

FALL 2020 // VOL. LXIV

THE COUNSELOR

Forchelli Deegan Terrana LLP hopes that this issue of The Counselor finds you, your colleagues and your families safe and healthy. Due to the ongoing COVID-19 pandemic, this edition of our newsletter will be released in a digital format only.

We look forward to returning to our mailed version, along with a digital version, soon.

ESTATE PLANNING DURING THE PANDEMIC: THE TAX LANDSCAPE HAS NEVER BEEN BETTER

— By Lorraine S. Boss

The COVID-19 pandemic has brought interest rates to historic lows, providing an unprecedented window of opportunity for estate planning. At the same time, the highest-ever federal estate and gift tax exemption remains at \$11,580,000 per person. This exemption is scheduled to sunset December 31, 2025 and revert to \$5,000,000, indexed for inflation. Taking advantage of this high exemption now is crucial, given the unpredictability of the November elections and the mounting federal deficit, each of which could lead to an earlier reduction in the exemption and to further tax law changes that will limit estate planning techniques.

The New York estate tax exemption is \$5,850,000 per person, however, New York has no gift tax (but adds back to the gross estate gifts made within three years of death). The benefits that New York residents derive from making gifts now include the insulation of the gifted property from New York estate tax, and the possibility of lowering the taxable estate below the \$5,850,000 exemption amount.

Clients with available exemption amounts should consider making current gifts, particularly of assets that are likely to appreciate or assets that can be discounted, as with gifts of minority interests in family real estate and closely held family businesses.

High-net-worth clients and those who have exhausted their federal gift tax exemption should consider such techniques as installment sales to intentionally defective grantor trusts (IDGTs) and grantor retained annuity trusts (GRATs), which are estate freeze techniques that can be structured to significantly reduce a taxable estate with minimal or no use of the exemption and that work exceptionally well in a low interest rate environment.

With historically low interest rates, and a record high federal gift tax exemption, there has never been a better time to implement estate planning strategies. If you have any questions, please call our office. Our attorneys will effectively guide you through the process. ■



Lorraine S. Boss,
Partner

EVENTS AND SPEAKING ENGAGEMENTS



Daniel P. Deegan was interviewed by the *New England/York Real Estate Journal* for their new One-on-One Interviews.

Douglas W. Atkins participated in the Institute for Professionals in Taxation's Survey-Based Cap Rates webinar.



Lorraine S. Boss, Lisa M. Casa, Andrea Tsoukalas Curto, Danielle B. Galo, Jessica A. Leis, Lindsay Mesh Lotito, Jacqueline A. Rappel, Judy L. Simoncic, Kristina E. Sornchai and **Lauren L. Stanton** participated in The Ivy Network's "Collaborate with Edge" Mini Conference.

Peter B. Skelos and **Stephanie M. Alberts** were panelists on NAM's CLE webinar for the NYS Academy of Trial Lawyers, "Using ADR to Fast-Track Surrogate's Court Litigation."

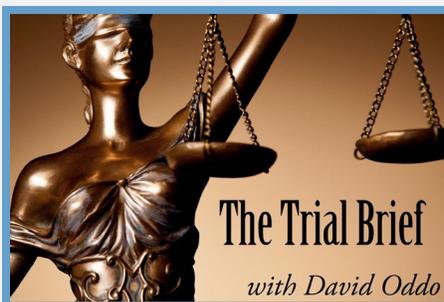
Joseph P. Asselta – assisted by **Raymond A. Castronovo** – presented a webinar for a client on the subject of typical construction contract requirements for notices and claims and best practices.



Jane Chen was a panelist on the Asian American Bar Association of New York's CLE webinars: "Real Estate Closings in the New Norm: The New Rules and Practices" and "Real Estate Closings in the New Norm: The Rules and Practices in Condos and Co-ops."



Jane Chen – Co-chair of the Law School Alumni Association's Diversity Committee – was a panelist on the Maurice A. Deane School of Law at Hofstra University's "How to Succeed as a Summer Associate" webinar.



Peter B. Skelos participated in David Oddo's Podcast – *The Trial Brief* – episode, "Mediation in the Age of COVID".

Peter B. Skelos was a panelist on the NYS Academy of Trial Lawyers' CLE webinar, "Fast-Tracking Matrimonial and Family Law Disputes Using ADR" and co-presented a CLE webinar, "Reduce Time and Cost: Crafting Effective Arbitration Clauses", for the Clear Law Institute.

