



# Cincinnati Law Library News

A Monthly Newsletter from the Cincinnati Law Library Association

April 2009

## Cost Segregation: A Little Known but Valuable Tool for Commercial Real Estate Clients

Written by Teresa M. Beasley and Jennie L. Church. Reprinted with permission.

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Cost segregation is a relatively new and somewhat obscure accounting tool that can help owners and lessees of commercial real estate realize significant cost savings. Attorneys may be unaware of this potentially valuable tool that could prove helpful to their clients who are active in commercial development or other aspects of commercial real estate.

Cost segregation identifies personal property assets that are grouped with real property assets, and then separately allocates the personal property for tax and accounting purposes. These personal property assets can be deducted over a shorter period of time. They are moved from a 39 year depreciation time period to five, seven or 15 year periods. This can reduce the taxes owed in the first few years dramatically. The taxes are gradually repaid through decreased depreciation deductions in the later years. This acceleration allows the taxpayer to maximize the present value of money.

Cost segregation can be used by any for-profit entity that has purchased commercial real estate since 1986. It may also be used by those constructing a commercial building, by tenants who are constructing significant leasehold improvements, or under other circumstances that trigger

a substantial step-up in basis. Cost segregation experts generally recommend an initial threshold of \$500,000 to \$750,000 in acquisition or construction costs to consider the use of cost segregation.

One CPA put the estimated savings using cost segregation this way: for every \$10,000 of property that is reclassified to five or seven year property, the present value of the tax savings is about \$2,000; for every \$10,000 of property that is reclassified to 15 year property, the present value tax savings is about \$1,000. Cost segregation may also be used retroactively to "catch up" on depreciations that could have been used in past years. Despite what many people believe, a taxpayer does not need to file an amended return if he or she wishes to utilize cost segregation for past years. The taxpayer would simply file a Form 3115, which is an Application for a Change in Accounting Method.

Besides the acceleration of deductions, cost segregation offers additional advantages to the taxpayer. One of these advantages is the ability to write off building components if they need to be replaced.

