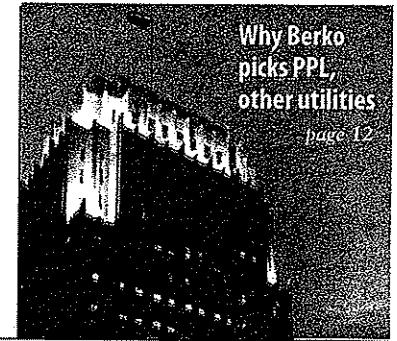


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Why Berko  
picks PPL,  
other utilities  
page 12

## Is 2<sup>nd</sup> wave of foreclosures looming on the horizon?

By **BETH W. ORENSTEIN**  
Business Journal Correspondent

The number of people losing their homes to foreclosure in Berks, Lehigh and Northampton continues to grow.

"We're getting as many as ever," said Jack Gross of Cassidon Realty in Bethlehem, which handles foreclosed properties. "In fact," he said, "I think it's going to get worse before it gets better."

"They're still increasing," said Jennifer De Frees, real estate administrator at the Berks County sheriff's department. "I thought they'd be getting better by now, but they're not."

## DOL to beef up scrutiny of indie contractors

By **BETH W. ORENSTEIN**  
Business Journal Correspondent

Few believe that legislation pending in Congress to prevent employers from classifying workers as "independent contractors" to avoid paying taxes and benefits will be successful this term.

Even if it isn't successful, however, employers can expect greater scrutiny over their employment practices in the future, area lawyers who special-

ize in labor and employment agreed. The lawyers said even those in industries such as construction where it is longstanding practice to use independent contractors should beware.

In July, U.S. Rep. Jim McDermott, D-Wash., and, in December U.S. Sen. John Kerry, D-Mass., introduced bills in the House and Senate to amend the Internal Revenue Service Code and to further restrict employers' ability to classify workers as independent contractors.

Both bills also would substantially increase penalties for employers that misclassify employees as independent contractors.

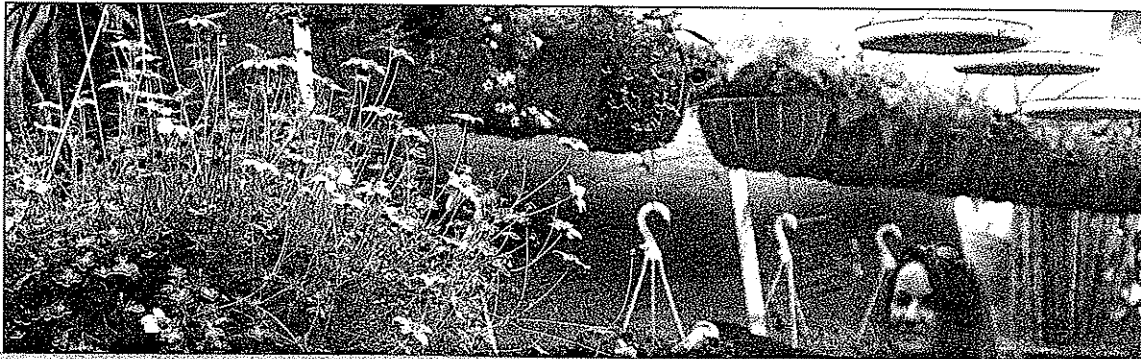
"Neither of the two bills is likely to go any place this term," said R. Michael Carr of Stevens & Lee in Hanover Township, Northampton County. "But there seems to be a consensus that it's going to happen" — that the rules concerning independent contractor status will be made more stringent and

that the penalties for misclassifying employees will be increased.

Under McDermott's bill, the IRS penalty for each incorrect tax return filed would increase from \$50 to \$250.

Why do the lawyers believe employers will face more scrutiny when it comes to classifying employees? Several reasons: One is the sour economy that is causing employers to look to save money by having fewer

See **Contractors** page 20



## Merchants 'expecting' big Mom's Day

By **KRISTINE SKUNDA-PORTER**  
Business Journal Staff

# CONTRACTORS

Continued from page 1

employees, and the other is the recent passage of healthcare reform that mandates employers offer healthcare insurance to their employees.

The status of workers as independent contractors rather than as employees is periodically an issue, said Thomas Heimbach of Flamm Walton in South Whitehall Township.

