

**Greenspoon Marder, P.A.**  
**Toll Free: (888) 491-1120**  
**www.gmlaw.com**

**Fort Lauderdale**  
 Trade Centre South., Suite 700  
 100 W. Cypress Creek Road  
 Ft. Laud. FL 33309-2140  
 Phone: (954) 491-1120  
 Fax: (954) 771-9264

**Orlando**  
 Capital Plaza I, Suite 500  
 201 East Pine Street  
 Orlando, Florida 32801  
 Phone: (407) 425-6559  
 Fax: (407) 422-6583

**West Palm Beach**  
 One Clearlake Centre  
 250 S. Australian Avenue, Suite 700  
 West Palm Beach, FL 33401  
 Phone: (561) 227-2370  
 Fax: (561) 653-3937

**Boca Raton**  
 One Boca Place  
 2255 Glades Road, Suite 414-E  
 Boca Raton, Florida 33431  
 Phone: (561) 994-2212  
 Fax: (561) 997-8494

**Aventura**  
 18851 NE 29 Avenue, Suite 406  
 Aventura, FL 33180  
 Phone: (305) 940-8440  
 Fax: (305) 935-4614

**Stuart**  
 850 N.W. Federal Highway, Suite 156  
 Stuart, FL 34994  
 Phone: (561) 227-2370  
 Fax: (561) 653-3937

## ATTORNEYS ON STAFF

### Commercial & Civil Litigation

Dariel J. Abrahamy  
 Mitchell D. Adler  
 William Berger  
 Jessica L. Berman  
 Rebecca Bratter  
 Amanda Chapman  
 Joanne Charles  
 Marc Cohen  
 Larry Corman  
 Heather Craig  
 Richard W. Epstein  
 Maurice M. Garcia  
 Brent D. Kimball  
 Victor S. Kline  
 Evan Klinek  
 Edmund Loos III  
 Michael Marder  
 Yueh-Mei Kim Nutter  
 Julie K. Oldehoff  
 Mireya L. Rivera  
 Kenneth A. Rubin  
 Kathryn G. Saft  
 Joel Shulman  
 Scott H. Silver  
 Sarah A. Slaughter  
 Elizabeth Tener

### Commercial & Transactional

**Real Estate Law**  
 Heidi Boyles  
 Donald P. Dufresne  
 Joseph S. Geller  
 Robert B. Jackson  
 Brent D. Kimball  
 William S. Kramer  
 David R. Lenox  
 Michael S. Ross  
 Reuben M. Schneider  
 Eric Tomchin  
 Frank Utset  
 David Weisman

### Corporate & Tax Law

Gregory J. Blodig  
 Ellen Gilmore

### Employment & Labor Law

Jessica L. Berman  
 Heather Craig  
 Haas A. Hatic  
 Myrna L. Maysonet  
 Joel Shulman  
 Peter R. Siegel  
 Elizabeth Tener

### Family Law

Patricia Alexander  
 William Berger  
 Richard H. Gaines  
 Yueh-Mei Kim Nutter  
 Mark Rabinowitz  
 Mireya L. Rivera

### Foreclosure & Bankruptcy

Chad Paiva  
 Evan Glasser  
 Marisol Morales  
 Chad Tamaroff

### Immigration Law

Larry Corman  
 Herschel Gavsie

### Personal Injury, Medical Malpractice & Product Liability

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 Kevin "Bo" Dennis  
 Jeffrey C. Fox  
 Neal Hirschfeld  
 Bradley Ross  
 Marc E. Schwartz  
 Mark L. Siedle  
 Kenneth J. Sobel  
 Michael A. Weiss

### Regulatory Compliance & Defense

Robby Birnbaum

### Resort Development & Condominium Law

Thomas F. Coyle, Jr.  
 Gerald Greenspoon  
 Leonard Lubart

### Tax, Trusts & Estate Planning

Laurence I. Blair  
 Alan B. Cohn  
 Gene K. Glasser  
 Alexandra M. Kandlehner  
 Brian Page

### Zoning, Land Use & Administrative Law

David (Dave) Aronberg  
 Steven A. Geller  
 Michael A. Rodriguez



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#### Real Estate



#### Trust and Estate Planning



#### Probate



#### Tax Law



#### Guardianships



#### Family Law



*By Senator Steven Geller, Esq.  
 Partner  
 Former Minority Leader, Florida Senate  
 Land Use and Zoning, Gaming*

The legislative session is shaping up to be a significant one, with lawmakers weighing in on key issues. Senator Steve Geller, partner at Greenspoon Marder, summarizes some of the industries and issues to keep an eye on this year.

