

## The \$5 Million Estate and Gift Tax Exemption... What to Do Before it Changes.

**C**ongress' 2010 Tax Act, which became effective January 1, 2011, raised the estate and gift tax exemption to \$5 million per person and lowered the maximum estate tax rate to 35%. If Congress fails to extend that law before the end of this year, however, the exemption will return to \$1 million and the highest marginal rate will return to 55%.

Current law unifies the gift and estate tax systems. From January 1, 2000 through December 31, 2009, the exemption levels for estate and gift taxes were different. During that period the estate tax exemption rose gradually to \$3.5 million while the gift tax exemption remained at \$1 million.

Since January 1, 2011, the exemptions have been unified. The \$5 million exemption applies to lifetime gifts and death time transfers. If, for example, you make \$3 million of lifetime gifts, you can still leave \$2 million tax free at death. The increased exemption and lower tax rates make gifting very attractive, especially in light of the possibility that the \$5 million exemption may be reduced.

The \$5 million gift tax exemption allows substantial gifting without having to pay any gift tax. Making current gifts will remove the gifted property from your estate, (and use your \$5 million exemption) and any future income or appreciation related to that property will escape tax completely.

In estate planning for married couples prior to 2011, advisors generally recommended separating some of

a married couple's jointly held assets so that both husband and wife could take full advantage of the estate tax exemption. Without the separation, the estate tax exemption of the first spouse to die was not fully utilized and the assets were subject to tax in the survivor's estate.

Present law provides a partial solution by making the exemption of the first-to-die spouse "portable." A surviving spouse can now elect to transfer the deceased spouse's unused portion by filing a federal estate tax return (Form 706) upon their spouse's death. For example, if a husband dies and uses \$1 million of his exemption, the wife can add \$4 million to her exemption making her total exemption \$9 million.

The future of portability is uncertain after 2012 and the benefit of portability can be lost by remarriage. Therefore, married couples should still consider separating their assets and balancing their estates.

The increased tax exemption can create unintended consequences in estate plans made prior to 2011. Many trusts prepared before 2011 contain an exemption formula clause that can result in the primary beneficiary receiving less than intended. For example, the formula clause may fund a bypass trust for the children with the full exemption amount. The surviving spouse will receive the balance which is much

less than was intended when the exemption was \$1 million.

In this era of uncertainty, it is important to review your estate plan to ensure that your plan works as intended. Despite the uncertainty, it is still possible to achieve your goals.



### **Barry A. Furman, Esq.**

*Barry A. Furman is a principal of the firm, counseling business clients regarding healthcare, tax, corporate, employment and real estate law matters. He handles entity formation, business structuring, acquisitions, financing, licensing, regulatory issues, contract negotiations and estate planning. He can be reached at 610.941.2529 or by email to [bfurman@kaplaw.com](mailto:bfurman@kaplaw.com).*



# KS News

☛ We are pleased to announce that Adam D. Taylor has become a principal of Kaplin Stewart. Mr. Taylor's practice covers a broad range of commercial real estate matters with an emphasis on commercial leasing, property development, acquisitions and sales. He has experience representing large institutional clients as well as national, regional and local operators and developers. Mr. Taylor's experience focuses on transactions involving various types of real estate assets including retail shopping centers and malls, office buildings, residential buildings, warehouses and other commercial properties.

☛ **MOHAMMAD A. GHIASUDDIN**, a principal and member of the Commercial Litigation and Construction Law groups, has been appointed Chair of the Diversity Committee of the Montgomery Bar Association for 2012. Mr. Ghiasuddin has been an active member of the Diversity Committee since its founding in 2008. He has served on the Montgomery Bar Association's Board of Directors and in 2011 was appointed to the Montgomery Bar Association President's Blue Ribbon Panel on Diversity in Leadership. In his practice, Mr. Ghiasuddin concentrates in the areas of commercial litigation, construction and surety law.

