

# ohio **phc** contractor

Summer 2005

A Publication for Ohio Plumbing, HVACR Contractors and Suppliers

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Summer 2005

A Publication for Ohio Plumbing, HVACR Contractors and Suppliers

The Ohio PHC Contractor is the official publication of the Plumbing-Heating-Cooling Contractors of Ohio  
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"Ohio PHC Contractor" is a news magazine produced by the Ohio Association of Plumbing-Heating-Cooling Contractors. Articles published in this magazine are the views and opinions of the writers and do not necessarily reflect the views or opinions of the Ohio Association of Plumbing-Heating-Cooling Contractors. Publication in *Ohio PHC Contractor* should not be construed as an endorsement by the Association."

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## From the President

*Liana Driscoll*



Hello,

This issue I would like to talk about being in a comfort zone. I think it is wonderful when you master a task and feel confidence in what you are doing. However, you have to make sure your comfort level does not become complacency.

As a very wise friend of mine said, "Every generation stands on the shoulders of the next". This is how PHCC has evolved into the respected organization it is today. The past generations stepped out of their comfort zone of running their own businesses to give back to the industry. The current generation now has to continue the growth of our industry by getting involved.

A few examples of being involved are:

- ◆ By attending meetings at all levels (Local, State and National)
- ◆ By volunteering for committees
- ◆ By growing through educational classes
- ◆ By supporting legislative efforts (including the PAC).

What a sense of community and pride can be felt when positive changes in our industry are realized.

As we look ahead to September and our regular routines, please step out of your comfort zone and get involved.

We'd love to hear from you (1-800-686-PHCC)

OK, What's next?



◆ Here is an interesting fact to pass on to customers: According to a 2004 survey of real estate agents conducted by Remodeling

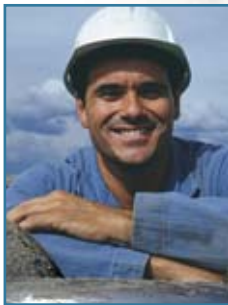
Magazine, Homeowners can recoup from about 81 to 90 percent of the cost associated adding a bathroom or powder room.

◆ Found some shocking news I think is worth reporting to the PHCC Industry. Drinking water and waste infrastructure system both received a "D-" grade in the report card released by American Society of Civil Engineer. The report indicated they both dropped from a "D" to a "D-" in the past four years.

◆ On Saturday, July 9, the President signed the Junk Fax Prevention Act of 2005 into law.

The bill maintains the "established business relationship" (EBR) exception that allows associations and companies to send unsolicited commercial faxes to their members and clients. In addition to restoring the EBR, the fax bill requires that all unsolicited commercial faxes include an opt-out provision on the first page of the fax, providing a cost-free, 24-hour means for the recipient to request to be removed from the fax distribution list; requires that fax numbers be obtained either directly from the recipient or from a public source to which the recipient gave the number for publication (i.e., a Web site, advertisement or directory); and "grandfathers" in fax numbers in the possession of the sender at the time of enactment.

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## From the Auxiliary President

*Becky Kolp*



Hello Everyone ...

One of my favorite melodies from the old Broadway musical “Porgy and Bess” is ‘Summertime’. I can particularly relate to the line, “... and the living is easy.” With the summer heat wave we’ve experienced since early June, I’m sure most of us found it to be the only way to endure the high temperatures, i.e. living or taking it easy. I hope all of you have had the opportunity to find a favorite shady spot, kick back with a big glass of iced tea or lemonade, and enjoy the warm sunshine. Before we know it we will be knee deep in white stuff so enjoy this season while you can!

Summer is the time for auxiliary board members to get ready for our annual board meeting in Millersburg, Ohio. This was originally referred to as our Fall Board Meeting but, due to the National Convention being held so early in September, the meeting date has been moved to August 13, 2005. We will be discussing issues that were brought before the general assembly at the 2005 Ohio State Convention and we will designate how much money from our fundraisers will be donated to each of the seven Ronald McDonald Houses. I invite all members of the state auxiliary, not just the officers, to attend this very important meeting. Let us know how you feel about these issues and feel free to bring up any other concerns you may have regarding our auxiliary. This is your organization and your input is important.

Please keep in mind that we are always looking for new members to join our ranks. Summertime is the perfect time to contact spouses and family of members of the Ohio State PHCC Association. Invite them to your local auxiliary meetings or just meet with them, one on one, for a cup of coffee and a chat. Ask your spouse if there are any new members in their local association and get their family members names. A personal invitation can do wonders when followed up by a phone call. Let’s make this coming year a year of growth for our state auxiliary as well as the local ones.

Keep cool and stay in touch.....



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## From the National Zone Director

*Joe Schmitt*



Greetings from your National Director. This year is flying by so fast. We are already making our plans to attend “Network 05” in Orlando, Walt Disney World being held in the Swan/Dolphin Hotel on September 7-10. This event will break new ground, but still hold PHCC traditions close – including a focus on supporting contractor education.

The PHCC Board of Directors have been actively at work with the following results:

◆ On July 1, 2005, PHCC—National Association transferred oversight of its training programs to the PHCC Educational Foundation and appointed a new director, Merry Beth Hall. Merry Beth served five years as the executive director of the Virginia state chapter of PHCC. As part of a renewed commitment to apprentice and journeyman training, the Plumbing-Heating-Cooling Contractors—National Association Educational Foundation will be offering several new training programs in the coming months. They include:

- A revamped and updated First-Year Plumbing Apprentice Program developed after almost a year of meetings with apprentice training and curriculum development experts.
  - A First-Year HVACR Apprentice Program offered in collaboration with the Refrigeration Service Engineers Society (RSES) and the Air Conditioning Contractors of America (ACCA).
  - There also are several other apprentice programs under way, such as administration of the Plumbing Home Study and Fast Trac programs, sponsorship of the International Plumbing Apprentice Contest and SkillsUSA Residential Plumbing and HVAC contests, and assistance to PHCC chapters and other industry organizations interested in offering an apprentice program. There also are plans to begin development of a plumbing and HVAC Continuing Education Unit program.
- ◆ Code issues were discussed from the national and state perspective resulting in recognition of a need to become more involved in the code development processes. Jim Finley is actively serving on the Code Committee for the International Code Council (decision-maker for the ICC Codes used with minor changes in Ohio).
- ◆ The membership survey was studied in depth and will be used to determine future direction. Ohio’s responses revealed the most important benefits of PHCC membership is Networking & Information followed closely by legislative activities and education programs. The least important noted coupons/discounts & participation. If the respondents could change one thing, what would they change? More management training. Secondly, they would add employee training, hold regional meetings and conferences, address the insurance problems of our members, and improve the image and recruit younger people. Getting more involved was a personal change recommended. Comments offered included “expand our legislative agenda to support clean air and clean water agendas as well as have a stronger influence with the government like the farmers and drug companies seem to have.”

