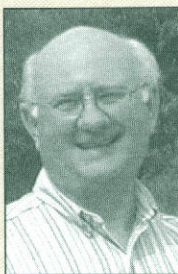


CLIENT ADVISORY NEWSLETTER

PAUL WRIGHT RECEIVES HIGHEST PEER RATING

Wright Law Co. LPA is pleased to announce that Paul Wright has been awarded an "AV" rating by Martindale - Hubbell, its highest rating. For over 100 years, Martindale - Hubbell has provided



professional peer review ratings of attorneys across the nation. In the words of Martindale-Hubbell's letter to Paul about his AV rating:

"The AV rating, which identifies a lawyer with very high to preeminent legal ability, is a reflection of your expertise, experience, integrity and overall professional excellence. Our ratings, established by attorneys for attorneys, clearly indicate you demonstrate the highest professional and ethical standards."

This same rating will also appear for the firm.

"Our ratings, established by attorneys for attorneys, clearly indicate you demonstrate the highest professional and ethical standards."

MAJOR CHANGES TO OHIO'S TAX SYSTEM

By David Miller and Kay Hafer

The following is a summary of some of the changes in Ohio taxes effective July 1, 2005.

INCOME TAX: there will be a 4.2% reduction in all brackets for 2005 and in each year, 2006-2009, for a total reduction of 21%.

SALES TAX: the state sales tax rate was reduced from 6.0% to 5.5%.

COMMERCIAL ACTIVITY TAX (CAD): most companies doing business in Ohio will be subject to this new tax based on taxable gross receipts. Businesses with taxable gross receipts of less than \$150,000 are exempt. Businesses with \$150,000 to \$1 million of gross receipts

will pay a minimum of \$150 and gross receipts over \$1 million will be taxed at 0.26% when fully phased in by 2009.

CORPORATE FRANCHISE TAX: will be phased out over five years at approximately 20% per year starting in 2006.

TANGIBLE PERSONAL PROPERTY TAX: will be phased out over four years starting in 2006 and ending in 2009.

ESTATE TAX: Ohio's additional estate tax (sponge tax) is eliminated although Ohio's basic estate tax remains in effect.

The Ohio Department of Taxation will be issuing specific details on the tax changes as needed.

Wright Law Co. LPA

4266 Tuller Rd., Suite 101
Dublin, OH 43017-5027
614-791-9112

Fall 2005 • Volume No. 9

IN THIS ISSUE

Limited Liability Companies
Are Popular

Major Changes to Ohio's
Tax System

Business Succession Planning

David Miller Joins Wright Law

Reducing Ohio Estate Taxes
for Married Couples

Ohio Drainage Law

Trustee Duties - Carrying Out
The Trust Maker's Wishes

Who's Who at Wright Law



Phone: 614-791-9112
Toll free: 1-877-791-9112
Fax: 614-791-9116

E-mail: law@wright-law.net
Website: www.wright-law.net

Address: 4266 Tuller Rd.
Suite 101
Dublin, OH 43017-5027

We're on the Web!
See us at:
www.wright-law.net

614 - 791 - 9112

WRIGHT LAW Co. LPA

TRUSTEE DUTIES - CARRYING OUT THE TRUST MAKER'S WISHES

By Kimberly M. Cutler

A trustee is the person who administers a trust. A trustee should be chosen based upon his/her ability to manage assets, supervise others to invest assets, distribute the assets as set out in the trust agreement, and who has integrity. The trustee can be an individual, or a company such as a bank or other financial institution. One can usually trust an institution such as a bank, and corporate trustees have higher fiduciary responsibilities. However, financial institutions do charge a fee for administering a trust and may not be as willing to manage unique assets. An individual as a trustee may not charge or may have reduced fees, but may not be as experienced as a corporate trustee. In some states, a trustee could be required to post bond to protect the beneficiaries from any of the trustee's unlawful conduct.

THE FOLLOWING IS A LIST OF TRUSTEE'S DUTIES:

- The trustee must title the required property to the trust. It is very important for the trustee to keep the property separate from his/her own property.
- Upon the trust maker's death, the trustee should request a taxpayer identification number from the IRS

if this has not already been acquired. This number will be used (similar to a social security number) in the filing of the trust income tax return.

