

Finkelstein Newman LLP

Newsletter

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Issue 5

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1031 Exchanges—Save On Taxes!

With April right around the corner, tax issues are rising to the forefront of people's minds. One method of saving on taxes that is gaining popularity nationwide is the 1031 Exchange—a procedure that protects capital gains on real estate from tax liability.

New York property owners can defer the tax on capital gains when they transfer property by essentially “trading” that property for another of equal or greater value. Under IRS rule Section 1031, “like-kind property” (which includes most real estate) may be exchanged without recognition of taxable gain or deductible loss. There are few restrictions on the types of properties that may be traded—so a residential investment property may be traded for a commercial one, or vice versa. Some believe that because the federal capital gains taxes have been reduced they are not worth worrying about. However, investors still must pay state and local taxes on their capital gains, and the impact of that “hit” can still be substantial.

The “trade” need not happen simultaneously. However, the replacement property must be identified within 45 days of the sale of the original property, and the deal must close within 180 days. There is an additional safe harbor available, which occurs when a property owner acquires the replacement property before divesting of the property to be relinquished. In that case, the exchange must meet several complicated requirements.

It should be noted that this method does not apply to the sale of an interest in a real-estate partnership. A real-estate partnership interest is considered personal property, not real property, and therefore does not qualify for 1031 treatment. However, if all members of a partnership agree to trade a property, and receive a property of equal or greater value, the partnership itself can defer the recognition of capital gain.

By continually exchanging like-kind property, owners may conceivably defer capital gains taxes throughout their lifetimes.

For more information on 1031 Exchanges and other real-estate transactions, contact Jonathan H. Newman at JNewman@FinkelsteinNewman.com or 212-619-5400 x 205.



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F&F Updated

Daniel Finkelstein and Lucas A. Ferrara are pleased to announce that the 2005 update and supplement to their award-winning treatise, *Landlord and Tenant Law in New York*, has been released.

If you would like additional information on Dan and Lucas's book, *Landlord and Tenant Practice in New York*, you may visit Thomson West Publishing on the web at www.westthomson.com or contact them directly at 1-800-344-5008.

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L&T Insider: Trying to Escape Interest Payments

Often times, a tenant will withhold rent in an effort to assert pressure on a landlord to make repairs or settle a long-standing lease dispute. To avoid undue prejudice, courts typically require that the money be paid by either depositing it with the court or paying the sums into an escrow account.

As a condition for remaining in occupancy of real property while a case is pending, courts may order the payment of "use and occupancy," or money representing the cost for the tenant to remain in the premises while the dispute proceeds through the court system. Use and occupancy is typically tendered to the court (or placed in an escrow account). This is done so that the "status quo" can be maintained: the landlord can be assured that if the tenant vacates, the outstanding rent is not lost. And if the tenant is entitled to some sort of refund or abatement, the monies can be readily returned and neither party is disadvantaged.

However, particularly in the commercial arena, late rent payments may also trigger an obligation to remit interest, either by operation of law, or by the parties' lease. And, as may be suspected, when a tenant is paying use and occupancy to the court during an on-going dispute, the question of whether or not interest on such sums is due will frequently arise. Of course, landlords argue that the rent has not been paid to them, while tenants argue that payments were remitted to a third party as directed so they should not suffer any "penalty" contemplated by the parties' lease (or governing law).

"The rule is pretty straight forward in these scenarios," says Melissa Ephron-Mandel. "The depositing of monies representing rent or U&O into court during the course of on-going litigation will not absolve a tenant from paying interest on those rental payments as contemplated by the parties' lease, or by operation of statute. This is true even if the payments are made pursuant to court order, or if the parties agree that payments are to be made into a jointly-held escrow account."

If you would like additional information or if we can assist you in any other way, please do not hesitate to contact Ms. Melissa Ephron-Mandel at MEphron-Mandel@FinkelsteinNewman.com or 212-619-5400 x 229.

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UPCOMING SEMINARS:

MARCH 16, 2005

LANDLORD AND TENANT LAW IN NEW YORK

On Wednesday, March 16, 2005, from 8:30 A.M. to 4:30 P.M., at The New York Ramada, partners Robert Finkelstein and Jonathan H. Newman, along with associate Daniel J. Curtin, Jr., will be featured speakers at a seminar sponsored by Lorman Education Services, a national CLE provider.



This seminar is designed to appeal to anyone interested in learning the basic concepts of landlord-tenant law. This course covers every aspect of landlord-tenant law, from due diligence and trial preparation to summary proceedings and the drafting stipulations of settlement. This one-day course can provide great insight for the novice and act as a healthy refresher to the experienced.

Topics to be discussed include:

- ◆ Anticipating Litigation: How to Win (Or Lose) Your Case
- ◆ Landlord-Tenant Litigation: A Primer
- ◆ “Let’s Make A Deal” — Use and Goals of a Stipulation of Settlement
- ◆ Special Considerations in Commercial Landlord-Tenant Proceedings

CONTINUING EDUCATION CREDITS:

- | | |
|-------------------|--------------|
| ◆ NY RE (pending) | ◆ CPE 8.0 |
| ◆ NY CLE 8.0 | ◆ IACET 0.65 |

For pricing information, including group discounts, or to register for this course, please contact Lorman Education Services at (888) 678-5565 or at www.Lorman.com.

MARCH 28, 2005

NUTS AND BOLTS OF RESIDENTIAL REAL ESTATE CLOSINGS

On Monday, March 28, 2005, from 6 P.M. to 10 P.M., at the New York County Lawyers Association, partner Lucas A. Ferrara, will be a featured speaker.

This course is essential for lawyers representing buyers and sellers of single-family homes, cooperatives, and condominiums. Attendees will learn typical contract provisions for residential single-family homes, cooperatives, and condominium apartments; review common form contracts and negotiation strategies; basics of real-estate financing (mortgagees and co-op loans); and title insurance, tax issues, and ethical considerations arising in residential real-estate conveyances.

CONTINUING EDUCATION CREDITS: NY CLE 3

For pricing information, or to register for this course, please contact NYCLA’s CLE Department at (212) 267-6646, or at www.NYCLA.org.

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FREE CLE Credits!

For a limited time, Finkelstein Newman LLP, as an accredited CLE provider, is offering *free* CLE credits to interested attorneys. The sessions will take place at our offices and interested individuals will have an option of attending one of two scheduled presentations.

On Wednesday, April 20, 2005, from 5 to 9 p.m., “Holdover Proceedings” and their attendant issues will be addressed. This seminar will examine the impact of rent regulation on predicate notices and procedures, the form and content of notices, appropriate service and filing methodologies as well as grounds for terminating a tenancy, together with the array of claims and defenses that will impede an owner's recovery of a residential or commercial space.

On Wednesday, May 4, 2005, from 5 to 9 p.m., “Nonpayment Proceedings” will be examined. Included in this discussion will be preliminary considerations, including ethical concerns, service methodologies and content of rent demands, as well as tenant defenses and motion practice.

Interested individuals may attend one of these two sessions without charge. A total of four CLE credits will be earned at each seminar and light fare and refreshments will be served. For more information or to register for one of the seminars, please contact Daniel J. Curtin, Jr., at DCurtin@FinkelsteinNewman.com or 212-619-5400 x 217. Please RSVP as soon as possible as space is limited!

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