Gregory S. Lisi presented a webinar outlining PPP loan issues for nursing home owners and was a panelist on the "Ready for Reopening: What Your Business Needs to Know" Zoom sponsored by Nassau County Legislator Arnie Drucker, the Plainview – Old Bethpage CoC and the Syosset – Woodbury CoC.



Jonah H. Blumenthal fundraised for and rode the Breezy Point 25 Mile Loop with Bike NCSY: Inspiring the Jewish Future Organization.

Elbert F. Nasis was a panelist on the "Ready for Reopening: Phase 3 into Phase 4: What to Know with One Week to Go", webinar sponsored by Nassau County Legislator Arnie Drucker, the Plainview – Old Bethpage CoC and the Syosset – Woodbury CoC.



As a member of the Melville CoC's NeXGen Board, **Lisa M. Casa** was instrumental in coordinating their virtual breakfast discussion, "Today's Entry Level Employee; Tomorrow's CEO".

FIRM MENTIONS

NEWSDAY QUOTED:

Daniel P. Deegan in multiple articles:

- "Mortgage lender bringing 225 jobs to Uniondale"
- "Owner of a once-dominant LI office building seeks tax breaks to renovate"
- "County to consider \$52M in tax breaks for Long Beach development"
- "Hearings on Hold for Long Beach Project Amid New Data, Officials Say"
- "London Jewelers seeks over \$1 million in tax breaks for new HQ in Glen Head"
- "Tax breaks for Carle Place building over objections of former IDA chief"

LONG ISLAND BUSINESS NEWS:

- **Gerard R. Luckman** was featured in the Ones to Watch: Law special section
- **Douglas W. Atkins** and **James P. Rosenzweig** were featured in the WHO's WHO in Real Property and Tax Certiorari Law special section
- **Nicole S. Forchelli** was featured in the WHO's WHO in Women in Professional Services special section
- FDT's article, "The Impact of COVID-19 on Commercial Real Estate Lending – From Closing Through Default" was published in the What's Next in Banking special section
- FDT participated in the Buy One, Give One program with advertisement donations to Long Island Cares, Inc. and The Interfaith Nutrition Network

NEW YORK REAL ESTATE JOURNAL:

- **Jeffrey D. Forchelli** and **Erik W. Snipas'** article, "Extinguishing restrictive covenants imposed as a condition of zoning approvals", was published
- **John V. Terrana** and **Gabriella E. Botticelli's** article, "COVID-19 may provide real estate taxpayers another chance to reduce taxes", was published in the Professional Services Spotlight
- **Judy L. Simoncic**, **Kathleen Deegan Dickson**, **Andrea Tsoukalas Curto** and **Jane Chen** were featured in the Women in Real Estate Spotlight
- **Lindsay Mesh Lotito's** article, "Land Surveys: Costs and Benefits", was published
- **David A. Loglisci** and **Brenna R. Strype's** article, "Construction Contracts in the Age of COVID-19 and Potential Defenses to Non-Performance Under New York Law", was published
- **William F. Bonesso** and **Brian R. Sahn** were featured in the Ones to Watch Spotlight
- **Richard A. Blumberg** and **James P. Rosenzweig's** article, "COVID-19 Raises Novel Issues in Commercial Leases", was published
- **Jessica A. Leis'** article, "A Cautionary Tale in Zoning: Historical Use of a

Property Does Not Guarantee Continued Future Use", was published

NASSAU LAWYER PUBLISHED:

- **Joseph V. Cuomo** and **Danielle B. Gatto's** article, "New York's Businesses are Interrupted, but are They Covered by Business Interruption Insurance?"
- **Jonah H. Blumenthal's** article, "Impact of Divorce on your Will"

THE SUFFOLK LAWYER PUBLISHED:

John P. Bues' article, "Creating Time of Essence in New York Real Estate Transactions"

LONG ISLAND HERALD:

- **Daniel P. Deegan** was quoted in Valley Stream article, "Town IDA mulls tax breaks for West Merrick Road self-storage project"
- **Gregory S. Lisi** was featured in the Oceanside/Island Park story, "Oceanside resident to become president of the Nassau County Bar Association"

LONGISLAND.COM PUBLISHED:

Anthony P. DeCapua and **John M. Comiskey's** article, "Is Your Business Insured for Covid-19? It Depends"

LONG ISLAND NOW QUOTED:

