

# UPDATES

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## NEW CHALLENGES ARE WHAT WE ARE ALL ABOUT

In the five years since Frascella & Pisauro, LLC was formed the economy has taken all into new and uncharted waters. General law firms such as F&P are on the front line of helping people navigate those waters.

The adjustments that the present economic downturn have thrust upon us have offered F&P an opportunity to help our clients in many ways.

Despite the gloomy headlines, the real estate market is also providing opportunities. In addition to offering representation in "traditional" Buy and Sell transactions, the economy has placed some of our clients in transactions involving: Foreclosures, short sales, mortgages in lieu of foreclosure and mortgage

renegotiations and other types of transactions designed to either buy or sell distressed properties. F&P has the experience and knowledge to meet your needs.



Our home in Princeton, NJ.

In the construction sector, a field closely related to real estate, matters involve construction contracts or home improvement contracts. F&P has significant experience in drafting and litigating in this area. In difficult times contracts from new construction, remodeling or repair sometimes result in a person not meeting their contractual obligation. F&P is here to protect your rights.

In addition to extensive litigation experience, we can help you protect your legal rights under the Home Improvement Contractor, and consumer fraud laws, municipal code and zoning ordinances.

Another area where we assist people is with nursing homes. Many of us

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## DEP CANNOT IGNORE THE REQUIREMENTS OF THE LAW

Recently, the appellate division reminded DEP that it has to follow the law. In Dragon v. NJDEP, the NJ Appellate Division reversed the DEP's authorization of development in the CAFRA zone without

issuing a permit.

The case arose because a property owner wanted to demolish their existing home and build a new larger one next to the beach of Brigantine. The original

proposed expansion would have expanded their home from 1944 to 3480 square feet and brought the house nine feet closer to the beach. The homeowner applied twice for a general

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## DEP & THE LAW - CONT'D FROM P. 1

permit which was denied because they did not meet the requirements of the general permit on either occasion. On both applications, one of the homeowner's neighbors objected to the applications.

The homeowners appealed the denial and the matter was referred to DEP's office of dispute resolution. During the dispute resolution process the DEP and the homeowners reached a compromise. This settlement was reduced to a written "Mediation & Settlement Agreement in lieu of a permit." The neighbor objected to the settlement and challenged it. The DEP rejected the challenge and issued the homeowners a "Letter of Authorization" (LOA) allowing the reconstruction of the house, but even bigger than what the homeowners requested and without any set back from the bulkhead along the beach. This LOA specifically provided that it was instead of a coastal general permit under the

Coastal Zone Management rules.

The objecting neighbors appealed the issuance of the LOA alleging that the Coastal Area Facility Act (CAFRA) and its implementing rules did not allow the DEP to settle a case by authorizing development without the applicant meeting the requirements of and receiving a permit. The DEP countered it had the authority "deviate from strict compliance with its own regulations in order to avoid 'litigation risks' and to prevent" a possible adverse legal ruling.

The Appellate division ruled that CAFRA did not give the DEP authority to waive the substantive requirements of the statute or its implementing regulations. (DEP could have the authority to wave procedural requirements.) Because CAFRA was designed to balance the competing interests of protecting, repairing and enhancing



ing the environment with encouraging compatible land use it was important that any development be either by permit or within one of CAFRA's exemptions. DEP could not in the spirit of settlement avoid the need to issue a permit. If the DEP wanted authority to issue settlement agreements without issuing a permit or to waive substantive requirements, it must gain that authority from the legislature. In short, DEP cannot give itself more power than what the law permitted.

The article was original posted in our environmental blog at: [www.fplegal.com/wordpress](http://www.fplegal.com/wordpress).

*DEP cannot deviate from strict compliance with its own regulations in order to avoid litigation risks.*

## WHY IT'S IMPORTANT TO ESTABLISH A COMPUTER USAGE/ELECTRONIC USAGE POLICY

The ability to search the Internet and communicate through email has become an integral part of our daily existence – both at the office and at home. However, the line separating these two worlds is not always clearly delineated. For example, you may find yourself using the office computer to pay personal bills online during your

lunch hour or, logging in to the office computer after hours to catch up on work in order to make your deadlines. Some studies suggest that at least 1/3 of the time an employee spends on the computer is for non-work related activities. While many employers understand their employees' desire or need to do non-work related activi-

ties at work. But it should be understood that not all of this activity is innocent. For example nearly 70% of the pornographic material downloaded from the internet is done during the work day. If this is going on at your business it may open you up to a lawsuit for hostile work environment. In addition to incoming mate-

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*1/3 of the time an employee spends on a employer's computer is for non-work related activities*

## NEW CHALLENGES— CONT'D FROM P. 1

face the prospect of extended nursing care for our loved ones. F&P has been involved in the area of patient rights and insuring the quality of care is provided.

