

# Senior Lawyers

The newsletter of the Illinois State Bar Association's Senior Lawyers Section

## A few words from the Chair

BY FRANK V. ARIANO

**One comment often heard from seniors is how fast time seems to accelerate as we age.** Well, that certainly applies to my privilege to serve as Chair of the Senior Lawyers Section Council. As you read this newsletter issue, the current year of this Section Council is concluding, even if it seems to me that it just began. That said, it was a busy year with significant accomplishments, thanks to the hard work of the Senior Lawyers Section Council

members.

As reported in the last issue, our basic technology CLE program was very highly praised by all attendees, who made it clear that another workshop is both wanted and needed. In response, our Technology Committee is in the process of planning a more advanced program for next fall. We will keep the emphasis, however, on basic computer, smart phone, tablet and

*Continued on next page*

## Request for volunteers to serve as receiver of a law practice

**The ARDC is seeking volunteer attorneys** who would be willing to serve as court-appointed receiver of a law practice of a deceased or disabled attorney. A receivership is governed by Supreme Court Rule 776 and arises when a lawyer has died, become disabled or abandons the law practice, and no partner, associate or executor is available to close the practice.

The ARDC will assist such volunteers and provide them with some insights based on the Administrator's experience serving as court-appointed receiver, and we can share some sample pleadings and forms.

Serving as a receiver is an important pro bono service because clients are quite vulnerable if no one is available to review

files and notify courts and opposing attorneys of the unavailability of the attorney. Acting as a volunteer receiver is an opportunity to serve the Bar and to aid in the administration of justice.

Attorneys interested in this volunteer opportunity should contact John Cesario at the Chicago office of the ARDC, 130 E. Randolph St., Suite 1500, Chicago, IL 60601; Telephone (312) 565-2600; Email: [jcesario@iardc.org](mailto:jcesario@iardc.org). ■

**If you're getting this newsletter by postal mail and would prefer electronic delivery, just send an e-mail to Ann Boucher at [aboucher@isba.org](mailto:aboucher@isba.org)**

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related technology for the more “seasoned” practitioner who has spent a large part of his or her practice without the training and experience benefitting younger lawyers. In my opinion, one of the greatest challenges to senior lawyers who want to continue to practice is dealing with electronic filing, email communication, document preparation and storage, electronic research, social media, etc., along with all of the technology, ethical and security issues inherent with that. I am certain that our Council, under the leadership of incoming Chair Tim Howard, will continue its efforts to assist those who no longer have the “luxury” of leaving the use of technology in the practice to younger members of the Bar.

In addition to the technology seminar, our Council offered a “Winding Down” of the practice program in April which had one of the largest live presentation audiences in current CLE history. A special thanks to Council members (and past ISBA presidents) John O’Brien and Leonard Amari, who planned, organized and presented the well received program. In addition, many of the attendees enjoyed a post seminar social hour, hosted by the ISBA Mutual Ins. Co. at its new offices in the 20 S. Clark St. building. Another special thanks to the Mutual for its greatly appreciated sponsorship, in addition to all of its other significant contributions to the ISBA.

Since this is the 10th year of the Senior Lawyers Section Council (which I am told was originally formed as an ISBA Committee), it is particularly rewarding to see the growth in popularity of the CLE programs, the listserv and our newsletter, not only by our over 12,500 section members, but by many others in the ISBA. I personally am glad to see that the ISBA and its leadership not only value “seasoned” members, but encourage continued significant participation by a group with vast education and experience who are happy, even anxious, to share the benefits of all that hard-earned knowledge with younger members of the profession. While the average age of our section membership

is likely higher than that of most of the other sections, I can assure you that the energy and professional dedication is alive and well!

Enough of my reflections on the past year; you need to get on to the excellent articles in this issue. Among them is a useful description of an application to deal with unsolicited cell phone calls by Don Mateer; an article on “tailoring” advanced directives by Mike Maslanka; another great book review, this time of ‘Red Sparrow’ by Gary Rafool; and a “primer” on exemptions for real estate taxes by Leonard Amari. We are also pleased to include an announcement of a volunteer opportunity by the ARDC and a book review of a wonderfully practical real estate “manual”. Finally, we are saddened to note the passing of Toby Barry, an accomplished lawyer and jurist, known to many of us.

I would like to thank all of this year’s contributors to our newsletters for their useful and frequently entertaining articles.

