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THE COUNSELOR

USING NEW YORK LAW TO SAVE ON MORTGAGE RECORDING TAXES

— By James P. Rosenzweig

If you are planning on purchasing commercial or residential real estate in New York State, there may be an opportunity for you to save taxes with the cooperation of your seller and its mortgage lender.

When purchasing property with the assistance of a mortgage loan, your lender will require that the mortgage document be recorded in the land records of the County in which the property is located. New York State charges a tax for the right to record that mortgage, 1.05% of the loan amount in Nassau and Suffolk Counties, and 2.8% in New York City. On large mortgage loans, the recording taxes can add up.

Quite likely, however, your seller also took out a mortgage loan when it bought your target home or commercial property. That means that the seller would have paid its own mortgage recording tax when it originally purchased the property. If the seller's lender "assigns" its mortgage loan to the buyer's lender, the buyer can avoid paying tax on that portion of his or her acquisition loan that was previously taxed to the seller. Under New York law, the mortgage recording tax is only payable with respect to the portion of the new debt that exceeds the outstanding principal balance of the existing debt. Mortgage lenders then will "consolidate" the old and new mortgages into a single, amended and restated instrument for recording purposes, resulting in a single mortgage for the buyer's new debt.

The right to take an assignment of the seller's loan is something that buyers should ask for early in negotiations, when purchase price and other economic terms are being discussed. Buyers should consult their professional advisers to ensure that they do not miss this opportunity for tax savings.



James P. Rosenzweig,
Partner

ACCOLADES



FDT was selected as a Long Island Business News' "Best Place to Work" in 2019, recognizing top employers on Long Island.



L-R: Lauren L. Stanton, Kristina E. Sornchai, Gerard R. Luckman, Michael A. Berger, Lindsay Mesh Lotito, Jessica A. Leis



Associate Brian W. Kennedy was an Honoree at Long Island Business News' "40 Under 40" awards dinner, honoring outstanding members of the business community on Long Island.

FIRM MENTIONS

GREAT NECK RECORD

Peter B. Skelos was quoted in the article, "Olive Hill Part III: Oral Arguments."

LONG ISLAND BUSINESS NEWS

- Jeffery D. Forchelli was interviewed by Bernadette Starzee and quoted in the article, "The place to be."
- WHO'S WHO Special Supplement:
 - » Steve G. Gaebler and Brian R. Sahn "Commercial & Residential Real Estate Law"
 - » John V. Terrana "Real Property & Tax Certiorari Law"
 - » Stephanie M. Alberts "Women in Professional Services"

LONG ISLAND GASOLINE RETAILERS ASSOCIATION, INC.

Lisa M. Casa's article, "Employee Handbook Set Out the Rules of Workplace," was published.

NASSAU LAWYER

- Michael A. Berger's article, "Moving the Needle Towards Pay Parity Among the Sexes," was published.
- Lisa M. Casa's article, "COBRA Compliance in Corporate/Business Restructurings," was published.
- Gregory S. Lisi was featured in content from the NCBA's Holiday Celebration.

NEW YORK AMSTERDAM NEWS

Landon C. Dais was featured in the article, "Getting in on the ground floor of the hemp industry."

NEW YORK REAL ESTATE JOURNAL

John V. Terrana was featured in the Year in Review Spotlight.

NEWSDAY & GoTECHDAILY

Daniel P. Deegan was quoted in articles, "\$43.6 million hotel project proposed for Jericho seeks IDA tax breaks."

"WHY DO PETS MATTER?" (PODCAST)

Mary E. Mongioi discussed how those involved in the care of a pet can navigate the relationship in a more productive way on the "Happy Clients, Happy Pets, Happy Vets" episode.

AWARDS, PRESENTATIONS & EVENTS



FDT participated in two holiday toy drives benefitting Toys for Tots and Options for Community Living, Inc.



