

Keeping You Informed

**Kaplin|Stewart**  
Attorneys at Law

TO THE  
**POINT**

Winter  
2014

## Estoppel Certificates: Nothing But the Truth

Remember when George told Jerry “it’s not a lie . . . if you believe it.”

Well, I am here to tell you that when it comes to estoppel certificates, the truth is paramount no matter what you believe.

Estoppel: a legal principle that bars a party from denying or alleging a certain fact owing to that party’s previous conduct, allegation, or denial. What does that mean? It means that when a party certifies that something is true, they cannot later make a claim

that contradicts such certification against another party that relied on those statements. Landlords sometimes request that tenants sign an estoppel certificate, a snap shot of the factual status of a lease. They are usually

given for the benefit of a prospective lender or purchaser, who will rely on your statements and prevent you from making claims down the road that are contrary to your certifications. Therefore, it is imperative that each statement be 100% accurate.

So what should you do when you receive this request? Check the lease to see how much time you have to

respond and what certifications are required. Limit the certifications to the actual knowledge of a named person who is responsible to complete the estoppel. Make sure that all lease documents, including amendments and side letters, are referenced so that you do not lose the benefit of those documents after a purchase or foreclosure. And, of course, review the lease to make sure that the statements are accurate.

If the estoppel provides that all landlord work is complete, clarify that this is subject to

any warranties in the lease. Sometimes the estoppel will contain a statement that there is no default and “no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default.” The additional language should be deleted since any event will become a default with the passage of time or the giving of notice. For example, if you have not paid next month’s rent, it could become a default “with the passage of time” even though it is not currently a default. If the estoppel states that there are no credits due to the tenant, be sure to exclude any credits that may be due pursuant to a reconciliation of pass-through charges such as operating expenses, taxes and insurance. Consider adding that the tenant’s certifications do not apply to co-tenancy requirements, exclusives or use restrictions since you will likely not have enough time to verify that the landlord is in compliance with these

provisions. Finally, include qualifying language that the tenant will not be subject to damages for untrue statements that the estoppel does not amend or waive the tenant’s rights, and that if there is any conflict between the estoppel and the lease, the lease will control.

While estoppel certificates seem mundane and routine, they should be taken seriously to avoid liability and to preserve your rights. Does it really need to be said . . . never take Costanza’s advice when it comes to business.

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### Marc A. Snyder, Esquire

Marc Snyder represents buyers and sellers, landlords and tenants, developers and investors, and lenders throughout the country. His practice focuses on retail, office and industrial leasing, sales and acquisitions of all types of commercial and residential properties, preparing partnership and other joint venture agreements and negotiating financing transactions. Mr. Snyder can be reached at 610.941.2562 or by email to [msnyder@kaplaw.com](mailto:msnyder@kaplaw.com).



# KS News

## We are pleased to announce that Kaplin Stewart has been named a Metropolitan Tier I ranked “Best Law Firm” in three practice areas -

Land Use & Zoning Law, Construction Law and Litigation/Construction by *U.S. News – Best Lawyers®* for 2015. In addition, six Kaplin Stewart attorneys have been named as *Best Lawyers* for 2015: **George W. Broseman** for Land Use and Zoning Law, **Andrew B. Cohn** for Construction Law, **Marc B. Kaplin** for Land Use and Zoning Litigation, **Robert A. Korn** for Construction Litigation, **Jeffrey L. Silberman** for Real Estate Law and **Neil A. Stein** for Land Use and Zoning Law.



👉 **Michael H. Weil**, Esquire has joined Kaplin Stewart in the Real Estate Transactions and Business & Finance groups. Mr. Weil previously was an Associate in the Real Estate & Business group of Morgan, Lewis & Bockius, LLP. His practice involves various real estate assets including office buildings, warehouses, retail shopping centers and malls, and other commercial properties. We are pleased to welcome Michael to the Kaplin Stewart family.

👉 **Maury B. Reiter** will be presenting a CLE program at the PBI’s 18th Annual Real Estate Institute on December 4, 2014 at the Pennsylvania Convention Center. Mr. Reiter’s presentation will be “Using Partnerships as Your Entity: Capital Commitments, Tax Allocations and Distributions Provisions.” Mr. Reiter, who is also a certified public accountant, focuses his practice on business law, including taxation, corporate and commercial law, and estate planning and administration.

👉 **Barbara Anisko and Pamela Tobin** of the Commercial Litigation group will also be co-presenting at the same PBI Real Estate Institute CLE on December 4, 2014. Their presentation will cover limitation of remedies clauses and damage provisions in real estate contracts. Both Ms. Anisko and Ms. Tobin are litigators with concentrations in commercial disputes, real estate transaction disputes, land use and zoning disputes, eminent domain and condemnation claims. They represent corporations, partnerships and individuals in litigation matters in state and federal courts.

👉 **Kaplin Stewart** continued its quest to win the Montgomery County Literacy Network Spelling Bee, which was held on October 14, 2014. Our team this year consisted of Andrew Cohn, Esquire; Pamela Tobin, Esquire and Bonnie Vandenberg. The team made it to the final round but got stumped on the word “brachygraphy” (which means *shorthand* or *stenography*). As the Philadelphia Eagles fans always lament, “maybe next year!”

👉 For those of you who have been following the adventures of **Lisa LaPenna**, our bike-riding Paralegal, the gal has done it again! Lisa rode her little comfort bike through the quaint towns and back roads of southern New Jersey, including the famous Pine Barrens where the Jersey Devil can be found, in the MS City to Shore Ride on September 27-28, 2014.



That’s our Lisa!

# Meet Our Construction Professionals

This month we shine the spotlight on Andy Cohn, a principal in our Construction group. Andy has practiced construction law and litigation for close to 30 years.