Don’t forget to support and invest in PHCC Educational Foundation and PHCC National Auxiliary Scholarships. What better charity than the one that directly supports our profession through education and scholarships. Any amount is appreciated and tax deductible.

See you all in Orlando. I’ll be wearing a Yellow Shirt!



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## Locker Room Report

I remember back when I first started in the accounting industry working for one of the Big 8 accounting firms in the tax and financial planning department. It was a great opportunity to get some real world experience in my field. Back then, the concept of financial planning was in its infancy and the firm was expanding its services to our clients. There weren't any licenses for individuals in that field at that point. A majority of our clients were bank and corporate executives. Many were making in excess of a million dollars a year. When we met with them to discuss financial and estate planning, we were horrified to find that most had no will or plan in place.

Surveys say that people's number 1 fear is public speaking. That may be true but death and estate planning have to be a close second. People procrastinate on estate and financial planning more than anything else. We don't want to face the fact that we're all mortal and will die at some point. I would estimate that less than 10 percent of people I meet have a proper estate and financial plan in place. What I find just as curious is most of these same individuals have done little or no planning for their retirement.

For the "Baby Boomers" and those younger, any Social Security benefits received will be a much smaller percentage of your annual needs than prior generations.

Have you thought about your retirement yet? I'm sorry but winning the Ultra-Mega Lottery just isn't going to happen. You say you're too young to think about retirement planning? Really? Retirement isn't as far off as you think. Plus, with modern medicine, people are living longer meaning you'll need additional resources to live comfortably. You need to start thinking about tomorrow today! Here's an example:

### 41 Year Old Contractor

\$ 0	-Retirement savings to date
\$50,000	-Annual Salary/Wages
3.00%	-Annual Salary Growth Rate
2.50%	-Inflation Rate
65	-Planned Retirement Age
20	-Years in Retirement
\$50,000	-Planned Annual Retirement Income (in today's dollars)
6.00%	-Annual Rate of Return before taxes
25.00%	-Federal & State Tax (combined)

Based on the above information, you have about 24 years to accumulate the assets and savings needed to provide for the retirement goals. There are a number of retirement calculators available on the internet to help crunch the numbers. We made the assumption that you have not



started saving anything for retirement. Based on the facts above and that assumption, you will need to save approximately \$1,515,000 (in today's dollars) to meet your retirement objective! You need to invest \$3,028 per month until you reach retirement age to meet your goal. How do you stack up in the real world? The figures change drastically depending on the facts of your specific situation. Please note that I took a conservative approach to the calculation (low, average figures...\$50,000, 6% return, etc.). By the way, the estimated monthly Social Security benefits in this example would be \$1,602 per month (today's dollars) and wouldn't start until age 67, the later normal retirement date for this age bracket.

There are IRS rules that require mandatory, minimum distributions from your retirement plan once you reach 70 ½ years old. The IRS doesn't want you passing the whole nest egg on to your heirs and you can't really take it with you. Remember, the earnings on your account have been tax-deferred all those years. The IRS wants to make sure it gets its' cut. Earlier this year, I was in Milwaukee visiting with my dear friend, Frank Blau. Frank and I had a good discussion on this topic. In helping contractors "see the light," he made the point that people should start with the 70 ½ age and subtract their current age to determine how much time they have to accumulate the necessary assets and wealth to provide for themselves during their retirement years. Like many other things, it's never too late to start. Of course, the later you start planning, the more financial ground you're going to have to make up to reach your goals.

If your company has a retirement plan in place (ala 401(k), IRA SEP, etc.), make sure that you're putting aside the pre-tax dollars that the plan allows up to the amount the company matches when a matching program is in place. My belief is that you don't miss what you never see in your paycheck. Put the money into the plan, set your investment strategy and then let it grow! You don't need to watch it constantly. Just check in on it from time-to-time to make sure your objectives and financial situation haven't changed. Compounding interest is a wonderful thing!

There are many types of retirement plans and options; more than we can get into here in this column. Check with your human resource personnel for information on your company's retirement plan or talk with your CPA. If you're an owner and don't have one in place, get started right

now. It's not too late. Even if your employer doesn't have a retirement plan in place, you can set up a Roth IRA on your own. Remember, if you're not keeping score, then why are you playing the game (working)?

*Michael A. Bohinc is a Certified Public Accountant based in Cleveland, Ohio. He is also a licensed contractor in the State of Ohio. He is an associate member of the PHCC of Ohio and a Consult & Coach Partner for the Service Roundtable. He has 17 years' experience working on business management issues in the P-H-C industry. He is a Past President of the PHCC of North East Ohio and a past Treasurer for Greater Cleveland ACCA. He can be reached at: (440) 708-2583 or KeepingScore31@aol.com (© 2005 Keeping Score, Inc.)*



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## Calendar of Events

### September 7-10 - Network '05



A brand new page in the history of our industry - Network '05 represents the very first time that the American Supply Association and the Plumbing-Heating-Cooling Contractors -National Association will combine annual conventions into one comprehensive, value-packed event. Make plans right away to be in Orlando at Walt Disney World Swan & Dolphin for this unique opportunity for contractors to "get down to business" with wholesalers, manufacturers and manufacturers' reps. to address mutual challenges. Go to [www.phccweb.org](http://www.phccweb.org) for details and registration.