Kathleen Deegan Dickson supported CDCLI's "Raise the Roof" Gala to celebrate the 50th anniversary of investing in the dreams of Long Islanders.

Robert L. Renda presented a seminar on the impact of the Nassau County Reassessment and the real estate tax grievance process to the Wantagh office of Century 21.

Judy L. Simoncic - a board member of Vision Long Island - moderated the "Getting Condominiums Built" panel. Jessica A. Leis, Jane Chen, Daniel P. Deegan, Louis H. Fiore, Andrea Tsoukalas Curto, Lisa M. Casa, Frank W. Brennan and Brian W. Kennedy attended the luncheon.



The Banking practice group at Westbury Manor; FDT honored Robert F. Chicco (standing third from left) on his upcoming retirement.



Jessica A. Leis, pictured with her mentee, Amy Majkrzak, at the Hofstra Law Mentorship Program Winter Reception, held at the Hofstra University Club.

Gregory S. Lisi and Lisa M. Casa attended the New York State Bar Association's Gala Dinner, which was held at the American Museum of Natural History in NYC.

Erik W. Snipas participated in St. John's University School of Law's Spring 2020 Mock Interview Program.



Judy L. Simoncic & Andrea Tsoukalas Curto hosted a meet & greet between FDT's Women's Initiative and female professionals from Marks Paneth LLP, a leading accounting, tax and advisory firm.



FDT will join you on your commute if you travel eastbound on the Long Island Expressway near Exit 42!

BANKING AND FINANCE

Practice Group Co-Chairs, **James C. Ricca** and **Steven G. Gaebler**, with the assistance of **Lindsay Mesh Lotito**, negotiated and closed a land loan, construction loan and building project loan (combined loan amount of \$54,000,000), on behalf of an institutional lender, for a project on Northern Boulevard in Long Island City. The transaction involved and required negotiating with two participating banks on the lending side, and a preferred equity investor on the borrower's side.

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed a \$22,500,000 mortgage loan on behalf of New York Community Bank for a property consisting of two 7-story buildings with 176 residential apartments and one office located in Cherry Hill, New Jersey.

Lindsay Mesh Lotito negotiated and closed a \$12,250,000 mortgage loan on behalf of an institutional Lender. The collateral consisted of three multi-family apartment buildings in Manhattan.

CONSTRUCTION

Anthony P. DeCapua negotiated, drafted and closed on a \$15,539,435 Guaranteed Maximum Price Contract for a general contractor client concerning the ground up construction of a new Class A industrial facility, including approximately 90,000 gross square feet of office and industrial space with truck loading bays and on-site parking in Brooklyn, New York.

In an action brought on behalf of a general contractor against a school district, **Joseph P. Asselta** and **Raymond A. Castronovo** successfully settled at trial for the full unpaid contract amount, inclusive of change orders, which exceeded \$1,000,000. The school district had previously terminated two separate prime contracts with the contractor for cause and rigorously contested liability until trial.

In an action brought on behalf of a contractor against a public authority in connection with a bridge construction project, **Joseph P. Asselta** and **Raymond A. Castronovo** successfully settled at trial for the full amount of the unpaid contract balance, plus additional accrued interest, despite the fact that the owner had claimed liquidated damages against our contractor client.

TAX CERTIORARI

John V. Terrana and **Douglas W. Atkins** handled the representation of a self-storage facility, seeking tax reductions from both the Town of Babylon and Incorporated Village of Amityville. The issues were complex as the real property contained several vacant lots, ultimately combined into a single-lot, new-construction facility. By seeking counsel from the firm's construction and land use departments, Messrs. Terrana and Atkins successfully secured tax abatements of approximately \$230,000.

John V. Terrana represented a Real Estate Investment Trust in pursuing reductions in PILOTs (Payments in Lieu of Taxes), for a client's self-storage facility in Amityville. Mr. Terrana was able to simultaneously prosecute the valuation proceedings and coordinate a settlement with the Town and IDA, which produced approximately \$250,000 in PILOT credits, as well as a 30% PILOT bill reduction going forward.

