

# IMPACT

## BUILDING & REALTY NEWS

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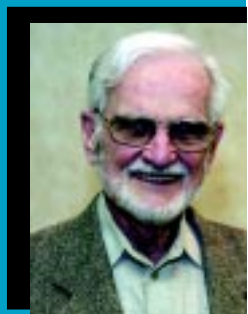
### THE HANLEY REPORT



#### Another Spring Has Quickly Come Around!

By JEFF HANLEY  
see page 2

### CO-OP CONDO CORNER



#### Think of "The Whole Deal"—It's The Only Way to Go!

By HERB ROSE  
see page 2



#### Reviewing Access to a Co-op's or Condo's Books and Records

By KENNETH J. FINGER, CARL L. FINGER  
and DANIEL S. FINGER  
see page 5

## NAHB Economist: A "Mild Recession" Exists

By Jeff Hanley, IMPACT Editor

WASHINGTON, D.C.—The deepening slump in the nation's housing markets has seriously eroded consumer sentiment and pushed the economy into a mild recession.

David Seiders, chief economist for the National Association of Home Builders (NAHB), issued that recent assessment in a report from the association.

"The worse than anticipated housing downturn, combined with a systematic weakening of the labor market and rapidly rising energy and food prices has taken a heavy toll on American consumers," he said.

"It's now clear that we have entered what we anticipate will be a mild recession, running through the first half of this year, and there are substantial downside risks to this economic scenario."

### Needed Action

Seiders stressed that, to guard against a longer and deeper downturn, Congress should take immediate steps to stimulate the economy through actions specifically targeted at improving the ailing housing market.

Those actions, he said, include a temporary home buyer tax credit, modernization of the Federal Housing Administration and oversight reform for the housing-related government sponsored enterprises.

"Stopping the downward trend in housing prices is a key to bolstering consumer confidence, as well as mortgage credit quality, and a temporary home buyer tax credit is the best way to do that," Seiders said.

The report noted that, due to the ongoing erosion in the housing finance markets and buyer demand, Seiders has adjusted NAHB's official housing forecast to indicate continuing downward movement in housing starts through the end of 2008. That movement, he said, will push the decline for the year to 30 percent.

A month ago, the report added, Seiders expected housing starts to bottom out in the third quarter, with a 27 percent decline for 2008.

"This change in our forecast indicates that, barring immediate action by Congress to stimulate housing and the economy, the housing sector will continue to be a serious drag on economic growth

*Continued on page 3*

## AOAC Continues to Prepare for The Upcoming "Guidelines Season"

By Jeff Hanley, IMPACT Editor

WHITE PLAINS – The Apartment Owners Advisory Council (AOAC) is continuing its preparations for the realty industry's testimony on rent guideline increases for rental apartment buildings affected by the Emergency Tenant Protection Act (ETPA).

The AOAC sponsored an Apr. 24 membership meeting as "a strategy session" that allowed members to voice their input on how the realty industry should prepare for the upcoming public

hearings and deliberations of the Westchester County Rent Guidelines Board.

The dates of the board's public hearings are June 10 (Mount Vernon); June 11 (Yonkers); and June 17 (White Plains). The locations and times of the hearings have not been announced.

The board's deliberations in White Plains are scheduled for June 19 and June 26 (if necessary). The times and

locations have yet to be determined.

### A Chance to Participate

"Members who wanted to voice suggestions on how we should prepare for the realty industry's testimony before the guidelines board had the chance to do just that at our Apr. 24 meeting," said Jerry Houlihan, AOAC chairman.

"And, of course, we will continue to

*Continued on page 3*

## Industry Meeting to Examine Energy Issues

By Jeff Hanley, IMPACT Editor

WHITE PLAINS—"The Region's Energy Needs, Part One!" is the topic of the May 8 General Membership Meeting of the Building and Realty Institute (BRI), association officials announced last week.

The meeting, scheduled for a 6:30 p.m. start, will be at the Crowne Plaza Hotel in White Plains.

Froydis Cameron of Shell Oil Corporation will be one of the featured speakers, BRI officials said. Cameron will give a presentation on the proposed Broadwater LNG (Liquid Natural Gas) project that involves Long Island Sound. The project was originally designed to augment the region's energy

*Continued on page 3*



**ADDRESSING KEY ISSUES** – The Mar. 13 General Membership Meeting of the Building and Realty Institute (BRI) addressed tax and marketing issues for businesses. Pictured at the conference are, first row, from left to right, Ken Nilsen, president, BRI; Suzanne Cortese, BRI member and speaker; and Andrea Wagner, BRI member and speaker. Pictured in the second row, from left to right, are Ken Finger, chief counsel, BRI; Albert Annunziata, executive director, BRI; Michael Dardano, BRI member and speaker; and Joseph Insalaco (speaker), 1031 Investment Services LLC. More than 60 building and realty industry members attended the program at the Crowne Plaza Hotel in White Plains.

Photo by Barbara Hansen

## CO-OP CONDO CORNER

BY HERB ROSE



NEW YORK—Samantha J. recently closed on an attractive, one-bedroom apartment on the upper West Side of Manhattan that she had purchased from an estate.

Her motivation was to “fix-up” the place and live there. Her initial viewing of the unit didn’t raise any red flags about the apartment’s condition, but after the closing many problems, aside from redecorating, became prominent.

The flooring in the living room was warped, the toilet didn’t work, and the refrigerator was missing! Without looking back at the lack of due diligence, these and other problems screamed out for a solution. Logically, repairing the toilet should have been the first priority, but our charming young lady addressed everything at once. She ordered flooring, furniture, hired an unlicensed plumber and fell into an inevitable pit!

After six weeks, she had a pile of flooring, a non-working bathroom and an adversarial relationship with the building’s superintendent. Plumbing was critical, since the in-bathroom valves did not work in the 50-year old building and all water to the building needed to be shut off to install the new mode.

The superintendent, who would not answer her calls, at one point insisted that his plumber be engaged to do the work and threw in the fact that our intrepid young damsel had no board permission to do alterations and/or repairs.

### Important Points

Foolishly, our new co-op owner felt she could fight with the super and win (not easily). Ultimately, certain conclusions can be drawn from this escapade.

1) Have a knowledgeable inspection conducted before your purchase.

2) Get permits and/or permission to do work after you buy your unit.

3) Make friends with the super.

4) Buy “The Whole Job” — the finished installation of flooring, a working bathroom from a qualified plumber, or perhaps a complete renovation from a general contractor.

### An Example for Boards

Samantha’s experience is much like what many co-op and condo buildings have lived through. For protection and prudent management, an engineer’s or architect’s specifications for boiler replacement, roof repair, brick pointing or

## Think of “The Whole Deal” — It’s The Only Way to Go!

what have you is an absolute necessity.