**Banking** – Some of the key issues in the banking committees this year will focus around debt settlement and debt collectors. While there are some reputable companies which provide legitimate services, legislative committee members are concerned about the tactics used by some agencies.

With debt collectors, most of the abuses appear to be violations of existing state and federal laws and regulations. Therefore, we expect the focus to be on strengthening the enforcement mechanism of existing laws.

Legislators are also concerned about debt settlement agencies that collect large fees up front without guaranteed methods of delivery. Among the proposed legislation are bills which would require greater fee disclosure, prohibitions on advance payments and perhaps tiered fee structures. We expect that there will be exemptions for services provided by attorneys.

An additional issue for the banking industry in 2010 is funding. The Chief Financial Officer of the state has requested additional funding for more examiners in the banking and mortgage brokerage areas.

**Corporate/Employment** – The biggest issue is the amount of unemployment taxes being paid by

Florida's employers. As a result of increased unemployment rates, coupled with a decrease in the number of employers paying unemployment, the rates paid by employers to provide unemployment benefits have risen dramatically. The minimum fee was \$8.40 per employee per year. Now, it's \$100.30 per employee per year. The maximum rate is up from \$378 per employee per year to \$459 per employee per year. Groups representing employers are expected to try and do something about this, but it's not clear what. Florida already has among the lowest unemployment benefits in the nation.

**Gambling** – This is a controversial and wide open topic. The legislature will consider several proposals, from trying to eliminate existing gambling to keeping the status quo, and from expanding gambling for pari-mutuels to making South Florida the "Las Vegas Southeast."

**Real Estate** – One of the major issues is legislation pertaining to bulk purchases of condominiums. Currently, if a purchaser buys a certain percentage of units in a condo building, he or she becomes a "developer," per Florida statutes. This potentially subjects the purchaser to liability in a number of areas and affects voting rights. Some argue that this provision prevents bulk purchase of units, adversely affecting the marketability of units and ultimately inventory levels in a distressed market. If legislation does succeed in this area, it is unclear whether the exemption will be permanent or temporary.

The foreclosure process will also receive substantial attention. The legislature is expected to look at the mediation process to try and improve the success rate. Lawmakers will also consider expanding the rights of renters of units that are undergoing the foreclosure process, including more and better notification. This is legislation which

## 'IN SESSION' KEEPS YOU IN THE KNOW

In order to keep you informed about key legislative issues and the potential impact on Florida industries, Greenspoon Marder will provide a legislative update for each week that lawmakers are in session in Tallahassee. The e-newsletter "In Session" will provide a first-hand account of the legislative proceedings plus background and analysis from Marty Cassini, president of The Cassini Group, Inc., a Fort Lauderdale-based government relations firm. Mr. Cassini's reporting and analysis comes with experience in the Florida Senate, where he worked with lawmakers in creating and developing comprehensive public policy models including gambling, transportation, health care, tax, insurance and condominiums.

In order to provide both frequent and timely information, "In Session" will be available only in electronic form. If you have access to email and you would like to receive the e-updates, send an email to Jenna Eichenbaum at [jenna.eichenbaum@gmlaw.com](mailto:jenna.eichenbaum@gmlaw.com).



