



# OTIS & BEDINGFIELD, LLC

ATTORNEYS AT LAW

2023 FALL NEWSLETTER



Loveland Office  
2725 Rocky Mountain Avenue, Suite 300  
Loveland, CO 80538  
(970) 663-7300



OTIS & BEDINGFIELD, LLC  
ATTORNEYS AT LAW



Greeley Office

8207 West 20<sup>th</sup> Street, Suite A  
Greeley, CO 80634  
(970) 330-6700

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



**INTEGRITY. EXCELLENCE.  
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## Otis & Bedingfield, LLC Welcomes New Attorney Frederick Steimling, Esq.



The Partners of Otis & Bedingfield, LLC, are pleased to announce that Frederick (“Freddy”) Steimling, Esq. is joining the firm effective November 6, 2023. Freddy graduated from Colorado University Law School in 2020, where he was managing editor of the *Colorado Technology Law Journal*. Prior to joining Otis & Bedingfield, LLC, Freddy has been working for law firms in Denver.

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The Face (and Heart!) of Otis & Bedingfield, LLC Retires!

Otis & Bedingfield LLC

*Providing a range of legal services throughout Northern Colorado*

## Are Verbal Agreements Enforceable in Colorado?



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*Otis & Bedingfield, LLC is  
a Better Business  
Bureau Accredited  
Business*

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This newsletter is not an offer to represent you. You should not act, or refrain from acting based on information in this newsletter. The hiring of a lawyer is an important decision that should be based solely on written information about qualifications or experiences.

Anyone considering hiring a lawyer should independently investigate the lawyer's credentials and ability, and should not rely upon advertisements or self-proclaimed expertise.

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By: Lia C. Szasz, Esq.  
[lsasz@nocoattorneys.com](mailto:lsasz@nocoattorneys.com)

To the surprise of many non-lawyers, most verbal agreements are enforceable under Colorado law, subject to a few categorical exceptions. Generally, the formation of a binding contract requires only that the contracting parties reach a "meeting of the minds" about the sufficiently definite terms of their agreement, and that the agreement is supported by adequate consideration. A contract may be evidenced by either the written or spoken words of the parties.

There are several categories of contracts, however, which courts may only enforce if a writing evidencing that agreement exists. The most common categories are:

- (1) contracts for the transfer of land;
- (2) contracts that cannot be performed in less than a year;
- (3) contracts for the sale of goods over \$500;
- (4) contracts for loans over \$25,000 involving a financial institution as the creditor; and

(5) marriage contracts, including prenuptial agreements.

Even still, these types of oral contracts may still be enforced under certain circumstances even if no writing exists. For example, if one of the parties partially performs their obligations under the oral agreement or relies on the other party's contractual promise to their detriment, the contract may still be enforced.

It is always the best practice, however, to reduce all verbal agreements to a comprehensive writing, even if not required by law. When the agreement is reduced to writing, the document can speak for itself. Without a writing, proving the specific terms of the verbal agreement in court can be challenging. If the parties provide contradictory testimony on the terms of their agreement, the judge or jury is tasked with deciding to what, exactly, the parties agreed. A classic "he said, she said." A factual dispute over the terms of the agreement can make the difference as to whether a case is resolved on a paper motion or proceeds to trial, making the litigation potentially exponentially more expensive. It is always a good idea to "get it in writing."

In any case, when entering into a verbal agreement, it is advisable to seek the counsel of an attorney experienced in the subject matter of the agreement.



We wish all our clients and their families  
a very Happy Thanksgiving!!!

## Taking Advantage of the Estate and Gift Tax Exemptions



By: **Corey W. Moore, Esq.**  
[cmoore@nocoattorneys.com](mailto:cmoore@nocoattorneys.com)

The United States Internal Revenue Code, Subtitle B--Estate and Gift Taxes, provides every taxpayer with the ability to exempt a certain amount of assets from their estate. The Estate and Gift Tax Exemption ("Exemption") for a single individual in 2023 is \$12.92 million, meaning an individual could either:

- ◆ gift up to the Exemption during their lifetime, or
- ◆ pass through inheritance assets in value up to the Exemption without incurring tax liability.

The Internal Revenue Service (IRS) will increase the Exemption in both 2024 and 2025 to match the rate of inflation.

However, in 2026 it is anticipated that the IRS will lower the Exemption to one-half of the then-2025 Exemption amount.

While there are various estate planning techniques that may be used to take advantage of the Exemption,

one of the most popular is the Spousal Lifetime Access Trust, or SLAT. A SLAT is an irrevocable trust created by one spouse, the "grantor," for the benefit of the other spouse. Upon creation, the grantor "gifts" assets to the SLAT, the value of which (including applicable discounting) may be up to or equal to the Exemption. The ability to use the Exemption now can provide an individual with the ability to remove millions of dollars from their estate and thus, from tax liability that may be incurred in 2026 or beyond. Some of the pros and cons of SLATs are as follows:

### **PROs:**

- ◆ The assets gifted to the SLAT will not be included in the estate of either spouse upon death.
- ◆ The appreciation of the assets gifted to the SLAT are not taxed upon death. For example, if the original gift is valued at \$12.92 million, and upon the beneficiary spouse's death the SLAT is valued at \$20 million, no tax will be owed on the increased value.
- ◆ The grantor spouse does not lose use of the gifted assets. While the non-grantor spouse is the beneficiary of the SLAT, the grantor spouse may indirectly benefit through the beneficiary spouse.