Two or \$3,000 dollars in fees to scope out a major project is a small price to pay for accurate information. Thus armed, all the contractor estimates will be based on the same requirements.

Aside from having a baseline to estimate costs, having specific requirements in hand will help guarantee that the job will actually get done. Tales of disappointments with large capital projects abound with buildings who believed they bought certain work and something else or nothing was done.

Lurking in the back of many projects is a requirement that renovations or alterations need to conform to current regulations of building codes and other new specifications. It has not been unheard for contractors to leave out conforming work in order to keep the quotation low.

Rewards and penalties are an expeditious method of getting a project done. A bonus per day for early completion before a mutually agreed completion date is highly motivating. A penalty of the same daily rate for late completion will also work. The World Trade Center contractor, Larry Silverstein, collected a substantial penalty from the Port Authority for late preparation of the build-

The superintendent, who would not answer her calls, at one point insisted that his plumber be engaged to do the work and threw in the fact that our intrepid young damsel had no board permission to do alterations and/or repairs.

ing site. Now, Silverstein must complete his end of the project in five years.

A careful assessment of rehab and/or alteration contracts with professional input can save vast amounts of money in the completion of these projects. And, as a final thought, buy “the whole deal!” You as the consumer are protected only when the finished product is usable by the uninitiated.

### Herb’s Hints

1) Are you charging enough to cover the cost of admissions

applications (a \$ 500 minimum)?

(2) Are you charging enough for closings and stock transfers? (a 750 minimum)?

Editor’s Note: Herb Rose is a co-op and condo consultant to many buildings in the New York metropolitan area. He is also a member of the board of directors of the Cooperative and Condominium Advisory Council (CCAC).

Rose can be reached at [hrse47563@aol.com](mailto:hrse47563@aol.com). The CCAC is at (914) 273-0730.

## THE HANLEY REPORT

By Jeff Hanley  
IMPACT Editor/  
Associate Director,  
Building and Realty Institute (BRI)



## Another Spring Has Quickly Come Around!

ARMONK—The sudden start of another spring is a subtle reminder of how quickly time is going by.

Most people would probably agree that the time between the changing of the seasons seems to be getting shorter and shorter.

Martin Ginsburg, the principal of Ginsburg Development Companies (GDC), probably shares in that thinking. GDC, one of the region’s leading builders, is marking its 45th anniversary this year.

It’s probably a good bet that Ginsburg - a past president of the Building and Realty Institute (BRI) - is amazed at how quickly time has passed since the formation of his well-known firm. A profile on GDC and its noteworthy achievements is

one of the features of this issue of IMPACT.

Other articles of interest include:

- A report on a team of veteran building and realty industry members forming SMR, a consulting firm focused on assisting financial institutions and developers with workouts of non-performing properties.
- An analysis in Counsels’ Corner on the rights of shareholders and owners to review the books and records of their respective co-op and condo boards. Finger and Finger, chief counsel to the BRI, wrote the article.
- A Page One report on how the Apartment Owners Advisory Council (AOAC) of the BRI is continuing to prepare for the upcoming public hearings

and deliberations of the Westchester County Rent Guidelines Board.

- An update by Maria Miller of Verizon on “Future Communications Technology” for multi family buildings.
- A report in Co-op and Condo Corner on how boards should consider all factors involved in important decisions affecting their respective buildings. Herb Rose authored the report.
- An analysis in Tech Talk from Andrea Wagner on the importance of updating web sites.

Those are just a few of the interesting reports in this month’s edition. Enjoy the issue — and the spring, because, as the saying stresses, “it will be gone before you know it!”

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## NAHB Economist: A "Mild Recession" Exists

*Continued from page 1*

until the beginning of 2009," he said.

Seiders added that the stimulus bill recently passed in the Senate and the House Ways and Means Committee are welcome steps in the right direction.

"This is one instance where prompt and appropriate efforts by the nation's lawmakers could make a significant difference in limiting the depth and duration of the economic downturn," he said.

### The Local Scenario

The Westchester and Mid-Hudson Region is feeling the effects of the downturn, according to studies by the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI).

Albert Annunziata, executive director of the BRI, noted that the region's housing market has definitely cooled.

"Our members have stressed that conditions have

changed noticeably when compared to a year ago," he said. "We also have the continuing problem of restrictive and negative land use regulations on the local and state level, which continue to thwart the development of much-needed housing units in our region."

Annunziata noted that, according to a report by the McGraw-Hill Construction Research and Analytics Department, contracts for new, addition and major alteration projects in the residential market from January through March are down, in value, by 14 percent in Westchester County. The study compared data to the same period in 2007.

Annunziata added that the BRI analysis showed that neighboring Dutchess County experienced a 27 percent decline, with Putnam at the virtual same level as 2007 (21 major projects, compared to 22 last year).

## AOAC Continues to Prepare for the Upcoming "Guidelines Season"

*Continued from page 1*

accept input from our members," Houlihan added. "We definitely will use their suggestions and experiences as we prepare for the hearings and the deliberations."

The guidelines board, which is composed of nine members, is the entity that annually rules on increases for lease renewals. The board's decision will affect rent adjustments for one or two-year leases which begin between Oct. 1, 2008 and Sep. 30, 2009.

### A Critical Factor

Houlihan added that testimony and attendance from AOAC members at the public hearings and deliberations of

the guidelines board is vital to the industry.

"Each year, we highlight the fact that it is extremely important that owners and managers testify on the continuing increases in costs that the realty sector is facing," Houlihan said. "We urge our members to attend and to offer their individual struggles with their day-to-day costs to the guidelines board. We can't emphasize it enough – we need the AOAC members to help us. In turn, that will help us help our members."

AOAC members will receive updates on the efforts of the association as it continues to prepare for the hearings and deliberations, Houlihan added.

## Meeting to Examine Energy Issues

*Continued from page 1*

needs, BRI spokesmen added.

The meeting is the first of two consecutive conferences that the BRI has scheduled to address energy issues affecting the Westchester and Mid-Hudson Region. The second meeting, entitled "Con Edison—Its Role in Westchester County" and "An Assessment of Electrical Energy Needs in Westchester County," is scheduled for June 12.

"These meetings will examine the energy issues that affect us all," said Albert Annunziata, executive director of the BRI. "It's become clear that as time goes on, these energy situations have to be addressed for the good of our region. We are facing a serious situation regarding our region's ability to find the energy sources that it needs."

The BRI has been addressing energy issues as part of an alliance of major Westchester

County business groups.

The coalition, known as The Westchester Business Alliance, released a major report on the region's energy needs on Jan. 31. The alliance is composed of the BRI, the Business Council of Westchester, the Construction Industry Council (CIC) and the Westchester County Board of Realtors (WCBR). The group is continuing its efforts to publicize the report and stress the energy needs and issues of the region.