☛ **PAMELA M. TOBIN**, a member of the Business & Commercial Litigation group, has been appointed to the Montgomery County Bar Association's Board of Directors for a 3-year term. She is also Vice Chair of the Women in the Law Society for the Montgomery County Bar Association and is a member of the Montgomery County Bar Association's Inn of Court. In her practice, Ms. Tobin handles complex litigation on behalf of businesses and individuals in both state and federal court.

☛ **SANDHYA M. FELTES**, a principal and member of the Commercial Litigation and Construction Law groups, was a faculty member and presenter at a Lorman Education Services seminar on January 18, 2012 on Construction Lien Law and Payment Disputes in Pennsylvania. She spoke about the Pennsylvania Mechanics Lien Law and Preparing and Filing a Mechanics Lien Claim. In her practice, Ms. Feltes handles a variety of construction and suretyship disputes, as well as bank litigation and creditors' rights.

☛ **ANDREW B. COHN**, a principal and member of the Construction Law group, was a featured speaker at a joint meeting of the Philadelphia Construction Management Financial Association and the Subcontractors Association of the Delaware Valley held on January 19, 2012. The meeting was attended by over 100 members of both construction focused associations. Mr. Cohn spoke on "pay if paid" clauses in construction contracts, and the significance of the recently decided *Sloan* decision in the Third Circuit Court of Appeals. Mr. Cohn focuses his practice in construction law and litigation.

☛ **NEIL A. STEIN**, a principal and member of the Land Use, Zoning & Development group, has been re-appointed to the Home Builders Association Board of Directors. Mr. Stein is also Chair of the HBA Political Action Committee. In his practice, Mr. Stein represents real estate owners, developers, lenders and builders in complex land use, zoning, environmental and corporate matters.

☛ **ROBERT A. KORN**, a principal and member of the Construction Law group, was elected as a Trustee of the ALS Association, Greater Philadelphia Chapter, at its Annual Meeting on January 10, 2012. Mr. Korn is a litigator focusing on all aspects of construction and surety law.

## Is Blue the new "Green?"

By this point in time, it's safe to say most people are somewhat familiar with many of the "green" construction technologies that have become de rigueur in today's development climate. And, despite a lot of initial worry that the "green revolution" was going to generate a flood of litigation as untested technologies failed and reality fell short of promises, by and large, these new technologies have been incorporated into traditional construction projects without too much angst. So, just as everyone was finally getting comfortable with "green," along comes BLUE.

Blue roofs are steadily gaining ground as a creative way to address the ever-expanding plethora of stormwater mitigation requirements being imposed upon development projects. A "blue roof" is any rooftop system which collects and stores rainwater on the roof, for controlled release at some later point in time. In my experience, designers, contractors, and owners generally work pretty hard to get standing water off a roof as quickly as possible. So, the concept of intentionally encouraging roof-top water retention is bound to give a lot of those same folks pause. In a "new construction" setting,

the design, installation – and all important assignment of liability should these systems fail – should be relatively easy to manage. However, where these systems are proposed for retrofit of existing buildings to help meet new stormwater regulations (think, for example, redevelopment of the myriad of largely vacant shopping centers smattering the landscape), designers, contractors, and owners would be advised to tread carefully and purposefully, lest they find themselves on the wrong end of this tidal wave.

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# Meet Our Employment Law Professionals

This month, Kaplin Stewart shines the spotlight on Kim Russell. Kim is a partner in the commercial litigation department and focuses a large portion of her practice on employment litigation. Kim defends employers in numerous types of employment matters including harassment claims, discrimination claims, wage and hour disputes, Family and Medical Leave Act claims, whistleblower claims, noncompete and trade secret disputes, and unemployment compensation claims.

Kim's employment law practice arose out of her defense of claims asserted against her real estate and commercial litigation clients. While defending those claims, Kim realized that although there is a need for employment laws that protect workers from harassment and discrimination, those laws are ripe for abuse by employees, and employers who do not take steps to protect themselves face an almost unlimited risk of claims. Kim now focuses a substantial portion of her practice on counseling her clients on workplace compliance issues. Kim works with clients to manage the risks that necessarily come with having to balance business decisions with employee relations.

