



REAL ESTATE

A PRIMER ON LEED CERTIFICATION
And its profound effect on Real Estate



Doug Wambach

Q & A with Christian Gunter, who directs the Responsible Property Investing (RPI) initiative at Kennedy Associates Real Estate Counsel, LP. RPI is a comprehensive approach to real estate that promotes the value of a building's social, environmental and financial attributes within Kennedy's investment portfolio.

Kennedy Associates, a full-service registered real estate investment advisor, brings thirty years of real estate investment expertise to a select number of public, corporate, and Taft-Hartley retirement systems, as well as major university endowments. Kennedy serves some of the country's

largest institutional investors in addition to serving open-ended commingled funds and closed partnerships. Kennedy currently represents more than 300 institutional investors, and has more than \$10 billion of real estate assets under management.

LEED - what's in the acronym?

Christian Gunter (CG): LEED stands for Leadership in Energy and Environmental

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Rendering of Kennedy's 222 South Main Street project in Salt Lake City. The LEED certified tower designed by architects Skidmore, Owings and Merrill features more than 350,000 square feet of office space on 22 stories and energy-conserving and fully automated building systems.

WEALTH & SUCCESSION PLANNING

CAN YOU BEAT A 3.8% RETURN? Doing So Can Save You Taxes
GRATs: a powerful wealth transfer technique for today's economic climate

Low interest rates and stock market volatility are contributing to the popularity of an IRS blessed estate planning technique known as a grantor retained annuity trust ("GRAT").



Martin P. Ryan

Once used primarily by entrepreneurs to transfer businesses and real estate to children at reduced gift and estate tax cost, GRATs are now being used more and more by owners of large holdings of marketable securities to do the same.

A GRAT is a trust established by a

taxpayer to which the taxpayer transfers property while retaining the right to receive a set annuity for a certain number of years. At the end of the term, any property remaining in the

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Yearend wealth planning, managing your "reductions in force" risk, the firm grows again.

THE FINANCIAL RESCUE - BEYOND THE HEADLINES

Critical issues lost in the minutia of the moment

Craig McCrohon, a partner in the Firm's corporate, transactional and bank regulatory practice, brings his perspective from nearly 20 years ago during the savings and loan crisis. He worked for the legal staff of the U.S. Senate Banking Committee that wrote the last financial rescue plan in 1989.



Craig McCrohon

The shock of the financial crisis has jolted the federal government into demolishing decades of financial regulation in a matter of days with the passage of the Emergency Economic Stabilization Act. Newspapers, magazines and cable news shows have relayed the basic story. However, in the never ending reply of sound bites and articles with the latest Congressional drama, several themes have largely been ignored by the mainstream media. Following are a few of the issues that will likely emerge from the footnotes of scholarly articles to the headlines of next year's financial newspapers. The review below is not an explanation of the crisis or a summary of the recent legislation. Instead, it is a review of some critical governmental matters lost in the high decibel debate surrounding the crisis.

1. The devil is NOT in the details.

The most striking aspect of the rescue law is its amoeba-like simplicity. In general, it is a check for several hundred billion dollars, a small committee of the government's top financial regulators, and a general instruction to be fair and efficient. Some last minute horse trading resulted in increased deposit insurance to \$250,000, tax breaks, suspension of mark-to-market accounting, and general prescriptions for additional regulation of selected securities and executive compensation. In the end, the law resembles more the drastic 1933 bank holiday and home loan buyback than the intricate re-engineering of regulations of the savings and loan bailout two decades ago. Then, Congress passed laws aimed at addressing specific regulatory issues in real estate lending practices, director and officer liability, and deposit insurance. The current crisis moved too fast to permit the traditional tinkering with regulations and give-and-take among competing trade associations. The White House and Congress concluded that the tidal wave of financial uncertainty required massive intervention, not legislative deliberation.