### **CONs:**

- ◆ SLATs are irrevocable and cannot be modified.
- ◆ The assets gifted to the SLAT will not receive a step up in basis upon death, which would occur if the assets were not gifted.

While there are various techniques available for individuals to take advantage of the Exemption, the SLAT is a popular estate planning tool that should be considered prior to 2026.

When contemplating either an Estate and Gift Tax Exemption or the use of a Spousal Lifetime Access Trust, it is advisable to consult an experienced estate planning attorney that specializes in the use of these tax exemptions and trusts. For individuals with the ability to gift assets now, utilizing the Estate and Gift Tax Exemption has the potential for significant tax savings.



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### **Our Team of Attorneys:**

**Fred L. Otis, Esq.**  
[fotis@nocoattorneys.com](mailto:fotis@nocoattorneys.com)

**Jeffrey T. Bedingfield, Esq.**  
[jbedingfield@nocoattorneys.com](mailto:jbedingfield@nocoattorneys.com)

**Timothy P. Brynteson, Esq.**  
[tbrynteson@nocoattorneys.com](mailto:tbrynteson@nocoattorneys.com)

**John A. Kolanz, Esq.**  
[jkolanz@nocoattorneys.com](mailto:jkolanz@nocoattorneys.com)

**Lia Szasz, Esq.**  
[lszasz@nocoattorneys.com](mailto:lszasz@nocoattorneys.com)

**Corey W. Moore, Esq.**  
[cmoore@nocoattorneys.com](mailto:cmoore@nocoattorneys.com)

**Lee J. Morehead, Esq.**  
[lmorehead@nocoattorneys.com](mailto:lmorehead@nocoattorneys.com)

**Stacey L. Shea, Esq.**  
[sshea@nocoattorneys.com](mailto:sshea@nocoattorneys.com)

**Savannah M. Nelson, Esq.**  
[snelson@nocoattorneys.com](mailto:snelson@nocoattorneys.com)

**Derrick K. Galantowicz, Esq.**  
[dgalantowicz@nocoattorneys.com](mailto:dgalantowicz@nocoattorneys.com)

**Frederick Steimling, Esq.**  
[fsteimling@nocoattorneys.com](mailto:fsteimling@nocoattorneys.com)

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The attorneys at O&B are recognized leaders in real estate law and business law. We advocate for individuals, businesses, and families in the Northern Colorado region. Our clients are landowners, business owners, business professionals, businesses of all sizes, and individual families in need of guidance or representation in court proceedings involving commercial real estate

For more information about our lawyers or practice areas, please visit our website at [www.nocoattorneys.com](http://www.nocoattorneys.com)

or contact us at  
(970) 330-6700  
OR  
(970) 663-7300.

## Enforcement of a Perfected Mechanic's Lien



By: **Savannah M. Nelson, Esq.**  
[snelson@nocoattorneys.com](mailto:snelson@nocoattorneys.com)

Construction companies, contractors, suppliers, and laborers that have provided labor and materials to improve real property, but remain unpaid, can follow specific requirements to perfect a mechanic's lien in Colorado.

With research on the specific requirements to mechanic's liens, unpaid claimants can perfect their lien with moderately small costs or fees. However, once those statutory requirements are met, there is a relatively short amount of time before the mechanic's lien must be enforced. In Colorado, an action to enforce the perfected mechanic's lien must be commenced within 6 months after the last work or labor is performed, and a notice of commencement of such an action must be filed with the county clerk and recorder in the same county that the Statement of Lien was filed.

If the lien claimant fails to file its lawsuit within this 6-month time period, the claimant will be barred from foreclosing or enforcing its mechanic's lien. While other collection avenues may still be available to the unpaid construction

companies, contractors, suppliers, and laborers, their interests will no longer be protected by the property itself.

Because the commencement period for mechanic's liens is so short, lien claimants often don't realize the litigation that lies ahead, and how quickly an unpaid invoice can become the center of a contested lawsuit. The foreclosure process of a mechanic's lien is no small feat and requires knowledge of the legal system to navigate successfully.

When utilizing a mechanic's lien, it is advisable to keep in mind the enforcement portion of the lien, and consult an attorney experienced in mechanic's liens as soon as possible for additional counsel on what to expect from commencing a lawsuit to foreclose a mechanic's lien.

**Otis & Bedingfield, LLC  
Bids the Fondest of Farewells to  
Honored Colleague Pamela Thompson**



If you visited or called into Otis & Bedingfield's offices, you undoubtedly spoke with our beloved Pamela Thompson, the Receptionist for the law firm for over 14 years!

Pam has been the heart and soul of the law firm. Her infectious energy and can-do attitude gave anyone visiting or calling in assurance that their needs would be addressed efficiently. Pam's devotion to her job was nothing short of inspiring.

We wish Pam, her husband Randy, and her family all of life's blessings as she heads into retirement to rest, relax, and recharge. You have been a blessing to all of us—coworkers and clients alike—and will be missed heartily! Godspeed, Pamela!