But because so many companies are downsizing, "we're probably in one of those periods where ... it's becoming a big issue again," said Heimbach, who recently served on a continuing education panel for the Northampton County Bar Association on the topic.

These days, Heimbach said, it's not

**"The IRS has estimated that it will lose over \$7 billion in tax revenues because of the misclassification issue, and that's why it wants to address it."**

~ Andrew Howe  
Hartman Shurr  
Wyomissing

unusual for companies to lay someone off and then to bring him back — perhaps slowly at first but later more frequently — to do some of the same work. The employer brings him back not on the payroll this time, but as an independent contractor. In those cases, Heimbach said, everyone wants to be sure that "applicable laws are applied to determine whether the person is truly an independent contractor or an employee."



Howe

Andrew Howe of Hartman Shurr in Wyomissing also blamed the tough economy. In this environment, he said, many employers are looking for ways to get the work they need done without having to hire employees and to pay the payroll taxes and benefits, including health insurance and pension contributions, that come with them.

"It can cost up to 40 percent more than his salary to hire someone," Howe said. "So an employee you're going to pay \$100,000 costs you \$140,000."

But if employers use independent contractors, they don't have to pay taxes or benefits or workers' compensation or unemployment insurance for them. "You owe them no benefits and your cost is solely that check whether it's weekly, biweekly or monthly. Labor becomes more affordable," he said.

However, he said, the government is wise to the scheme and "that's where we're seeing new scrutiny imposed by the government on employers."

Indeed, Howe said, the budget that President Obama proposed in February includes \$25 million so that the Department of Labor can add 100 people in its enforcement division to investigate claims of misclassified workers.

With unemployment so high, tax revenues are down. Another reason the lawyers believe the government may crack down on misclassified employees is because it needs every legitimate dollar it can get, Howe said.

"The IRS has estimated that it will lose over \$7 billion in tax revenues because of the misclassification issue, and that's why it wants to address it," Howe said.

The healthcare reform package also could impact how employees are classified, the lawyers agreed. Under the new law, starting in 2014, employers with more than 50 workers that do not offer a "qualified" health plan or pay 60 percent of health insurance premiums for their employees will face an annual tax penalty of \$2,000 per full-time worker.



Carr

Carr said he expects some employers to try and classify their employees as independent contractors so they're not going to be responsible for their health insurance or a penalty. "The prospect of a \$2,000 per employee penalty, that's

going to be a big incentive to try to make people independent contractors," he said. "How all this dovetails with the healthcare overhaul is very pertinent."

However, Howe said he's not sure reclassifying employees as independent contractors just to avoid having to buy health insurance for them would work.

Currently, employers who have a long-standing practice of hiring independent contractors — such as those in the trucking and construction trades — can use that practice to avoid IRS scrutiny. It's what's known as a safe harbor.

Lawmakers also are talking about revising the safe harbor provision of the IRS code to reduce abuses.



Peterson

Richard Peterson, president of the Eastern Pennsylvania chapter of the Associated Builders and Contractors (ABC) in Allentown, said builders and contractors couldn't survive if they weren't able to use independent contrac-

tors to complete jobs. A general contractor's workflow is such that he needs to be able to hire skilled workers for specific jobs on an as-needed basis, he said.

"For example, a general contractor will need to hire framers and finishers — two different skilled labor guys — at different points in the project," Peterson said. But the general contractor won't have a need for them when they're not in that phase of the project.

Peterson said he hopes any scrutiny that the government imposes on the use of independent contractors doesn't interfere with their legitimate use as in the case of the construction industry.

Howe said what's needed most is not more scrutiny, but more clarity on classifying workers.

"One of the biggest problems with the independent contractors classifications is the different agencies have different tests," Howe said. "There is no one test for all the agencies. All the tests have common themes running through them, but what the IRS determines qualifies as an independent contractor is different from what the Department of Labor says and the federal government is different from the state. So when employers ask, 'Am I doing this right?' it's hard to say. It can depend on why you're asking."

If lawmakers are determined to write new laws governing independent contractors, Howe said, "I hope they look at bringing some uniformity to it. I would really like to see more uniformity that can help to demystify all the different tests and applications."

# FORECLOSURES

Continued from page 1

about 20 percent more foreclosure filings this year than last "if the trend stays the same as it started the year."

The number of filings had tapered off some in December, she said, but that's because lenders have a heart and don't want to foreclose on people at Christmas. But from January through April, the numbers seem even higher than they were in 2009.