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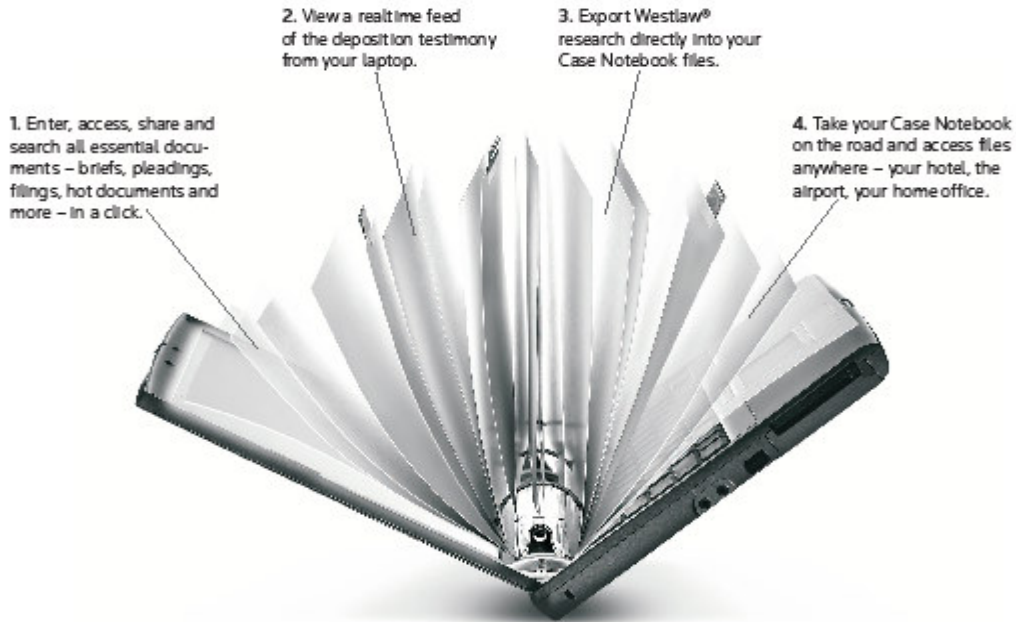
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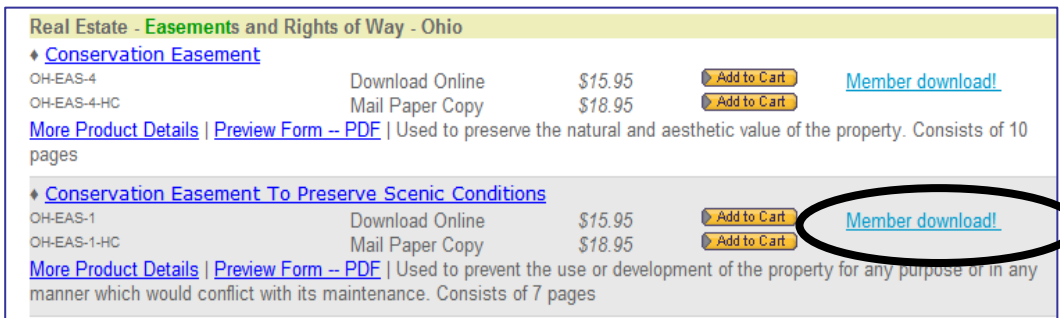
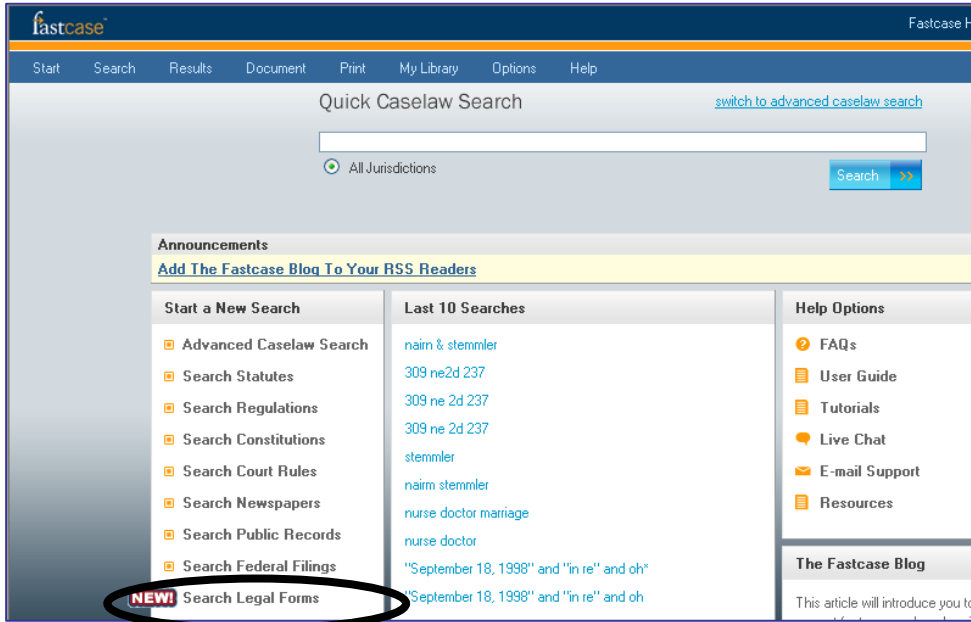


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## Legal Forms from Fastcase

by Julie Koehne, Assistant Law Librarian

Fastcase now offers the ability to download forms. To download the forms you must subscribe individually with Fastcase as a Registered User. This membership is separate from the Law Library Membership. Registration is FREE!



To Register Free complete the Registered User Sign-Up form. Once you have completed the form, your Username and Password are active and you can begin using the forms database as a Registered User. Upon registering, your Credit Card is filed with U.S. Legal Forms, Inc. (USLF), the administrator of the forms database, and charges are made to it as you use the member download link and order forms.

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For example, suppose the initial value of the siding of a building is \$200,000 and then, five years later it must be replaced. Now, its adjusted basis is \$150,000. Under cost segregation this \$150,000 can be written-off as a loss. Without cost segregation, no part of the value of the siding could be written-off as its value would remain tied into the basis of the building as a whole.

The range of projects that can utilize cost segregation is wide and includes manufacturing, retail, apartments, office buildings, hotels, hospitals, restaurant and golf course, among many other examples. The direct costs that may be accelerated through cost segregation include decorative lighting, signage, decorative wall coverings and flooring, fire alarm systems, cabinets, appliances and portions of the electrical, plumbing and HVAC systems. It can also encompass indirect costs, including building permits, architect fees, soil testing, construction period interest under Section 263a and negative basis adjustments.