- **Andrea Tsoukalas Curto** in the article, "Manhasset civics decry 7-Eleven application for Plandome Road"
- **William F. Bonesso** in the article, "Estates trustees grant Playhouse developers permit extensions due to coronavirus pandemic"

GLEN COVE RECORD PILOT QUOTED:

- **Kathleen Deegan Dickson** in the article, "Redevelopment: Glen Cove Board Hears Applications at Latest Meeting"
- **Daniel P. Deegan** in the article, "Glen Cove IDA Hears Application for Tax Abatements at Garvies Point"

ASSOCIATION OF CORPORATE COUNCIL NYC CHAPTER COVID-19 RESOURCE PAGE PUBLISHED:

Joseph V. Cuomo and **Danielle B. Gatto's** article, "Analyzing Commercial Contract Rights in Troubled Times"

ELLEVATE NETWORK ANNOUNCEMENT FEATURED:

Danielle E. Tricolla in: "Danielle Tricolla Chosen as a 2020 Leukemia and Lymphoma Society Woman of the Year Candidate"

U.S. GREEN BUILDING COUNCIL-L.I. NEWSLETTER FEATURED:

- **Brian R. Sahn's** article, "The Upside of COVID-19? Maybe, but for how Long?"

ACCOLADES



Jeffrey D. Forchelli was selected by his peers for inclusion in the 27th Edition of *The Best Lawyers in America*® for Land Use and Zoning Law

Gregory S. Lisi was selected by his peers for inclusion in the 27th Edition of *The Best Lawyers in America*® for Litigation – Labor and Employment Law

Lindsay Mesh Lotito was included in the inaugural edition of the *Best Lawyers: Ones to Watch* for Banking & Finance Law

Robert L. Renda was included in the inaugural edition of the *Best Lawyers: Ones to Watch* for Tax Law



FDT congratulates the following attorneys for being selected to the 2020 *New York Metro Super Lawyers* list:

Jeffrey D. Forchelli	Mary E. Mongjoi
Joseph P. Asselta	Elbert F. Nasis
William F. Bonesso	James C. Ricca
Frank W. Brennan	Brian R. Sahn
Joseph V. Cuomo	Judy L. Simoncic
Andrew E. Curto	Peter B. Skelos
Daniel P. Deegan	John V. Terrana
Kathleen Deegan Dickson	Russell G. Tisman
Gregory S. Lisi	Andrea Tsoukalas Curto
Gerard R. Luckman	

FDT congratulates the following attorneys for being selected to the 2020 *New York Metro Rising Stars* list:

Stephanie M. Alberts	Nathan R. Jones
Douglas W. Atkins	Brian W. Kennedy
Lisa M. Casa	Jessica A. Leis
Raymond A. Castronovo	Lindsay Mesh Lotito
Landon C. Dais	Robert L. Renda
Nicole S. Forchelli	Erik W. Snipas
Danielle B. Gatto	Brenna R. Strype
	Danielle E. Tricolla



BANKING & FINANCE

James C. Ricca and **Lindsay Mesh Lotito** negotiated and closed on behalf of New York Community Bank the refinance of a \$48,955,000 mortgage loan secured by four properties in Manhattan and Queens.

Lindsay Mesh Lotito negotiated and closed on behalf of Valley National Bank a \$700,000 unsecured revolving line of credit and \$4,700,000 mortgage loan secured by a cooperative building in Brooklyn.

James C. Ricca negotiated and closed on behalf of BCB Community Bank a \$3,500,000 mortgage loan secured by 59 unimproved lots in New Jersey and secured a subordination of previously existing debt.



CONSTRUCTION

Anthony P. DeCapua successfully negotiated and closed on a termination for convenience agreement for a construction manager client on a public works project. At the start of negotiations, the municipal owner's position was that the construction manager was overpaid and was requesting reimbursement as part of any deal. By the close of the agreement, the municipal owner had surrendered its overpayment stance and acquiesced to making final payment to the construction manager client within thirty days.

Raymond A. Castronovo obtained an order reinstating a subcontractor's mechanic's lien, which was improperly discharged and cancelled under the Lien Law. In violation of the requirements of Lien Law Section 59 (and due process), the general contractor previously filed an ex parte application to discharge the subcontractor's mechanic's lien, which was granted by the court. After the subcontractor discovered its mechanic's lien had been wrongfully discharged, Mr. Castronovo successfully petitioned the court to vacate the order and reinstate the lien.



