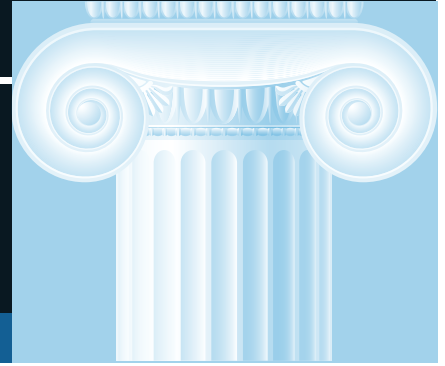


# Legal Notes



BURT J. BLUSTEIN  
MICHAEL S. BLUSTEIN  
RICHARD J. SHAPIRO  
GARDINER S. BARONE  
RITA G. RICH  
JAY R. MYROW

ARTHUR SHAPIRO,  
of Counsel  
DAVID S. RITTER,  
of Counsel  
CHARLES A. JUDELSON,  
of Counsel

AUSTIN F. DUBOIS  
RAYMOND P. RAICHE  
DANIELLE BARAN  
MARCELLO A. CIRIGLIANO

## IN THIS ISSUE:

- **TITLE REPORTS: THE BASICS**
- **LIFETIME GIFTS CAN REDUCE NEW YORK STATE ESTATE TAXES**
- **RECENT COURT VICTORIES**
- **FIRM HIGHLIGHTS**
- **EDUCATIONAL WORKSHOPS**

10 MATTHEWS STREET  
GOSHEN, NEW YORK 10924

PHONE: (845) 291-0011  
TOLL FREE (866) 692-0011  
WWW.MID-HUDSONLAW.COM

## BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

ATTORNEYS AT LAW

### TITLE REPORTS: THE BASICS

By: Jay R. Myrow, Esq.  
[jmyrow@mid-hudsonlaw.com](mailto:jmyrow@mid-hudsonlaw.com)



If you have ever bought a house or any other real property, you were undoubtedly presented with a bill for a title search that was prepared for your closing of title. If you obtained a mortgage loan, you paid premiums for title insurance policies for both yourself and your bank. Although most buyers know that they have bought title insurance to protect their interest in the property, it is also important to know what is typically contained in the title report for your property.

Title services in the Hudson Valley are typically provided by title abstract companies that search the public records to report on the state of title for a property, and then provide insurance through an affiliated title insurance company. The policy of insurance is issued by the title insurance company with limits of liability to the buyer in the amount of the purchase price. A policy will also be written for the mortgage company in the amount of the loan.

The title report that is provided prior to closing sets forth the terms and conditions upon which the title insurance company will issue its insurance policies. The report contains a legal description of the property being insured and sets forth any documents that may contain restrictions against the use of the property. If the property being sold was created by the filing of a subdivision map, the report will contain any notes or other facts shown on the filed map that may restrict the use of the property. For example, many subdivision maps contain notes that prohibit further subdivision of the property. If this restriction is disclosed in the title report, the title insurance company will “except” that prohibition from coverage and no claim for damages can be brought against the insurer based on that restriction.

The title report will also contain a tax search and a search for municipal water and sewer bills. Since real estate taxes and bills for municipal services can become liens on real property, the purchaser must be assured that all such bills have been paid up to the date of closing. The report will also contain what is referred to as a municipal search which will be set forth in a letter from the municipality disclosing whether there are any violations of zoning or building codes. It is important to verify that the municipal search was based on a physical inspection of the premises to ensure that there have not been any improvements to the property that were not made known to the building department.

Any judgments against the seller, or mortgages given by the seller, will also be reported as they are also liens against the property. The amounts owed for either type of lien are typically paid at

*(continued on page 2)*

(continued from cover)

the closing from the proceeds of sale. There will also be a flood search attached to the title report disclosing whether the improvements on the property are within a federally designated flood zone. If so, the purchaser's mortgage company will require the purchaser to obtain flood insurance; however, any purchaser in a flood zone is advised to purchase flood insurance, even if no lender is involved.

At closing, the representative of the title company "marks up" the title report, omitting the exceptions raised that have been determined to be eliminated as objections to title. The title insurance company will issue a title policy after closing, setting forth the remaining exceptions that are not omitted in the title report.

The title policy will contain standard provisions as to how, and when, claims against title must be filed and the manner in which damages may be calculated on a claim. Although it is not the most exciting of reading, you should **review your title policy after closing and consult with your attorney if you have any questions regarding your rights under the policy.**

---

## LIFETIME GIFTS CAN REDUCE NEW YORK STATE ESTATE TAXES

By: Charles A. Judelson, Esq.  
cjudelson@bmjpc.com



The American Taxpayer Relief Act of 2012, which was enacted in early January 2013, caused the federal estate tax exemption equivalent to be increased to \$5,250,000, effective for people dying during 2013. This eliminated any concern about federal estate taxes for the vast majority of people. However, the exemption equivalent for New York State estate tax purposes remains fixed at only \$1 million. Therefore, when a person's assets exceed \$1 million, in certain situations, consideration should be given to possible lifetime gifting to reduce or eliminate the exposure for New York State estate taxes. These lifetime gifts can even be made in contemplation of death; i.e., immediately before death.