In order to take full advantage of the benefits of cost segregation, a taxpayer should obtain a cost segregation study from a qualified firm that has both the engineering expertise and tax expertise to produce a useful and dependable study. To prepare a cost segregation report, an architect, appraiser, engineer or other representative of the firm will inspect the building and allocate the costs of the property inside and outside of the structure between personal property (the portion that can be accelerated) and other property. So that the study is as accurate and thorough as possible, the taxpayer should be able to produce as much documentation to support the costs of the items identified by the firm to be reclassified as personal property. The IRS has warned that an "accurate cost segregation study may not be based on noncontemporaneous records,

reconstructed data or taxpayers' estimates or assumptions that have no supporting records." Separately, a business entity must also utilize the services of an experienced certified professional accountant in order to apply the results of the cost segregation study to the tax situation.

The big four accounting firms often offer cost segregation services, but there are also smaller firms that specialize in providing cost segregation services. The IRS has published a "Cost Segregation Audit Techniques Guide" that provides internal guidelines for reviewing cost segregation reports. This Guide may be found at <http://www.irs.gov/businesses/article/0,,id=134180,00.html>. A formal report is not strictly required by the IRS to take advantage of cost segregation. A certified public accountant may be able to do the allocations without a study prepared by a third party. However, these do-it-yourself attempts at cost segregation are more likely to miss potential opportunities to allocate property, and thus, pass up valuable depreciation. They may also to fail to pass muster in the event of an audit by the IRS.

Potential downsides exist to utilizing cost segregation. The first is the cost of obtaining the report itself. Some firms may provide a free quote and estimate of the potential tax savings. A common range of costs for a study is \$7,000 to \$35,000, but the final cost will vary depending on the size of the project, the property's location, whether the building is new, the nature and relative amount of improvements that may be allocated as personal property and whether there are any unusual time pressures to complete the study. A well-done cost segregation study may provide many times more in savings than the cost of the study itself.

*Commercial Real Estate*, continued from page 4

A business entity can deduct the cost of the study as a business expense.

Further, the structure of the entity contemplating cost segregation and the financial condition of the entity must be considered. If an entity is not profitable, cost segregation will not be useful. Similarly, in the context of a partnership, depending on the state of an individual partner's finances at the time, one partner will not find it advantageous to go through the cost and effort of obtaining a cost segregation study if he or she cannot reap the benefits on his or her taxes. In either case, however, the ability to use cost segregation retroactively should be kept in mind if and when the entity or partner's financial state improves.

Due to its somewhat new and novel nature, many people may be worried about the risk of an IRS audit should they utilize cost segregation. However, those who work in the field say that cost segregation does not increase a taxpayer's risk of being audited. In the event of an audit, a thorough and well-supported cost segregation analysis that adheres to the IRS guidelines set forth at the web address listed above should withstand the IRS's scrutiny.

One reason for the relative lack of awareness about cost segregation is its relatively new arrival. No legislation was passed to implement cost segregation. Early users of cost segregation simply utilized existing parts of the tax code in a new way. The IRS often challenged these isolated uses of cost segregation until it was established as a legitimate accounting technique in *Hospital Corporation of America v. Commissioner*, 109 TC 21 (1997). It has since been developed through court cases and further publications from the IRS.

Attorneys active in the commercial real estate field should keep cost segregation in mind for their clients who might be able to enjoy its potentially valuable tax savings.

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## Member Benefits

All members have access to the following valuable resources and services:

**Circulation privileges** to borrow from over 40,000 print volumes for **up to 6 weeks** at a time

Access to extensive electronic databases from the Law Library, including **LexisNexis**, **Shepards'**, **CCH Omnitax**, **CCH Human Resources Group**, and **CCH Business Group** resources, **Hein Online Law Journals** and **Federal Register**, and over 70 **Aspen / LOISLaw** treatises in 16 substantive areas

**Wireless network** throughout the Law Library

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Professional **reference service** by our law librarians, available via e-mail, telephone, and in person;

Free **document delivery** by fax or e-mail of print and electronic materials

Inexpensive **CLE seminars** throughout the year, on legal research and substantive topics

In addition, solos and members whose firm has a membership have **24 hour remote access** to Fastcase.com case law and Aspen/LOISLaw treatises



## Cincinnati Law Library Transfers Historical Collections to U.C. Law Library

By Mary Jenkins, Law Librarian & Director

In late March 2009, the Cincinnati Law Library Association transferred a significant portion of its rare and historical collection to the Robert S. Marx Law Library, University of Cincinnati College of Law. The transfer, nearly twenty years in the making, is one of the most significant moments in the history of the Cincinnati Law Library and, indeed, in the history of the bench and bar of Cincinnati. The Association's Board, with the approval of the membership, continued its long tradition of stewardship for the collection and service to the legal profession with the transfer, for these materials will be conserved appropriately and made available to legal scholars.