Finally, I thank all of our Committee chairs and members for their efforts on behalf of the Council and the Senior Lawyers Section. As I said in my opening newsletter column last October (sure seems like last month!), working with this Section Council’s membership is truly rewarding. Looking around the room at our meetings is like looking at a history of the ISBA leadership (at least in “modern times”). It has been a true honor to work with those who have literally shaped and directed the ISBA since I have been a member (over 45 years). I leave you with the sincere hope that you will continue to remain an active and contributing member of the ISBA and its important role in the practice of law. There is little more consequential to society than the law, and the role therein played by our profession. Our participation is a privilege which requires that we continue to serve as long as we effectively can. We can and should also have fun, which reminds me that I need to stop reminiscing and do a FaceTime call with my grandkids! Thank you. ■

## Senior Lawyers

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# Remembering Justice Tobias “Toby” Barry

BY LEONARD F. AMARI

**The Illinois legal community lost a true giant, everyone’s pal, Justice Tobias “Toby” Barry.** He was a friend to so many, one of the truly good guys, and one of the most respected lawyers and jurists over the last 50+ years.

Justice Tobias “Toby” Barry, 92, of Ladd, passed away peacefully on Tuesday, April 4, 2017, at the Illinois Valley Veterans Home in LaSalle, surrounded by loved ones.

Toby was born April 12, 1924, in Chicago, to Tobias Sr. and Mary (Castignari) Barry. He graduated from Ladd Grade School, St. Bede Academy, LPO Junior College, Marquette University and the University of Notre Dame Law School. He interrupted his studies at Marquette University to serve his country in the U.S. Navy during World War II, from 1943 to 1946, as a combat medic. Following his service in the Navy, he returned to Marquette University to complete his undergraduate degree in philosophy. In 1952, he earned a Juris Doctorate degree

from Notre Dame Law School, and began his legal career, which spanned more than 50 years.

While practicing law, Toby was elected to the State of Illinois House of Representatives in 1960, filling the seat previously held by his father, Tobias Barry Sr., following his father’s untimely death. Toby continued to serve as a state representative for 14 years. In 1974, he was elected to the Third District Appellate Court, becoming Justice Barry. He was retained by the voters in 1984 and continued to serve on that court for 20 years, until his retirement in 1994. He was subsequently reappointed by special order of the Illinois Supreme Court to serve again on the Third District Appellate Court from 2002 to 2004. He was also appointed by special order of the Illinois Supreme Court to serve on its Worker’s Compensation Division for many years.

Toby was a founding member of the “Illinois Lawyers’ Assistance Program,”

a program that assists Illinois judges and attorneys who struggle with alcohol abuse, drug dependency and mental health issues.

Toby is survived by his wife, Jan Barry, of Ladd; three sons, Mark Barry, Patrick (Mary Jo) Barry and Dan (Sue Preston) Barry; one daughter, Michele (Gilbert) Barattini; and seven grandchildren, Bianca, Grazio, Bruno and Emma Barattini, Colin Barry, and Owen and Keller Barry. He also leaves behind a host of friends and colleagues who played very important roles in his life.

One of the kindest things one can say about this great man, this truly beloved individual, this greatly respected and admired lawyer and jurist, is that no one ever said a bad word about Toby, or ever heard a disparaging remark or comment about Toby. He was a leading lawyer in his community of Ladd, in fact throughout the state of Illinois. He was a most respected and esteemed jurist and community leader. Toby will be greatly missed. ■

## Powers of attorney, living wills, advance directives and religion

BY MICHAEL J. MASLANKA

**When preparing such estate planning documents for clients,** it is imperative that the attorney inform the client that what these documents say and do can be tailored to the client’s personal needs, wishes, desires and directions. In that regard, the client must know that she or he can include directions to the agent and service providers, to make decisions and act in ways that do not offend or contradict the religious principles and beliefs of the

client. I recently reviewed a Health Care Proxy form and an Advance Medical Directive form that the Roman Catholic Church approved. Those estate planning documents look similar to generic powers of attorney and living wills, but also contain clear and specific references to religious doctrine and publications, which the client can direct the agent to follow. Other religious denominations may have their own suggested or recommended language

to consider.