**"The next wave is people losing their jobs ..."**

~ Alan Jennings  
Executive director  
Community Action Committee  
of the Lehigh Valley

The Northampton County's sheriff's department also reported an increase in foreclosures so far this year and seeing no signs of it leveling off. Reports from the Lehigh County's sheriff's department also showed a steady number of foreclosures.

De Frees said she believes the problem is unemployment. Even if lenders are willing to make modifications, the borrowers still aren't employed so they don't have the means to make the new lower payments, she said.

"Unless the unemployment rate changes, I don't see this foreclosure problem will get better. The unemployment needs to correct itself first," De Frees said.

Jennings said while the numbers in the Lehigh Valley are bad, they're not as bad as they are in other parts of Pennsylvania.

CACLV can take some of the credit for that, Jennings said. "A lot has to do with our work in the Lehigh Valley, making sure people are buying homes responsibly and chasing predatory lenders and doing mediation work," he said.

# WEB

Continued from page 1

computer networking and security at Northampton Community College (NCC), said Internet usage becomes problematic when it affects a company's C.I.A. — Confidentiality, Integrity and Availability.

## Confidentiality

Hartranft said people, especially the younger generation, have become "very open book about putting things online." It is in that openness that the problem lies, he said. "People may post things on Facebook, or even more so Linked In, that corporations want to keep details of from the public."

Hartranft gave the example of someone posting a resume on Linked In that highlights accomplishments at work.

"They may provide job descriptions or remark on projects that they are working on that perhaps they shouldn't," he said.

Gorski said sharing of corporate information should be a high concern to companies.

"People probably share more information than they should be sharing," he said.

Gorski said he felt that voluntary information leaks may be an even bigger threat to a business than downloading a virus or malware from an email or social networking site application.

So how does a company deal with the threat of leaked information on the Internet? A firm could simply block access to social networking sites.

"There's certainly mixed thoughts on that,"

Jennings said his office has helped in 460 cases where homeowners were in financial trouble and, of those, only two were buyers who had gone through its homeownership counseling program before buying.

Gross agreed the high unemployment rate is contributing to the problem. It's also, he said, that people have adjustable rate mortgages, and they're not able to keep up with the higher payments.

In many cases, their homes are worth less than they paid for them, and because they put little, if any money, down, it's easier for them to walk away than stay and struggle to make the payments, he said.

Gross said that foreclosures are taking longer, and people aren't being evicted right away but he believes some of that slowdown may be intentional.

"They're taking longer because the banks are inundated," he said.

But also, he said, he suspects the banks are taking longer to foreclose on some properties because they want to spread things out.

"If they allowed it all to avalanche, it would devastate the market, and so they're trying to spread it out some so things appear to be stable," he said.

According to RealtyTrac, home foreclosures are accelerating nationwide. Foreclosure filings in March totaled 367,056, a nearly 19 percent increase from February and an almost 8 percent increase from March 2009.

The March number was the highest monthly total since January 2005, when RealtyTrac began keeping numbers and issuing reports, it said.

RealtyTrac also reported in March, foreclosure filings increased in Pennsylvania at a much higher rate than the national average but that the overall filing rate in Pennsylvania is still lower than the national average.

RealtyTrac reported 5,664 filings in Pennsylvania in March, which equals one in every 970 homes. For the first quarter, there were more than 14,700 filings — one for every 374 homes, it said.

said Gorski. "You can get some benefits from using these sites in the workplace."

He also noted that employees could be placing sensitive information on social networking sites from home computers, or even their smart phone, which is hardware that a company doesn't have control over.

Both men agreed the answer is to draw the line between what is designated as legitimate business use and what is personal use. Then the company should have a policy in place as to what is acceptable usage.

Gorski said the fact is people are always going to use the Internet for personal use at work.

"It's pervasive," he said. "Anyone who thinks their employees aren't doing it would be surprised if they actually checked employee browsing history."

## Integrity

But are employees on the Internet harmful?

A staffer who accesses a website that contains a virus or malware could damage that computer, and other computers on the network.

Gorski stated that parts of MySpace, for example, have developed into sort of a "red light district" where the risk of picking up a virus or malware is very high. He said he does feel any website known for being problematic should be blocked.

## Access

Internet usage is also a problem in the workplace if it slows down the overall computer

See Web page 21