### October 5-6, 2005

#### *BOSS – Business Operations and Systems Success*

Everyone talks about having processes and procedures, but few know how or where to start. This national program is being brought to Columbus, Ohio for two days when attendees will set up the road map, identifying key areas of business operations and systems to create an increasingly successful business. Speaker is Mike Maynard, business coach for QSC (Quality Service Contractors – PHCC) and 2005 Ohio convention seminar presenter. Go to [www.phccohio.org](http://www.phccohio.org) or call 1-800-686-PHCC for details and registration.

### January 4-7, 2006

#### *Essentials of Project Management Course*

#### *Lansdowne, Va., near Washington Dulles Airport*

Managers working on the office side of a contracting business need to realize that making money in this industry depends completely on how well they can support their field labor," said Kirk Alter, director of the Foundation's management courses and lead instructor for the Essentials course. "By increasing field labor efficiency by just one percent, many companies could double their net profits." Go to [www.phccweb.org](http://www.phccweb.org) or call 1-800-533-7694 for details and registration.

**Ohio PHCC Board Meetings:** All welcome attendance by PHCC members. Please call for details 1-800-686-PHCC and make sure we have materials and lunch for you. *August 13 – Millersburg, Ohio 9:00 a.m. – 2:00 p.m.*

*November 12 – location to be announced*

**Chapter Meetings** around the state can be found at [www.phccohio.org](http://www.phccohio.org) in the Calendar. Members are welcome at any of the chapter meetings where networking and CEU-approved seminars are valuable opportunities.



### 2006 ACCA-PHCC Convention

April 6 - 8

Hilton at Easton, Columbus, Ohio



*While there are bills that are being monitored, and addressed as needed, the Biennial Budget took the majority of time and energy of the Senators and Representatives up through June 30. We recap the issues affecting our members here and note at the end of this report other bills we are following:*

**HB66:** Ohio's Biennial Budget, effective July 1, 2005, has major implications for our businesses:

**TAX:** The new CAT (Commercial Activity Tax) mandates **registration by November 15** and applies to all business with \$150,000 annual taxable gross receipts. (Not included in the gross receipts are: employee compensation; interest, dividends, federally-defined capital gains, and distributions; proceeds from loans, stocks, bonds, mutual funds, trusts, pension plans or certificates of deposits; damages received from litigation; or property, money or other compensation received by an agent in excess of commissions or fees.) Registration can be done online with a \$15 refundable fee; paper registration is at a cost of \$20. Thereafter, the initial filing covers the period July 1, 2005 through December 31, 2005, and is due February 10, 2006. Beginning in 2006, a minimum cost of \$150 for every taxpayer subject to this tax must be paid with a required filing for calendar year 2006 by May 10, 2006. Subsequent returns are due on a quarterly basis if the taxpayer has receipts of \$1.0 million a year. A tax return will be sent to all registered taxpayers before the first return is due. For an informational brochure with more details, go to <http://tax.ohio.gov>.

On the positive side, corporation franchise tax is

phased out over five years at a rate of 20% per year beginning in tax year 2006. All components of the tangible personal property tax – inventory, manufacturing machinery and equipment, and furniture and fixtures – are phased out over four years at approximately 25% per year, starting in tax year 2006. Ohio income tax is cut by 4.2% in tax year 2005, and cuts continue for four years to a total of 21% reduction from 2004 rates. State sales tax (only) is reduced by 0.5%.

**PLUMBING INSPECTORS/INSPECTIONS:**

- ◆ Requires the Superintendent of Industrial Compliance to adopt rules for certifying and recertifying, rather than approving, plumbing inspectors and for the continuing education of plumbing inspectors.
- ◆ Allows the Superintendent of Industrial Compliance to (1) contract with a third party to conduct certification examinations of plumbing inspectors, (2) deny, suspend, or revoke certifications for inspectors, (3) examine inspectors under oath and examine their records, (4) enter into reciprocal certification agreements with other states and other agencies of this state, and (5) establish fees for the certification, recertification, and continuing education of inspectors.
- ◆ Repeals the prohibition preventing inspectors employed by the Department of Commerce from engaging in the plumbing business.
- ◆ Eliminates the Fire Marshal's Fireworks Training and Education Fund and requires the State Fire Marshal to use the State Fire Marshal's Fund instead for fireworks training and education.





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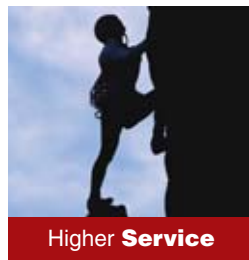
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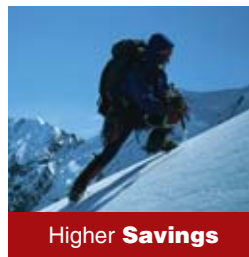
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- ◆ Division of industrial compliance shall order such changes in plumbing as are necessary to insure the safety of the public health.
- ◆ Division of industrial compliance and boards of health shall not inspect plumbing or collect fees for inspecting plumbing in particular types of buildings in any municipality that has been certified by the board of building standards to exercise enforcement for plumbing in such types of buildings;
- ◆ The state will not inspect plumbing or collect fees for inspecting plumbing in particular types of buildings in any health district that has employed one or more approved plumbing inspectors
- ◆ The superintendent can enter into reciprocal agreements with other states
- ◆ No plumbing work shall be done in any building coming within the jurisdiction of the division of industrial compliance except in cases of repairs or leaks in existing plumbing until a permit has been issued by the division.

