

# “He Sai d, She Sai d”

Law Offices of Burton A. Brown

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## Congress Passes Amendments to False Claims Act

On May 20, 2009, President Obama signed into law the 2009 amendments to the civil False Claims Act (FCA), as part of the Fraud Enforcement and Recovery Act (FERA). The amendments beef up the False Claims Act by undoing several decisions by the federal courts which had narrowly interpreted the FCA.

Most notably, FERA reverses a ruling by the U.S. Supreme Court from last year, which held that plaintiffs under the FCA have the burden of proving that defendants submitting claims had the intent to defraud the government.

Calling this “inconsistent with the spirit and intent of the FCA,” the Senate Judiciary Committee pointed out that this allowed con-

tractors to avoid being punished when they intend to defraud general contractors, with no specific



intent to defraud the federal government.

Sometimes called “Lincoln’s Law,” the FCA was passed during the Civil War in response to widespread looting of federal funds by unscrupulous war contractors.

Several cases overturned by the 2009 amendments involved fraudulent billing related to the Iraq war, showing that the FCA’s original intent continues to be relevant.

The FCA allows private individuals with knowledge of false claims—called “relators”—to bring a lawsuit on behalf of the government, and to collect a reward if the suit is successful. Many states have identical laws, including Illinois.

The 2009 amendments to the FCA, contained in FERA, were passed by wide, bipartisan majorities in the House and Senate. FERA itself is designed to impose stronger penalties for mortgage fraud.

## Illinois Supreme Court Denies Landmarks Review

The Illinois Supreme Court recently turned down an appeal by the City of Chicago, seeking to review a lower court’s ruling that the city’s Landmarks Ordinance was unconstitutional.

The Supreme Court, per the usual custom, did not comment on its denial of the appeal. The case will now go to trial on several issues,

and faces a further possible appeal by either party.

The case involved landowners in the Arlington-Deming neighborhoods who alleged that the city’s zoning ordinances were unconstitutionally vague, improperly delegated authority, and violated their due process and equal protection rights.

The trial court had disagreed with the landowners and dismissed their claims, but the appellate court agreed that the zoning ordinance was vague because it used terms such as “important” and “substantial” when referencing qualifications for landmark status, without defining them. The court thus felt that the case (see p. 4)



# “He Said, She Said”

## Pending Bill Would Eliminate Estate Planning Obstacle



The Illinois Legislature is considering a bill that could help married couples avoid an estate planning obstacle for 2009.

House Bill 255 has been passed by the House and Senate, and of this writing is in waiting mode on a procedural motion in the Senate. It would amend the state’s estate and generation-skipping tax laws to allow married couples with more than \$2 million to set up a qualified interest property trust, or QTIP, to take advantage of tax deductions by deferring estate

taxes until both husband and wife are deceased.

Normally, couples can use a bypass trust to defer estate taxes until both spouses die, but in 2009 this is a problem because of a gap between the state and federal estate tax exemption levels.

The 2009 federal estate tax exemption rises to \$3.5 million, while the Illinois state’s exemption level only rises up to \$2 million.

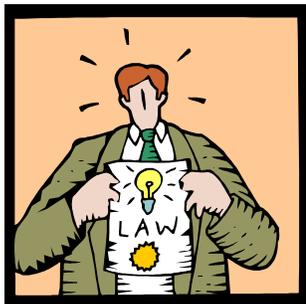
So, although the federal level allows transfers of up to \$3.5 mil-

lion to a bypass trust tax-free in 2009, the lower state limit reduces the taxes that surviving spouses could defer this year.

This undercuts the value of the bypass trust, a device that has been commonly used in Illinois for decades, by essentially requiring different formulas based on when you die.

The federal estate tax is set to be repealed in 2010 (meaning no federal estate tax), but it is highly unlikely that Congress would allow that to happen.

## Proposed Amendment Would Limit Retention Amounts



The Illinois Senate is considering a bill to change the Illinois Prompt Payment Act. The Prompt Payment Act controls when and how contractors are paid by owners, and prime contractors pay their subcontractors.

The bill as proposed would change the Prompt Payment Act by limiting retainage on private construction projects to a maximum of 5%; and by limiting retainage after 50%

completion to a maximum of 2.5%

If signed into law, this bill would limit how much retainage owners and prime contractors may hold, and when they may withhold it. The bill is HB 0344, and has already passed the Illinois House. It is currently pending for assignment to a Senate committee.

Contractors and subcontractors often feel like they are financing an

owner’s or a general’s project through the amounts withheld. Although contractors and subs have powerful tools available to them through mechanics liens and actions under the Prompt Payment Act, this amendment can only be a good thing.

Contact your state senators and representatives to voice your support for this bill.

## City’s Green Permit Program Speeds Permits, Reduces Fees



Chicago leads the nation in the number of LEED registered projects, a fact that often surprises people. One innovative feature drawn up by the city is the Green Permit Program, in an effort to promote the construction of green buildings.

