arizona, and the US insular areas of Puerto Rico, the US Virgin Islands, American Samoa, and Guam

### Great Truths Adults Have Learned

Now that I’m older, here’s what I’ve discovered:

1. I started out with nothing, and I still have most of it.
2. Funny, I don’t remember being absent-minded.
3. It’s hard to make a comeback when you haven’t been anywhere.
4. Kids in the back seat cause accidents.
5. Accidents in the back seat cause kids.
6. These days, I spend a lot of time thinking about the hereafter...I go somewhere to get something, and then wonder what I’m “here after”.
7. Funny, I don’t remember being absent-minded.

## Wisconsin Center Stage on Energy Scene

In Wisconsin, frac sand is the new gold. And by most accounts, the rush is only beginning. Wisconsin's sand, left by the glaciers, is in demand for use in the process of hydraulic fracturing, or fracking. Frac sand mining has surged in recent years, growing from a handful of sites to at least 115 permitted facilities. This growth boom has divided communities across sandy western Wisconsin — those who believe mining will create sorely needed jobs against those who fear the consequences these mines may have on human health, road safety and the environment.

Midwest residents are convinced of health hazards posed by the frac sand mining that has proliferated in tandem with fracking. The freshly fractured crystalline silica from mining and processing operations is thought to be particularly damaging to health. One grain of silica sand is comprised of many crystalline silica particles. Fractured free by indus-

trial blasting or crushing, these particles are sharp, chemically reactive and, according to Pierce, have been shown to cause more lung inflammation in animals than the kind of weathered silica likely to be kicked up from a farm field or dirt road. Despite the dangers, crystalline silica dust is not regulated as a hazardous pollutant by the U.S. Environmental Protection Agency or by Wisconsin.

The type of ancient, coarse-grained sand that form the hills and river bluffs of west central Wisconsin is now highly prized by the oil and gas industry. Wisconsin's sands happen to be perfectly suited for the task of fracking. Since May 2010, the number of mines and processing plants in the state jumped from 10 to about 110, according to the Wisconsin Department of Natural Resources. The sand is mixed with water and chemicals, then injected at high pressure into shale rock formations, forcing out formerly difficult-to-extract deposits of oil and natural gas. Up to 4 million pounds of the sand is used per well to prop open the newly created rock fractures that release the natural gas.

Fracking is why the U.S. is now producing more of its own petroleum than ever before, moving from importing 60 percent of its oil in 2007 to just 33 percent today, including Canadian imports. More than 40 percent of the natural gas and 30 percent of the oil being produced in the U.S. today is coming via fracking, with those numbers expected to climb past 60 percent by 2020. For that reason -- and because Wisconsin has some of the best frac sand deposits in the world -- the state is suddenly center stage on the world energy scene, despite having no fossil fuels of its own.

### Warning: Phony Websites

In the past year Better Business Bureau has shut down more than one hundred fraudulent websites. A noticeable trend recently is websites that include the word "overstock" in the domain name, hoping to fool consumers into thinking they are shopping with Overstock.com, a highly visible online retailer. BBB is warning consumers: be careful to look for the real domain when it comes to major retail sites. Overstock.com is a BBB Accredited Business with an A rating.

Here are some suggested tips for online shoppers to avoid bogus websites:

1. Go to bbb.org to look up the BBB Business Reviews of your favorite online retailers.
2. Type the URL directly into your browser; do not click on a link from an email or social media site unless you are absolutely sure the message is from the legitimate business
3. On the payment page, look for "https" at the beginning of the address (the "s" stands for "secure").
4. Look for "Contact Us" Information, including a real address, a toll-free customer service number, and other ways to reach the company if you have a problem.
5. Use a credit card (not a debit card) when shopping online for greater protections against possible fraud.
6. If a website has a BBB Accredited Business seal, click on it. A real seal should link directly to that company's BBB Business Review.





## Flowers On The Graves

By Terri Maier



Laurence Binyon

On Memorial Day, all Americans should pause to reflect on the actual meaning of this holiday and the sacrifices made by military service members, their spouses, and their children. Ask children what Memorial Day means to them and they'll frequently say: "That's the day that the pools open." Yet no other observance in America is more somber: It is the day we remember our war dead, pay homage to their sacrifice and courage, and recall the selflessness that embodies military service. Memorial Day also honors the families of the fallen: the mother who hears her child's 21-gun salute; the husband or wife who receives a folded flag; the young son or daughter who knows mom or dad only from a photograph.

Memorial Day 2014 is on May 26 and is a holiday that has evolved dramatically over the years. The holiday's original name, Decoration Day, came from the day's main activity: leaving flowers at cemeteries and was first observed on May 30, 1868. Decoration Day was initiated to honor the soldiers for the Union and Confederate armies who died during the American Civil War. The Civil War claimed more lives than any conflict in U.S. history, requiring the establishment of the country's first national cemeteries.

On May 5, 1862, General John A. Logan, leader of an organization for Northern Civil War veterans, called for a nationwide day of remembrance later that month. "The 30th of May, 1868, is designated for the purpose of strewing with flowers, or otherwise decorating the graves of comrades who died in defense of their country during the late rebellion, and whose bodies now lie in almost every city, village and hamlet churchyard in the land," he proclaimed. The date of Decoration Day, as he called it, was chosen because it wasn't the anniversary of any particular battle.

On the first Decoration Day, General (later President) James Garfield made a speech at Arlington National Cemetery, and 5,000 participants decorated the graves of the 20,000 Union and Confederate soldiers buried there. Many Northern states held similar commemorative events and reprised the tradition in subsequent years; by 1890 each Northern state had made Decoration Day an official state holiday.

Many Southern states, on the other hand, continued to honor their dead on separate days until after World War I. During World War I the United States found itself embroiled in another major conflict, and the holiday evolved to commemorate American military personnel who died in all wars. The establishment of a public holiday was meant to unify the celebration as a national day of remembrance instead of a holiday celebrated separately by the Union and Confederate states. For decades, Memorial Day continued to be ob-

served on May 30, the date Logan had selected for the first Decoration Day. But in 1968 Congress passed the Uniform Monday Holiday Act, which established Memorial Day as the last Monday in May in order to create a three-day weekend for federal employees; the change went into effect in 1971. The same law also declared Memorial Day a federal holiday. Memorial Day weekend is the unofficial beginning of the summer vacation season that lasts until the first Monday in September, which is Labor Day.

Memorial Day is designated as a day of remembrance, where no one should forget that those who died were individuals who will no longer be able to celebrate a birthday, an accomplishment, or a special family event. On this somber day, people need to take a moment out of their lives and think about the ultimate sacrifice made by those who have served so Americans can maintain their lifestyles. As we observe Memorial Day weekend visiting cemeteries or memorials, attending parades doused in red, white and blue, having cook-outs in the backyard or making excursions to the local pool, let's also reflect on the actual meaning of the day.

To those who died securing peace and freedom; To those who served in conflict to protect our land, and sacrificed their dreams of the day to preserve the hope of our nation - keeping America the land of the free for over two centuries - we owe our thanks and our honor. It is important to not only recognize their service but to respect their devotion to duty and to ensure that the purpose for which they fought will never be forgotten.