2. Whither the lobbyists?

The bailout is so vast and so rapid that the traditional wrestling match among interest groups became a side show. In 1989, with the measured pace of the legislation, competing factions within the financial industry had significant influence over the legislation. However, the current crop of rotten mortgage-backed securities - directly or indirectly - through the financial system led to a rarely seen degree of harmony among the various subsectors. Small banks held the preferred stock of Fannie Mae and Freddie Mac; large banks individually held large portfolios of mortgage-backed securities and loans; bulge-bracket banks held mortgage-backed securities and depended on the related underwriting income. The initial failure of the legislation in the

House of Representatives provided dozens of Congressmen, and their industry and political allies, the chance to negotiate special provisions in the bill. The typical intra-industry give-and-take failed to materialize in the frantic efforts to pass the bill.

3. Federal Reserve - Regulatory Superpower.

Since the 1930s, lawyers and banks have plied their trade amidst a cold war among turf-conscious regulatory agencies. The Securities and Exchange Commission eagerly sought to regulate securities activities of commercial banks; the Department of the Treasury sought to expand the powers of the banks it supervised — and therefore Treasury's own influence; and the Federal Reserve worked to maintain its hegemony over monetary policy by expanding beyond traditional banks and methods to inject or withdraw cash in the U.S. financial system. Last spring, the Department of Treasury unveiled a revolutionary plan to rearrange regulatory responsibility among the federal regulators. The September financial crisis created such drastic realignment of investment and commercial banks that the "radical" plan of a few months ago now appears laughably modest. The winner has largely been the Federal Reserve. In a matter of days, investment banks outside the daily operational supervision of the Federal Reserve fell like dominoes. The need for liquidity provided by federally-insured deposits, and the occasional loan from the Federal Reserve, drove these proud stock and bond houses into the restrictive realm of the Federal Reserve. The SEC and the bank regulatory arm of the Department of the Treasury could only stand on the sidelines and watch as decades of competition ended in a matter of days.

4. On Main Street - The World Forever Changed.

The financial earthquake created a consolidation of banks, brokers and insurers that would have otherwise taken years


GRAT is then held for the benefit of the taxpayer's family members free of gift and estate tax.

When a GRAT is established, for federal gift tax reporting purposes, the taxpayer is viewed as making a gift to the trust equal to the fair market value of the property reduced by the value of the annuity to be paid to the taxpayer from the GRAT during the term of the GRAT. The value of the annuity is determined at the time of the gift using an interest rate set by the IRS for the month the trust is created. The current IRS rate is 3.8%.

and included anti-trust court battles, lengthy negotiation over regulatory exemptions and the delicate arrangement of multi-billion dollar financing.

The result: gargantuan financial platforms that may undermine the competitiveness of small players. This crisis resolution was not so much from sea to shining sea, but from lower Manhattan to Midtown. Given the sheer size of these new firms, an understanding of the full impact of the consolidation may take decades.

For operators of smaller independent banks, the major restructuring may offer opportunity. As the roll-up slowly accelerates, these independent institutions could profit by selling to larger competitors and compete for loan and deposit customers. In the short run, integration of large organizations could distract these new behemoths from catering to main street.

Comments? With such a fluid industry and regulatory situation, we appreciate your thoughts on the future of bank regulation and law. Contact Cy Griffith at cgriffith@burkelaw.com or your Burke, Warren attorney. 

YEAR	FMV OF SECURITIES TRANSFERRED TO GRAT	ANNUAL APPRECIATION IN VALUE OF SECURITIES	ANNUITY PAID BY GRAT TO TAXPAYER	AMOUNT REMAINING IN GRAT AFTER PAYMENTS
1	\$5 million	\$400,000	\$ 760,560	\$4,639,440
2		\$371,155	\$ 912,672	\$4,097,923
3		\$327,834	\$1,095,206	\$3,330,551
4		\$266,444	\$1,314,248	\$2,282,747
5		\$182,620	\$1,577,097	\$ 888,270
Total Paid to Taxpayer:			\$5,659,783	
Amount transferred to trusts for family members free of gift and estate tax:				\$ 888,270
Estate taxes saved (assuming a flat 50% rate):				\$ 444,135

In the event a taxpayer transfers marketable securities to a GRAT, a benefit is realized when, during the term of the GRAT, the securities appreciate at a rate greater than the IRS rate. The greater the amount the actual rate of return exceeds the IRS rate, the greater the amount of property that will be transferred from the taxpayer's taxable estate free of gift and estate tax.