The May 8 and June 12 meetings of the BRI are open to all members of the association. The conferences are also open to non-members. For reservations and further information, call the BRI offices at (914) 273-0730.

The BRI is a building, realty and construction industry membership organization. The association, based in Armonk, has more than 1,700 members in 14 counties of New York state.



Photos by Barbara Hansen

**A CCAC MEMBERSHIP MEETING** – The Cooperative and Condominium Advisory Council (CCAC) of the Building and Realty Institute (BRI) sponsored a Mar. 20 membership meeting. The themes of the conference were "How Boards Can Deal With Major Capital Improvements!" and "How to Generate Additional Sources of Revenue!" Pictured at the meeting are, from left to right, Vincent Mutarelli, Capital One Bank and a BRI member; Doug Bottner, Capital One Bank, speaker; Jay Mendel, BRI member and speaker; and Herb Rose, BRI member and speaker. More than 55 CCAC members attended the event at the Crowne Plaza Hotel in White Plains.



**EXAMINING IMPORTANT TOPICS FOR THE MULTI FAMILY SECTOR**– "An Update on Heating Issues Affecting Multi Family Buildings"; "Insurance for the Shareholders in Your Co-op – Why It's Important!"; "An Update on Recycling Issues for Multi Family Buildings"; and "An Update on NYSEERDA Programs" were the topics of the Jan. 24 membership meeting of the Cooperative and Condominium Advisory Council (CCAC). Pictured at the conference are, from left to right, Bob Morabito, Westchester County; Patrice Courtney Strong, NYSEERDA; Bruce Berger, Westchester County; Jeff Foster, BRI member; Art DiCaro, BRI member; and Herb Rose, BRI member. All those pictured were speakers. More than 50 CCAC members participated in the program at the Crowne Plaza Hotel in White Plains.



**A LOOK AT THE NEW YORK CITY WATERSHED** – David Warne, assistant commissioner, watershed protection and planning for the New York City Department of Environmental Protection (DEP), was the speaker at the Apr. 10 General Membership Meeting of the Building and Realty Institute (BRI). Warne delivered a presentation on the New York City Watershed to more than 50 members of the BRI. The conference was at the Crowne Plaza Hotel in White Plains.

# Strategic Management of Tax Liabilities for Owners – There Are Several “Ways Out!”

By Curtis A. Wyatt, MBA, BCE/Board Certified Estate Planner/Senior Trust Advisor, Estate Planning Team

There is a perfectly legal way to defer capital gains tax and reduce your overall tax burden that may be better than anything you have previously heard about.

Those of us who own highly appreciated assets, such as homes, commercial real estate and businesses, are often reluctant to sell that asset because of the capital gains tax and depreciation recapture costs associated with the sale.

## Repeated Statements

How many times have you heard, or made the following comments?

\*“If I sell my property I am going to get killed with taxes!”

\*“It would be better to let my kids inherit my assets at stepped-up value when I pass away!”

Sound too familiar? These are questions we hear daily in my profession. Also, most people don’t realize estate taxes are almost 50 percent, above varying exemptions, and that non-spousal “step-up” values are set to cap at \$1.3M in 2010!

## Examining The Issues

There is a smart, functional, and legal way to address these issues. The answer may lay with a powerful tax and estate

planning tool called the Deferred Sales Trust.<sup>™</sup>

If you own a business or real estate with a large amount of gain and are not selling your property because of capital gains taxes, or can’t find suit-

**Even with your primary residence, factoring in your tax exemption of \$250,000 each for husband and wife, you may still have a hefty tax surprise when you sell your property.**

able, qualified, property exchanges, then you may want to consider a Deferred Sales Trust,<sup>™</sup> (“DST<sup>™</sup>”).

The DST<sup>™</sup> is a legal method, combining several sections in

the tax code, which allow the seller of the property to defer capital gains taxes due at the time of sale over a period of time, even beyond your lifetime.

Deferring taxes, legally, is not new. Some commonly used tax deferral examples are 1031 Exchanges and Installment Sales.

## Types

Various types of trusts are used by millions of Americans to protect and transfer assets to their heirs outside of probate and to minimize and even avoid selling their assets to pay estate taxes.

There is no maximum to the size of value of the transaction. The DST<sup>™</sup> can also be used with any kind of entity, i.e., LLC, S or C election corporations, as well as individuals who own real estate, rental properties, vacation homes, commercial properties, hotels, land, industrial complexes, retail developments, and raw land, to name a few.

## What Are Capital Gains Taxes?

A Capital Gain scenario is the profit we are taxed on when we sell an asset. It is calculated by subtracting what you paid for the asset from the net selling price.

The current rate for an asset

owned for one year or longer is 15 percent for Federal taxes. Most states charge 5 percent to 10 percent on top of that (CA is 9.3 percent), making the total tax run as high as 25 percent.

If there was depreciation taken on the asset, the cost basis is lowered by that amount, thus increasing the taxable gain!

Even with your primary residence, factoring in your tax exemption of \$250,000 each for husband and wife, you may still have a hefty tax surprise when you sell your property.

That isn’t the end of the story for the total tax effect though. Capital gain is added to the taxpayer’s adjusted gross income (AGI). This may raise the “floor” above which one can take a number of itemized deductions and affect Alternative Minimum Tax.

This could result in a large decrease or total loss of those deductions. This makes the effective, but hidden capital gain rate much larger than the stated federal and state rates.

## How Does the Deferred Sales Trust<sup>™</sup> Work?

The process starts with a property owner, “grantor,” transferring ownership of the property to a dedicated trust set up for them.

The transfer is not a gift. The owners of the trust are the

heirs of the “grantor,” probably their children.

Next, the trust “pays” the grantor for the property. The payment isn’t in cash, but with a special payment contract called an “installment contract”. It is strictly a private arrangement between the trust and the grantor. The term of payment can be for life or a stated term.

The payments may begin immediately or they may be deferred for some period of months or years.

The trust then sells the property. There are zero taxes to the Trust on the sale since the Trust “purchased” the property for what it sold it for to a third party.

The grantor is not taxed on the sale since he has not yet received any cash for the sale. Often grantors will choose deferral because they have other income and don’t need the payments right away. Of course, the payments may begin immediately.

## A Choice

Deferral is strictly an option. It is important to understand that payment of the Capital Gains Tax to the IRS is done with an “easy installment plan” as the grantor receives the payments.