## DIFFICULT ECONOMY: PROTECT YOUR ASSETS



By Gene K. Glasser, Esq.  
Managing Shareholder  
Tax, Trusts and Estates

The subprime mortgage, difficult stock market, and the decrease in the value of real estate has caused many individuals and families severe economic problems. The monthly cash flow in carrying real estate properties can erode liquidity and net worth. Florida has long been known as a debtor's state. If a family or individual has significant liabilities, then certain exclusions unique to Florida law allow those assets to be exempted from execution by judgment creditors. In

addition, in the event of a bankruptcy, the Federal bankruptcy laws acknowledge and respect these exemptions. One major exemption relates to wages of the head of the family. Under Florida Statute 222.11, the earnings of a head of a family are exempt from the claims of creditors. The key to this exemption is to be a head of a family. Therefore, a single individual with no dependents would not qualify. However, if you have dependents or are supporting certain individuals and are classified as a head of a family, then all of the wages are exempt. The exemption has no dollar limit. By way of example, an individual can earn employment wages of \$200,000.00 a year and have a significant creditor, but the creditor cannot garnish the wages.

The major asset that is exempt from creditors in the State of Florida is Homestead. Under Article X Section 4 of the Constitution, the homestead property is exempt from forced sale. There is no dollar limit on the exemption. The exemption relates to an acreage limitation. A half acre inside a municipality and 160 acres outside a municipality are exempt from the claims of creditors. Florida homestead law has been well known over the years. Individuals in debt move to the State of Florida to avail themselves of this significant exemption. In the event the homestead is purchased or increases in value within a certain time frame of a bankruptcy, then there are certain complications. However, under state law, there is no such impediment.

Pursuant to Florida Statute 222.13, life insurance is exempt from creditors. Therefore, if an individual owns a significant life insurance policy with cash value, i.e., whole life, variable or universal, then a creditor cannot garnish the life insurance. Also, annuities are exempt from the claims of creditors. Pursuant to recent cases, private annuities come within the protection of the annuity statute. Therefore, if property is sold and the seller takes back a private annuity, then those payments may also be exempted from creditors. On the other hand, if a sale is made and the debtor takes back a promissory note, there is no such exemption.

Interests in pension plans, profit sharing plans, 401(k)'s and IRA's and other Federally exempted retirement plans are exempt from the claims of creditors. Certain plans enjoy the exemption both under the laws of the State of Florida as well as the Federal law. For example, a 401(k) plan is exempted under Florida Statute 222.21 and also under the ERISA laws because a qualified plan requires a spendthrift provision.

In addition to the foregoing exemptions, if one of the parties in a marriage has a liability, the assets owned by the spouse may not be subject to the claims of the debtor's spouse. By way of example, if the wife is driving an automobile that she owns and is in an accident, and a judgment is suffered against the wife, then the husband's assets would not be subject to the claims of the wife's creditors.

In these economic times there exists significant liabilities. Individuals will be prudent to consider asset protection. There are always uncertainties in life. Any protection which can be afforded should be utilized to protect the individual or family unit.

## GREENSPOON MARDER REVEALS 'SECRET WEAPON' IN ATTACK ON DISTRESSED REAL ESTATE MARKET



By Jeffrey H. Cannon  
Director of Real Estate  
Services

Greenspoon Marder is taking an unconventional approach to an unusual real estate market. The firm recently hired a Director of Real Estate Services to capitalize on real estate opportunities developing in the commercial and multi-family markets. Jeffrey H. Cannon, who has three decades of experience in real estate, banking and financial services, will utilize his varied experience and bank contacts to identify, analyze and present opportunities to clients of the firm.

"There's a home for every real estate asset," said Cannon. "We just need to find it. There are many instances where buyer and seller haven't met, or they're just not sure how to put together a lucrative deal. It's our job to come up with a strategic – even out-of-the-box – solution to benefit buyer and seller."

Cannon, who is not a lawyer, has an extensive, 27-year career in the commercial real estate, financial services and banking industries. He has served as executive vice president of commercial banking at CNL Bank in South Florida and executive vice president for commercial real estate for Regions/Union Planters Bank in the Broward and Palm Beach County markets. Prior to that, Cannon established and managed the residential construction lending department for SouthTrust Bank in South Florida and served as senior vice president responsible for commercial real estate lending for First Union and Barnett banks in Broward, Palm Beach and Lee counties.