For GRATs funded with marketable securities, annuity payments from the GRAT to the taxpayer can be made with securities with a fair market value equal to the annuity payable, thus avoiding the sale of securities.


A popular twist to the GRAT technique is to create multiple "rolling GRATs". In general, this involves creating an initial short-term GRAT (typically two years) and then funding additional short-term GRATs with the two annuity payments received from the initial GRAT. Although more complicated than a typical GRAT, rolling GRATs maximize the shift of assets free of gift and estate tax.

The chart above offers an example of the gift and estate tax savings to be realized by establishing a GRAT. For purposes of this example, we assume a taxpayer has \$5 million in marketable securities and that he or she establishes a GRAT with a term of five years. We also assume the IRS interest rate is 3.8% and the securities appreciate by 8% per year

over the term of the GRAT. The chart summarizes the results.

Under this example, at the end of the term of the GRAT, the taxpayer would be transferring \$888,270 from his or her taxable estate. For gift tax reporting purposes, the amount of the gift is \$0; thus no gift tax is payable.

If for any reason the marketable securities were to fail to appreciate by the IRS rate (3.8% in our example), then all property initially transferred to the GRAT would be returned to the taxpayer and no amounts would be transferred from the taxpayer's taxable estate. At that point, the taxpayer would only be out of pocket the relatively modest professional fees incurred in establishing the GRAT.

The attorneys in the firm's Wealth and Succession Planning practice are experienced in established GRATs and are happy to answer any questions you may have. For more information, please contact your attorney or a member of the firm's Wealth and Succession Planning group at 312/840-7000. Members of the group include Karen K. MacKay, Stephanie H. Denby, Jonathan W. Michael, Martin P. Ryan, Melissa Cover Selinger, Melanie Witt, Julia A. Turk and Gregory M. Winters. Martin P. Ryan contributed this article to the *BWM&S Bulletin*. 

LEED *Continued from page 1*

Design. LEED focuses on sustainable building development and operations and maintenance practices through the adoption of universally understood and accepted tools and performance criteria.

The LEED ratings system was originally developed in 2001 and is continually refined by the 17,000-member U.S. Green Building Council (usgbc.org) through an open, consensus-based process led by volunteer committees comprised of practitioners and experts from a cross-section of the building and construction industry. The USGBC is a non-profit organization that administers and verifies LEED certification.

LEED provides third-party certification with nationally accepted benchmarks for the design, construction, and operation of high performance green buildings. LEED promotes performance in five key areas of human and environmental health: sustainable site development, energy and atmosphere, water efficiency, materials and resources, and indoor environmental quality. These categories are scored on a point scale, with certified projects earning LEED Certified, Silver, Gold, and ultimately Platinum certifications as one achieves higher point totals.

Who uses LEED and what is different about a LEED certified building?

CG: LEED is used by real estate and design professionals, including architects, developers, real estate brokers, consultants, facility managers, engineers, interior designers, landscape architects, construction managers, lenders, and government officials. LEED certified projects receive a plaque, a nationally recognized outward symbol that the building is environmentally responsible, and a healthy place to live and work. LEED-certified buildings typically provide the following:

- Lower operating costs resulting in increased asset value



The energy saving, LEED certified 222 South Main Street building features a double-height entry lobby with adjoining retail space on Salt Lake City's historic and revitalized Main Street corridor.