Nicole S. Forchelli resolved a property tax matter for a Fortune 500 company. During the course of negotiations with the municipality, she took the position that the ownership interest valued for tax certiorari purposes should be the leased fee interest, as opposed to the fee simple interest. In doing so, Mrs. Forchelli successfully argued that the property was over-valued for real estate taxation purposes and obtained over \$200,000 in tax savings for the client.

Douglas W. Atkins and **Robert L. Renda** represented an owner of a large-scale, warehouse facility in the Town of Hempstead. The valuation methodology proffered by Messrs. Atkins and Renda was supported by a prior subject sale, the actual financial experience of the subject property, and an in-depth market analysis of comparable properties. After extensive negotiations with the Nassau County Assessment Review Commission, Messrs. Atkins and Renda successfully resolved the proceedings and obtained a real estate tax benefit of over \$700,000.

LITIGATION

Richard A. Blumberg, **Peter B. Skelos** and **Andrea Tsoukalas Curto** successfully litigated an Article 78 proceeding which was initially dismissed and then granted on a motion to reargue. The Court awarded the clients a judgment directing the Town of North

Hempstead Board of Zoning Appeals to issue a conditional use permit and area variances which would permit the expansion of a parking lot for a strip mall in Glen Head. The well-supported petition and motion papers established that the proposed expansion was in character with other commercial uses in the area.

David A. Loglisci successfully argued before the Appellate Division to reverse the Supreme Court and reinstate a client contractor's multimillion-dollar delay claim lawsuit against the NYC School Construction Authority, despite the "no damage for delay" and "two-day notice-of-delay" clauses in the parties' contract.

Elbert F. Nasis and **Danielle E. Tricolla** secured an order dismissing claims in a lawsuit brought against a client, challenging the allocation of certain assets formerly owned by the parties' parents. They successfully demonstrated that the parties agreed to and ratified such allocation. Mr. Nasis and Ms. Tricolla then successfully opposed a re-argument, and the Court upheld its dismissal of plaintiffs' claims.

LAND USE & ZONING

Andrea Tsoukalas Curto successfully secured final subdivision approval for a Chinese private equity fund, which owns a waterfront parcel with beach access and dock rights in the Village of Sands Point. **Robert B. Moy** successfully represented the client on a sale of one of the newly created lots to another Chinese investor for \$5,400,000 with an option to purchase the additional lots.

TAX, TRUSTS & ESTATES

The Internal Revenue Service (IRS) assessed a penalty against a client, in the amount of \$76,960, for late filing of certain information returns for 2017.

Barry C. Feldman was able to convince the IRS that the penalty should be withdrawn in its entirety.

VETERINARY

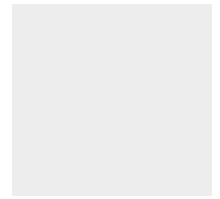
Mary E. Mongioi recently represented clients in connection with:

- A \$4,000,000 purchase of a multi-doctor practice and related real estate in Southern New Jersey;
- The acquisition of a single-doctor practice based in New Haven County, Connecticut and negotiated a favorable multi-year lease for the practice location.



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FIRM ADDITIONS



Anthony P. DeCapua joined the Firm's Construction and Litigation practice groups as a Partner on November 11, 2019.



Jacqueline A. Rappel joined the Firm's Litigation practice group as a Partner on November 19, 2019.



James P. Rosenzweig joined the Firm's Real Estate, Banking & Finance and Restaurant & Hospitality practice groups as a Partner on December 2, 2019.



Brenna R. Strype joined the Firm's Construction and Litigation practice groups as an Associate on January 6, 2020.



Jeremy M. Musella joined the Firm's Corporate and Mergers & Acquisitions practice group as an Associate on January 13, 2020.