Part of the payment received

*Continued on page 5*



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Daniel S. Finger,  
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Building & Realty Institute (BRI)



# Reviewing Access to a Co-op's Or Condo's Books and Records

WHITE PLAINS—One of the questions that we are frequently asked by our clients, whether they be a cooperative board, a condominium board or a managing agent, is to what extent does the shareholder or unit owner have in the right to examine the co-op's or condo's books and records.

In view of the difference in the laws covering a co-op and a condo, there are multiple answers to what appears to be a simple inquiry.

### Co-ops

With a cooperative, generally most cooperatives are subject to the Business Corporation Law ("BCL") (some cooperatives known as "213s" were formed under the Cooperative Corporations Law and were subject also to federal regulations and laws under "model documents" and also "Mitchell-Lama" cooperatives are subject to other state laws).

Where the Cooperative Corporation's Law does not apply, the BCL is generally looked to for statutory authority.

A corporation is required to keep books and records, minutes of shareholder, board and executive committee meetings and a record of the shareholders (BCL §624 and similarly in the Not For Profit Corporation Law Section 621). While a shareholder is given the right to review the minutes of the corporation's meetings, i.e., Annual and Board meetings, and to, under appropriate circumstances to take excerpts of same, the shareholder can also get names and addresses of shareholders.

### The Keys

However, the BCL Section 642(c) establishes that the shareholder may not examine the records above referenced if the shareholder refuses to sign an affidavit that the inspection of the records is not desired for a purpose other than the business or interest of the corporation.

Thus, this right of inspection is subject to the requirement that the inspection must be in good faith and for an appropriate reason and purpose. The Board of Directors has the right, before an inspection is granted, to require an affidavit as to the purpose and an inspection may be denied upon the shareholder's refusal to furnish to the cooperative that such inspection "is not desired for a purpose which is in the interest of a business or object other than the business of the

corporation and that he has not within five years sold or offered for sale any list of shareholders of any corporation of any type or kind."

The shareholder's recourse, under such circumstances, if he disagrees with a refusal to make the records available, is to make application to the Supreme Court of New York State for such information. Additionally, the shareholder has the right, upon written demand, to a copy of the annual balance sheet and the profit and loss statement for the preceding fiscal year.

### Other Factors

In addition to the statutory rights above, the common law, which precedes the statutory authority, remains in effect. The common law right of inspection of the books and records of the corporation is not diminished by the statutes, but rather expands those rights. However, the enforcement of the common law right, by court action, allows the court to permit greater or lesser right of inspection as may be necessary under the circumstances of a given situation.

As with the statutory right of examination, the common law right permits an investigation into the reason the inspection is sought. The courts have required a legitimate reason for an inspection before granting

same.

To the extent that the court may apply the various corporate rationale, under the common law, to the context of a condominium unit owner seeking to inspect records, presumably the requirement of a bona fide reason for the inspection would similarly apply, although there is no statutory authority specifically authorizing in a condominium such an affidavit as the Business Corporation Law. The purpose may be generalized or specific depending upon the records sought.

Based on the within, a party seeking to inspect the books and records of the corporation should be required to state with precision the books and records sought for the inspection and reason that same are sought for inspection.

The Board may review the information and determine whether the reason is a good faith basis and act accordingly.

### Condos

Section 339-w of the Real Property Law provides that: "The manager or board of managers, as the case may be, shall keep detailed, accurate records, in chronological order, of the receipts and expenditures arising from the operation of the property. Such records and the vouchers authorizing the payments shall be available for examination by

the unit owners at convenient hours of weekdays. A written report summarizing such receipt and expenditures shall be rendered by the board of managers to all unit owners at lease once annually."

Real Property Law Sec. 339-w thus requires a board of managers to keep records of receipts and expenditures, which "shall be available for examination by unit owners." However, there is no provision in the Condominium Act authorizing an inspection of a list of unit holders. This is in contrast to Business Corporation Law Sec. 624 (which is applicable to cooperative corporations), which permits any shareholder to examine the "record of shareholders and to make extracts there from for any purpose reasonably related to such person's interest as a shareholder."

While privacy of the unit owners may be a desirable goal, with condominiums we are dealing with owners whose interest therein is a public record as the deeds to their

taining the list from the public records.

Moreover, since the most up to date and accurate list of persons entitled to vote will normally be that maintained by the board, delivery of that list may avoid controversy should there be a conflict between the public records and the information maintained by the board.

Lastly, a unit owner's desire to communicate reasons for opposing, for example, a proposed by-law amendment to their fellow unit owners is a sufficient bona fide reason for obtaining the list.

The statutory authority for unit owner review of condominium records ends with the right to review receipts, expenditures, and vouchers authorizing such payments at convenient hours of the weekdays. However, Courts have applied corporate law to condominiums on occasion with reference to the inspection of various records of the condominium.

Courts have both upheld the rights of unit owners to view unit owner lists and denied that

**"The Board may review the information and determine whether the reason is a good faith basis, and act accordingly."**

units are normally recorded (RPL Sec. 339-s) and they are subject to individual real property taxation (RPL Sec. 339-y), the records with respect to which are also public.

### Communication

While unit owners could thus obtain the requested information from public records, there is no valid reason why the board should not furnish a unit owner this information and avoid the owner having to incur the time and expense of ob-

unit owners have a right to view unit owner lists. In contrast, board members have been held to have unequivocal rights to view all corporate records.

**Editor's Note: The authors are attorneys with Finger and Finger, A Professional Corporation. The firm is based in White Plains. Kenneth J. Finger is chief counsel to the Building and Realty Institute of Westchester and the Mid-Hudson Region (BRI).**

## Strategic Management of Tax Liabilities

*Continued from page 4*

is tax free return of basis, part is return of gain which is taxed at capital gain rates, and part is interest. There is no interest or penalty on these deferred payments of the tax.

On top of that the tax payments will be made with depreciated dollars. The tax dollars will be worth far less than they are today due to inflation. If invested properly, the money in the trust could grow at a greater rate than that of inflation and even the distribution rate. The interest rate in the note to you is dictated by the IRS to be a competitive rate, i.e., 6 percent to 10 percent.

### Another Method

While we have primarily focused on the capital gain tax, the amount of gain due to straight line depreciation is also deferred with a DST™. But if you have taken accelerated depreciation in excess over straight line, this amount is not deferrable.

There is substantial flexibility

in investing the trust's funds. The money may be invested in securities, real estate, or even in a new or existing business.

The primary requirement of the trust's investment objective is simply to produce the cash flow necessary for the annual payments to the grantor.

### The Benefits

There are significant benefits for the property which the grantor transfers to the trust:

1. Whatever is left in the Trust at the time of the grantor's death will pass to the beneficiaries completely free of estate and gift taxes.