## SHORT SALES AND BAILOUTS AND DEFAULTS - OH, MY! IS THE COMMERCIAL MARKET NEXT?



By David Weisman  
Partner  
Commercial Real Estate

The storefronts of almost every community are lined with signs advertising space for rent. Construction projects sit partially completed with either weeds or tall grass dotting the landscape. Signs advertising new buildings sit fading in the sun. The commercial real estate market is not in good shape.

The question is often asked if the commercial market will be as badly affected as the residential market, with as great a number of mortgage foreclosures, abandoned properties and general problems. While it is no secret that there are problems with the commercial market, it is unlikely that those problems will devolve to the degree of the residential market for several reasons.

First, commercial lending has been slightly saner during the time of rising prices. With the residential market, the biggest problem was that property owners were buying at top prices or were refinancing at top values based upon appraisals that were available to the residential lenders. The lenders relied upon what appeared to be sound valuations, but the market corrected itself and the values fell. Conversely, commercial appraisals are more conservative, more complex and take into account a variety of factors, such as the income generated by the property and the potential cost to reconstruct the property. Therefore, it was less likely that commercial loans based upon overvalued property would flood the market.

Secondly, commercial lenders tend to have a more direct relationship with their customers and typically are willing to work with customers at the early signs of trouble. In many cases, commercial lenders are entering into modification agreements extending the maturity of loans, particularly loans extended for the acquisition and development of new projects. These lenders recognize that the projects were not started or have not been completed with the diligence contemplated by the initial loan documents, because the developer was wise enough not to bring the product to market during this difficult time.

Finally, commercial lenders do not want to own the commercial properties. Because most commercial property owners will not abandon the property when there is difficulty, the lender has an opportunity to allow the owner additional time to rebuild his or her business or to market the property for sale, while allowing the owner to manage the assets. This way, the lender is not forced to employ personnel to maintain and manage the real estate while it is being marketed for sale.

Much has been written lately about looming maturities and the inability of projects to be refinanced. The attitude of most lenders who are willing to extend maturities should soften this perceived crisis.

Probably the most at risk segment of the commercial lending market is related to the residential crisis. This segment consists of those lenders who were aggressively lending to homebuilders, condominium developers, and condominium converters. These loans were structured to be short-term while the property was acquired, built or fixed up and re-sold at a rapid rate. Very often, these loans are designed to be repaid within 18-24 months. The inability of the developer to sell the units results in the inability to pay the loan.

With the exception of these distressed properties, it does not appear that prices have been slashed to record lows or that sellers are accepting the first offer that comes along. There are still buyers with cash who are hunting for bargains, but it does not appear that the normal commercial properties are being sold at bargain basement prices.

As credit loosens up and money is more available for commercial lending, activity will pick up, property will change hands, and dormant projects will awaken. With everyone having been burned a little bit, it is likely that everyone in every segment of the market will tread lightly.

## LEGAL ACCOLADES

The *South Florida Legal Guide* has named Greenspoon Marder as one of the "Top Law Firms" of 2010. Based on a peer review procedure, the publication has also named several of the firm's attorneys as "Top Lawyers" and "Top Up and Comers" in their practice areas.

### TOP LAWYERS:

**Mitchell D. Adler** - Commercial and Business Litigation  
**Laurence I. Blair** - Tax, Trusts and Estates  
**Richard W. Epstein** - Civil Litigation, Commercial and Business Litigation  
**Maurice "Manny" Garcia** - Civil Litigation  
**Gene K. Glasser** - Tax, Trusts and Estates  
**Gerald Greenspoon** - Hotels and Resorts  
**Neal W. Hirschfeld** - Plaintiff's Personal Injury and Wrongful Death

**William Kramer** - Corporate and Business, Real Estate  
**Leonard Lubart** - Real Estate  
**Michael S. Ross** - Real Estate  
**Peter R. Siegel** - Labor and Employment, Commercial and Business Litigation  
**Kenneth J. Sobel** - Plaintiff's Personal Injury and Wrongful Death

### TOP UP AND COMERS:

**David A. Aronberg** - Government, Litigation  
**Robby H. Birnbaum** - Commercial Litigation  
**Richard H. Gaines** - Commercial and Construction Litigation