- The trustee must locate the beneficiaries.
- The trustee should follow the trust agreement instructions. The trust agreement will usually list the powers and limitations of the trustee.
- The trustee should review the trust investments and make prudent investment decisions. The trustee will not be personally responsible for investments gone bad if the trustee did what an ordinary and prudent person would do. The trustee must then review the investments periodically to make sure the investments are still proper.
- The trustee is responsible for making the trust property productive. The trustee can hire someone to help make this happen. The trustee should diversify the investments as much as possible. If the trustee decides that certain property cannot be made productive, then the trustee should change investments.



In completing the duties, the trustee must exercise good faith in all matters. This means that the trustee cannot promote self-dealing so that he/she uses the property to his/her own benefit.

While exercising good faith, the trustee can delegate ministerial tasks, but cannot delegate discretionary acts. The discretionary acts that are non-delegable would include investment choices. The trustee can hire someone to help with investments, but that agent must be properly supervised by the trustee. The trustee must also keep accurate records of all of the activities taking place with regards to the trust. The creator of the Trust may have also given discretionary responsibilities such as when to distribute income and principle to beneficiaries. If given this awesome responsibility, the Trustee will need to have an ongoing relationship with the trust beneficiaries.

Being a trustee is a very honorable position to hold, but also a very difficult and time-consuming task. You should always choose someone who has management skills and who you trust to be the trustee. With assistance, a trustee can carry out the trust maker's wishes as outlined in the trust document. ■

LIMITED LIABILITY COMPANIES ARE POPULAR

By Robert Moore

The Limited Liability Company (LLC) is a business entity created by statute in Ohio. The LLC is essentially a hybrid of a corporation and partnership. The owners, usually called members, enjoy the liability protection of a corporation and the taxation and operation options of either a corporation or a partnership. It is also possible to have a single member LLC which can operate as a sole proprietor or a corporation. The

favorable attributes of the LLC have caused it to be the preferred choice for new business entities. One of the more common and effective uses of LLC's is as a real estate holding entity.

Many LLC's are formed with the sole intent of holding real estate. The title to the land is simply transferred by deed from the individual owner(s) to the LLC. This transaction provides the LLC members with several benefits.

First, the members will receive limited liability protection in regards to their ownership of the land. Second, the transfer of interest from one family member to another is much easier. For example, suppose a husband and wife own 100 acres of land and wish to gift 10 acres to each of their two children. If the land is not in an LLC, they have

LIMITED LIABILITY COMPANIES
(continued on page 6)

SUPPORT STAFF



L. to R, Joanne Schindelar, Chris Pullins, Laura Kulina, Jane Black, Teresa Grubbs

WRIGHT LAW CO. LPA

provides a wide range of legal services. Areas of emphasis include: agricultural law, business formation and planning, cooperatives, debtor/creditor/bankruptcy law, environmental law, estate planning, estate administration, government regulation, grain and feed contracting issues, land use planning, litigation, arbitration and dispute resolution, natural resource law, real estate transactions, and tax law.

BUSINESS SUCCESSION PLANNING

By Paul L. Wright

Business succession planning is one of the most challenging and important projects any business owner will undertake. It is important to the continued success of any business and important to the next generation of owners and managers. This can be a very exciting process if successful, and so very disappointing if the process fails.

Business succession planning involves a planned change of ownership and a planned change of management. Ownership changes can occur with sales, gifts or by inheritance to the next generation of owners. Ownership changes involve consideration of the income needs to the current owners and their spouses who may be leaving the business. Ownership changes also involve seeking ways for the future owners to feasibly fund purchases.

The next generation of owners and managers may include literally the next generation of a family or may include the next group of owners and managers who have been working in the business but who are not related to the current owners.

If a purchase of the current owner's interest is the major method of transferring the interest, then buy-out plans need to be put in place. Buy-out plans may involve internal financing arrangements, where the seller agrees to accept payments over an extended period of time with security for those payments. Buy-out plans may also involve external financing from third party lenders. Buy-out plans may also involve the purchase of life insurance on the current owner's life so funds are available to complete the purchase.

The shifting of management may be more challenging than the shifting of ownership. If the next generation of owners are to come from within the current group of those involved, then a plan for gradually sharing management should be put in place. If the next generation of managers have

been too sheltered from the experiences of decision making, then they may not be successful in the future management role. There is an unfortunate saying, "How to make dad a success and son a failure at age 40." This implies that dad never shared decision making and the son always was subservient to dad until one day son had all of the decisions to make. Prudent decision making tends to be an acquired talent not a talent to be achieved in an instant.

The shifting of management should be an intentional process. There needs to be a common goal of all the parties with lots of discussion. It is very unlikely that there will be full agreement on all topics. The common goal will provide guidance when differences arise. The plan for shifting management needs to be one that is fair and feasible.