*We are monitoring the following legislation which has not been passed by the General Assembly. It is reported here for your information and comment. Additional informa-*

*tion may be obtained by contacting the PHCC Ohio office or going to the [www.state.oh.us](http://www.state.oh.us) and locating the laws & legislation.*

**Am.Sub.HB104** – Will require a state agency, person or business to contact individuals if unencrypted personal information about the individuals that is maintained on the computers of the agency, person or business is obtained by unauthorized persons. The bill has been reported out of committee and is waiting for vote on the House floor.  
6/22/05

**SB5 – Health Insurance:** this bill would permit small employers to offer health care plans without benefits otherwise required by statute, provide for the operation of health savings accounts consistent with federal laws and limit the amount of co-payments and deductibles paid by persons insured by health benefit plans. A substitute bill accepted by the Senate Insurance, Commerce & Labor committee, includes an alternative provision that could include dollar limits on mandated services in lieu of eliminating the mandate entirely. *In committee* 6/21/05

**SB68 – Health Insurance** for all Ohioans was introduced

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in February and has had one hearing in Senate Insurance, Commerce & Labor. The bill would provide universal access to quality healthcare, dental care and vision services for all Ohioans. Funding would come from tax on employers, tax on businesses, tax on personal income (over \$87,900). There is some resistance to a government-run health insurance program. (See National Legislation below – AHPs)


**Am.Sub.SB7 –Bureau of Workers’ Compensation**

**Reform** package was also passed by June 30 following negotiation. One item in the original bill that was removed was the requirement of an employer to show proof of coverage before obtaining a building permit. Provisions were added outlining when an employer can object to settlements allowed outside the employer’s experience without employer signature. Also added is the provision that any person confined to a county jail in lieu of incarceration in a state or federal correctional institution, as well as those confined in state or federal correctional institution, may not receive compensation or benefits during the period of confinement. The definition of workers’ comp fraud now includes altering, forging, or creating workers’ compensation certificates to falsely show correct coverage, providing

false information when needed to determine an employer’s actual premium or assessment, and failing to secure or maintain workers’ compensation coverage with the intent to defraud the Bureau.

This bill **increases the penalty for overdue premium payments** from the required tiered penalty, based on overdue periods, to a *permissive* flat \$30 fine plus a tiered penalty beginning at 3% of the premium due for 11-30 days past due and increasing every 30 days thereafter, capped at the prime interest rate plus 10% times the premium due. The bill’s provisions apply to claims arising on and after the bill’s effective date and specified pending claims.

**HB148** Registration of **Home Improvement Contractors** would be required through the Ohio Dept. of Commerce and civil and criminal penalties would be established for violation of the law. The Attorney General would have enforcement powers. The bill was introduced 3/22/05 and last heard 5/24/05. It appears there will be a substitute bill drafted. Our focus will be to omit OCILB licensed trade contractors from this legislation should it pass.  
5/24/05 House Commerce & Labor Committee




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**HB181** directs the Ohio Board of Building Standards to adopt rules requiring a carbon monoxide detector be installed in each residential dwelling unit in a multifamily building. The first hearing was 5/3/05 in House Commerce & Labor Committee.

**HB198** would regulate glass technicians and create the **State Board of Glass Technicians**. We have expressed concern as to the broad interpretation of glass technicians and have submitted suggested wording “*that plumbing contractors engaged in the installation of glass shower doors and bathtub enclosures to be exempted.*” This bill had its first hearing on 5/17/05 in House Commerce & Labor Committee.

**Am. Sub. H.B. 175** – Residential Code to be established; Bill was effective 5/27/05

- ◆ Establishes three types of regulations governing residential buildings: a state residential building code, local residential building regulations (for municipal corporations, counties, and townships), and existing structures codes (for counties and townships).
- ◆ Requires the Board of Building Standards to adopt a state residential building code separate from the non-

residential building code (ongoing law’s Ohio Building Code).

- ◆ Specifies that local residential building regulations may not differ from the state residential building code unless their subject matter is not addressed by the state code or a specified “conflict” procedure is followed.
- ◆ Requires enforcement of the state residential building code only where a local building department is certified to enforce it and does not require building departments to apply for residential enforcement certification.
- ◆ Gives counties, townships, and municipal corporations the option of adopting the state residential building code, or an essentially identical local residential building code, or no residential building code at all.
- ◆ Permits, but does not require, municipal corporation, county, and township adoption and enforcement of local residential building regulations, and authorizes counties and townships to adopt specified existing structures codes.
- ◆ Re-establishes the Residential Construction Advisory Committee and requires it to recommend a state residential building code to the Board of Building Standards.

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- ◆ Permits a certified building department established by a county, township, or municipal corporation to administer and enforce the state residential building code, the nonresidential building code, or both.
- ◆ Specifies that an owner of a residential building in an area *without* a local building department certified to enforce the state residential building code is not required to receive approval of the plans and specifications for the building.
- ◆ Provides procedures for the Board of Building Standards to determine whether a conflict exists with a local residential building regulation, and requires the incorporation of a local regulation into the state residential building code if it technically conflicts with the state code but is necessary for health or safety.
- ◆ Requires a county, township, or municipal corporation with a certified building department to collect, on behalf of the Board of Building Standards, a fee equal to 1% of any local fees collected in connection with residential buildings.
- ◆ Removes detailed requirements that the Board of Building Standards adopt energy conservation and thermal efficiency standards for residential structures,

while retaining an energy conservation requirement in a general manner for state building codes.

- ◆ Adds penalty provisions for violations of the Ohio Building Standards Law.
- ◆ Provides procedures for a homeowner and residential contractor to follow before a homeowner files a civil action against the contractor or seeks arbitration for an alleged construction defect.

*Update 6/30/05: The residential advisory board has been appointed and PHCC Ohio will be sending a position statement supporting the ICC Ohio Plumbing Code [as referenced in the International Code Council Residential Code]. The board members are: Doug Prestier, North Canton, General Contractor Representative; A. Bailey Stanbery, Toledo, General Contractor Representative; James M. Zengel, Dayton, General Contractor Representative; Michael A. Boeckermann, Cincinnati, Fire Official Representative; John Crater Senhauser, Cincinnati, Architect Representative; William W. Owens, Powell, Residential Contractor Representative; Gerald L. Stoker, Fairfield, Building Official Representative; Dana Robert Booghier, Springfield, Building Official Representative*



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## ON THE NATIONAL FRONT:

As of June 1, 2005, the **FACT Act** requires all employers with one or more employees to properly dispose of sensitive financial and personal information. The Federal Trade Commission (FTC) stated shredding, pulverizing or burning paper records so consumer information is unreadable are examples of appropriate disposal methods. The rule also applies to electronically stored data. Information stored electronically, such as computer discs or hard drives, should be over-written, deleted or physically destroyed such that they cannot be read or reconstructed. "This rule does not address when you get rid of [the information], it just describes how you get rid of it," says Katherine Armstrong, an attorney at the FTC.

