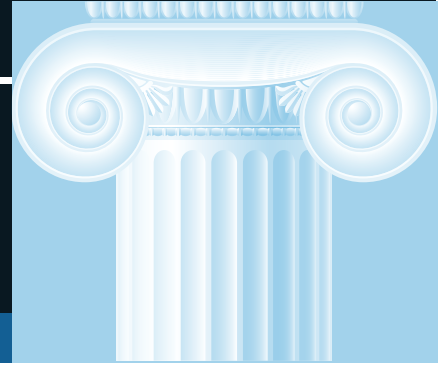


Legal Notes



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ESTATE PLANNING FOR SAME-SEX COUPLES

By Austin F. DuBois, J.D., LL.M.
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There is typically no need to “convince” same-sex couples that well-thought-out estate planning is necessary. It’s not news to them that the “system” is not designed with same-sex couples in mind, even though legislation such as New York’s Marriage Equality Act has begun to level the playing field.

While many heterosexual married couples are content (though misguided) to rely on default rules in the law that help to provide for one spouse upon the other spouse’s death, same-sex couples have a number of unique issues to consider in the estate planning landscape.

It is true that some same-sex married couples will benefit from the laws of the state of New York that provide preferred status to a spouse, but there is still the question of other state laws, federal laws, and the policies of private businesses. Just because those businesses are obligated to follow the law (assuming they are in a marriage equality state), that does not guarantee compliance, and a law suit may be necessary to compel them to act appropriately. **However, any good estate planner seeks to avoid risking a law suit to obtain a client’s desired results.**

The Basics

A duly executed power of attorney, health care documents, and will and/or trust are essentials for any same-sex couple. **These documents are, in most instances, more important for same-sex couples than married heterosexual couples.**

“Without a power of attorney and health care documents, your partner has no authority to assist you with financial transactions, make health care decisions for you if you are unable, or even to speak with your physician if you fall ill.”

(continued on page 2)

Partner Richard Shapiro Featured in Second Estate Planning Book -page 3

(continued from cover)

Family members of gay and lesbian couples may choose to delegitimize the relationship and, without legal documents authorizing a partner to act, the partner may be “shut out” of all critical financial and health care-related decisions affecting their partner.

Will or Trust?

New York’s default trusts and estates rules will only help provide for your partner if you’re married. Given the “newness” of the Marriage Equality Act and the scarcity of applicable case law, there remains a fair degree of uncertainty as to how the rules will be interpreted. **So to provide for your partner, proactive estate planning is the best course of action.** Wills and trusts are best thought of as a lawyer’s “tools”; your goals and objectives will dictate which estate planning tools are necessary, and your attorney will recommend whether a will or trust, or combination thereof, is appropriate.

But there is a benefit to trusts which is worth noting. With a will, certain family members will be entitled to appear in court to object to the will and its contents. This could lead to an unfortunate dispute, as same-sex couples’ family members who do not approve of the couple’s relationship may choose to challenge the will. A will contest may give them one last chance to voice their displeasure by creating a legal battle for your surviving partner amidst their grief. **Trusts can minimize such conflict because they are not subject to any notice requirement.** This does not avoid the possibility of a dispute entirely—any person can typically dispute any contractual agreement if they are so inclined. But utilizing a living trust at least avoids giving disgruntled relatives a written “invitation” from the court to intervene, which is inherent in a probate proceeding.

Cohabitation Agreements

If an unmarried couple jointly owns their house or other significant assets, a **Cohabitation Agreement** is particularly advised. Cohabitation Agreements are helpful for all unmarried couples regardless of the genders of the owners, but such joint ownership is perhaps more prevalent in the GLBT community since it was only recently that marriage became a legal option. Married couples can avail themselves of divorce proceedings and settled law to divide jointly held assets on a breakup, and married same-sex couples in New York are now able to rely upon New York’s Domestic Relations law to affect equitable distribution of their assets. **For unmarried couples, however, Cohabitation Agreements can provide a certainty of outcome for same-sex couples regarding their rights to jointly-held assets (typically a home) if the couple’s relationship should disintegrate.**

As with any situation, proactive, detailed, and ongoing planning is necessary to be certain that your desired goals are ultimately achieved.