Providing this type of information to the client can certainly aid the client in choosing the client’s agent, and also show how detailed the client can be in creating estate planning documents. The client will likely appreciate the explanation that personal preferences and wishes can be honored and incorporated into these types of documents. ■

# Book review: *Getting Started as a Real Estate Attorney*, by Joseph R. Fortunato

BY LEONARD F. AMARI

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**A small, tight little book crossed my desk the other day that truly amazed me.**

Frankly, I didn't know how or why I found this book on my desk that morning, but I was so impressed with it that I want to tell every young lawyer I know, every lawyer in transition, any one of us who wants to know what a "real estate lawyer" is and how he or she goes about doing it: Get this book. I've known Joe for over 40 years and know the esteem in which he is held in the Illinois legal community. I am not surprised at the quality of this "manual."

This 130-page volume contains "everything-one-could-possibly-want-to-know" about practicing in the real estate transaction field, written by a recognized authority.

Joe leaves little to the imagination. He even covers matters you might not think important but which are indispensable if you want a true picture of what a "real estate attorney" is and does. Demonstrating the practicality of this book, I include here an excerpt from Chapter 3 "Why would I want to do this work? Why not?"

On the plus side, transactional practice allows the attorney to practice law in a less formal setting. Court visits are rare. Casual dress is permissible (although I believe that the level of professionalism in real estate closings suffers when lawyers fail to dress for business). The lawyer often can set his or her own schedule. Client contact is maintained primarily by telephone or via e-mail or text. Elaborate and expensive office space is unnecessary. Office space in the pricier downtown locations can be relinquished in favor of less expensive space in neighborhood or suburban locations where the majority

of the residential clients and properties that the attorney will handle are located.

Many lawyers who have family responsibilities and therefore want to restrict the number of hours devoted to work each week can still maintain a transactional practice, albeit on a limited scale. This work can be seen as an alternative to abandoning the practice of law altogether, due to the extreme demands of a litigation practice on one's time and quality of life.

Much of the work required of the attorney can be standardized and compartmentalized, lessening the level of stress associated with the handling of unfamiliar matters. Communication by e-mail or facsimile can be accomplished by the lawyer without the assistance of staff... Much of the documentation and written communication is form-driven, especially with regard to standardized correspondence, closing documents, closing statements, powers of attorney, contracts, leases, etc.

Recognizing how practical, insightful and helpful the book was prompted me to write this book review. I suggest it as an excellent resource for those who receive the ISBA Young Lawyer's Section Council and Real Estate Section Council newsletters.

Author Fortunato suggests how to begin: Chapter 4's "Sources of Business: Where Should I Begin?" He talks about the early need for training and where to get it (real estate committees of the various national, statewide and local bar associations, by name.) He explains how

that initial approach is also the forerunner of marketing in this area: the networking opportunities with other lawyers in this field. He suggests contacting a firm with this concentration and perhaps an overflow of real estate business transactions. It is in these contacts that you may find a mentor, a seasoned real estate practitioner.

There are chapters dealing with "Becoming Familiar with Contracts" (5), "The Listing Contract" (6), "The Residential Real Estate Sales Contract" (7). There are chapters dealing with the closing (10), The Consumer Financial Protection Bureau (11), and The Interplay of Real Estate Law with other areas of law (12).

Joe even provides 6 appendixes on such subjects as the CFPB Three-Day Closing Disclosure Rule (Appendix 3), the ALTA Combined Settlement Statement (Appendix 4), the Residential Real Property Disclosure Report and Salient Provisions of the Disclosure Act (Appendix 5) and more.

Joe's chapter 13, "Marketing and Mentoring," is a must read for every lawyer; his intelligent perspectives and insightful suggestions are especially useful for a lawyer in transition or a new or newish lawyer

As a real estate transactional attorney myself, I was most impressed with the quality and utilitarian application of this book.

I asked my career pal Joe Fortunato what was his motivation for writing this outstanding practical publication. He responded:

I hoped to be able to compile in one place all the ideas I had about handling residential transactions, and handling them correctly. I hoped to share my passion for the work, and how important it is to individuals whom we represent. I wanted to enhance the profession by suggesting to transactional



practitioners that they are professionals, just as litigators are. In order to do the job correctly it is necessary to study other areas of the law, to go beyond the basics, to maintain the position as trusted advisor that many lawyers have ceded to real estate

brokers. Finally, just as a certain young law student at The John Marshall Law School compiled and disseminated for the use of his peers a set of notes on Property Law as taught by the late professor Edward Brodkey, I wanted to provide useful


information for my peers to use, whether they were experienced practitioners or simply freshly minted attorneys.