2. This arrangement does not trigger any gift tax consequences no matter how much trust assets are worth.

3. Trust assets will not need to go through probate when the grantor dies.

### More Positives

The deferral of Capital Gains Taxes can produce a dramatic increase in the growth of trust

assets. That is not the only benefit:

1. The trust can make a cash sale. It is not forced to make an installment sale to the outside buyer in order to spread out the capital gain tax. This is an advantage because you never know whether the outside buyer will make all the payments on an installment sale.

2. The DST™ payment amount and term is designed for what you want per your needs and objectives.

3. The formal mechanics of the trust provide the discipline that some find helpful in providing for their own retirement.

4. The DST™ works equally well for single or married grantors.

Nothing is given away to charity as happens with the competing strategy known as a Charitable Remainder Trust.

The DST™ allows all the principal and accrued interest to be paid to the grantor. In most cases, the DST™ yields more bottom-line dollars to the prop-

erty seller than the Charitable Remainder Trust.

The DST™ may generate substantially more wealth over the long run than a taxed sale. Depending on your circumstance, it may be superior to a Charitable Remainder Trust, installment sale, private annuity, or like-kind property exchange in many respects.

### Frequently Asked Questions

*Q: How can I know the amount of my payments from the trust?*

A: The payments are what you, the grantor, desire. Depending on your income goals and other objectives, the amount and length of term are your choice.

*Q: What happens if I live longer or die sooner than my life expectancy?*

A: Payments continue for the term that you have chosen. The term can be extended. After your death (or the surviving

*Continued on page 8*



**Case Study:**  
**Firm Launched to Assist Developers, Institutions With Workouts of Troubled Real Estate Projects**

VALHALLA— A team of veteran real estate professionals has announced the formation of SMR, a new, full-service consulting firm focused on assisting financial institutions and developers with workouts of non-performing properties.

The partners of the SMR team—Anthony Miceli, Don Smolev, William Riehl, Gregg Smolev and Douglas Smolev—have more than 130 years combined experience in the residential real estate field.

“In today’s difficult real estate market, there is a growing demand for professionals with the experience and expertise to help turn around troubled properties. This has taken on a new urgency in the wake of the sub-prime mortgage crisis,” said Don Smolev.

**Help for Developers and Land Owners**

In addition to assisting on workouts of non-performing properties, SMR also helps developers and land owners who have to build their projects in order to keep their approvals in place, or, if they don’t build, lending institutions may terminate agreements and loans.

“We also have investors available who are interested in

purchasing land or partially built developments at realistic prices,” said Smolev, who founded Marcon Group, one of the Northeast’s most successful residential sales and marketing firms.

Anthony Miceli said: “We looked at the market and saw that nobody else with our capabilities was offering this kind of service. Nobody has a team with this level of expertise and understanding of the market. This is the perfect time for our kind of firm.”

Miceli, who owns A. Miceli & Associates of Carmel, has more than 30 years experience in real estate development as chief executive officer of a major developer.

**Valuable Experience**

SMR’s construction and project management services are built on decades of experience of building thousands of homes in hundreds of communities, company officials said.

“We have managed the construction of every type of residential development, from high-end estate homes to mid-rises and townhome communities,” said Riehl, who formerly served as vice president and chief construction officer of a

major developer and currently heads his own construction management firm, W. Riehl & Associates of Rye Brook.

Douglas Smolev, who has worked in on-site sales and marketing for major real estate projects for the past 20 years, said SMR offers developers and financial institutions the sales and marketing services necessary to jump start a troubled development.

“We know the region’s housing market and know what buyers are looking for in terms of design, floor plans and features. More importantly, we know what they’re willing to pay in today’s market,” he said.

Gregg Smolev, who has worked in the housing industry



**AN EXPERIENCED TEAM:** The partners of SMR have more than 130 years of combined experience in the residential real estate field. Seated, from left, are Don Smolev and Anthony Miceli. Standing, from left, are Gregg Smolev, Douglas Smolev and William Riehl.

since 1989, specializing in sales and marketing, added: “We understand the power of effective marketing, especially in terms of

maximizing a project’s exposure on the Internet, which is becoming a dominant force in real estate sales.”

**Building Facades in New Rochelle To Get New Life, CPC Announces**

NEW ROCHELLE—As part of an ongoing program to restore building facades in the central business district of downtown New Rochelle, The Community Preservation Corporation (CPC) recently closed on two facade loans totaling \$114,695 for two properties.

The announcement was recently made by CPC spokesmen.

CPC is providing \$79,695 for a property at 398 North Avenue, just outside the New Rochelle Business Improvement District (BID) area. The property, which was built in 1922, is a two-story, 9,000-square-foot commercial building with seven stores and two offices. Improvements will include the replacement of all windows, a new front entrance door, pointing and steam cleaning of the entire exterior, and new exterior lighting and security cameras.

Another CPC loan of \$35,000 was used to restore the façade of a Mexican restaurant at 581 Main Street. Built in 1896, the building includes the 2,200-square-foot restaurant and 2,000 square feet of residential space.

The façade improvement program, which was developed by CPC for the New Rochelle BID, provides property owners with loans of a maximum of \$100,000 at an in-

terest rate of three percent over a 10-year term, spokesmen said.

The program has made a significant impact on the revitalization of downtown New Rochelle with the restoration of historic facades of key downtown properties, including The Curtain Shop, Diamond Glass and Talners Fine Jewelry, CPC officials added.

“CPC is pleased to continue its partnership with the New Rochelle BID in helping to restore these important and historic downtown buildings. New Rochelle is enjoying an unprecedented revival in its central business district. We’re proud to play a role in this ongoing success story with our façade improvement program,” said Sadie McKeown, regional director of CPC’s Hudson Valley office.

More information on the program can be obtained by calling McKeown at (914) 747-2570, ext. 227, CPC said.

CPC is a not-for-profit mortgage lender that finances residential multi-family development throughout New York, New Jersey and Connecticut. Since its founding in 1974, the company has invested more than \$6 billion in more than 144,000 units of housing in New York and New Jersey, spokesmen said.

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Managing Partner



By **Andrea Wagner**  
*Wagner Web Designs, Inc.*

**YORKTOWN HEIGHTS**—Spring is in the air. Time for new growth!

For those looking to refresh their site, here are some sure fire signs it's time to redesign your website.

**Your Business Has Changed or Grown**

If your business is no longer the same as it was when you designed your site, chances are that you should redesign your website to reflect that. If you've only had a few small changes, you might be able to just update your current website. But, if you've changed your business direction, decided to provide new products or services, or if your company has grown significantly, it will pay off to redesign your site.

**Your Site Looks Like It Was Designed in 1995**

Some signs of an outdated web site may include: slow-loading graphics, framed sites, animated cartoon clip-art throughout the site, and text created as images.

