

practice chair

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The Tax-Exempt Organizations Real Estate Group represents tax-exempt organizations in connection with their real estate and related activities, including sales, purchases, leasing, property management and financing transactions, as well as development, easement and air rights matters and joint ventures with for-profit entities. The Group includes partners and counsel from the Real Estate Department, the Tax-Exempt Organizations Practice Group, the Tax Department and the Environmental Practice Group, as well as associates from these groups.

Based upon the breadth of knowledge and experience of the Group, we are able to provide one-stop advice with respect to all of the real estate aspects of any transaction, as well as unrelated business income tax (UBIT) issues, analysis of the impact of applicable statutes, such as New York's Not-For-Profit Corporation Law and Religious Corporations Law, and tax exempt bond financing.

We also advise on appropriate entity selection and formation, and obtain federal, state and local tax exemptions and exemptions (where available) from city and state sales taxes and realty transfer taxes.

Our practice group has a special interest in non-profit corporation and charitable trust law, and thorough knowledge of the fiduciary responsibilities of directors, trustees and managers in undertaking real estate transactions and activities.

Leasing:

Our long-standing clients include tax-exempt organizations that are among the major landlords in New York City. In negotiating and finalizing commercial office and retail leases and long-term ground leases, we have assisted these clients in transactions with public and substantial private companies such as WNYC, Bliss World (part of Starwood hotel chain) and L'Oreal, financial institutions such as The Bank of New York and Morgan Stanley Dean Witter, leading chain operators such as CVS and Starbucks, and real estate developers including Tishman-Speyer, Time Equities and Leonard Litwin.

- We assisted the Museum of American Finance to negotiate a lease for its premises at 48 Wall Street. We assisted the Museum of American Finance in the negotiation of architectural services and construction management agreements for its premises at 48 Wall Street.

- We helped a tax-exempt landlord negotiate a 175,000 square foot lease to an archive company and assisted the owner in relocating existing tenants to create the necessary block of space.
- We helped a religious corporation renegotiate the ground rent for one of its premier holdings, resulting in what we believe to be the highest fair market rent that had been agreed upon, up to that time, for a renewal term of a Manhattan ground lease.
- Over a two-year period, Carter Ledyard & Milburn represented a tax-exempt owner in negotiating five long-term ground leases of Manhattan office buildings, most of which had initial terms of 99 years and 99-year renewal terms.

Buying and Selling:

We assist tax-exempt clients in buying and selling properties, with a focus on office, retail, residential and mixed-use buildings in the City of New York. Representative transactions include purchases and sales of actively-managed office buildings, net-leased office buildings, joint venture transactions, air rights transfers and transfers of controlling interests. To avoid recognition of gain on dispositions of debt-financed properties, we have structured such sales as 1031 like-kind exchanges. Our Group is uniquely positioned to provide advice with respect to the tax treatment of sales, acquisitions and related financings generally and for tax-exempt organizations in particular. Carter Ledyard also represents royalty-chartered entities in connection with real estate transactions.

- We represented a tax-exempt organization in the sale of a debt-financed office building and the reinvestment of proceeds into two Manhattan commercial properties in a like-kind exchange to avoid recognition of unrelated business income tax.
- We represented a tax-exempt organization in the sale of a joint venture interest in a 26-story Manhattan office building to a private developer.
- We assisted the Bronxville Historical Conservancy, a tax-exempt organization, in selling an historical home in the Village of Bronxville subject to conservation restrictions, thus promoting the Conservancy's purpose of historic preservation while raising funds for its other projects. We also advised the Conservancy on ways to encourage Bronxville homeowners to consider similar transactions.
- We represented a religious corporation in the sale of property on Manhattan's upper east side for more than \$45 million.

Real Estate Financing and Development:

Another important part of our practice is representing institutional lenders in connection with their investments in or secured by real property. These investments often take the form of mortgage loans, sometimes accompanied by equity participations or "kickers."

We are involved in a wide range of real property development activity: assemblages, obtaining subdivision and other regulatory approvals, ground leases, air rights transfers, joint ventures, dealing with real estate brokers, creation of office and retail lease forms, construction financing as well as permanent and secondary financing, industrial development bond financing and condominium conversions.

We are equipped to meet our clients' needs with respect to regulatory issues that frequently arise in the course of this work. For example, we have dealt with SEQRA and CEQR compliance and litigation, ULURP applications, franchises (including bridges across city streets), franchise renewals and street demappings.

- We represented a tax-exempt client in making mezzanine loans on an industrial office property in California.
- We represented a tax-exempt owner in a \$25 million loan secured by a mortgage on a Manhattan office building.
- We represented a tax-exempt owner in obtaining loans from the U.S. Department of Housing and Urban Development for several housing projects for the elderly under Section 202 of the National Housing Act.
- We represented three affiliated health care providers in over \$61 million of tax-exempt bond financings with the New York City Industrial Development Agency to provide funds for upgrading a nursing home facility in the Bronx, developing an adult day care

facility in Queens, developing five day health care centers for the frail elderly in Manhattan, Queens and Brooklyn, and refinancing existing debt for a nursing home and related facilities in Brooklyn.

- We have developed, for a tax-exempt commercial property owner, a series of customized service contract forms for portfolio-wide application.
- We represented a tax-exempt property owner in the negotiation of access agreements over adjacent properties in order to perform necessary façade maintenance.

Construction and Property Management:

We also have substantial experience in the preparation of architectural and engineering services agreements, construction contracts, construction management agreements, and a multitude of property management agreements, generally representing the owner. We have also represented tax-exempt owners, as well as contractors and subcontractors, in connection with lien filings and discharges, Lien Law diversion of trust fund actions, mechanical lien foreclosure actions and lien discharge proceedings, and legal proceedings and arbitrations among owners, contractors and architects for breach of construction contracts. We are experienced in working with the intricacies of the New York Lien Law.

Environmental Matters, Landmarks and Historic Preservation:

Members of the Environmental Practice Group have extensive experience in both landmarking and historic preservation matters under the National Historic Preservation Act, the Section 106 review process of the Advisory Council on Historic Preservation, the New York State Historic Preservation Act, and New York City and other landmarks ordinances. This experience includes representing nonprofit organizations who seek to challenge developments that would adversely affect historic properties, clients who seek to take advantage of the tax credits available for the rehabilitation of historic buildings, and charitable organizations that seek to preserve environmentally sensitive land and open space in urban, suburban, and rural areas. Stephen L. Kass of our Environmental Practice Group is the principal author of *Rehabilitating Older and Historic Buildings* (published by John Wiley & Sons), the leading one-volume summary of law and practice in this field for lawyers, accountants, developers, and government officials.

Professional Activities:

Cully Irving is a former member of the Real Estate Law Committee of the Association of the Bar of the City of New York. Cliff Case and Steve Kass are members of the Section on Environmental Law of the New York State Bar Association, and Mr. Kass is a former chair of the Special Committee on International Environmental Law of the Association of the Bar of the City of New York. John Casolaro is a former chair of the Construction Law Committee of the New York City Bar Association.