The move of these infrequently used materials allow the Law Library to devote its resources to its mission, namely, the provision of professional, practical legal research services, relevant information and education to the public, its members, the members of the Ohio general assembly, and officers and judges of Hamilton County and its townships and municipalities.

Originally chartered by the Ohio legislature in 1834, this Bench and Bar library was incorporated June 5, 1847 for "the improvement of its members, the cultivation of the Science of the Law, and the foundation of a Law Library", as established by its constitution. See Chuck Kallendorf's history of the law library on our website <http://www.hamilton-co.org/cinlawlib/about/history.html> Like many of the nation's early law libraries, ours was begun by members of the bar who raised the funds and formed the law library association. The earliest subscribers included Alphonso Taft and Salmon P. Chase. Most of the rare and older books in the collection were given to the Law Library

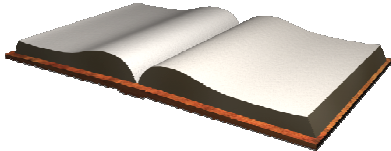
or made possible by monetary gifts by the legal community's earliest members. When the courthouse burned in 1884, destroying the law library, the Association rebuilt the collection, assessing each member a \$100 fee, attracting other monetary commitments and donations of books, and, ultimately, benefiting from several bequests, including a very generous gift by Rufus King, longtime president of the Association.

In fact, when Rufus King penned his will in 1891, he endowed not only the Cincinnati Law Library Association with \$20,000, but also what became the UC College of Law. His generosity and tremendous leadership, matched by the fine management of long-time librarian Maurice Myers and his successors, and the many contributions of private libraries and money from the local and national legal community, enabled the development and then the re-establishment of a world-renowned collection after each of several devastating fires. Upon the occasion of the Library's centennial in 1947, Librarian Edward Gholson commented, "...it is generally regarded as being one of the most important Libraries of its character in the country." These historical collections are truly remarkable: Some of the books are among the few remaining copies. Others, while less extraordinary in and of themselves, represent the library's legacy of legal research. They will prove a treasure trove for legal historians and other researchers. The historical collection will benefit from significant attention to its conservation and will be made available to a broader legal research community. As the Cincinnati Law Library

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*Transfer of Historical Materials*, continued from page 6

Association turns its attention to the refinement of a practitioner-oriented collection, it is my distinct privilege to honor the legacy of Rufus King, Maurice Myers, Edwin Gohlson and other fine servants of the Cincinnati Law Library Association to have managed the transition of these books, with the excellent help of our staff, to their next 175 years of care and access.



## **Westlaw offers free CLE Credit!**

### **Wednesday morning, April 29**

9:30 a.m. - Westlaw Basics : This class is designed for rookies or for anyone who wants to get back into shape using Westlaw.

11:00 a.m. – Westlaw Update: If you're a major league Westlaw user this class is for you! Refresh old and learn some new skills. This class will focus on a variety of secondary sources, such as OH Jur and Jury Verdict databases

One hour OH CLE credit is available for each class!

Please call and reserve your seat @ 513-946-5300 or email [gherald@cms.hamilton-co.org](mailto:gherald@cms.hamilton-co.org)

We look forward to seeing you then!

## **Commercial Real Estate Resources**

By Glenna Herald

Will going green under the American Recovery and Reinvestment Act help your clients? How will the new Consumer and Business Lending Initiative (CBLI) expand the scope of the Term Asset-Backed Securities Loan Facility (TALF) to include support for the commercial mortgage-backed securities market? What other issues are currently affecting the commercial real estate industry scene?

To help you answer these and other questions, the Cincinnati Law Library offers its membership the following electronic resources.

### **BNA's Real Estate Law & Industry Report**

This service keeps you current on the numerous issues affecting the commercial real industry today. The topics include public policy decisions, finance, equity and leasing, taxes, litigation, legislation, regulation, and more.

### **Aspen's Real Estate Law Library**

This service includes:

- Forms and checklists
- Commercial Real Estate Transactions Handbook
- Commercial Real Estate Leases
- State-by-state Guide to Commercial Real Estate
- Environmental Liability & Real Property Transactions
- Law of Real Estate Brokers
- Law of Title Insurance

If you have questions about using or accessing these (or other) resources please ask, we are happy to help.

**National Library Week  
Celebrate April 12-18, 2009**

National Library Workers Day, April 14, is a day for library staff, users, administrators and Friends groups to recognize the valuable contributions made by all library workers. Take a moment on April 14 - or any day - to thank librarians and support staff for their service, hard work, dedication, and expertise.



**April 2009 Law Library Newsletter**

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