Kim joined Kaplin Stewart's predecessor firm, Lesser & Kaplin, as a law clerk while completing her studies at the Villanova

University School of Law. After graduating from Villanova, Kim decided to stick around for a while and has been with the firm for almost 19 years. Although the focus of Kim's practice is employment law, Kim handles all



**Kim Russell**

types of commercial litigation cases including residential construction cases and complex real estate litigation. Kim is a litigator by trade, but she is a firm believer that litigation is not always the most effective way to resolve issues for her clients. Kim works to achieve a practical result for her clients but takes a very aggressive approach to litigation.

When not in "lawyer mode," Kim usually can be found on a soccer field watching one of her children, cheering on the Phillies, Flyers, Sixers, or the Union, or screaming for (or at) the Eagles. Some of Kim's most "enjoyable" court appearances and most "effective" cross examinations have come on a Monday after a fourth quarter implosion by the Birds. Kim also is an avid tennis fan who can analyze Federer's forehand but cannot get a serve in to save her life. With children not far from college and no discernible athletic prowess that will lead to endless Nike endorsements, Kim has no plans of quitting her day job and expects to be with the firm for another 19 years.

## Do You Know...

that under Pennsylvania law, a buyer of a unit in a condominium or planned community has the right to terminate the Agreement of Sale at any time prior to its receipt of a

A Resale Certificate is a document provided by the association that details certain information about the unit being sold and the community in general.

Resale Certificate and for a period of five days thereafter. Therefore, it is extremely important for a seller to request the Resale Certificate from the condominium or homeowner's association and to deliver such certificate to the buyer as soon as possible after signing the Agreement of Sale.

A Resale Certificate is a document provided by the association that details certain information about the unit being sold and the community in general. It is important to note that these rights can only be waived with respect to properties that are intended



for non-residential use at the time of sale by the declarant (i.e. the person or entity that initially forms the condominium or planned community) or by a buyer that is in the business of buying and selling properties. **Marc A. Snyder, Esq., 610.941.2562**  
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# Legal Perspectives

## WHERE IS THE CONSTRUCTION ECONOMY HEADED IN 2012?

At the end of 2011, the American Institute of Architects (AIA) announced that its Architecture Billings Index (ABI) expanded in December. The ABI is a leading economic indicator of construction activity and reflects the roughly 9-12 months lag time between architecture billings and construction spending. The ABI in December, 2011 was 52.0, identical to its index in November. An ABI score above 50 reflects an increase in billings. These scores followed what economists generally consider to be spotty scores for most of 2011.

The ABI includes design billing for commercial and industrial facilities such as hotels, office buildings, multi-family residential and institutional activity (e.g., schools, hospitals, and other government buildings). The increased architecture billing activity in November



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and December suggests that there will be an uptick in non-residential construction spending in 2012.

It is interesting that recent statistics show that it is public construction that now appears to be taking the brunt of the economic downturn in construction spending. According to the U.S. Department of Commerce, last November the dollar value of total construction for the year to date was down 2.5%. During the same time period, the dollar value of total private construction activity remained level with 2010 numbers.

However, public construction was down 6.8% for the first ten months of 2011 versus 2010. It appears that the public works sector is being depressed by large hits to its biggest markets, public school, highway and other transportation work. Those three key markets were down 5.6%, 4.9% and 12.5% respectively from a year earlier. On the institutional side of things, only public health care spending showed an increase, up 11.5%.

Hopefully, the Architecture Billing Index numbers at the end of 2011 will be a harbinger of a stronger construction economy in 2012.



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Unless otherwise expressly stated herein, all discussions and opinions are based upon the law of the Commonwealth of Pennsylvania and the State of New Jersey. **Your comments or suggestions are welcome...** Phone: 610.260.6000 • Fax: 610.260.1240 • [www.kaplaw.com](http://www.kaplaw.com)

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