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Schwartz, Mineo & Terrana, LLP**

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P R E S E N T S

# The COUNSELOR

## REAL ESTATE TAX BREAKS FOR GREEN BUILDINGS



John V. Terrana, Esq.

Doing the right thing environmental-ly doesn't always make economic sense. However, when it comes to green buildings, it certainly may. A recent amendment to the New York State Real Property Tax Law (RPTL) provides certain tax benefits to those who construct a building with the health of its occupants and the environment in mind.

RPTL Section 470 allows exemptions for improvements to real property meeting certification standards for green buildings. The U.S. Green Building Council, or USGBC, is the overseeing body that developed the Leadership in Energy and Environmental Design (LEED) program, the most well known certification program. LEED provides building owners and operators with a framework for identifying and implementing practical and measurable green building design, construction, operations and maintenance solutions.

Initial requirements under RPTL Section 470 are (a) such construction of improvements was

commenced on or after January 1, 2013, or such later date as may be specified by local law; (b) the value of such construction exceeds the sum of \$10,000; and (c) such construction is documented by a building permit, if required, for the improvements, or other appropriate documentation as required by the Assessor.

Properties that meet the above requirements and apply for an RPTL Section 470 tax exemption are subject to a rating system that will classify the building in one of four categories: Certified, Silver, Gold or Platinum. A building that qualifies for a Certified, Silver, Gold, or Platinum exemption shall be exempt from taxation by any municipal corporation in which such property is located to the extent provided in RPTL Section 470, provided the governing board of such municipal corporation, adopts a local law, ordinance or resolution providing RPTL Section 470 exemptions effective in that municipality. The following chart shows the maximum exemption percentages allowed given the certified rating achieved:

YEAR	CERTIFIED/SILVER	GOLD	PLATINUM
1	100%	100%	100%
2	100%	100%	100%
3	100%	100%	100%
4	80%	100%	100%
5	60%	80%	100%
6	40%	60%	100%
7	20%	40%	80%
8	0%	20%	60%
9	0%	0%	40%
10	0%	0%	20%

The certification system used by LEED is a point based system where LEED assigns a certain amount of points to each environmentally friendly improvement made to the property. LEED lays out major areas of improvement where a taxpayer can earn points such as sustainability, water efficiency, energy and atmosphere, materials and resources as well as indoor environmental quality. The number of points the project earns determines its level of LEED certification. At Forchelli, Curto, Deegan, Schwartz, Mineo and Terrana, LLP, we are proud to have been the first commercial tenant on Long Island to achieve a LEED certification for interior space in a non LEED certified building. Specifically, the Firm's space on the top floor of the Omni building in Uniondale was awarded LEED commercial Interior Silver.



L-R: Nina McCann, Dan Deegan, Esq., Managing Partner Jeffrey D. Forchelli, Esq., Jay Carney, Virginia Kawochka & Landon Dais, Esq.

The Firm is one of the exclusive sponsors for the Hofstra University -Distinguished Lecture Series. The keynote speaker for the first lecture was Jay Carney, former White House Press Secretary from 2011-2014.

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RPTL Section 470 provides an exemption for improvements to the property and does not provide an exemption for the existing land or building(s) already on it. As set forth in the chart above, the exemption declines over a 10 year period, and only in year 11 would the taxpayer pay taxes based on the full assessment of the improvements. However, if the taxpayer has separately commenced tax certiorari proceedings and has been successful, he may never have to pay taxes based on the proposed assessment of the improvements. For these reasons,

we recommend filing a separate tax certiorari proceeding on the property in addition to filing for the exemption.

Despite checking with the New York State Office of Real Property Tax Services and the USGBC, we have been unable to find a database that lists the municipalities that have adopted RPTL Section 470. However, we have been able to determine some municipalities that have on Long Island. To date, the Suffolk County Towns of Huntington, Babylon, Brookhaven and Southampton have adopted

RPTL Section 470. The maximum allowable exemption in Babylon is \$250,000 and in Southampton it is \$1,000,000.

This article is meant to provide some general information regarding the availability of a particular tax exemption for new construction. A more detailed review of the proposed project and the statute must be done before it can be determined if a project qualifies for it. In addition, other exemptions or avenues for obtaining tax relief may be available. Accordingly, before proceeding with a project, you should consult an attorney with expertise in tax certiorari.

## Media Mentions

*The Firm and its attorneys have been recognized in several leading publications recently, including:*

*Long Island Business News:* Managing Partner **Jeffrey D. Forchelli** featured in the Who's Who in Real Estate Law section. **Brian R. Sahn** was interviewed

for the article, "Environmental Issues on The Rise." **Daniel S. Dornfeld, Keith J. Frank,** and **Elbert F. Nasis** were spotlighted in the Ones to Watch section.

*The Suffolk Lawyer* published **Dana Y. Lee's** article, "U.S. Welcomes Your Money – You Just Have to Tell How Much."