The Green Permit Program offers two main incentives. First, for large or complex projects, it cuts

the typical permit issuance time by up to half—often saving 6-12 weeks from the review process. Second, it waives fees by up to \$5,000 for smaller projects and \$25,000 for developers of larger projects. This can often be a boon to developers of nonprofit and affordable housing projects.

As for non-tangible benefits, developers who seek out the Green

Permit Program receive a much higher level of customer service than typical large developments. Of course, legally required review periods and legislative approvals may still need to be maintained. Smaller projects, such as residential homes, may qualify as well.

For more information, link to the Department of Building’s website at [cityofchicago.org](http://cityofchicago.org).

## City of Chicago Construction Recycling Ordinance

Many people do not know that the City of Chicago requires contractors to recycle 50% of all construction or demolition (C&D) debris generated at a job site.

Contractors must keep track of how much waste is generated at project sites and strive to meet the recycling goals in the new ordinance.

The requirement was raised to 50% starting for all permits applied for starting January 1, 2007; prior to 2007, it was 25%.

Compliance forms for the recycling ordinance are handed out at the time of permit issuance, or are available from the City's web site at [www.cityofchicago.org](http://www.cityofchicago.org).

Contractors must fill out the form and return it to the Department of Buildings at the end of each project, together with an affidavit (also available on the City's web site) from the waste hauler or recycler, if applicable.

For details on which projects must comply and how compliance will be enforced, see the text of the

city ordinance, which is code section 11-4-1905, also available on the City's web site.

The City also offers free seminars on C&D material recycling. 2009 seminars will be held on June 23, 2009 and September 22, 2009 at the Chicago Center for Green Technology, 445 N. Sacramento Blvd., from 10:00 a.m. to 12:00 p.m.

*“The City of Chicago requires contractors to recycle 50% of all construction or demolition (C&D) debris generated at a job site.*

## New Energy Efficient Building Standards

The U.S. Green Building Council has developed a new set of Leadership in Energy and Environmental Design (LEED) regional credits as part of LEED 2009, the latest version of the LEED Green Building Rating System.

LEED regional credits set out how companies can design, build, and operate energy efficient buildings through a regional standard. Building owners will be able to earn

additional "bonus points" on their LEED certification for implementing green building strategies that specifically address issues in their geographic region.

LEED 2009 is one of the three components that make up LEED Version 3, the next version of the LEED green building certification program, which launched April 27, 2009.

The changes to the LEED rating system reflect the updates in building science and technology and give incentives to reduce energy efficiency and CO2 emissions reductions, among other priorities.

Going forward, the LEED system is expected to change every two years, including social and cultural criteria to be included in 2011.



## News and Updates!

The Law Offices of Burton A. Brown is pleased to announce its redesigned website at [www.babrownlaw.com](http://www.babrownlaw.com). The site was designed by Rachel Montague of **Not Another Cliche**. We'll be posting regular blogs, news, and updates, along with our newsletters and PowerPoint presentations. If you like Rachel's work, she can be reached at [rachel@notanothercliche.com](mailto:rachel@notanothercliche.com).

The firm is pleased to welcome new clients **AP. Monarch, LLC, Antigua, Inc., Susan Bolton, Dr. Bassam Osman, Loop Management, Inc., and Yagla Engineering Services, Inc.**

On June 11, 2009, the Law Offices of Burton A. Brown conducted a joint seminar with **MetLife's Chicago North Financial Group** on succession planning for

small businesses. The seminar covered succession planning for small businesses. Every business owner should have a succession plan in place to protect their business in the event of an unexpected or unforeseen accident, as well as for retirement planning. Special thanks to **Lori Miller, Denise Goldby and Skip Leuzzi** of MetLife for hosting.





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- Construction Law;
- Estate Planning and Wealth Management;
- Guardianships and Probate;
- Tax Deed Litigation; and
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### Landmarks, cont'd from Page 1

*“Although the ruling invalidated the ordinance, the city is expected to fight any further attempts to challenge the landmark status of additional buildings.”*

should not have been thrown out at the initial pleadings stage, and instead should have gone to a hearing on its merits.

Further, the court found that the Commission on Chicago Landmarks—the council charged with recommending landmark status—was in effect functioning as a legislative body, because its recommendations became law within a year if not challenged. The court found that this was an improper delegation of lawmaking authority under the Illinois constitution.

The city had deemed the Arlington-Deming district and the Elk Grove Village district as land-

mark districts, per the Commission’s recommendation. Finding that the zoning ordinance was unconstitutionally vague and that



the council had improper lawmaking authority, the court did not reach the questions of whether the zoning ordinance deprived the landowners of their due process and equal protection rights under the Illinois constitution.

Having lost the appeal, the city then asked the Illinois Supreme Court to review the appellate court’s decision. Such appeals are discretionary, although the likelihood of the high court taking a case is usually greater when it involves constitutional issues of importance such as this. However, the high court allowed the ruling to stand.

The case now returns to the trial court for additional proceedings, and possibly trial. Although the ruling invalidated the ordinance, the city is expected to fight any further attempts to challenge the landmark status of additional buildings.