As a plan for shifting ownership and management is put in place, several concepts and documents are usually needed. These include buy-sell agreements; asset valuation strategies; contracts for sales, purchase and rental of assets; development of company policies relating to the transfer plans; an identification of the next business leaders; a review of business entity

choices; job descriptions; retirement and deferred compensation plans; life insurance plans; estate plans with trust distribution provisions; gifting strategies; and a time table and process for shifting management.

There are counselors who give a lot of thought and attention to business succession planning. Counselors can be a source of ideas, a catalyst for getting the plan in place, and a guide for implementing the plan.

This is a topic which we at Wright Law have focused on with many businesses. There have been some real success stories among those with whom we have worked. However, we can not take all the credit. Our business clients have brought ideas, attitudes, and a willing spirit to achieve success. ■



The shifting of management should be an intentional process. There needs to be a common goal of all the parties with lots of discussion.

REDUCING OHIO ESTATE TAXES OF MARRIED COUPLES

by James K. Leonard

Most people know the basics about estate taxes (see below). But few know that Ohio estate taxes can be dramatically reduced for married couples when their estate plan uses a special technique. The technique, which I explain in a 2003 article in the *Probate Law Journal of Ohio*, has been approved by the Ohio Department of Taxation.

The tax-saving technique involves a Living Trust that exclusively benefits a surviving spouse during his or her lifetime. To see the technique's results, consider these two cases:

Tom and Mary Miller have a combined \$2,000,000 estate. With their Living Trust planning and careful asset titling, there will be no federal estate tax. However, there will be Ohio estate taxes – \$44,700 at the first death, and another \$44,700 at the second death, for a total of \$89,400.

George and Sally Jordan also have a \$2,000,000 estate and no federal estate tax liability. But, unlike the

Millers, they will pay zero Ohio estate tax at the first death, and about \$50,000 at the second death. This is a \$39,400 savings.

If you are married and have a Living Trust, a new technique can reduce your Ohio estate taxes if the "Family Trust" in your trust has the right wording.

What causes the different result? It's the distributions from the Living Trust of the first spouse to die. The Millers' plan permits distributions to the surviving spouse **and to their children**, while the Jordans' plan qualifies for reduced taxation because only the spouse can receive distributions during the spouse's lifetime.

The technique always eliminates Ohio tax at the first death and always reduces the combined tax for the two estates. For some couples, the combined tax is completely eliminated. For others, the savings would be like the Jordans' – the tax bill is roughly cut in half.

If you are married and have a Living Trust, your trust (specifically, the "Family Trust" inside the trust) must have the right wording for the technique to work.

Please call us if you would like to schedule a review of your trusts. ■

THESE ARE THE BASIC RULES FOR FEDERAL AND OHIO ESTATE TAXES:

- (1) There is no tax on transfers to charity, to your spouse, or to a trust for your spouse that pays the trust income (or more) to your spouse alone for life.
- (2) For transfers to your children, there is tax only on the value greater than the "exclusion" amount. The Ohio exclusion is \$338,333; beyond that, the tax is 6% up to \$500,000, and then 7%. The 2005 federal exclusion is \$1,500,000; beyond that, the tax rate is 45%. (The exclusion will increase to \$2,000,000 in 2006 and to \$3,500,000 in 2009. In 2010, the federal estate tax is repealed. It will be reinstated in 2011 with a \$1,000,000 exclusion. This roller-coaster situation will certainly be changed by legislation before 2010.)



- (3) Married couples can **each** use their exclusion amount through the use of Living Trusts. This doubles the amount of tax-free inheritance for their children. Our clients' estate plans are designed this way.
- (4) With proper planning, farm assets can qualify for reduced taxation.

Married couples can **each** use their exclusion amount through the use of Living Trusts. This doubles the amount of tax-free inheritance for their children. Our clients' estate plans are designed this way.

OHIO DRAINAGE LAW

By David S. Pennington

As urban development increasingly expands into Ohio's rural areas, the field of drainage law is becoming more and more important. Every farmer knows how crucial proper drainage is to crop yields, yet developers often undertake projects with little or no consideration of the impact that development will have on surrounding farmlands. This article will explore the respective rights and responsibilities of adjacent landowners when construction is undertaken that negatively impacts the drainage of surface waters on surrounding lands.