[Author's Note: The ABA sells this publication at [www.shopABA.org](http://www.shopABA.org).] ■

## Bothered by unsolicited calls on your mobile phone?

BY DON MATEER

**I have the app for you.** It is called Hiya and it is free. Whenever you get an unsolicited call, you can find out who called you without answering the call. Let it ring and then enter the phone number into Hiya. It will tell you who called you and whether it is spam. If it is spam, the screen turns red and there are comments from people identifying the type of spam and the pitch. Then, you can proceed to block the number knowing it was spam. This proves helpful for all unknown numbers. I awoke one morning with a message that I received a call at 3:32am. I checked the number through Hiya and found out it was from the ER of a local hospital. No need to block that number; it was just dialed in error. On another occasion, I was about to block a number I did not recognize and then thought it would be best to check Hiya first. It turns out the number was from the pharmacy that fills my prescriptions. As you can see, this app is not only useful for identifying spam but also beneficial for identifying legitimate calls. ■



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# Book review: *Red Sparrow* by Jason Matthews

BY GARY T. RAFOOL

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**I think a change of pace is in order** after the gloom and doom content of my last book review concerning a possible cyber attack against the continental United States' electrical grids.

While I do not think you will need to check with your doctor as to whether or not your heart is healthy enough to read this book, I want to give you a heads up that there is a lot of sex in this book.

Just in case you are now wondering, the book I have chosen for this review is a spy novel written in 2013 by Jason Matthews titled *Red Sparrow*. It is available in soft cover (547 pages) and electronically.

The author was a CIA field operative for 33 years before retiring, and he appears to be using much of his CIA experiences as material for this book.

The book's title refers to a special secret Russian training school for smart, young and attractive Russian women. They are taught the art of seduction and how to use sex and blackmail to obtain highly classified information from foreign diplomats and military personnel. According to the author, this school is called "Sparrow School," and it is considered a Russian intelligence academy or AVR.

The author also makes a brief reference to an equivalent school for smart, young and attractive Russian men called "Raven School," where young men are trained to use their charm and talents to seduce neglected or unappreciated diplomats' wives and secretaries (both male and female) to obtain classified information.

The main characters in the book are Nathan (Nate) Nash, a young CIA field operative, and Dominika Egorova, a former Russian ballerina training to become an agent of the SVR (the successor of the KGB).

Nate has been handling a high-ranking

Russian general, who has been a U.S. spy in the Kremlin for the past 14 years. This general was considered to be Nate's asset, and his code name was "Marble."

Dominika's test or initiation for Sparrow School was seducing a wealthy protagonist of President Putin. However, unbeknown to Dominika, this man was to be garroted while having sex with her.

Upon completing Sparrow School, Dominika's first assignment is to become very close to and intimate with Nate in an effort to entice him into divulging the identity of Marble.

To add a little complication to the story, the CIA wants Nate to use his charms, etc. to recruit Dominika into becoming a CIA spy to replace Marble in case he gets caught or decides to retire.

The book moves its characters into and around various locations, including Moscow, Helsinki, Athens, Rome, New York and Washington.

Also, President Putin makes several appearances in the book, one in which he is, of course, shirtless.

21<sup>st</sup> Century spying is portrayed in the book as countries honoring, for the most part, an unwritten agreement that one country will no longer kill or torture another country's apprehended spies in order for its apprehended spies not to be killed or tortured by that other country.

Thus, if one of two spying country's agent or spy is arrested, he/she will either be deported immediately, or, depending upon his/her rank and value, detained for use as a later bargaining chip to exchange for someone being held by the other country. I think an early example of this procedure was portrayed in the 2015 movie "A Bridge Of Spies" involving the exchange of Russian spy Rudolf Abel for U-2 pilot Francis Gary Powers in the 1960s.

There is supposed CIA slang used by the

author in this book, such as Feebs for the FBI, an L-Pill for a hidden poison needle in a ballpoint pen, Dead Drop, Running a Canary Trap, a Trap Door Team, and a Reverse Fish Hook Pattern, to name a few. There was even an older civilian couple known as "Archie and Veronica" used very inconspicuously to make sure Nate was not followed to several of his meetings with Marble or Dominika.

I found it rather interesting in this book that, in each of its chapters, when there was a meeting or negotiation over a meal or drinks, the recipe for the particular food being eaten or the drink imbibed was given at the end of the chapter.