EMPLOYMENT & LABOR

In a 15-page Decision After Trial, the Hon. Garrett W. Swenson, Jr. ruled in favor of **Albert F. Nasis'** client, Craig Perri, in a case concerning landlord/tenant, fraud, constructive trust, collateral estoppel, the familial relationship exception to a license, life estates and other complex trial and procedural issues.



IDA

On behalf of client Engel Burman, **Daniel P. Deegan** presented the Long Beach "Superblock" development to the City of Long Beach, the City Council, and the IDA Board resulting in final approval from the Nassau County IDA. The development – which represents over \$350 million in private sector investment in Long Beach – will consist of 200 condominium units and 238 rental housing units on 6 acres of ocean-front property along the boardwalk. The financial assistance granted includes a 25-year PILOT agreement.



On behalf of a Firm client, **Daniel P. Deegan** - assisted by **Louis H. Fiore** - presented a 20-year PILOT agreement, for the major renovation of a 450,000 square foot office complex at One Old Country Road in Carle Place. The case resulted in obtaining IDA financial assistance from the Nassau County IDA. The project will invest \$13 million to

transform the building to a modern "healthy" Class A office building.

FDT's IDA practice group represented Spectronics Corporation – a leading manufacturer of ultraviolet equipment and fluorescent materials – in relocating its corporate headquarters to Suffolk County. **Daniel P. Deegan** - assisted by **Louis H. Fiore** - obtained a final approval, including a PILOT agreement, from the Suffolk County IDA.



LAND USE & ZONING

Jeffrey D. Forchelli and **Erik W. Snipas** secured approval from the Glen Cove Planning Board for Friends Academy to convert the existing all-purpose field to a synthetic turf field, in order to provide a greater experience for future students.

Erik W. Snipas secured approval of several variances from the Village of Lattingtown Board of Zoning Appeals during its first virtual public hearing. The client sought lot area, principal building area, total building area, and side yard setback variances in connection with a land transfer with an adjacent property. Mr. Snipas successfully established that the land transfer would bring the property into greater conformity with the other lots in the surrounding area.

Judy L. Simoncic was successful in securing:

- Town of Oyster Bay Zoning Board of Appeals approval for New York American Water to install a granulated carbon treatment filtration system at its existing well site located in Glen Head. The approval is part of NYAW's plans to proactively address emerging contaminants in the water, enabling them to continue to provide clean drinking water to their customers.
- approval from the Town of Brookhaven Town Board for 13.35-acre parcel of land on Rocky Point Road in Middle Island, paving the way for the development of a 96-unit apartment complex to be constructed and managed by firm client Scalamander Cove. The development plans include a number of community amenities such as a recreation building, in-ground pool, a fitness trail around the entire site, and other outdoor amenities.
- a special use permit from the Oyster Bay Town Board and a parking variance from the Zoning Board of

Appeals for property planned to be utilized by a new restaurant located on Carmans Road in Massapequa.

FDT client – VIP Auto Group of Long Island, Inc. – conducted a competitive bidding campaign to lease a 14-acre parcel of land from the Town of Oyster Bay. After crafting a successful proposal, **Judy L. Simoncic** and **Daniel S. Dornfeld** represented the client in being awarded the bid and successfully negotiated the lease with the Town. The site will be used for the storage of dealership vehicles for VIP’s numerous dealerships on Long Island.

Kathleen Deegan Dickson obtained variances from the Village of Freeport Board of Zoning Appeals on behalf of a hotel development client to permit a new hotel project in the Village to advance to site plan review.

Representing two clients who provide affordable community housing, **Kathleen Deegan Dickson** obtained parking variances and site plan approval from the Village of Freeport for the construction of a 45-unit senior affordable rental apartment building, and site plan approval from the Village of Port Jefferson for a 100% affordable, 45-unit rental apartment building.



LITIGATION

Russell G. Tisman successfully moved to dismiss a complaint for commissions allegedly earned through insurance policies sold in Nassau County by a Florida-based salesman against a Florida-based insurance brokerage. The Nassau County Supreme Court agreed that this dispute’s relationship with New York was tangential and held that the plaintiff could not pursue the lawsuit in New York.