IF I DON’T HAVE A WILL WHEN I DIE, WILL THE STATE TAKE MY ASSETS?

By Rita G. Rich, J.D.
rrich@mid-hudsonlaw.com



This is a question often heard from laymen, as many believe that if they die without a Will, the State will take their assets.

There’s something to that belief, but the answer is generally no, provided that there is even a distantly related relative entitled to inherit from you. The purpose of this article is to give a broad overview of what does happen to a decedent’s assets when there is no Will, spouse, or children.

New York’s Estates, Powers and Trusts Law (“EPTL”) Section 4-1.1 governs the distribution of a decedent’s estate. Absent a Will, when no spouse or children are living, parents are next in line. If both parents are deceased, then brothers and sisters of the decedent share in the net estate. In that case, the statute says the brothers and sisters of the decedent (called “issue of parents”) become distributees “by representation.”

“Representation” means if all of the decedent’s brothers and sisters (siblings) are alive, they share equally. In the event all of the siblings have predeceased and leave children, the children (nieces and nephews of the decedent) share equally as well. However, should there be living siblings, along with nieces and nephews who are children of deceased siblings, then it’s a different result: the living siblings take a proportionate share based on the number of original siblings, and the nieces and nephews share equally whatever is left, rather than sharing in the legacy their parent would have inherited.

The next scenario for distribution would be a decedent having no surviving spouse, children, parents, grandparents, brothers or sisters, and nieces or nephews. This is where the decedent’s aunts, uncles and cousins come into the inheritance chain. They are identified in the statute as “issue of grandparents,” and representation applies, but that’s where that method of calculation ends.

There is another last group in line for an inheritance: the great-grandchildren of grandparents!! They are children of cousins. Thus, the list of distributees who are entitled to inherit your estate is quite extensive.

Glossary:

Decedent: a person who is deceased

Escheat: the transfer of a decedent’s property to the state

Surrogate: a specialized court that deals with the administration of estates

Will: a legal document which names one or more persons to manage an estate and provides for the transfer of property upon death

If no relatives come forward with a petition to administer your estate, the Surrogate has the discretion to appoint the public administrator or chief financial officer of the county; or someone other than a relative who has applied for that authority; or any other person (or persons) to settle the estate.

New York's Surrogate's Court Procedure Act, Article 22, governs the administrator's accounting and settlement of the estate. Article 22 also sets forth procedures when there are unknown distributees; distributees whose whereabouts are unknown; distributees who may be presumed deceased; and other situations that require payment of the net estate into court to be held for their benefit.

Eventually, if unclaimed, the net estate goes to the State Comptroller as abandoned property under New York's Abandoned Property Law Section 600 (1) (a). It remains in the abandoned property fund until claimed by someone who is entitled to the inheritance. Statutory procedures must be followed.

Only if no one is entitled to a decedent's assets will the net estate escheat to the State.

“But isn't it preferable to provide for distribution of your estate through a Will drawn up to reflect your wishes, which may include your friends, as well as charities?”



PARTNER RICHARD SHAPIRO FEATURED IN SECOND ESTATE PLANNING BOOK

Richard Shapiro has been recognized as a leader in the trusts and estates law field through his inclusion as a contributing author for the recently released book, *Inside the Minds: Strategies for Trusts and Estates in New York*.

Shapiro's chapter, “**Counseling-Based Estate Planning: A Modern Approach**,” features insight for other lawyers regarding new trends in estate planning, such as utilizing a counseling-based approach, as opposed to a word-processing approach. He also discusses developments in other areas of New York estate planning practice, including a recent court decision authorizing an agent under a power of attorney to revoke an “irrevocable” trust.