Finally, there is a procedure detailed in the book for making a spy exchange on a bridge over a river between Russia and Estonia. This description went into the protocol of how to walk across the bridge and pass the person for whom you are being exchanged. ■

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## July

**Thursday, 07-06-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Tuesday, 07-11-17 Webinar—**Word for Mac. Practice Toolbox Series. 12:00 -1:00 p.m.

**Thursday, 07-13-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 07-20-17 - Webinar—**  
Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Tuesday, 07-25-17 Webinar—**Illinois E-filing and PDF. Practice Toolbox Series. 12:00 -1:00 p.m.

## August

**Thursday, 08-03-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 08-10-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 08-17-17 - Webinar—**  
Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

## September

**Thursday, 09-07-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday and Friday 09-7 & 8, 2017 – Chicago, ISBA Regional Office—**  
ISBA Guardian Ad Litem and Child Representative Training. Presented by Family Law.

**Friday, 09-08-17 – Lincoln Heritage Museum, Lincoln, IL—**1st Annual Lawyer Lincoln's Legacy: Lessons for Today. 9 a.m.-4:30 p.m.

**Wednesday, 09-13-17 – LIVE Webcast—**Sexual Orientation Protected as Sex Discrimination Under Title VII: Hively V. Ivy Tech Community College 15-1720 7th Cir. April 4, 2017. 12-2 pm.

**Thursday, 09-14-17 – LIVE Webcast—**  
Environmental Due Diligence in the Era of President Trump: Revisiting Caveat Emptor, the Role of Government, Tort Liability and Statutory Environmental Cleanup Liability under State and Federal Law. Presented by Real Estate. 12-1 p.m.

**Thursday, 09-14-17 - Webinar—**  
Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 09-15-17 – Fairview Heights, Four Points by Sheraton—**Solo and Small Firm Practice Institute. All Day.

**Wednesday, 09-20-17 – LIVE Webcast—** Construction Escrow, Lien Waivers and Sworn Statements: Best Practices. Presented by Construction Law. 12-1 p.m.

**Thursday, 09-21-17 - Webinar—**  
Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm

**Wednesday, 09-27-17 – LIVE Webcast Webinar—**HIPAA and How It Applies To YOU. Presented by Employee Benefits. 12-1 p.m.

**Thursday, 09-28-17 – LIVE Webcast—**  
How Secure Are you? Cyber for the Illinois Practitioner. Presented by Insurance Law. 12-2:15 p.m.

## October

**Wednesday, 10-04-17 LIVE Webcast—**  
Issues to Recognize and Resolve When Dealing With Clients of Diminished Capacity. Presented by Business Advice and Financial Planning. 12-2 pm.

**Thursday, 10-05-17 - Webinar—**  
Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 10-06-17 – Holiday Inn and Suites, East Peoria—**Fall 2017 Beginner & Advanced DUI and Traffic Program. Presented by Traffic Law. Time: 8:55 am – 4:30 pm.

**Friday, 10-06-17 – Chicago, ISBA Regional Office—**Pathways to Becoming Corporate General Counsel and the Issues You Will Face. Presented by Corporate Law. Time: 9:00 am – 12:30 pm

**Monday, 10-09-17 – Chicago, ISBA Regional Office—**Workers' Compensation Update – Fall 2017. Presented by Workers' Compensation. Time: 9:00 am – 4:00 pm.



**Monday, 10-09-17 – Fairview Heights**—Workers’ Compensation Update – Fall 2017. Presented by Workers’ Compensation. Time: 9:00 am – 4:00 pm.

**Thursday, 10-12-17 - Webinar**—Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Monday-Friday, 10-16 to 20, 2017 – Chicago, ISBA Regional Office**—40 Hour Mediation/Arbitration Training Master Series. Master Series

**Thursday, 10-19-17 - Webinar**—Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 10-27-17 – Chicago, ISBA Regional Office**—Solo and Small Firm Practice Institute. All Day.

## November

**Wednesday, 11-01-17 – ISBA Chicago Regional Office**—Anatomy of a Medical Negligence Trial. Presented by Tort Law. All Day.