Andy grew up in Windsor, CT, the oldest of four children, three of whom have become lawyers. He attended the Loomis School as a day student in Windsor and then left Connecticut in 1970 to attend college at the University of Pennsylvania. He has been in the Philadelphia area ever since. Although Andy started at Penn in the Wharton School, he transitioned to earn his B.A. degree with a double major in political science and sociology. While at Penn, Andy was a Resident Advisor, House Master, and for one year before entering law school Assistant Director of the Penn Quadrangle Undergraduate Residence. But the most important thing that happened to Andy at Penn was that he met his future wife, Joy, there.

Andy attended Temple University Law School and graduated in 1978. While at Temple, he spent two summer internship years in the Philadelphia District Attorney's office. After he earned his law degree, he was hired by then newly elected D.A. Ed Rendell, and spent six years as an Assistant D.A. doing trial, appellate, and investigative grand jury work. During that time, he briefed and argued multiple cases before the Pennsylvania



Andy Cohn

Superior and Supreme Courts.

After his time in the D.A.'s office, Andy joined a Center City law firm and began practicing construction law with Bob Korn, his current partner at Kaplin Stewart. Ultimately, Andy and Bob formed their own boutique Construction law firm which, after ten years,

merged with Kaplin Stewart in 2000. Since that time, Andy has helped manage and develop the construction group at Kaplin Stewart into an eight lawyer group focused on the transactional and litigation side of the construction practice. He represents owners, developers, contractors and subcontractors in all aspects of the construction process, including front end contract negotiation and

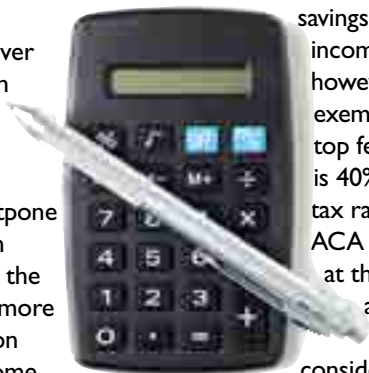
problems and disputes which may require litigation, arbitration, or mediation.

Andy and his wife, Joy, live in Montgomery County where they raised two children, a boy and a girl, now grown and out of the nest. Both played sports in high school and college (ice hockey and lacrosse respectively). Andy misses the opportunity to watch them play and complain to the refs about bad calls! When he is not working, Andy enjoys playing golf, following the Phillies at Citizen's Bank Park or watching them on TV, reading history and historical fiction, and enjoying a home away from home in Quechee, VT.

## Do You Know...

### How to Calculate the Basis in Estate Planning: Less Tax for Heirs

Basis has always been important in estate planning, and the fundamental distinction between the carryover basis for gifts and the step up in basis for inherited property is a key factor in evaluating planning steps. As a result, for example, people will often postpone a sale of property if death is on the horizon in order to secure the step up in basis. Until recently, more attention usually was focused on estate tax than post-death income tax consequences. The main reason was the rate differential - for instance, in 2004 the top federal estate tax rate was 48% (with a \$1.5 million exemption) while the top federal long-term capital gains tax rate was 15%. In addition, capital gains tax will not be imposed until the gain in an asset is recognized



(e.g., the asset is sold) so it is not clear when or even whether the donee will be subject to that tax. As a result, wealth transfer tax savings virtually always trumped income tax considerations. In 2014, however, the federal estate tax exemption is \$5.34 million, and the top federal estate and gift tax rate is 40%. Meanwhile the capital gains tax rate is 23.8% (including the ACA surtax under Code Sec. 1411) at the federal level, and 28.7% on average in total if state capital gains taxes are taken into consideration. As a result, planning for basis step-up at death has stepped into the foreground.

**Dirk M. Simpson is a principal in the Estate Administration & Planning and Tax groups. He can be reached at 610.941.2549 or by email to dsimpson@kaplaw.com.**

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# Legal Perspectives

## Three Things I've Learned in 25 Years of Practice

**The bar exam is too easy.** (Credit my wife with this observation; she's not a lawyer, but she's absolutely right.) Bad lawyering is probably the number one reason why litigation takes so long and costs so much. Bad lawyers don't recognize weak cases; instead, they waste everyone's time and money without changing the outcome.

**The 11th Commandment of the Commercial Lawyer is "Thou shalt settle every case, because it's only money."** (Credit for this one goes to a colleague, who is both older than I am, and wiser, too.) Years ago, I knew a Municipal Court tipstaff who would always open court with a speech: "[n]ow is your chance to go into the hall and resolve your case among yourselves. You can do a better job than the court can. And if you can't work it out and your case is tried, you may not be happy with the outcome – even if you win." These were the words of a very smart man. Good lawyers can make this easy. Bad lawyers can make this impossible.



Williams J. Levant

**Pick your spots.** Not every dispute is worth a lawsuit, no matter how right you think you are. Often, once you are in, you can't get out without your opponent's consent – which may not be readily forthcoming. Then, the floodgates are wide open. It costs a bare minimum of \$20,000.00 to take a case to trial, and often much, much more. Don't start a suit that you don't intend to pursue to completion; in other words, bringing suit primarily to "put pressure" on your opponent usually doesn't work.

We can't win every case; no one can do that. But when you consult us about a claim that you have or a lawsuit to which you must respond, we will give you our honest, unvarnished opinion of its merits – and its weaknesses – so that you can make the most informed decision possible about how to proceed from there.

**Williams J. Levant is a principal in the Business & Commercial Litigation, Real Estate & Title Litigation and Bankruptcy & Creditors Rights groups. He can be reached at 610.941.2474 or by email to [wlevant@kaplaw.com](mailto:wlevant@kaplaw.com).**



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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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