The points discussed in this article are complicated and a [detailed schedule is included](#). Columns A through D illustrate four varying amounts of assets and gifted amounts. The potential savings in New York State estate taxes is summarized at the top of the schedule in the summary section in Line 6 and can exceed \$100,000.

The New York State estate tax is computed in a different manner from the federal estate tax. One important difference is that in computing the New York State taxable base, taxable lifetime gifts are not included in the New York State taxable base, whereas taxable lifetime gifts are included in determining the federal tax base. There are two alternative methods to compute the New York State estate tax, and whichever alternative produces the **lower** tax amount is used.

The first alternative tax uses a modified federal tax base for New York purposes and is illustrated in Section A of the schedule. The taxable base under the first alternative includes the Federal taxable estate and all lifetime taxable gifts. The federal estate tax rates are then applied and the exemption equivalent is limited to \$1 million, which is a maximum credit against the tax of \$345,800. The New York State estate tax using the first alternative is shown in Section A on line 9.

The second alternative uses the federal taxable estate. This alternative method does not include prior lifetime taxable gifts. These are the figures shown in Section B-1 and B-2 at Line 3 and referred to in the schedule as the Gross Tax Base. From the Gross Tax Base there is allowed a subtraction of \$60,000. There is a separate graduated rate schedule which is then applied to the Taxable Base Amount. The New York State estate tax using the second alternative is shown in Sections B-1 and B-2 on line 11.

Several additional points to consider:

- Although the gifts are referred to in this article as lifetime taxable gifts, no gift tax will be due with respect to the lifetime gifts unless the total taxable lifetime gifts exceeds the Federal Exemption Equivalent, which is presently \$5,250,000. However, a gift tax return would be required to report any taxable gifts. A gift of a present interest is not considered to be a taxable gift unless the amount of the gift exceeds \$14,000.
- New York State does not presently have any gift tax.
- This technique of making taxable lifetime gifts to reduce the NYS estate tax is also applicable with respect to larger estates that are subject to the Federal estate tax and would result in a greater estate tax savings since the tax rates are higher.
- One tax disadvantage in making a gift in contemplation of death is that the donee could receive the donor's income tax basis, which could be substantially lower than the fair market value of the gifted asset. This would be in comparison to making a testamentary transfer of the asset, which would result in the donee obtaining the step-up in the income tax basis to the fair market value of the asset at the time of the donor's death.
- One possible approach to avoid the problem is to have the donor borrow against the low-cost basis asset, make a gift of the cash and then after the date of death, repay the loan from the asset which is retained.

