

**NEWSLETTER**



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**ARE YOU THE CONTROLLING TYPE?**



By: John A. Kolanz, Esq.  
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If so, and you own property on which tenants engage in certain regulated activities, you should consider consulting a specialist for a little preventive care – legal, not medical. Controlling the activities of these tenants can draw enforcement against the property owner when the tenants’ operations raise environmental compliance issues, as a recent federal case illustrates.

The case involved a sportfishing group that sued an industrial park owner for Clean Water Act (“CWA”) violations caused

by discharges of polluted storm water. The fact that any pollutants in the storm water were put there by the tenants did not protect the landlord. The court held that “owners and/or operators who have sufficient control over a facility can be held liable under the CWA even if they do not themselves perform the industrial activities that create the pollutants in the storm water discharge.” Here, the landlord owned and controlled the storm water drainage system from which the pollutants were released.

Operations requiring storm water permits are not uncommon, and can include transportation, food processing, and recycling businesses, as well as construction activities. The requirement can also apply to other operations on a case-by-case basis.

Moreover, this potential enforcement trap for landlords goes beyond CWA

concerns. Owners who exert control over their tenants’ waste management practices may also risk enforcement. In recent years, retail outlets like hardware stores, pharmacies, and even groceries have been targeted by hazardous waste enforcement actions. This is because many common products like drain cleaners, over-the-counter drugs, and hand sanitizers can be considered hazardous wastes under certain circumstances.

Thus, a tenant’s business may not necessarily raise a red flag. Landlords should consider how monitoring protocols or proper lease provisions could provide protection from the environmental afflictions of their tenants, and save the expense of a pound of cure.

-John A. Kolanz

## Work/Family Boundaries: Your Attorney Can Help



By: Christian J. Schulte, Esq.  
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As a litigator in a business law firm, I have seen the best and worst of family businesses. When they work, they work great, for intuitive reasons: family know and trust each other, they share values, they want to maintain a generational tradition. But when they sour, they are

horrible. Family business dissolutions are like divorces: parties supposedly fighting over fair asset division are really fighting over hurt feelings and deeper family conflicts.

This Forbes article: <https://www.forbes.com/sites/nextavenue/2017/03/08/how-family-businesses-can-set-workfamily-boundaries/#13f6abc62a80> is worth reading. The authors do not, however, mention that legal advice is essential too.

During formation, your attorney will consider things you might not. For instance, you may not think that a sibling, spouse, or child might leave the business, because of new interests,

divorce, or an untimely death. Does your business have a buyout provision that lets someone separate without crippling the business? Is your agreement fair to the heirs of a deceased partner? Your attorney can help you make conscious decisions about these issues, instead of leaving them to spring up during a crisis. Hopefully, this makes litigation less likely.

When things are falling apart, however, you should consult a litigator early. A litigator such as myself would give you a sense how much litigation can cost and your likelihood of prevailing, but more importantly would help you think about your case

dispassionately. Family members may try to “guilt-trip” you into an unfair settlement, or you might be taking an untenable stance motivated by non-business considerations. Regardless, your litigator’s goal should be to help you stop and think, Is this really what you want to do?

Ultimately, whether you want to pursue settlement or a full lawsuit, your litigator’s job is to help you carry out your decision. But that decision should be your informed decision, not an unfortunate gut reaction.

- Christian J. Schulte

### Attorney Spotlight

#### Lia Szasz

Lia’s practice centers around business law, agricultural law, real estate law, complex commercial litigation, and trust and probate litigation.

She obtained her undergraduate degree from Washington State University and her J.D. from the University of Colorado School of Law. While in law school, Lia received the best overall combined brief and oral argument award in the Colorado Appellate Advocacy Competition, and represented CU in the American Bar Association’s Client Counseling Competition. Before law school, Lia worked for a real estate and estate planning law firm, and served as a law clerk for OBP throughout law school. With a background in agriculture and real estate, she is particularly adept at assisting clients with matters related to farming and ranching operations. Lia is admitted to practice law in Colorado, Wyoming, the United States District Court for the District of Colorado, and the Tenth Circuit Court of Appeals. She is committed to serving northern Colorado both professionally and as a member of its community.





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**Adverse Possession: Losing the Farm without Even Knowing It**



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Did you know that, under Colorado statute, someone can obtain title to your land without paying for it? Under the doctrine of adverse possession, if someone uses your land continuously for 18 years, it may become theirs. This doctrine became famous when a retired judge in Boulder obtained title to part of his neighbor's property through adverse possession, and a lengthy

(and expensive) legal battle ensued.

However, there are actions a landowner can take to prevent this from happening to them. While adverse possession is a concern for all Colorado landowners, it is especially important for those in agriculture, who often have hundreds or even thousands of acres of land. For example, if a neighboring landowner's fence line is placed somewhere other than the true property line on a ranch, a portion of the ranch could become the neighbor's property if the fence line stands for 18 years. Those in agriculture should take care to periodically monitor their ground for use by any third party and to put a stop to it.

On the other hand, if you're buying a farm or ranch, it is also important to have a survey completed to determine the true boundaries of the property. Often, agricultural land is kept in the same family for generations, and a fence line may not reflect the true property line. When someone from outside the family purchases some or a part of that property, a survey may keep you from buying something you did not expect—the defense of an adverse possession claim. A competent attorney can assist those in agriculture, as well as any landowner, in ensuring that they are protected from losing some or all of their real estate to adverse possession.

-Lia Szasz, Esq.

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