PHCC and other associations advocating for the **Association Health Plan** legislation participated in a meeting recently to discuss the status of the Association Health Plans legislation, otherwise known as the Small Business Health Fairness Act. The Chairman of Health Committee, Sen. Mike Enzi from Wyoming, wants to move legislation that would address health care for small businesses, but is aware of the stalemate that has helped block insurance reform. He supports the concept of Association Health Plans, but is also sensitive to criticism from many, including from within the Republican party, that would allow AHPs to adhere to a different set of rules and that the oversight of these plans would shift power away from the states and toward the federal government. In a floor statement, he included five guiding principles to serve as the basis for new legislation and is optimistic this will make it through his committee, and the Senate thereafter. 1) Meaningful role for associations, but on a level playing field; 2) Streamlining of regulations; 3) access to reduced-cost options; 4) Strong state-based consumer protection and oversight; and 5) Budget neutrality.

We can expect a vote on permanent repeal of the death tax sometime in the third week of July. At the moment, unfortunately, there lacks the necessary 60 votes to secure support in the Senate for full repeal. Understanding that there lacks for the votes for full repeal, Sen. Kyl, the bill's sponsor, has been tasked with coming up with the best possible solution, which means compromise. Some are reporting that the compromise will be something like a reduction in the estate tax from 55% to 15% which represents the current capital gains rate. Additionally some are suggesting that the rate reduction be accompanied by an increase in the unified credit under which there would be no estate tax due. In other words, if the value of your estate, say \$2.5 million, falls below the

newly established unified credit level, say \$5.0 million, there would be no estate tax due. The problem with any compromise is that it does nothing to eliminate the tax; it only reduces the number of individuals subject to the tax. Death should not be a taxable event; not at 55% or 15%. I encourage you to send a letter to your Senator via email that states that you seek permanent repeal of the death tax. A draft of such a letter is available on our website at [www.phccweb.org](http://www.phccweb.org). In the right margin of the website is a link that features the "write to your member of Congress." This is the perfect time to advocate on an issue of importance to your company.

### **PHCC Advocating for Contractor-Friendly Energy Bill**

PHCC is lobbying full force to add a fair competition amendment to the proposed energy bill under consideration by the Senate. The amendment would help prevent unfair competition from utility companies by creating a level of separation between a utility and its unregulated affiliates.

### ***Why is Energy Bill Important?***

First, the energy bill is intended to reduce the country's dependence on foreign oil by encouraging energy efficiency, conservation, and exploration here in the U.S. Second, and of critical importance to our industry, is the inclusion in this broad legislation is what is called "the electricity title" which is a section of the legislation that would repeal PUHCA, or the Public Utility Holding Company Act. PUHCA requires utilities to go through the Securities and Exchange Commission before entering businesses (such as servicing and installation of appliances like water heaters, air-conditioning, etc.) other than providing electricity. PHCC opposes repeal of PUHCA unless amendments could be offered to guarantee that utilities would compete fairly in those industries.

### **PHCC Member Testifies Before Congress About Unfair Utility Competition**

"I would say that no matter which state you come from, unfair utility competition is having a tangible, negative impact on small businesses in your district," offered Hugh Kelleher, executive director of the PHCC of Greater Boston and a licensed master plumber, to the U.S. House Committee on Small Business on May 4. At a hearing entitled "Anticompetitive Threats from Public Utilities: Are Small Businesses Losing Out?", Kelleher said legislation is needed to ensure fair competition between the small businesses which provide plumbing, heating and cooling services, and

the large multi-state monopoly utilities which, through unregulated affiliates, compete unfairly in the marketplace.

To illustrate unfair practices, Kelleher provided some examples of the difficulties his Boston area members encounter when competing against a large natural gas utility, KeySpan. One of the most common is "free equipment" (e.g., boilers and furnaces) offers from utility affiliates that are actually subsidized through customers' regular bill payments to KeySpan.

"The plumbing and heating industry is on record supporting repeal of the Public Utility Holding Company Act (PUHCA)," he stated. "All we ask is that the repeal includes some degree of consumer protections, and that Congress ensure that there is a real firewall created between a utility's regulated business and its unregulated affiliates. Don't let the repeal of PUHCA be an opportunity for the utilities to create more inefficiencies by allowing them to compete in more plumbing, landscaping and drapery cleaning businesses."

In response to questions from the committee members, Kelleher stated, "PHCC supports an amendment that would draw a line in the sand between a utility company and its affiliate, ensuring the elimination of cross subsidies that allow utilities to gain market share at the expense of small businesses. This is a national issue which needs a federal solution." He urged the committee to work with the House Energy and Commerce Committee and the Senate to incorporate safeguards into the national energy policy legislation currently under consideration.

**MAKE AN IM-PAC-T:** In addition to voting, there are two ways you can make an impact in the legislation that is considered: 1) send a letter to your senator or representative/congressman; and 2) make a personal contribution to the Ohio and National Political Action Committees (PACs).

What is a PAC?? it is an important component of the overall legislative representation PHCC provides its members. This special fund, created from the personal contributions of our members, helps provide bi-partisan support to candidates who understand the unique concerns of the p-h-c industry. Specifically, PAC funds are used to support the election campaigns

of candidates for federal and state office who will continue to work with us to enact legislation that is favorable to plumbing and HVACR contractors, such as access to affordable health insurance, tort reform, preventing unfair utility competition, clarifying the role of the plumbing contractor in proposed legislation (i.e., glass technician, licensing defined as it applies to residential contractors in the trades and in home improvement work), and permanent repeal of the estate tax.