Having any of these on your site could reflect poorly on your business, making you look "behind the times." It can also make you look like you don't care enough about your busi-

**TECH TALK**

**It's the Right Time to Refresh Your Web Site**

ness or about technological advances to keep abreast of them. Keeping your company's website looking modern will improve its credibility.

**The Information on Your Site Isn't User-Friendly**

If you've been adding to your site over time and the navigation has become confusing, restructuring your navigation could be another pressing reason to redesign your site.

You want visitors to be able to easily find their way around your site and to access all the information you have within a few clicks.

**You Apologize for the Site When Referencing It or Handing Out Your Business Cards**

Your site should be a source of pride. It should provide your clients and prospects with an easy way to get a lot of information about your business. If you have to apologize for out-of-date information, broken images, or difficult navigation, it makes you look unprepared and unprofessional. Make sure your site is in top shape and looks impressive, so your clients believe your business is in good shape too.

**You're Not Getting Good Results in the Search Engines**

Poor rankings in the Search Engines can be a result of not optimizing your site well. Poor

search engine ranking can also be a result of bad design choices or coding on your site. Make sure that your site isn't designed using frames and that the text is coded in HTML.

**It's Not Bringing in Inquiries and Helping You to Make Sales**

Recently businesses have realized that a website can do a lot more than just impersonate your brochure—it can help you close sales, bring in new prospects and make your business easier to run.

To bring in more inquiries and make more sales, include some of the following when you redesign your site: Tips, newsletter sign ups, blogs, forms,

If you've been adding to your site over time and the navigation has become confusing, restructuring your navigation could be another pressing reason to redesign your site.

downloadable PDF instructions and auto-responders.

**Your Site Is Costing You a Fortune to Update**

If you're racking up huge bills because of changes and still have a lot to go, it might be time to consider a whole site redesign. Make a list of everything that you want to do on your site

and consult a web designer about redesigning your site with those changes in mind.

If your site is designed in such a way that you can't maintain it yourself, redesigning and re-coding your site could allow you to do so. Having the ability to make changes and update your own text will let you make revisions quickly, at no expense.

Do you have questions about a tech topic? Send an email to [andrea@wagnerwebdesigns.com](mailto:andrea@wagnerwebdesigns.com) and I'll do my best to respond directly or add to my next installment of Tech Talk.

**Helping Buildings Enjoy the Best of Future Communications Technology**

By *Maria Miller, Verizon*

**ARMONK**—Verizon FTTP can wire your apartment building, co-op or condominium, bringing the best future communications technology to residents and owners.

Verizon can "future proof" your property's communications infrastructure and add to the profit potential of your building, at no cost to you.

**What is FTTP?**

FTTP is an acronym for Fiber to the Premises, which describes the build-out method for the new Verizon network currently being deployed in Verizon service areas nationwide.

This network will provide

Verizon FIOS, voice (telephone), video (television) and broadband Internet services all over a "hair-thin strand" of dedicated fiber-optic cable, installed all the way to the home or business of each of our customers.

Fiber-optic systems use glass fiber and laser-generated pulses of light to transmit voice, data and video signals at speeds and capacities far exceeding most of today's copper and coaxial cable systems.

This dedicated fiber link to each customer's home has enormous bandwidth, allowing Verizon to provide your residents with all the above services at unparalleled speeds

and reliability. This powerful, new network will make it possible for your residents to access all the high-bandwidth entertainment content and services available today, as well as those we believe will become available over the next 20 or so years.

**What Action Should Be Taken?**

The first step in deploying Verizon's fiber-optic network is to complete a no-obligation site survey of the property. The site survey will allow Verizon to design the best possible network for each specific property. To find out more information, please call (914) 741-8374.





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# Prudential Rand Appoints Lindsey As a Business Development Consultant

WHITE PLAINS – Prudential Rand Realty recently announced that Liz Lindsey has been appointed as a business development consultant for the firm.

In her new role, Lindsey will aid in strategic planning, growth and development initiatives for Prudential Rand, with a special focus on increasing market presence and visibility in Westchester County.

“Liz brings a wealth of experience and relationships,” said Greg Rand, managing partner with Prudential Rand Realty. “Her instincts are incredible.

We have been very careful to preserve our resources in anticipation of the market cooling off. It has cooled off, and now we see undeniable signs that it is warming up again. This is the ideal time for Prudential Rand to restart our expansion, and Liz is a key player in that plan.”

Prior to entering the real estate industry, Lindsey served as the dean of administration at Sarah Lawrence College in Bronxville. In 1986, she began her real estate career and, a year later, opened her own company. Lindsey Real Estate quickly gained a dominant



**Liz Lindsey**  
market share in Mount Vernon. In 2000, she sold Lindsey Real Estate to Houlihan Lawrence and joined the com-

pany as manager of its Bronxville office, where she worked until joining Prudential Rand.

“As Rand expands in the Westchester market, their energy and excitement fit perfectly with my own goals,” Lindsey said. “Developing offices and coaching Realtors to grow their careers - this is what I do best. I find that Rand has the best technical and professional support for agents that I have seen in our industry. Rand focuses on excellent service for buyers and sellers, and they encourage agent input. Valuing agent thinking and

ideas is a rare quality and helps keep the company fresh. I am delighted to be part of this forward-thinking company.”

Lindsey is a member of the National Association of Realtors (NAR), the New York State Association of Realtors (NYSAR) and the Westchester/Putnam Multiple Listing Service.

Prudential Rand Realty, founded in 1984, is the top real estate brokerage in the Greater Hudson Valley, company officials said. The firm has 20 offices serving Westchester, Rockland and Orange counties.

## Strategic Management of Tax Liabilities

Continued from page 5

spouse's), the payments can continue on to your beneficiaries. The remaining net assets of the trust go to them estate tax free, per your terms.

**Q: Are there any flexibilities or variability in the payment stream, such as increasing the payments over time?**

A: Yes. The payments can increase. In any year an election can be made to not take a payment.

**Q: Can I cancel the whole deal after a few years and get my money?**

A: If the parties agree, you may terminate the trust and get the cash out. However, you would owe all the taxes,

plus interest, on the unpaid capital gain plus taxes on gains of trust assets.

**Q: What happens if capital gain tax rates are changed after I set up the DST™?**

A: Politicians, from time to time, discuss changing capital gain rates. If that happens, you would pay the new rate on the capital gain portion of your annual payment. However, there is usually adequate notice to make a sound financial decision.

**Q: Can the trust buy property at a later date?**

A: Yes, the investments of the trust are extremely flexible. The main focus of the trust is to be able to make pay-

ments, as agreed, to the grantors.

We recommend that you consult with our advisory team who are experienced in trust law, trust asset management and tax law.