*New York Real Estate Journal:* Published **Douglas W. Atkins'** article, "In Tax, As in Comedy, Timing Matters." **Daniel S. Dornfeld** was spotlighted in the Professional Profiles section. **James C. Ricca** was quoted in the Year in Review section.

## Awards, Presentations & Events



Co-chair of the Construction Law practice group, **Joseph Asselta** was honored with the **Top Businessman award** from the *Queens Courier Publications*.

**Kathleen Deegan Dickson** presented to the North Hempstead Business & Tourism Development Corporation. The seminar was titled, "What to Know Before Opening/ Expanding a Business – A Guide to the Building Permit."

**John V. Terrana** presented on a panel titled, "How to Appeal Your Real Estate Tax Assessment" to the Nassau Academy of Law.

**Jason L. Rothman** presented "Construction Law Issues Between Owners and Contractors" to the Nassau County Bar Association.

The Firm was the recipient of the *Long Island Business News'* **Corporate Citizenship award**; this award recognized companies who believe that being a good corporate citizen contributes to the economic and social well-being of employees, business, and the community. **Dan Deegan** accepted the award on behalf of the Firm.



Sharing in the holiday spirit, this year, the Firm selected **Contractors For Kids (CFK)** to be one of this year's charitable recipients. (PHOTO L-R: CFK liaison **Deborah O'Rourke,** **Jeffrey D. Forchelli,** **Virginia Kawochka,** **Joseph P. Asselta**)



**Tax Trusts & Estates Of Counsel Barry C. Feldman** was honored by the **Babylon Citizen's Council of the Arts** (Photo: **Barry C. Feldman** with actor **Dan Lauria** from "The Wonder Years.")



Corporate department Co-Chair, **Joseph V. Cuomo** and Director of P.R., **Nina McCann** were honored with *Long Island Business News'* **2015 Leadership in Law award**.

**Gregory Lisi** and **Peter B. Skelos** presented a CLE titled, "An Examination and Discussion of the Final Report of the Commission on Statewide Attorney Discipline, the Chief Judge, The Court of Appeals, and the Board of Judges – A Change in the Landscape," at Hofstra University in conjunction with the Hofstra University Department of Professional Development.

**Peter B. Skelos** presented a discussion to the Appellate Practice Committee of the Nassau Bar Association titled "Preservation of the Trial Record for Appellate Review: The Role of Appellate Counsel."

**Dan Deegan** presented on "Tax Incentives and PILOTS" at the 14th Annual Smart Growth Summit hosted by Vision Long Island.

**Robert B. Moy** presented on business and estate planning to the Business Networking International (BNI) group.

# SUCCESSFUL LAWYERS SUCCESSFUL CLIENTS

## Banking and Finance

**Steven G. Gaebler** and **Lindsay Mesh** successfully represented HSBC Bank USA in connection with a \$7,800,000 acquisition loan made to Gabrielli Brookville LLC to purchase premises located at 181-25 Eastern Road a/k/a 154-68 Brookville Boulevard, Queens, New York. Gabrielli Brookville obtained New York City IDA assistance, and the transaction was made possible through Steve and Lindsay's negotiation with the New York Economic Development Authority to obtain certain relief from a covenant containing a right of reversion as it applied to HSBC. The second phase of this transaction is a contemplated \$15,500,000 construction loan for the purpose of constructing a 75,000 square-foot facility to be used by Gabrielli Truck Sales.

**James C. Ricca** negotiated and closed a \$8,500,000 mortgage loan secured by a shopping center located on Sunrise Highway in Suffolk County, New York. **James C. Ricca** negotiated and closed a \$16,000,000 mortgage loan secured by six 5-story mixed-use buildings located on West 28th Street in Manhattan.

**James C. Ricca** negotiated and closed a \$7,100,000 mortgage loan secured by a 4-story mixed-use building located on Greenwich Street in Manhattan.

**John P. Bues** obtained a favorable resolution for a major lending institution, on a loan in excess of \$1,150,000. The borrower defaulted on the loan obligation. Shortly after commencing the action triggered by the default, a settlement was reached for the full amount of principal, interest and attorneys' fees.

## Construction Litigation

In an action brought on behalf of a subcontractor in the United States District Court, Eastern District of New York, **Joseph P. Asselta** and **Raymond A. Castronovo** obtained partial summary judgment against the general contractor's surety company in the amount of \$126,831.99, with interest. The Court found that the subject payment bond did not incorporate certain conditions for payment set forth in the relevant subcontract. In this regard, the Court held that on public construction projects, notwithstanding contractual conditions to the contrary, the timing of payment from a general contractor to its subcontractor is governed by the New York State Finance Law and, in this case, there were no issues of fact that an undisputed balance of \$126,831.99 was due. The Court also went on to award interest from the date the subcontractor served notice of its payment bond claim on the surety.

## Corporate

The Firm's Long Island General Counsel Network founded by **Joseph C. Cuomo**, jointly with the Association of Corporate Counsel (ACC) hosted a CLE. The CLE seminar was titled, "Identity Theft and Securing Your IT Infrastructure Against Cyber

Attacks." The featured speakers were Bryan Frank, a cyber security consultant with DDIS Info Sec Corp., and Jennifer Mone, Deputy General Counsel at Hofstra University.

