



Real Estate Litigation in New York

Moderator:

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Herrick, Feinstein LLP

Robert M. Abrahams

Schulte Roth & Zabel LLP

Joshua J. Grauer, Esq.

Cuddy & Feder LLP

Kenneth A. Bloom

Gartner + Bloom P.C.

Arthur P. Xanthos

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Neal M. Eiseman

Goetz Fitzpatrick LLP

This seminar is designed for attorneys, real estate professionals and title officers.

NEW YORK, NY

JULY 15, 2008

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Critical Issues on the Agenda

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- 8:30 AM – 9:00 AM **Registration**
- 9:00 AM – 10:10 AM **Overview** — *Raymond N. Hannigan, Esq.*
- Overview of Real Estate Litigation Today
 - Nature of Real Estate Litigation and the Difference Between Transactional Real Estate and Real Estate Litigation
 - Species of Real Estate Litigation
 - Some General Guidelines
- Foreclosure of Condominium Development Loans** — *Raymond N. Hannigan, Esq.*
- General Review of Foreclosure Procedure; Statutory Multistep Process
 - Lender Liability Considerations for Condominium Loans
- 10:10 AM – 10:25 AM **Break**
- 10:25 AM – 11:35 AM **Mechanics' Liens** — *Neal M. Eiseman*
- An Update of New York Law: What Constitutes a Lienable Interest?
 - How to Attack (or Defend) the Sufficiency of a Mechanic's Lien
 - Once the Mechanic's Lien Has Been Filed, What Next?
 - New York's Lien Law Trust Fund
- 11:35 AM – 12:35 PM **Lunch (On Your Own)**
- 12:35 PM – 1:45 PM **Litigation of the Land Use and Development Dispute** — *Joshua J. Grauer, Esq.*
- Exhaustion of Administrative Remedies
 - Standing
 - Article 78 and Declaratory Judgment Actions
 - Vested Rights
 - Moratoriums
- 1:45 PM – 2:00 PM **Break**
- 2:00 PM – 3:10 PM **The Yellowstone Doctrine: Alive and Well** — *Robert M. Abrahams*
- *First National Stores v. Yellowstone Shopping Center, Inc.*: A Brief History of an Impactful Case
 - No Longer a Case; Now a Doctrine
 - Practical Tips for Obtaining or Avoiding *Yellowstone* Injunctions
 - Lease Drafting Considerations
- 3:10 PM – 4:20 PM **Mold Litigation** — *Kenneth A. Bloom and Arthur P. Xanthos*
- Dynamics of Mold Litigation – The Backstory
 - Mechanics of Mold Litigation – Discovery and the Medical Examination
 - Motions – Pretrial and in Limine
 - Settlements, Partial Settlements and Insurance
 - Related Coverage Issues
 - The Future of Mold Litigation
- 4:20 PM – 4:30 PM **Questions and Answers** — *Robert M. Abrahams, Kenneth A. Bloom, Neal M. Eiseman, Joshua J. Grauer, Esq., Raymond N. Hannigan, Esq., and Arthur P. Xanthos*

Registration

Real Estate Litigation New York, NY - July 15, 2008



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Our Distinguished Faculty

Robert M. Abrahams is co-chair of the Litigation Department of Schulte Roth & Zabel LLP. His area of expertise is complex commercial litigation, including real estate, securities, trusts and estates, and lender liability matters. He is a member of the American Bar Association Litigation Section, including the Trial Practice Committee, as well as the New York State Bar Association, including the Trial Practice Section, Real Property Section and Task Force on Foreclosure Reform. Mr. Abrahams is listed in *Who's Who in America*, was selected as a New York Super Lawyer by *Super Lawyer* and is a fellow of the New York Bar Foundation. He is a frequent speaker and writer on legal topics. Mr. Abrahams earned a B.A. degree from Hobart College and a J.D. degree, with distinction, from the Hofstra University School of Law, where he was editor-in-chief of the *Hofstra Law Review*.

Kenneth A. Bloom is a partner with Gartner + Bloom P.C. His areas of concentration include casualty and liability defense; insurance coverage; construction litigation, including construction defect, EIFS, apparent microbial growth, asbestos and lead paint matters; insurance fraud defense; and commercial litigation. Mr. Bloom is a member of the New York State Former District Attorneys Association; the Brooklyn, New York State, Pennsylvania and American (Tort and Insurance Practice Section and Alternate Dispute Resolution Section) Bar Associations; the District of Columbia Bar; and the New York County Lawyers Association. Mr. Bloom earned a B.S. degree from Cornell University and a J.D. degree from the American University.