**Q: When the trust sells the property may I keep some of the cash from the sale?**

A: Yes, in that case you would pay taxes only on the capital gain portion of the money which you kept for yourself outside the trust.

**Q: How can my tax advisor, or attorney, analyze the DST™ strategy?**

A: For detailed technical information, have your CPA contact us for a full legal and

tax cite package. The names Deferred Sale Trust™ and DST™ are trademarked names and are not found in the code. All of the legal and tax authority used in the DST™ are in the tax code.

**Q: I'm interested in finding out if this works for me. What should I do next?**

A: It's very easy. Your next step is to complete an “illustration request” on-line at [www.myDSTplan.com/cjfrealty](http://www.myDSTplan.com/cjfrealty).

Or, you can call our toll free number and request a “free tax savings analysis” which will illustrate your particular circumstance. This summary is typically sent to you within 48 hours. Once you have received the il-

lustration summary, you can then review this information with a trust case manager and share this information with your CPA or tax attorney for further review.

**Editor's Note: This article is being printed with permission. It was suggested as a contribution piece by Joseph Fernandez, a member of the Building and Realty Institute (BRI) and a Real Estate and Mortgage Broker. He can be reached at (914) 739-7119, or by email at JFernan351@optonline.net.**

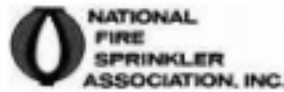


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# Friedland Realty Reports N.Y. Transaction

NEW YORK—Friedland Realty, Inc., the Manhattan satellite office of NAI Friedland Realty, Inc. of Yonkers, recently completed the lease of 7,000 square feet of space at 712 Madison Avenue to David Yurman, retailer of jewelry and watches.

Gene Meer, president of Friedland Realty, Inc., represented the landlord and the tenant in the \$25-plus million aggregate lease deal, company officials said.

As part of its international expansion, New York-based David Yurman will be moving its flagship store to the landmark location in October. Meer interviewed close to 100 potential clients, nationally and internationally, to find the right luxury tenant for the space and neighborhood. The deal took six months to complete, officials added.

Mere has 28 years of New York City retail experience and has worked extensively with retailers using a global approach. His clients include dozens of luxury retailers and restaurants.

They include A/X Armani, Bice, Chanel, Chopard, Mikimoto, Roberto Cavalli, St. John's, and Valentino.

"The best location for a jeweler is next to another jeweler because the cluster effect allows customers to focus in on different categories of jewelry," Meer said. "This stretch of Madison Avenue resembles Place Vendôme in Paris, with jewelers Graff, Yurman, and Mauboussin all on the same side of the block and Chopard, Di Modolo, Chanel, and Pomellato across the street. It is a shopper's paradise and a retailer's dream that attracts loyal, as well as new, customers."

Friedland Realty, Inc. is the Manhattan satellite office of NAI affiliate Friedland Realty Inc.. The firm is a full service commercial real estate company in metropolitan New York, including Westchester, the five boroughs, Long Island, Connecticut and New Jersey.

Friedland has four divisions: Retail, Industrial, Office and Residential/Development.

# Houlihan Arranges a White Plains Sale

WHITE PLAINS—Jerry Houlihan of Houlihan-Parnes/iCap Realty Advisors, LLC has arranged the sale of a 2-story garden apartment building at 14 Hall Avenue in White Plains.

The building, built in 1960, contains 10 apartments. Two are studios and eight are 2-bedroom units. There is on site parking for approximately 10 cars, company officials said.

Approximately 10 years ago, the roof, entry doors and mailboxes were replaced, com-

pany spokesmen added. Recently, the hallways have been painted and the oil tanks have been replaced.

Houlihan-Parnes/iCap Realty Advisors is a nationally affiliated, multi-faceted real estate investment company headquartered in White Plains. Its companies and affiliates are engaged in the acquisition and ownership of all types of commercial real estate investment property, officials said.

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Construction Financing: \$8,650,000  
Home Funds: \$350,000

**Montgomery, NY**  
Route 17K  
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Construction Financing: \$3,250,000  
Permanent Financing: \$2,400,000

**Kingston, NY**  
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Gut rehab; 3-story mixed-use building  
4 rental units & 3 storefronts  
Construction and Permanent Financing: \$735,000

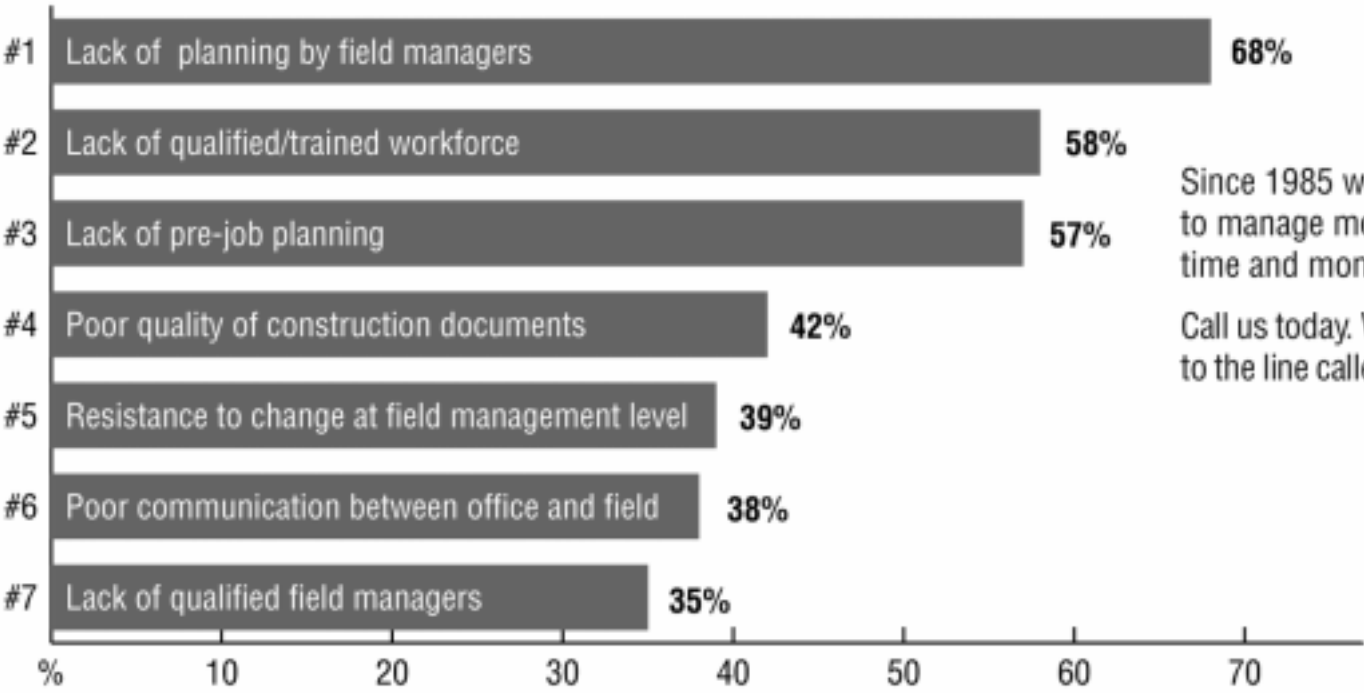
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**Development Profile:**  
**GDC Celebrates Its 45<sup>th</sup> Anniversary**

VALHALLA—In 1963, Martin Ginsburg, then a young architect, and his two brothers, Sam and Jerome, decided to build a single family home in Hartsdale.