- Less waste sent to landfills
- Less energy and water consumed than non-LEED buildings, often upwards of 30%
- Healthier indoor environmental quality for occupants
- Reduced greenhouse gas emissions
- Qualify for tax rebates, zoning allowances, and other public incentives
- Demonstrate an owner's commitment to environmental stewardship and social responsibility

Where is the market for LEED certified buildings going?

CG: To date, there are approximately 1,400 LEED certified buildings. This is a substantial figure given how recently the standards were put in place. The rate of adoption, however, is accelerating. There are now more than 14,000 projects in various stages of development seeking LEED certification in 41 countries. This major shift in the real estate industry compares to the introduction of enforceable zoning and building codes.

Though concern for the environment is a factor in the rapidly growing demand to obtain LEED certification, the primary motivation behind this drive is financial. The cost of building a basic LEED certified project has fallen to 1 to 2 percent of additional project cost, and these costs are often quickly recouped

through increased operating efficiency as well as through publicly funded rebates and incentives which are available in many markets nationally.

LEED certified buildings offer a certain cachet that others don't in the market. Growing evidence suggests LEED buildings lease up more quickly, and at higher rates than non-certified buildings. We expect LEED rated buildings to sell at a premium.

Many large tenants seeking new or additional space now require LEED certified real estate. They often use their LEED ratings as recruiting tools by promoting superior work environments to potential employees. LEED ratings factor in amenities such as showers and bike storage, day-lighting and views, in addition to open space areas including plazas and roof tops. The "walkability" of a building and its proximity to transit and community amenities such as shops, banks and housing are reinforced by the LEED rating system too. Tomorrow's highly educated work force will demand LEED certified work environments.

Kennedy's history with LEED

CG: Kennedy launched its Responsible Property Investing initiative in connection to the continued adoption of LEED standards and its historic commitment to using Responsible Contractors. RPI combines the sensibility and benefits of

building and managing energy efficient, environmentally friendly buildings with economically viable and financially rewarding real estate investments. RPI focuses on sustainable development, property operations, economic fairness, and employee health. One of Kennedy's most recognized RPI projects was the 2002 redevelopment of Brewery Block in Portland, Oregon. On behalf of the Multi-Employer Property Trust, Kennedy converted a former brewery into a transit-oriented, mixed-use office project with a significant historic preservation component. The project earned LEED Gold certification and met our own RPI guidelines.

Today RPI is an essential part of Kennedy's business model. It provides a framework for how we look at all investing opportunities. We currently have more than \$1 billion in LEED certified assets under management, and more than \$1 billion of LEED projects under development or evaluation.

Our work implementing RPI as an investment strategy has not gone unnoticed. Earlier this year, Kennedy

Associates was selected for its RPI initiative as one of nine global winners chosen for the 2008 Urban Land Institute/Financial Times Sustainable Cities Awards. The awards honor ongoing programs that exhibit new ideas and forward thinking perspectives for the best sustainable land use practices. Each of the winners was recognized for their significant contribution in highlighting the importance of the concept of sustainability in real estate. The nine award recipients were selected from 18 finalists, chosen from a field of 86 entries submitted from 15 countries.


What is next for Kennedy?

CG: The financial benefits of sustainable development and building according to LEED standards continue to grow for new construction. However, there are huge benefits to be found in seeking LEED certification for existing buildings, especially pertaining to energy and water efficiency. On the forefront of this effort, Kennedy is participating in a USGBC LEED for Existing Buildings-Operations and Maintenance Portfolio Pilot program with a

focus on sustainable operations and maintenance. As a part of this new program, Kennedy is working to achieve LEED certification for approximately to 35 buildings from our portfolio, representing seven million square feet. Through this effort, we hope to be able to establish guidelines for the industry to improve the performance of buildings around the world.

Kennedy Associates, headquartered in Seattle, has offices in Chicago, Dallas, Los Angeles, San Francisco, and Washington, D.C.

The firm's Doug Wambach works with Kennedy and its clients around the country providing legal services for property acquisition, disposition, leasing and development. Recently the firm represented Kennedy and one of its pension fund clients in a joint venture development of a LEED certified office building in downtown Salt Lake City. Burke, Warren, MacKay & Serritella is proud of its affiliation with Kennedy.