Each year, funds are needed to contribute to legislators and candidates that play a key role in protecting and furthering the interests of PHCC members. This proactive approach to representing member interests continues to increase our visibility on Capitol Hill and in Columbus and strengthens our relationships with legislators, ensuring that we are an integral part of the decision-making process on issues affecting our industry. Visit PHCC national association web site at [www.phccweb.org](http://www.phccweb.org) for more information on the national legislation efforts, and [www.phccohio.org](http://www.phccohio.org) or call 1-800-686-PHCC for Ohio information. Make your dollars count by being part of a larger group of like-minded contractors - send a personal check today. Ohio: OH PAC 892, 18961 River's Edge Drive, Chagrin Falls, OH 44023 National: go to [www.phccweb.org](http://www.phccweb.org) for details. ■

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# BACKFLOW in Ohio

**SB 179** passed requiring certification of technicians to install, repair or test backflow:

- ◆ Ohio Dept. of Commerce, Div. of Industrial Compliance is officially responsible for Backflow Program
- ◆ Advisory Board appointed, made decisions
- ◆ Rules are written for OAC 1301:3
- ◆ JCARR ready to review
- ◆ September 1 is the goal for implementation

## BE PREPARED !!

New applicants for backflow certification must:

- Have 5 years experience in the plumbing industry and
  - Be employed by (or are) a plumbing contractor, or
  - Be employed by (or are) a hydronics contractor; or
  - Be employed with a fire protection company certified by the Ohio State Fire Marshal; or
  - Hold a current plumbing inspector certification from the Division of Industrial Compliance or Ohio Board of Building Standards
- OR
- Be experienced in the water purveyor industry and demonstrate to the satisfaction of the superintendent (or superintendent's designee), that the Applicant possesses one of the following:
  - Five years of experience in the water purveyor industry; or
  - Possess a minimum of an Ohio EPA (Environmental Protection Agency) license class I distribution or water treatment operator license

ALSO

- Reciprocity may be approved for certificate holders from another state with the addition of an 8-hour Ohio recertification backflow course
- And there is an opportunity to seek certification pending submission of experience acceptable to the board.

**CERTIFICATION** only after

- filing application and fee; and
- completing 32 hour backflow course by approved training agency using ODOC "Backflow Prevention & Cross-Connection Control Manual"; and
- passing practical and written examination; and
- paying certification fee



**RECERTIFICATION** /renewal every three (3) years:

- Complete 8-hour backflow course by an approved training agency using ODOC "Backflow Prevention & Cross-Connection Control Manual"; and
- Passing mandatory practical test by approved training agency; and
- Paying \$75 renewal fee

**Fees** (nonrefundable):

- Application fee .....\$50
- Examination fee ..... \$50
- Re-examination fee.... \$50
- Certificate fee ..... \$75 every three (3) years

**Training Agencies**

- Sited in Ohio
- Trainers who meet the following requirements:
  - 6 years of experience in backflow industry
  - Hold an Ohio backflow certificate currently
- Submit fee of \$50 fee
- Attend annual meeting held by the Division of Industrial Compliance
- Meet any other requirements established by the Superintendent

**Your certificate can be denied, revoked or suspended by the Board for any of the following if you:**

- Falsify documentation; or
- Violate any provision of Chapter 3703 of the Revised Code or rules that have been adopted pursuant thereto; or
- Obtain a certificate by fraud, misrepresentation, deception; or
- Engage in fraud, misrepresentation, deception, malfeasance, misfeasance, or nonfeasance in the conduct of business; or
- Are certified as an employee of a water purveyor and perform a test and/or inspection on an isolation device that is not owned by the public water system.

**For reasonable cause shown, if certificate revoked or suspended:**

- Your certification may be suspended for 6 months to a maximum of life as established by the board; and/or
- You may be required to complete additional continuing education courses within a specified period of time.

**Your recourse:**

- Upon written notification of the action by the Board, you may appeal pursuant to chapter 119 of the Ohio Revised Code for an adjudication hearing.

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# CONSUMER THREE DAY RIGHT OF RESCISSION RIGHT TO WRITTEN ESTIMATE

*OHIO HOME SOLICITATION SALES ACT  
OHIO REVISED CODE SECTIONS 1345.21 - 1345.28*

even if it turns out it did not apply [for risk-adverse/prudent contractors].

## I. General

Ohio's Home Solicitation Sales Act (the "Act"), which provides a consumer with a three (3) day right to cancel a contract, was traditionally aimed at door-to-door salesmen. However, the Act may or may not apply in a given situation involving the work of a contractor on a customer's home. The answer to the question of whether the Act applies in a given situation is rarely simple. It involves a fact-intensive case-by-case analysis of the circumstances regarding how and where the agreement was reached.

In general, if the Act applies, the contractor must provide the consumer with a written agreement containing a notice of the consumer's right to cancel within three days. The contractor must also provide two copies of a "notice of cancellation." The contractor is not to provide any services during the three day cancellation period which does not begin to run until the contractor has provided the consumer with the cancellation notices. Thus, compliance can be burdensome and impractical.

Therefore, in situations where the work will be performed or delivered at a residence or where the Act may otherwise apply, the contractor has some options: (1) hire a lawyer to analyze each situation and give advice regarding the Act's applicability [this is obviously expensive, impractical and illogical], (2) develop and adopt procedures with the assistance of a lawyer which are designed to result in the Act being inapplicable [can be impracticable for business, discourage sales and is not fool-proof], (3) ignore the Act and risk the consequences of noncompliance, if any [for risk-acceptant contractors], or (4) comply with the Act,

(A) "Home solicitation sale" means a sale of consumer goods or services in which the seller or a person acting for the seller engages in a personal solicitation of the sale at a residence of the buyer, including solicitations in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller, or in which the buyer's agreement or offer to purchase is made at a place other than the seller's place of business.

(E) "Consumer goods or services" means goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses or instruction or training regardless of the purpose for which they are taken.