**Thursday, 11-03-17 - Webinar**—Introduction to Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Thursday, 11-09-17 - Webinar**—Advanced Tips for Enhances Legal Research on Fastcase. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

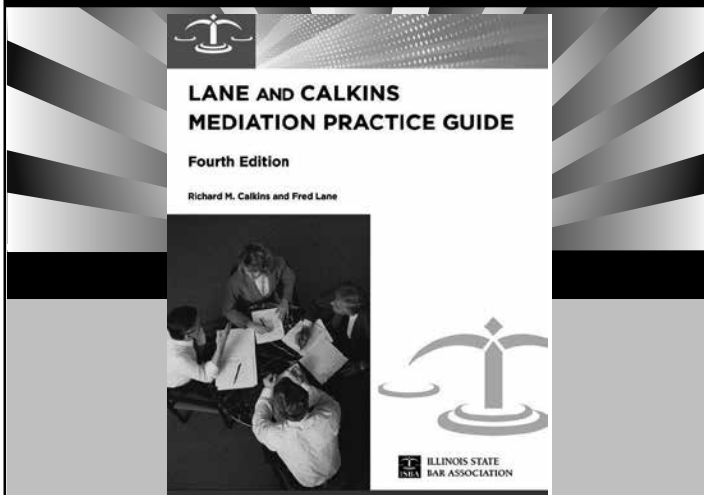
**Friday, 11-10-17 – Chicago, ISBA Regional Office**—Profession Under Pressure; Stress in the Legal Profession and Ways to Cope. Presented by Civil Practice and Procedure. 8:15 am-4:45 pm.

**Thursday, 11-16-17 - Webinar**—Fastcase Boolean (Keyword) Searches for Lawyers. Presented by the Illinois State Bar Association – Complimentary to ISBA Members only. 12:00-1:00 pm.

**Friday, 11-17-17 – Webcast**—Obtaining and Using Social Media Evidence at Trial. Presented by Young Lawyers Division. 12:00-1:30 pm.

**Tuesday, 11-28-17 - Webcast**—Ethics Questions: Multi-Party Representation – Conflicts of Interest, Joint Representation and Privilege. Presented by Labor and Employment. 2:00-4:00 pm. ■

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## Real estate tax exemptions in Illinois: A primer

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from property taxes simply because of their federal tax-exempt status, and that assumption is mistaken. Charitable status granted by another governmental body, for example 501 (c)(3) status, is not in itself determinative.

Once the organization passes the charitable ownership prong, it then must demonstrate the property is exclusively used for charitable purposes and not leased or otherwise used with a view to profit. In analyzing charitable use, Illinois courts look to six characteristics, to be applied on a case-by-case basis, in determining whether a property is used for a charitable purpose. These characteristics were set forth in the Illinois case of *Methodist Old Peoples Home v. Korzen*, 39 Ill. 2d 149 (1968). The following 'Korzen factors' are not by themselves determinative, but they are a guide that local Boards of Review and the IDOR look to when analyzing exemption applications submitted by charitable organizations:

- (1) The organization bestows benefits on an indefinite number of people for their general welfare, or the benefits in some way reduce the burden on the government;
- (2) The organization has no capital, capital stock or shareholders, and earns no profits or dividends;
- (3) The organization derives its funds mainly from public and private charity and holds them in trust for the objects;
- (4) The organization dispenses charity to all who need and apply for it;
- (5) The organization does not appear to place any obstacles in the way of people seeking the charitable benefits; and
- (6) The exclusive, primary

use of the property is for charitable purposes.

### Religious Use

The Property Tax Code provides that property used exclusively for religious purposes will qualify for exemption as long as it is not used with a view to profit (35 ILCS 200/15-40(a)). In this context, the term "exclusively" refers to the primary purpose for which the property is used. This section of the Property Tax Code applies to property owned by religious institutions and used in furtherance of the religious institutions' functions or services, including churches, religious schools, orphanages, convents and, in applicable situations, housing facilities for religious officials and their families (35 ILCS 200/15-40(b)).

If property used for religious purposes is determined to be operating with a view to profit, that use destroys any eligibility for property tax exemption. For example, if a property owner intends to earn a profit resulting from its religious activities, or by leasing the property, then that property is not eligible for property tax exemption.

### Educational Purposes

Schools that own and use property exclusively for "educational" purposes and not leased or otherwise used with a view to profit are also eligible for property tax exemption pursuant to the Property Tax Code (35 ILCS 200/15-35). In defining "school," the Illinois Supreme Court stated that two qualities are necessary to qualify a private institution for property tax exemption as a school. First, a course of study needs to exist which fits into the general scheme of education funded by the State and supported by public taxation. Second, there needs to be a course of study which substantially lessens what would otherwise be a governmental function and obligation. *Coyne Electrical School v. Paschen*, 12 Ill. 2d 387 (1957).