The Ohio Supreme Court established a common legal standard for resolution of surface drainage disputes in the case of *McGlashan v. Spade Rockledge Terrace Condo Development Corp.*¹ In that case, the Court reviewed the three primary doctrines utilized by courts around the country to resolve surface drainage disputes and concluded that, in Ohio, Courts should apply the "reasonable use" doctrine.

Noting that "the basic issue in these [surface drainage] controversies is normally whether liability for the damage resulting from an interference with surface water flow should be borne by the person causing it,"² the Court established the following rule of law:

[A] possessor of land is not unqualifiedly privileged to deal with surface water as he pleases, nor is he absolutely prohibited from interfering with the natural flow of surface waters to the detriment of others. Each possessor is legally privileged to make a reasonable use of his land, even though the flow of surface waters is altered thereby and causes some harm to others. He incurs liability only when his harmful interference with the flow of surface water is unreasonable. In determining the reasonableness of an interference, the trier of fact is to be guided by the rules stated in 4 Restatement on Torts 2d 108-142, Sections 822-831.³

[A] possessor of land is not unqualifiedly privileged to deal with surface water as he pleases, nor is he absolutely prohibited from interfering with the natural flow of surface waters to the detriment of others.

The referenced Restatement on Torts describes the general law of nuisance and lays out a comprehensive framework for evaluating the reasonableness, or lack of reasonableness, in a particular case. Analysis begins with a determination of whether the conduct causing the nuisance was intentional or unintentional. Because interference with surface drainage is rarely an accidental event (it invariably involves construction and earthmoving), the following will only address the law applicable to intentional interference.

When intentional conduct is shown, an actor is liable in damages to a neighboring landowner if his intentional conduct is determined to be unreasonable.⁴ The rules for determining when an intentional invasion is unreasonable are stated in //826-831 of the Restatement. Section 826 reads as follows:

//826 Unreasonableness of Intentional Invasion

"An intentional invasion of another's interest in the use and enjoyment of land is unreasonable if (a)**the gravity of the harm outweighs the utility of the actor's conduct, or (b)**the harm caused by the conduct is serious and the financial burden of compensating for this and similar harm to others would not make the continuation of the conduct feasible.

When a landowner's conduct interrupts surface water drainage, //826(a) of the above-quoted Restatement is the standard that is

frequently applied. Under this standard, a Court is required to balance the utility of the desired construction against the harm it causes to a neighboring landowner. If the utility of the conduct outweighs the harm it causes, then the offending landowner will not be held liable in damages. However, if the harm caused outweighs the utility, the offending landowner is

liable in damages to any landowner injured by his conduct. Courts have allowed the following damages as

compensation for the unreasonable interference with surface drainage: (1) reasonable restoration costs, (2) compensation for the loss of the use of the property between the time of the injury and the restoration, and (3) damages for personal annoyance and discomfort if the plaintiff is an occupant of the property.⁵



It is impossible to condense the law of surface drainage into a short article such as this, but the above should give you a feel for your rights, and your potential responsibilities, if you are currently facing a surface drainage issue.

¹ See *McGlashan v. Spade Rockledge Terrace Condo Development Corp.*, 62 Ohio St. 2d 55; 402 N.E.2d 1196 (1980).

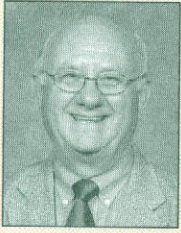
² See *McGlashan*, 62 Ohio St. 2d 55 at p.59.

³ See *McGlashan*, 62 Ohio St. 2d 55 at p.60.

⁴ See Rest. Torts 2d, Section 822(a).

⁵ See *Horrisberger v. Mohlmaster*, 102 Ohio App. 3d 494, at 538.

WHO'S WHO AT WRIGHT LAW & Co. LPA



PAUL WRIGHT

Paul Wright is the founding principal in Wright Law Co. LPA. He earned a Bachelor of Science degree in Agriculture Education in 1960 and a Master of Science degree in Agricultural Economics in 1970 from The Ohio State University. In 1978 he earned a Law degree from the University of Toledo.

Paul's career includes 29 years of service with The Ohio State University Extension and Teaching as County 4-H Agent, Area Farm Management Agent and State Specialist in Agricultural Law. As State Specialist, he focused on conducting educational programs in agricultural law including continuing education and on-campus teaching. Paul retired from The Ohio State University as Associate Professor Emeriti in January 1988.

Paul works closely with legal assistant **Jane Black** and office manager **Joanne Schindelar**.