**Keith J. Frank** moderated the seminar. **Anthony V. Curto** attended the premiere of *Joy* the 20th Century Fox/David O. Russel movie. This biographical picture features Academy Award winner Jennifer Lawrence as Firm client and entrepreneur Joy Mangano. **Anthony V. Curto** and **Joseph V. Cuomo** handled Joy's life rights agreement with Fox.



L-R Joy Mangano & Anthony V. Curto, Esq.

## Real Estate

**Daniel P. Deegan** breaks ground with client Anthony Bartone on the Cornerstone at Farmingdale Project, a new 46-unit transit-oriented apartment complex located at the train station in Farmingdale's downtown. The firm assisted in the acquisition and financing of the project as well as securing Nassau County IDA benefits including, a 20-year PILOT agreement.



L-R Anthony Bartone & Dan Deegan, Esq.

**Brian R. Sahn** represented clients in the acquisition of a 9.6 acre parcel of unimproved land in Edinburg, Texas, for the future development of an apartment project. The transaction included putting in place bank financing for the development.

**Brian R. Sahn** represented Community Mainstreaming Associates in the lease of new office space at 1025 Old Country Road, Westbury, New York.

**Daniel S. Dornfeld** met acting NJ Governor Kim Guadagno during a tour of the distribution center and future bottling plant of Arizona Iced Tea. Mr. Dornfeld represented the company in its acquisition of property, additional land lease, State of New Jersey benefits and the granting of site plan approval and variances in the Townships of Edison and Woodbridge, NJ.

## Tax, Trusts, & Estates

**Barry C. Feldman** successfully negotiated with the New York State Department of Taxation and Finance to cancel more than \$1.2 million in wrongfully assessed sales tax liabilities. Barry argued that the client was no longer associated with the company during several of the periods for which assessments had been made and the remaining assessments had been made after the expiration of the statute of limitations on assessment.

**Barry C. Feldman** successfully negotiated with the New York State Department of Taxation and Finance to cancel a sales tax assessment against a client of approximately \$500,000 (including interest), withdraw the tax lien and release the garnishment of the client's wages.

On the tax planning side, a business client that had received a substantial federal grant wanted a means in which to accelerate deductibility of the amounts for which the grant was to be used, rather than having to capitalize the costs. After reviewing the grant documents, **Barry C. Feldman** determined that the grant was issued pursuant to a specific federal statute, which permitted the payment to qualify as a disaster mitigation payment. As such, it was fully excluded from gross income so that the issue of accelerated deductibility became moot.

## Tax Certiorari

The Tax Certiorari Department showed its expertise in specialized property tax matters:

**John Terrana** and **Douglas W. Atkins** represented an owner of large industrial properties in the Town of Brookhaven. After obtaining expert appraisals and moving towards a valuation trial, they resolved the matter for more than \$500,000 in refunds for the client.

**Warren Arthur** and **Robert Renda** handled tax assessment appeals for a large co-op apartment complex in Nassau County. After filing appeals with the Assessment Review Commission and Nassau County Supreme Court, they utilized novel valuation methods in negotiating approximately \$550,000 in refunds and savings for the residents of the co-op.

# Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP

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## AWARDS, APPOINTMENTS AND NEW ADDITIONS



*Land Use & Zoning Partner, Judy L. Simoncic, was honored with Long Island Business News' Top 50 Influential Women of Long Island Award.*



*Douglas W. Atkins named firm Partner*  
Douglas W. Atkins concentrates his practice in the areas of tax certiorari, real estate and condemnation. He has experience in tax reduction proceedings for all types of commercial real estate throughout the region's counties, towns and villages.



*Litigation Partner Andrew Curto was honored with Long Island Business News' Around 50 Award. He was selected because of his leadership in business and commitment to the Long Island community.*

*The firm is pleased to announced the addition of associates Landon C. Dais and Lindsay Mesh.*



### Landon C. Dais

is a member of the Employment, Labor, Construction, and Commercial Litigation practice groups at the Firm. Prior to his legal career, Dais worked on multiple political campaigns throughout the east coast. He also became the Deputy Director of Urban Planning and Policy to the VP of the NY State Senate, NYC & Albany, NY. Before 2008, Dais worked in the construction and real estate development industry. As a project manager and engineer at Turner Construction in NYC, he worked on high-profile projects such as: Yankee Stadium, the IAC Building, and 3 World Financial Center.



### Lindsay Mesh

concentrates her practice in the areas of real estate finance, banking, foreclosures, and creditors' rights. Ms. Mesh primarily counsels institutional and private lenders on commercial mortgage loan transactions and represents lenders, mortgage loan servicers, and homeowner associations in the various aspects of foreclosure and collection law. While earning her degree, Ms. Mesh worked as a law clerk at Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana LLP, where she gained a diverse range of experience in transitional and litigation matters by working with the Firm's various departments.