In the 45 years since that endeavor, Ginsburg Development Companies (GDC), under Martin Ginsburg's leadership, has developed more than 10,000 homes in award-winning neighborhoods. Those areas include New York City, Westchester, Rockland, Orange and Dutchess counties, as well as Fairfield and Hartford counties in Connecticut.

Over the years, the company has demonstrated a unique commitment to design and integrity, creating communities that live well for generations, company officials said.

Now, as GDC celebrates its 45th anniversary, that same commitment to the future is still evident in every new home and every new GDC community, officials added. And the same man, Martin Ginsburg, is still very much at the helm.

GDC has thrived and led the market for all these years because of his vision, his unique design sense and his extraordinary attention to detail, company officials said.

**A Successful Combination**

From impressive, landscaped entries and the preservation of challenging sites to the development of exciting, resort-lifestyle neighborhoods and classic, yet innovative architectural design, GDC is proud to note that it continues to create dynamic, exciting and unique places to live.

Those locations include the Harbors at Haverstraw, Fairways at Wallkill, Christie Place in Scarsdale and AVANT Chelsea in Manhattan.

Committed only to this region of the country, GDC is recognized as one of the most seasoned, well-respected homebuilders in the northeast. Neighborhoods developed decades ago are still proud to be known as GDC-built, the company said.

Through the ups-and-downs of the residential real estate market, GDC has remained privately held and has successfully completed every community it has begun.

Today, the history and strength of GDC, spokesmen noted, is exemplified by its ongoing commitment to current communities such as Ridgewood at Middlebury (Conn.), The Greens at Gillette Ridge in

Bloomfield (Conn.), Quaker Green in West Hartford (Conn.) and Riverwatch in Yonkers.

**Future Plans**

Company officials added that the firm is planning and processing future neighborhoods like Harbor Square in Ossining, Saw Mill Lofts in Hastings, the Abbey in Peekskill, StoneHollow at Cornwall and The Hamlet at

Gillette in Bloomfield.

"It has been quite a journey from building that one single family home to designing and developing resort-style, master-planned communities, and revitalizing downtowns along

the Hudson River and in resurging suburban locations," said Martin Ginsburg. "Throughout my 45 years I strived to build high quality homes and neighborhoods that respect the land and benefit the community they are part of. As the company has evolved and grown, our mantra remained—as it was 45 years ago—'Always with Integrity.' We are committed to our buyers, the communities we work in and our own core values. We will always build neighborhoods to

developing in the river towns on both sides of the Hudson and in making the river itself active and alive again with ferries, marinas and human activity, GDC spokesmen said.

In 2004, GDC embarked on the construction of Harbors at Haverstraw, a master-planned community incorporating townhomes and condos and lifestyle amenities along the river, including an award-winning lifestyle club, a public promenade and sculpture trail, a marina, a kayak launch and a commuter ferry dock. The development is now a lively, thriving riverfront neighborhood that attracts people of all ages, GDC officials said.

GDC also built a riverfront promenade at Ichabod's Landing in Sleepy Hollow, and is planning another at Harbor Square at Ossining.

Martin Ginsburg was recently named to the Hudson-Fulton-Champlain Quadricentennial Commission, a state agency that is organizing events to mark the 400th anniversary of Henry Hudson's journey up the river that bears his name.

"The Hudson River is one of the world's most beautiful waterways and the 400th anniversary of Hudson's discovery provides a wonderful opportunity to inform people around the globe about the beauty of the Hudson Valley and the historic towns along its shores," Martin Ginsburg said.

Martin Ginsburg is the creator and the lead sponsor of the annual Hudson River Ferry-Go-Round, scheduled for Sept. 14. The event is a day long activity, where thousands ferry between Ossining, Tarrytown, Peekskill and Haverstraw. Each town has fairs and festivities on that day.

In addition, Martin Ginsburg organized the Historic River Towns of Westchester Flower Village Program. The program gives grants to the towns for the most attractive landscaping and public gardens.

**Noteworthy Efforts**

Martin Ginsburg and GDC have a long history of supporting charitable groups and arts organizations, having donated more than \$2 million to groups in Westchester, the Hudson Valley and Connecticut. He has served as president of the Builders Institute of Westchester and the Mid-Hudson Region (BI) and was inducted into the Westchester County Chamber of Commerce (now The Business Council) Hall of Fame in 2003.

With Martin Ginsburg's history and commitment to excellence in all he does, it is clear why GDC has succeeded for 45 years and has led the market in design and innovative planning while still providing great value for homebuyers, company spokesmen noted.

All GDC communities will be celebrating this momentous anniversary with events and extraordinary programs for the first 45 buyers, the company said.



Martin Ginsburg



# Weather - Tite

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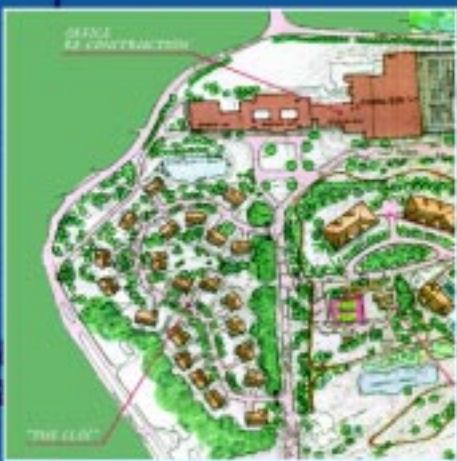
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SMR was established to offer the combined talents and experience of Don Smolev, Anthony Miceli, Bill Riehl, Gregg Smolev and Douglas Smolev...a team with over 130 years in the design, planning, development, construction, marketing and selling of thousands of homes of virtually every kind.

SMR provides "start to finish" full service for builders, developers and investors. We do it all. Instead of working with many unrelated companies you will only have to meet and work with one - SMR.

One of the purposes of this partnership is to perform "work-outs" for

investors or lenders for their non-performing properties. We can come in at any point to complete an unfinished development.

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