Neal M. Eiseman, a partner with the New York-New Jersey based law firm Goetz Fitzpatrick LLP, has been representing corporate clients in the construction and real estate industries for more than 25 years. He focuses on the litigation and arbitration of commercial disputes. Mr. Eiseman is a member of the American Arbitration Association's Panel of Commercial Arbitrators and a former member of its Regional Construction Attorney Advisory Council. He has also served as an arbitrator for the New York Civil Court, Small Claims Department. Mr. Eiseman is an adjunct associate professor at New York University, where he teaches "Legal Principles and Practices" in the Master's Program in Real Estate and Construction. He is co-chair of the American Bar Association's Committee on Arbitration. Mr. Eiseman has written extensively about construction and commercial issues for the New York and New Jersey law journals and the American Bar Association. He is a graduate of St. John's University School of Law and The George Washington University, where he earned a B.A. degree in journalism and political science.

Joshua J. Grauer, Esq., is admitted to the New York bar and is a partner and chairman of the Litigation Department in the law firm of Cuddy & Feder LLP. His practice is principally involved in the litigation of complex real estate and commercial matters, land development claims, Article 78 and declaratory judgment actions involving planning boards, zoning boards, zoning moratoriums, landmarkings and rezonings; business and contract disputes; commercial landlord-tenant matters; construction claims; and general corporate litigation. Mr. Grauer is a graduate of Yeshiva University's Benjamin N. Cardozo School of Law. He is admitted to practice in New York State Court, the U.S.

District Court for the Southern and Northern Districts, and is a member of the American Trial Lawyers Association. Mr. Grauer has lectured extensively on many topics, including real estate and landlord-tenant law in New York; litigation of contract disputes to trial, judgment and collection; legal aspects of condominium development and homeowners' associations; and zoning and land use in New York. He has published several articles, most recently in the fall/winter 2007 issue of the *Westchester County Bar Journal* titled "If I Win – Can I Recover My Attorney's Fees? Whether successfully trying a breach of contract jury trial involving millions of dollars in damages against a nationally known public company, representing a neighbor in an adverse possession claim or challenging controversial municipal landmarkings or rezonings, Mr. Grauer takes a practical and conservative approach to resolution of conflict, recommending where feasible, a creative settlement as compared to the always uncertain outcome of a judge or jury determination.

Raymond N. Hannigan, Esq., is a partner in the litigation department of Herrick, Feinstein LLP, which has one of the largest real estate and real estate litigation practices in New York. Mr. Hannigan concentrates his practice in real estate litigation and transactional real estate. His extensive transactional experience gives him a unique insight into the matters he litigates, and when a settlement is reached, Mr. Hannigan will document and close the transaction himself, rather than hand it off to a transactional lawyer. He has extensive experience litigating commercial real estate matters and is experienced in the workout and foreclosure of mortgage loans. Mr. Hannigan has litigated several noteworthy cases, including *NSKK v. Nakahara*, the celebrated battle for control of the Empire State Building that is chronicled extensively in Mitchell Pacelle's book, *Empire; A Tale Of Obsession, Betrayal And The Battle For An American Icon* (Wiley 2001). In 2002, Mr. Hannigan represented Donald Trump in the historic sale of the Empire State Building to a group headed by Peter Malkin. While pursuing his law degree, Mr. Hannigan was notes and comments editor of the *New York Law School Law Review* and received American Jurisprudence Awards in land use regulation, New York practice, insurance law, municipal finance law and torts. Mr. Hannigan graduated magna cum laude.

Arthur P. Xanthos is a partner with Gartner + Bloom P.C., where his areas of concentration include commercial litigation; labor litigation; construction litigation, including construction defect, EIFS, apparent microbial growth, asbestos and lead paint matters; and medical malpractice defense. He earned a B.A. degree from Williams College, where he was a recipient of the Tyng Scholarship, and a J.D. degree from Fordham University School of Law, where he was managing editor of the *Fordham Urban Law Journal*. Mr. Xanthos is the author of "D&O Insurance: Disbursement of Insurance Money Covering an Insured's Legal Expenses as Incurred," XVI *Fordham Urban Law Journal* III, cited in *New York Law Journal*, April 1989. He is admitted to practice in New York, New Jersey and the U.S. District Court for the District of New Jersey.

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- Do's and don'ts for litigating land use and development disputes
- Practical lease drafting considerations
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Real Estate Litigation



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— Kelly Shelton, HR Manager
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