**II. Does the Act apply? General rule: Start with "yes"**  
*The Act applies to transactions in which the consumer's agreement or offer is given at a place other than the contractor's place of business.*

Exclusions — The Act does not apply to:

1. *Transactions under \$25.00.* The "purchase price" is the total cumulative price of the consumer goods or services, including all interest and service charges (1345.21(G)). If there are multiple contracts, "purchase price" is determined by adding all of the consumer's contracts with the contractor (1345.21(A)(1), (G)).
2. *Sales conducted at the contractor's retail place of business.* The Act does not apply if the final agreement is made "in the course of a visit by the buyer to a retail business



establishment having a fixed permanent location where the goods are exhibited or the services are offered for sale on a continuing basis.” *But beware*, there is a statutory presumption that if negotiations took place at a place other than the contractor’s fixed location business establishment where the services are exhibited, but the agreement is signed at the contractor’s fixed location business establishment, the sale was a “home solicitation sale” covered by the Act (1345.25).

a. The Act does not apply if the consumer initiates the sale and the transaction is consummated *entirely* by mail or telephone (1345.21(A)(2)). There cannot be any other contact before the goods are delivered or services performed.

b. The Act does not apply if the consumer initiates the sale and the contractor has a fixed location in Ohio where the goods or services are exhibited for sale (1345.21(A)(4)).

c. The Act does not apply if the consumer initiates the sale and the sale is needed to meet a bona fide immediate personal emergency of the consumer (1345.21(A)(5)). This exemption is *very narrow* and only applies if the consumer furnishes the contractor with a separate, dated and signed statement in the consumer’s handwriting describing the situation and expressly waiving the three day right of rescission.

d. The Act does not apply to consumer-initiated at-home repair calls (1345.21(A)(6)). This exemption only applies to the requested maintenance service and necessary replacement parts. Any additional services or goods sold are covered by the Act.

The sale is considered initiated by the consumer if the consumer calls the contractor in response to an advertisement (1345.21(A)(4)). But, when the consumer responds to mail or telephone solicitation, it is seller initiated (1345.21(A)(2)).

### III. Compliance with the Act

A. Terms and Manner of Forming the Contract. The contract must meet certain requirements (1345.23(A)):

1. *Must be in writing* — every home solicitation sale must be evidenced by a written contract or offer to purchase.
2. *Contract must include the contractor’s name and address*.
3. *Language* — i.e. if the sale was conducted in French, the written contract must be in French.
4. *Contract must be signed by the consumer*.
5. *Contract must state the date on which the consumer*

*actually signed it*.

6. *Contractor must leave the consumer a copy of the written contract, signed by the contractor*.

B. Written Notice. The contract must also include a written notice of the consumer’s right to cancel (1345.23(B)(1)). The following language must appear in the written contract (and on all notes or other evidence of the consumer’s indebtedness, if any):

**You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation for an explanation of this right.**

1. It must appear “clearly and conspicuously.”
2. It must appear in 10 pt. and bold face type.
3. It must be in immediate proximity to where the consumer signs.

C. Notice of Cancellation. The contractor must also give the consumer two copies of a “notice of cancellation” (1345.23(B)(2)). The notice of cancellation describes in detail the consumer’s right to cancel. There are very exact requirements for the format of the notice of cancellation set forth in 1345.23(B)(2):

1. Two (2) copies must be given to the consumer.
2. It must be attached to, but easily detachable from, the written contract.
3. It must be printed in 10 pt. and bold face type.
4. It must be in the same language (English, French, etc.) as the written contract.
5. It must contain blanks for the date of the contract, the name of the contractor, the contractor’s address, and the date by which the consumer may cancel. Section 1345.23(B)(3) requires the contractor to fill in each of these blanks on both copies of the notice of cancellation before giving them to the consumer.

D. Oral Notice. The contractor must orally inform the consumer of the right to cancel at the time the consumer signs the contract (1345(D)(2)). The contractor must not misrepresent the right to cancel (1345(D)(3)).

E. Timing of Performing Services. The Act prohibits the contractor from performing any services during the time in which the consumer may cancel (1345.22).

IV. **Illegal Provisions in a Contract Covered by the Act**. Section 1345(D) prohibits the contractor from including:

A. Confession of judgment.

B. Waiver of any of the consumer’s rights under the Act — including, but not limited to, the three day right to cancel.

***IT IS A VIOLATION OF THE ACT TO HAVE A CONSUMER WAIVE THE THREE DAY RIGHT TO CANCEL WITH POSSIBLE CRIMINAL LIABILITY, EXCEPT IN THE NARROW CIRCUMSTANCE WHERE THE CONSUMER INITIATES THE SALE AND THE SALE IS NEEDED TO MEET A BONA FIDE IMMEDIATE PERSONAL EMERGENCY OF THE CONSUMER.***

**V. Consequences of Not Complying with the Act, if Applicable**

A. For most violations (*see* III(A), (B), (C) and (D) above), the consumer’s right to cancel is extended until three business days after the contractor comes into compliance. If the contractor has not complied, the consumer can cancel *at any time*. In the meantime, if the contractor performs consumer services, the contractor runs the risk that the consumer will cancel and be able to keep the services without paying for them.

B. If the action by the contractor constitutes a “deceptive act or practice in connection with a consumer transaction” in violation of the Sales Practices Act, 1345.02, which entitles the consumer to:

1. Rescind the transaction *or* recover damages;
2. If the act has already been declared deceptive, recover three times actual damages or \$200 whichever is greater (likely to apply);
3. Reasonable attorney’s fees if the contractor knowingly committed the deceptive act.
4. Punitive damages have been awarded.

C. The Attorney General can sue to enjoin violations, bring a class action on behalf of consumers, seek large civil penalties, appointment of a receiver, reimbursement of consumers and other appropriate relief. The Attorney General can intervene in suits brought by consumers.

D. For most violations (*see* III(A), (B), (C), (D), (E), IV, VI(A) and possibly others), the contractor can be *criminally* liable for a minor misdemeanor (1345.99).