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FIRM HOSTS VISTAGE CEO MEETING

Vistage is a CEO member organization where participants meet monthly in small groups to support each other with key decisions and in growing their businesses. Meetings regularly include guest speakers, member business plan reviews as well as open sessions where participants provide counsel to one another.

Vistage operates in 15 countries with more than 14,000 world-wide members. Fifteen of those members participate in one of Chicago's local Vistage groups which includes the firm's Terry Jeffrey.



Terry Jeffrey

"Members are business owners of successful and growing companies, who typically do not have their own statutory board of directors," says Jeffrey. "Each member brings his or her expertise to the meetings as we share our business challenges and opportunities. My group members credit Vistage with a good deal of their personal and professional growth as well as providing significant help in building their businesses."

Vistage International was founded in 1957 in Wisconsin as TEC (The Executive Committee). The core concept remains the same as members share their knowledge and experience to develop their leadership skills and help each other make better decisions and get better results for their businesses. On average, after a CEO joins a Vistage group, his business grows nearly three times as fast as before he joined.

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FIRM SCORES ANOTHER VICTORY FOR ILLINOIS MOTOR VEHICLE DEALERSHIPS

Burke, Warren, MacKay & Serritella's Ira Levin recently obtained an important ruling in federal court that will advance the interests of motor vehicle dealerships throughout Illinois. At issue in the case was whether a manufacturer could proceed with a lawsuit against a dealer in the federal district court in Chicago where the matter was within the jurisdiction of the Illinois Motor Vehicle Review Board.

The Motor Vehicle Board was created to decide a variety of disputes under the Illinois Franchise Act as the result of a 1994 Illinois Supreme Court case (in which Burke, Warren partner Bill Kelly represented one of the dealerships involved). In that case, the Court decided that it was the Legislature's duty to create an administrative body with the specific expertise to ensure that actions taken by manufacturers were consistent with the critical public interest in a stable motor vehicle industry in Illinois. In this most recent case, the U.S. District Court for the Northern District of Illinois thwarted a manufacturer's efforts to by-pass the Motor Vehicle Board and have its dispute decided in federal court. The court ruled that it was vital for the Motor Vehicle Board to hear the case, since only the Board could "determine the number of car dealerships such a ruling might affect, the ramifications on Illinois commerce, or the impact on the public interest."

Mr. Levin, who tried the first case before the Motor Vehicle Board, and who last year successfully defended the constitutionality of the Motor Vehicle Franchise Act and the authority of the Board in both state and federal courts, said this most recent ruling is a critical one: "It further confirms that the Board is the primary forum in which locally-owned dealerships can seek protection of their substantial investments." Levin added: "The court's ruling also reinforced the Board's role of ensuring that the public can expect dependable and reliable sources for motor vehicle sales and services."

Under the direction of Mr. Levin and Mr. Kelly, Burke, Warren, MacKay & Serritella serves the needs of motor vehicle franchise owners in all phases of their businesses, including litigation, employment and labor, purchases and divestitures, as well as succession planning. Mr. Levin was supported in this latest case by Burke, Warren's Aaron Stanton and Jim Geoly. For more information, contact Ira Levin at ilevin@burkelaw.com / 312/840-7065 or Bill Kelly at wkelly@burkelaw.com / 312/840-7061. 



Ira Levin

Firm provides wireless Internet access

Clients and other visitors to the firm can now connect to the internet wirelessly within any conference room with the addition firm wireless internet access. The strength of the signal is focused in the conference rooms but guests may also be able to connect from surrounding areas.

Each conference room now includes a small display showing the "key" needed to connect. The connection key automatically changes every 30 days. "The new service was a part of a recent firm technology upgrade," says the firm's IT director, Greg Pocias. "We are happy to help visitors stay connected with their laptops and other mobile devices." 