F&P is on the front line in the environmental field. Mike Pisauro is the lobbyist for the New Jersey Environmental lobby. As we move forward in addressing environmental issues the fields of land use, energy, environmental, and other fields are merging. Whether it is representing a land owner seeking to

install a renewable energy system or groups opposing harmful projects, F&P has the knowledge and experience to assist you.

With the threats of layoffs, many people decide to take control and begin their own business venture. We advise people on the formation of business entities (corporations, limited liability companies, partnership, etc.) and the required state registration and licensing provisions. F&P helped many clients in their day to day legal needs. For example, we

have helped companies protect their trade secrets, recover monies owed and resolve disputes with vendors.

We understand our clients' needs and continue to offer 40 years of combined legal experience and direct availability to each and every client. We know how important every matter is to our clients and it is to us as well.

*We value our clients.  
We are here to help meet  
your need.*

## COMPUTERS & PRIVACY— CONT'D FROM P. 2

rial, you also need to keep an eye on what is going out to ensure that client lists and other proprietary information is not being distributed outside of your business – either intentionally or accidentally.

The question, from both an owner's and an employee's perspective, should be "are those computer activities private to the individual or are they company property?" The answer to that question boils down to whether the company has a policy in place regulating employees' computer usage.

A recent law division case reaffirmed the importance having both an estab-

lished policy in place and ensuring that your employees are aware of that policy. In the case of Stengart v. Loving Care Agency, Inc., an employee used her company-issued laptop to access her personal webmail account to communicate with her attorney regarding the filing of a lawsuit against her employer. After the employee left the company and filed suit the company and its lawyers made a copy of the laptop's hard drive and recovered the emails to and from her attorney. The former employee attempted to bar the employer from using those emails as she alleged they were protected under the attorney client privilege.



In determining whether or not the emails were protected by the privilege the Court looked to whether the employee had an expectation of privacy in the emails. The Court rejected the employee's claim by noting that while the law provides some level of privacy to an employee's use of the a company's computer that expectation of privacy can be negated by the company's com-

*Have a computer usage policy in place, educate you employees on the policy and then enforce that policy.*

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FRASCELLA &  
PISAURO, LLC.

100 Canal Pointe Blvd.  
Suite 209  
Princeton, NJ 08540

Phone: 609-919-9500  
Fax: 609-919-9510  
Email: [attorneys@fplegal.com](mailto:attorneys@fplegal.com)

[www.fplegal.com](http://www.fplegal.com)

Blogs: [www.fplegal.com/wordpress](http://www.fplegal.com/wordpress)

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expectations*



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## COMPUTERS & PRIVACY— CONT'D FROM P.3

puter usage policy. In this case the employer had established a policy that provided that the computers were company assets and that all emails, voice mails, internet use and communication and files maintained on those computers were part of the company's business and client records. The policy specifically provided that the electronic communications were not considered private or personal to the employee.

In light of the employer's policy on computer use and communication, the Court ruled:

*When an employee has knowledge of the employer's electronic communication policy which ade-*

*quately warns that any and all internet use and communication conducted on the employer's computer is not private to the employee and warns that E-mail and voice mail messages, internet use and communication and computer files are considered part of the company's business and client records, such communications are not . . . to be considered private or personal.*

In short a Court is unlikely to enforce any rights to privacy that an employee may have in regards to their electronic communications *if the employee is clearly on notice that they should not expect privacy.* This means that the employer should have a writ-

ten policy, signed by the employees, on computer usage. The policy should not only detail the privacy issues but also clearly identify what is considered "appropriate usage" of the computer.

The article was originally posed in our business blog at [www.njbusinesswise.com](http://www.njbusinesswise.com)