REAL ESTATE

In a cross-practice group effort, **Daniel S. Dornfeld** quarterbacked the acquisition, bank financing and closing of property and abandoned road on behalf of client Terwilliger & Bartone Properties. The plan is to build a state of the art 80-unit

apartment facility near the Lynbrook train station, complete with a Starbucks next to the building and 10% workforce housing. **William F. Bonesso** handled the zoning approvals with the village and county, while **Louis H. Fiore** and **Daniel P. Deegan** negotiated documents and closed an IDA PILOT transaction. Mr. Dornfeld – assisted by **Judy L. Simoncic** and Mr. Bonesso – successfully transferred the title for a portion of a road bed. **James C. Ricca** assisted on the Opinion Letters to complete the transaction.

Daniel S. Dornfeld and **Jane Chen** represented Nassau Academy of Medicine, a not-for-profit organization, in the sale of the commercial property located at 1200 Stewart Avenue, in Garden City for \$6 million. Together, they negotiated a favorable post-closing occupancy agreement to allow NAM to remain at the property for a period of time following closing.

Brian R. Sahn and **Jane Chen** represented Valley Park Estates Owners Corp. in the closing of a commercial mortgage-backed security loan of multiple cooperative apartment buildings in the loan amount of \$14.5 million. Favorable terms and several facility issues were negotiated with the lender, Natixis Real Estate Capital LLC.

James P. Rosenzweig closed on the sale of a commercial property (warehouse and office) in West Babylon on behalf of his client. The property was successfully sold at a difficult time during the pandemic when the time needed to complete buyer’s environmental due diligence was longer than normal. To bridge the parties’ expectations, the transaction involved a creative, client-driven solution to grant the buyer a pre-closing license agreement for the property that created cash flow for the seller in exchange for closing adjournments for the buyer.



TAX CERTIORARI

John V. Terrana and **Robert L. Renda** represented the owner of a regional mall in negotiations with the Nassau County Assessment Review Commission. The primary valuation methodology proffered by Mr. Terrana and Mr. Renda involved a complex analysis of the subject’s value following multiple sales of outparcels. After extensive negotiations

with the Nassau County Assessment Review Commission, Mr. Terrana and Mr. Renda were able to successfully resolve the proceedings resulting in the real estate tax benefit exceeding \$10 million.

Nicole S. Forchelli resolved a property tax matter for a large-scale Fortune 500 company relating to a bundle of properties in Upstate New York. The valuation methodology proffered by Ms. Forchelli was that of a leased-fee, supported by the actual financial experience of the subject properties. After extensive negotiations, Ms. Forchelli obtained a real estate tax benefit of more than \$250,000 for the client.

Douglas W. Atkins’ post as Chairman of the Nassau County Bar Association’s Committee on Condemnation Law and Tax Certiorari has been critically important during the height of the pandemic. Mr. Atkins was tasked with coordinating the unprecedented process of commencing over 100,000 commercial property tax cases amid court and municipal closures. He negotiated and interfaced with the New York State court system, Nassau County, thirty Incorporated Villages and approximately twenty law offices resulting in all commercial taxpayers being afforded their lawful right to fair taxation, during a period of local government closures.

In a cross-practice group case, **Nathan R. Jones**, **Douglas W. Atkins** and **Daniel S. Dornfeld** obtained a favorable outcome from the Suffolk Supreme Court in an Article 78 proceeding against the Town of Riverhead. In this case, FDT’s client obtained property from a tax-exempt organization which had a real property tax exemption and simultaneously executed an IDA deal wherein it leased the property to the IDA, which then leased it back to the client. The FDT team argued that the property should not have been restored to the tax rolls and 100% of the taxes levied on the property should be refunded. The court agreed and ordered a 100% refund of the \$760,000. ■



FORCHELLI
DEEGAN
TERRANA

333 Earle Ovington Blvd., Suite 1010
Uniondale, NY 11553
516.248.1700



VISIT OUR WEBSITE for extended content and updates:
www.forchellilaw.com



SIGN UP for our digital communications by emailing marketing@forchellilaw.com



APPOINTMENTS AND NOTABLE UPDATES



Jeffrey D. Forchelli was appointed Trustee of Wagner College. His three-year term commenced on September 1, 2020.



Andrea Tsoukalas Curto was appointed Chair of the Village of Roslyn Harbor's Planning Board.



Gregory S. Lisi was installed as President-Elect of the Nassau County Bar Association on June 2, 2020. He will serve a one-year term and then become President in June 2021.



Lisa M. Casa was appointed to the Melville Chamber of Commerce's NeXGen Board.



Agatha Rankin earned her Paralegal Certificate from Nassau Community College.



Jamie Memisha earned her ABA Certified Paralegal Certificate from Hofstra University.