ROBERT MOORE

Robert Moore joined Wright Law Co. LPA in May, 2004. The primary focus of his practice at Wright Law is business organization, real estate, landlord/tenant issues and contracts. Robert works with legal assistant **Jane Black**.

Robert was raised on a dairy farm in Coshocton County. In addition to dairy, his family raises beef cattle, hogs and sheep and produces hay and grain. Robert remains active in the farming operation. Growing up, Robert was a member of 4-H and FFA and graduated from Riverview High School in 1987.

Robert received a Bachelor of Science degree in Dairy Science and a Master of Science Degree in Agricultural Economics from The Ohio State University. Upon graduating from OSU, Robert spent four years as an Agricultural Extension Educator in Fairfield County and five years as an Extension Associate in the Department of Agricultural, Environmental and Developmental Economics at OSU. While employed at OSU, Robert attended Capital University Law School's evening program. In January, 2005 he graduated Cum Laude. Robert was admitted to the Ohio State Bar in May, 2005.

Robert is an avid Ohio State football fan and enjoys spending time with his two boxer dogs. He and his fiancée, Kelly, are planning an October, 2005 wedding.

LIMITED LIABILITY COMPANIES ARE POPULAR *(continued from page 2)*

two options. One, they can survey off two 10 acre parcels and execute two deeds, transferring 100% ownership of each parcel to each child individually.

...If one or more family members wish to sell their interest in the LLC, the other members can simply buy the selling members interest without executing new deeds or requiring a partition of the jointly owned land.

Or, two, they can execute a deed giving each child a 1/10 interest in the 100 acres, having joint ownership between four people. Both scenarios present challenges to the parents. The first requires the parents to obtain a survey and to give up their ownership and control entirely over each 10 acre parcel. The second requires the consensus of all four family members before the land can be sold in its entirety, or a partition proceeding if

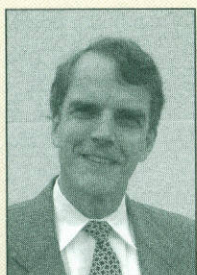
some family members wish to sell their interest and others do not.

In contrast with the above example, suppose the parents have placed the 100 acres in an LLC and made themselves the managing members. Upon placing the land in the LLC, each parent can be assigned 50 membership units, one for each acre. Each parent may elect to give each child 10 membership units in their gifting process. The children now own 10 units each out of the total 100 LLC units, the equivalent of 10 acres, but are brought into the LLC as non-managing members. With this method, the parents have avoided both problems discussed above. One, they have gifted the equivalent of 10 acres to each child while maintaining control of the property as the managing members of the LLC. Also, the transfer was executed with a simple paper transaction rather than a formal execution of a deed. Two, if one or

more family members wish to sell their interest in the LLC, the other members can simply buy the selling members interest without executing new deeds or requiring a partition of the jointly owned land.

Another popular use of LLCs is to operate a business. In this case possibly only the operating assets like the check book, machinery, and other operating assets are placed into the LLC. The owners can enjoy limited liability as the day to day business is carried out. Farmers who are receiving payments from FSA will need to watch this type of entity. Any form of business which has limited liability can only receive one payment limitation. For direct payments from FSA this is currently \$40,000.

If you should be interested in exploring the formation of a LLC you may contact us and we will share our information with you. ■

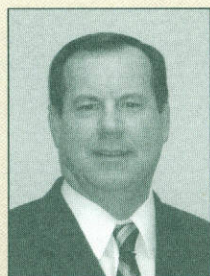


JAMES K. LEONARD

James K. Leonard, originally from Allen County, Ohio, has been certified by the Ohio State Bar Association as a specialist in Estate Planning, Trust & Probate Law. Jim is one of a small group of attorneys in Ohio to have earned this distinction.

Jim has helped hundreds of clients achieve their estate planning goals. He has enabled clients to implement customized estate plans; to protect assets from creditors, lawsuits, divorce, and re-marriage; to minimize federal and Ohio estate taxes; to avoid the probate process at disability and death; to fulfill charitable goals; to eliminate capital gains taxes; to continue tax-free compounding for an extra generation; to transfer businesses and farms; and to implement special planning for disabled children, second marriages, and many other situations.

Jim is a graduate of Lima (Ohio) Senior High School, Princeton University, and the University of Denver College of Law. He and paralegal **Teresa Grubbs** work together to assist our clients with estate planning and administration.