E. In addition to remedies under the Act and the Sales Practices Act, the consumer can still sue the contractor for breach of contract or any other cause of action under any other law.

**VI. What if the Consumer Cancels the Transaction?**

**A. Contractor’s Duties.**

1. The contractor must retain a copy of the notice of cancellation and the envelope in which it was delivered, and, if necessary, note the date of delivery on the notice (1345.24).

2. Within 10 days after mailing or delivery of the notice, the contractor must refund all payments made, return any goods or property traded in, cancel and return any note, negotiable instrument or other evidence of indebtedness, and terminate any security interest or lien (1345.23(D)(4)).

3. Within 10 days after mailing or delivery of the notice, the contractor must notify the consumer whether the contractor intends to abandon or repossess any goods (1345.23(D)(6)).

**B. Consumer’s Duties.**

1. After the seller has complied with its duties *and after demand by the seller*, if the transaction was for goods, the consumer must make the goods available for the seller to pick up at his residence. If the consumer makes the goods so available and the seller fails to pick them up within 20 days of the consumer’s notice of cancellation, the goods become the property of the consumer without obligation to pay for them. During the 20 day period, the consumer must take reasonable care of the goods which are at the seller’s risk.

2. Although the consumer is only required to make the goods available at his residence, if the consumer agrees to ship the goods to the seller, the consumer must do so

3. ***If the transaction was for services, the consumer is not required to return the services or goods which are inextricably combined with the services. In such case, the contractor has no right to be paid for the services.*** To protect the contractor from this situation, 1345.22 forbids the contractor from performing any services before the right to cancel has expired.

**VII. Suggestions for Residential Jobs.** Although sometimes impractical, because of the potentially hazardous consequences of noncompliance, it would be prudent for a contractor to comply with the Act in any job where work is to be performed at a residence, even though the contractor risks providing the customer with a right to cancel that may not otherwise have existed.

**After following the recommendations above,**

Do not cash any check or otherwise negotiate, transfer, sell or assign any note or other evidence of indebtedness executed by the consumer prior to midnight of the fifth business day after the date the consumer signed the contract (1345.23(D)(5)).

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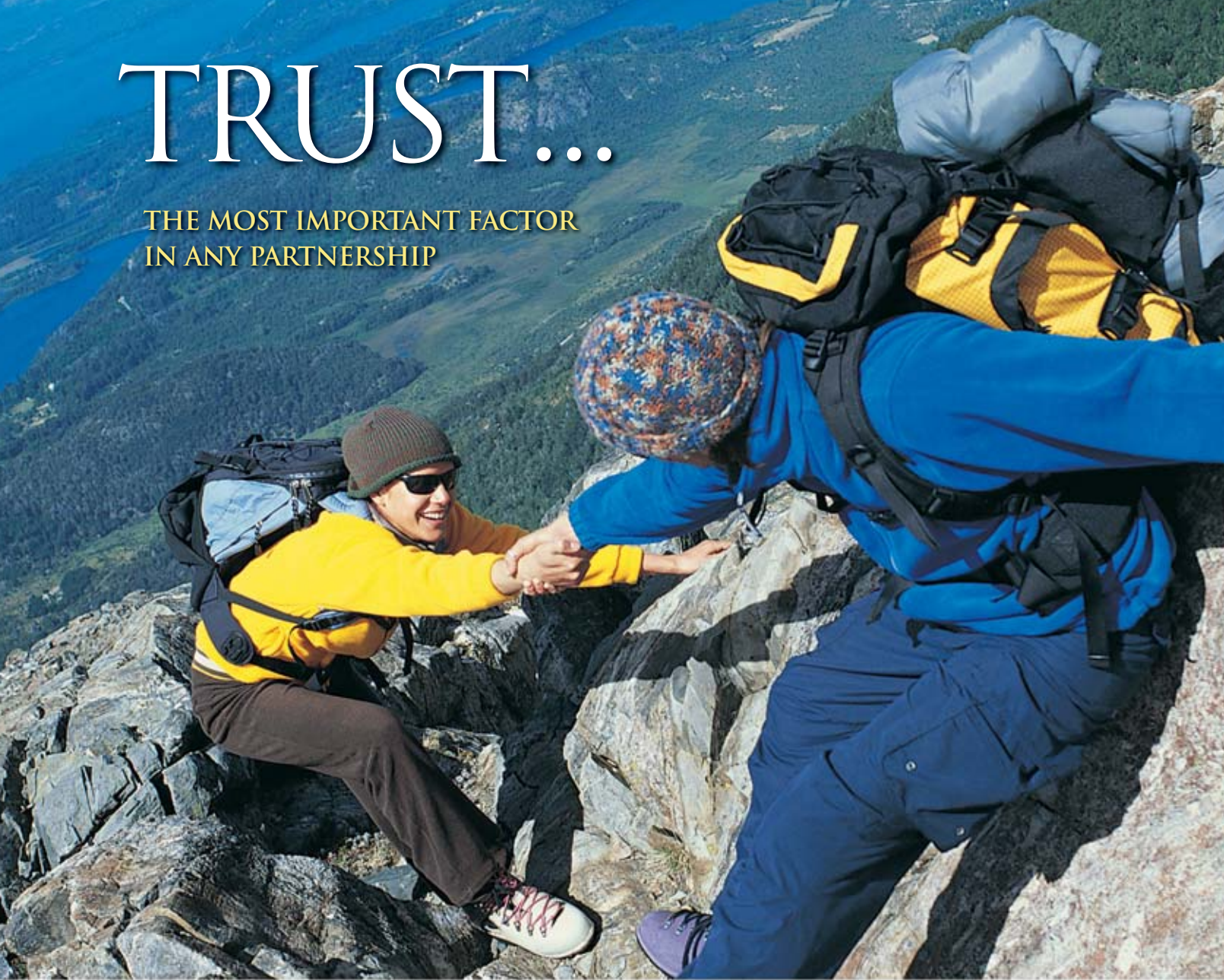


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