Property owned by schools incidental to the operation of the school is also

considered exempt under this statute, including but not limited to student residence halls, dormitories, and other housing facilities for students and their spouses and children. Additionally exempt are staff housing facilities and school-owned and operated dormitory or residence halls occupied in part or entirely by students belonging to fraternities, sororities or other campus organizations (35 ILCS 200/15-35(b)).

### Governmental Ownership

The Property Tax Code states that "all property of the United States is exempt, except such property as the United States has permitted or may permit to be taxed" (35 ILCS 200/15-50). In other words, United States property is exempt from state and local taxation under the Supremacy Clause of Article 6 of the United States Constitution, which generally prohibits state taxation or regulation that would impair or interfere with a federal instrumentality (IICLE, Real Estate Taxation, Section IV(A)(I)(I) .33 United States Property (2016)). Additionally, the Property Tax Code provides that all property belonging to the State of Illinois is exempt (35 ILCS 200/15-55).

### Exemption Application Process

Once you know what type of organization you are representing and the exact category of real estate tax exemption your client is seeking, the application is filed through an administrative filing process. The application process begins with filing an application with your local County Board of Review containing all of the required materials. The application is then reviewed by the Board of Review and a recommendation is made to the IDOR as to whether the property should be granted property tax exemption. The IDOR does not need to follow the Board of Review's recommendation and conducts its own analysis of the application. If the application and accompanying documentation sufficiently establish the applicant

organization's qualification for exemption, it should be approved. However, if the application is denied by the IDOR, the applicant organization must proceed with administrative appeal and, potentially, a subsequent court appeal.

Once a real estate tax exemption is successfully obtained, exempt organizations must file annual affidavits with their local County Assessor's offices by a specific deadline in order for their exemptions to continue. The exempt ownership and use of the property must remain unchanged.

## Conclusion

The reader is asked to please recognize that this article is just a primer on the subject of real estate tax exemptions in Illinois. Obviously, there are very complicated issues that can arise. For example, a church that may be exempt could lease out its parking lot for profit to a restaurant in the area for parking in the evening, or perhaps its basement for profit for after-school care, or weekend bingo. This begs the question: what happens to the exemption — should they lose it, either

partially or completely? Of course, other questions in all the areas of exemption from real estate taxes could arise. The goal of this article is to provide the reader with a basic understanding. ■

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# Real estate tax exemptions in Illinois: A primer

BY LEONARD F. AMARI & VESNA MARUSIC

## Introduction

**The subject of real estate tax exemptions has been in the news lately,** particularly the property of hospitals which were not previously required to pay real estate taxes. The issue, whether hospitals are truly charitable and therefore exempt from real estate taxes, was just recently before our Illinois Supreme Court. They remanded the case for the determination of a penultimate issue, before reviewing and deciding the dispositive issue. This caused me, as a practitioner exclusively in the ad valorem real estate field, to realize that this area of real estate taxation is not one with which most attorneys are familiar. I'm pretty sure this area, in fact real estate taxation generally, is not taught in our Illinois law schools. For that reason,

we offer here a very basic primer for the Illinois State Bar Association Senior Lawyers Section Council newsletter on the subject of real estate tax exemptions in Illinois.

In general, all real property in Illinois is taxable and subject to assessment by local assessing authorities. Exceptions to this general principle are made for certain categories of property which qualify for property tax exemption. Certain entities are eligible for property tax exemptions under Illinois law, such as charitable, religious, educational and governmental entities. While these organizations initially submit exemption applications with their local County Boards of Review ("Board of Review"), it is the Illinois Department of Revenue ("IDOR") which ultimately approves and monitors such exemptions

on a case-by-case basis. Following is a basic overview on property tax exemptions, in particular exemptions based on charitable, religious, educational and governmental ownership and/or use.

## Charitable Ownership & Use

Pursuant to the Property Tax Code, in order for a charitable organization to qualify for a property tax exemption, it must demonstrate that the property is *both* (1) owned by a charitable organization; and (2) that it is exclusively used for charitable purposes (35 ILCS 200/15-65(a)). The burden of proof is on the applicant and both prongs have to be met in order to succeed in an application for property tax exemption. Many organizations assume that they should be exempt

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