The recently released book was published by Aspatore Books, a Thomson Reuters business focused on highlighting top-level executives from the world's most respected companies. This is Shapiro's second time contributing to an Aspatore book.

The 2013 edition, as well as past editions, of *Inside the Minds: Strategies for Trusts and Estates in New York* is available at booksellers and retailers as well as www.west.thomson.com.

Firm Highlight

The 2nd Annual Hooky on the Hill event at Hunter Mountain, sponsored by both BSR&B and The Ruby Group, drew nearly 30 skiers this year and helped support Inspire, a regional non-profit supporting children with developmental disabilities.



PARTNER RICHARD SHAPIRO TO PRESENT AT ELDER LAW SEMINAR

Richard Shapiro will give three elder law-related presentations as part of the National Business Institute's Fundamentals of Elder Law continuing education seminar in Newburgh on **March 11**.

Shapiro's three topics will include:

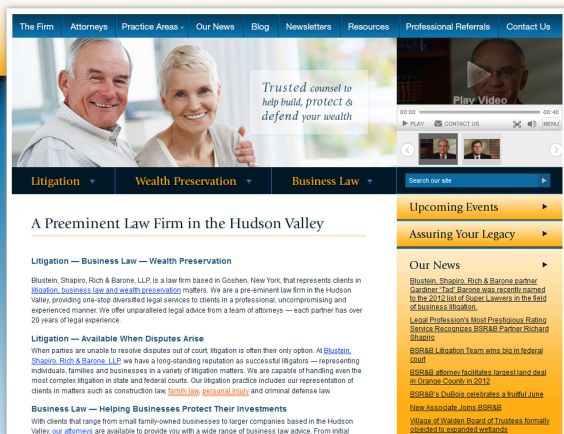
- Planning for Continuing Care Costs,
- Planning for Incapacity, and
- Preventing Financial Abuse and Neglect.

For each segment, Shapiro will discuss the financial and legal issues and techniques vital for today's elder law and estate planning practitioners.

Monday, March 11th
9 a.m. to 4:30 p.m.
at the
Hilton Garden Inn
15 Crossroad Court, Newburgh, N.Y.

More information and pre-registration are available by calling NBI at **1-800-930-6182** or visiting **www.nbi-sems.com** and using **Product ID 61635**. Registration includes a course book; audio recordings are available for those who cannot attend.

Firm Highlight



We are pleased to announce the launch of our redesigned website at **www.mid-hudsonlaw.com**. There you can find the latest BSR&B news, upcoming events, information about our attorneys and practice areas, and so much more. We invite you to explore...

FREE EDUCATIONAL WORKSHOPS:

Estate Plans That Work™

March 14, 2013

3:00 p.m. to 6:00 p.m.

April 17, 2013

3:00 p.m. to 6:00 p.m.

We'll explain little-known pitfalls and the best methods to protect your loved ones' inheritance after you're gone.

Elder Law and Long-Term Care Planning

April 9, 2013

4:00 p.m. to 6:00 p.m.

The costs of long-term care can be staggering; nursing homes in our region are averaging over \$10,000 per month for care. Under the 2006 Deficit Reduction Act, Medicaid eligibility for long-term care benefits was significantly curtailed. We will explain a number of legal strategies which, when properly implemented, can help you preserve your assets for yourself and your loved ones.

2013 Client Update Meeting

April 23, 2013

3:00 p.m.

Our client update meetings (which are open only to participants in our law firm's maintenance program) provide our up-to-date document language, a discussion of the latest estate planning legal news and issues, and advanced estate planning ideas.

The above workshops and meeting will be held at the

BSR&B Education Center (1st floor)
10 Matthews Street
Goshen, New York

To register for a workshop, call Donna at 291-0011 x.242, or register online at www.mid-hudsonlaw.com by going to the "Upcoming Events" link.

The information in this newsletter is for general information purposes only and is not, nor is it intended to be, legal advice, including legal advice for Internal Revenue Code purposes as described in IRS Circular 230.