DAVID PENNINGTON

David Pennington, originally from Pickaway County, joined Wright Law Co. as head of its litigation section. David is a graduate of The Ohio State University, receiving his Juris Doctor in 1982 and a Master of Hospital and Health Services Administration degree in 1983. Shortly after completing his college degrees, David joined the Air Force where he served as an attorney in the Judge Advocate General (JAG) Corps. He retired from the Air Force in 2003 at the rank of Lieutenant Colonel. David's last position was as General Counsel to the Commander of the Nevada National Guard. As a Judge Advocate, David acquired a broad range of legal experience but worked primarily in the areas of litigation, employment law, government contracting, and environmental law. His focus at Wright Law Company is to represent our clients in all civil litigation with a focus on litigation related to farming and agriculture, drainage issues, environmental concerns, and business transactions.

Dave and paralegal **Chris Pullins** provide Wright Law clients with service on all litigation issues.

KATHRYN HAER

Kathryn Haer is a Certified Public Accountant from LaRue, Ohio in Marion County. Kay and her family are active in farming which provides Kay with a deep understanding of the tax needs and concerns of our clients. Kay received a Bachelor of Science in Agriculture from The Ohio State University in 1976 and became a CPA in 1987. Kay along with Dave Miller provide our clients with accounting and tax services.



KIMBERLY CUTLER

Kim Cutler has an LL.M. in Business and Tax (Master of Laws in Business and Taxation) from Capital University Law

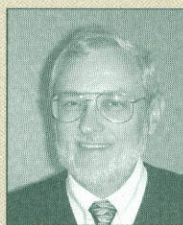


School. The LL.M. program involves in-depth, intensive courses that explore the intersection of taxation and business issues. Related to her practice of estate administration and estate planning, Kim's degree included specific studies in estate and gift tax, estate planning, corporate taxation, tax research, and federal income tax. Kim, originally from Ross County, Ohio, received a Bachelor of Business Administration from Ohio University in 1999 and her Juris Doctor from Capital University in 2002. Kim and paralegal **Laura Kulina** provide estate administration and estate planning services.

DAVID MILLER JOINS WRIGHT LAW Co.

David Miller joined Wright Law Co. in January as a tax and business organization specialist. David retired from OSU extension where he had been employed since 1974 as a farm management specialist located at the South East Regional Office in Noble County.

As a farm management specialist, he has worked with agricultural agents in a 44 county area in southeastern and eastern Ohio on farm management programs related to computerized farm record keeping, farm financial management and analysis, farm taxation and management, timber and Christmas tree taxation, farm business transfers



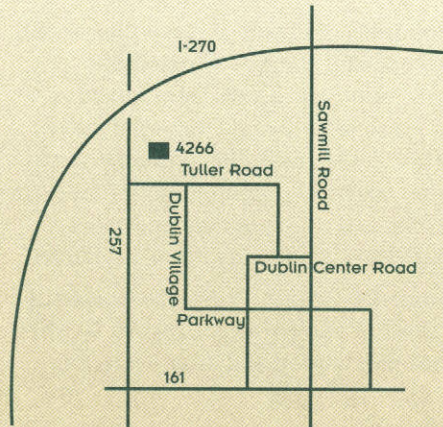
and estate planning, and economics of intensively managed grazing systems. In addition, he provided ongoing tax-related programs for tax preparers, accountants, lenders and attorneys.

He received a Bachelor of Science in Agriculture from The Ohio State University and a Masters of Science in Agricultural Economics from Oregon State. Dave and his wife, Candy, have three grown children and two grandsons and reside on a small farm in Noble County.

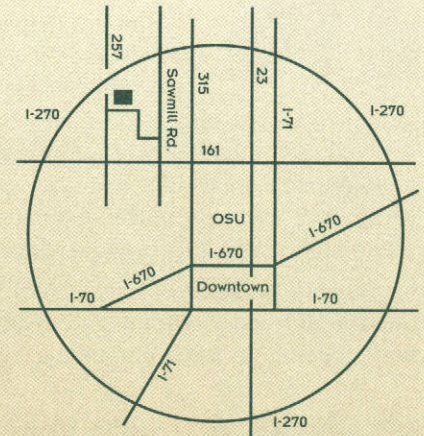
WRIGHT LAW Co. LPA

Brickstone Commons
4266 Tuller Rd., Suite 101
Dublin, OH 43017-5027

Wright Law Co. LPA is located in Dublin, Ohio, a suburb northwest of Columbus and is AV rated by Martindale Hubble Law Directory – their highest rating.



Northwest Detail



Greater Columbus Area

CLIENT ADVISORY NEWSLETTER