**POTENTIAL SAVINGS IN NEW YORK STATE ESTATE TAX BY MAKING LIFETIME GIFTS**

	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	
<b>SUMMARY</b>					
<b>Amount of Assets and Gifts</b>					
1	Amount of Assets	4,500,000	3,000,000	2,000,000	1,000,000
2	Amount of Gifts in Contemplation of Death	3,500,000	2,000,000	1,000,000	0
3	New York Taxable Estate	1,000,000	1,000,000	1,000,000	1,000,000
<b>Savings in New York State Estate Tax by Making Lifetime Gifts</b>					
4	NYS Estate Tax - No Lifetime Gifts - Section B-1 Line 11	159,718	115,344	75,898	0
5	NYS Estate Tax - Lifetime Gifts - Section B-2 Line 11	29,146	29,146	29,146	0
6	<b>NYS Estate Tax Savings</b>	<b>130,573</b>	<b>86,198</b>	<b>46,752</b>	<b>0</b>
<b>A. MODIFIED FEDERAL ESTATE TAX BASE - ALTERNATIVE 1</b>					
1	Fed. Taxable Base (Fed. Taxable Estate + Prior Taxable Gifts)	4,500,000	3,000,000	2,000,000	1,000,000
2	Base Amount for Tax Computation	3,000,000	3,000,000	2,000,000	1,000,000
3	Amount Over Base Amount	1,500,000	0	0	0
4	Tax on Base	1,290,800	1,290,800	780,800	345,800
5	Percentage on Amount over Base Amount	55.0%	55%	49%	41%
6	Additional Tax Amount	<b>825,000</b>	<b>0</b>	<b>0</b>	<b>0</b>
7	Total NYS Estate Tax Lines 4 + 6	<b>2,115,800</b>	<b>1,290,800</b>	<b>780,800</b>	<b>345,800</b>
8	Less NYS Credit	345,800	345,800	345,800	345,800
9	<b>Net NYS Estate Tax Line 7 - 8</b>	<b>1,770,000</b>	<b>945,000</b>	<b>435,000</b>	<b>0</b>
<b>B-1 MODIFIED FEDERAL TAXABLE ESTATE - ALTERNATIVE 2A - NO GIFTS</b>					
1	Federal Taxable Base	4,500,000	3,000,000	2,000,000	1,000,000
2	Less: Gifts	0	0	0	0
3	Gross Tax Base (Federal Taxable Estate)	4,500,000	3,000,000	2,000,000	1,000,000
4	Less Adjustment	60,000	60,000	60,000	60,000
5	Taxable Base Amount	4,440,000	2,940,000	1,940,000	940,000
<b>Computation of Tax</b>					
6	Base Amount	3,040,000	2,540,000	1,540,000	840,000
7	Amount Over Base Amount	1,400,000	400,000	400,000	100,000
8	Tax on Base Amount	146,800	106,800	70,800	27,600
9	Percentage on Amount over Base Amount	8.8%	8.0%	7.2%	5.6%
10	Additional Tax Amount	12,918	8,544	5,098	1,546
11	Total NYS Estate Tax Lines 8 + 10	159,718	115,344	75,898	29,146
<b>B-2 MODIFIED FEDERAL TAXABLE ESTATE - ALTERNATIVE 2B - GIFTS</b>					
1	Federal Taxable Base	4,500,000	3,000,000	2,000,000	1,000,000
2	Less: Gifts	3,500,000	2,000,000	1,000,000	0
3	Gross Tax Base (Federal Taxable Estate)	1,000,000	1,000,000	1,000,000	1,000,000
4	Less Adjustment	60,000	60,000	60,000	60,000
5	Taxable Base Amount	940,000	940,000	940,000	940,000
<b>Computation of Tax</b>					
6	Base Amount	840,000	840,000	840,000	840,000
7	Amount Over Base Amount	100,000	100,000	100,000	100,000
8	Tax on Base Amount	27,600	27,600	27,600	27,600
9	Percentage on Amount over Base Amount	5.6%	5.6%	5.6%	5.6%
10	Additional Tax Amount	1,546	1,546	1,546	1,546
11	Total NYS Estate Tax Lines 8 + 10	29,146	29,146	29,146	29,146

## Firm Highlights



### Marcello Cirigliano, Danielle Baran join BSR&B

BSR&B recently welcomed the arrival of Marcello A. Cirigliano and Danielle Baran to the firm.

Mr. Cirigliano joined the firm after serving five years as an assistant district attorney with the Orange County District Attorney's Office. He is a graduate of Villanova University and the Quinnipiac University School of Law. Mr. Cirigliano, a lifelong Orange County resident admitted to practice law in New York and New Jersey, focuses his practice on criminal law, personal injury, commercial and residential transactions, family law, and general litigation.

Ms. Baran, who graduated last year from New England School of Law, is admitted to the Massachusetts and New York State Bars. Ms. Baran, a 2009 alumna of LaSalle University, will focus her practice on general litigation under BSR&B Partner Gardiner Barone.

### Partner Shapiro Joins Community Foundation Board of Directors

Partner Richard J. Shapiro was recently appointed to the Board of Directors for the Community Foundation of Orange & Sullivan. As a member of the Board, Rich will serve as an ambassador for the Community Foundation and help to further its mission of allowing the people of Orange and Sullivan counties to realize their charitable ambitions on a local level.

### DuBois Honored with "Hall of Fame Award"

Austin DuBois, a BSR&B estate planning and elder law attorney, joined 18 other distinguished Leadership Orange graduates in being inducted into the Leadership Orange Hall of Fame at the organization's "20th Anniversary – Best Party. EVER!" event on Thursday, April 11.

## Recent Court Victories

- Partner Gardiner S. Barone was, in two instances, able to get cases dismissed early in the litigation process, before substantial legal fees and inconvenience were incurred for his clients.
  - > In *Salehpour v. Just A Buck*, Barone was granted a dismissal on behalf of his client, Just-A-Buck, which allowed his client to continue to pursue collection of a six-figure money judgment Barone obtained for it in New York State Court.
  - > In *IWS vs. CAM*, Barone convinced the court that the plaintiff didn't have the competent legal proof necessary to prevail during a trial, and the case was dismissed.
- In a third matter, Barone fended off a pre-answer motion to dismiss a federal lawsuit he commenced on behalf of a client to recover over \$10 million in damages from an investment partner who pulled out of a development agreement. Without filing formal motions, the federal judge used Barone's letter submission to persuade the defendant's counsel there was no likelihood that the court would grant the proposed motion.
- Finally, BSR&B recently won the dismissal of a case filed against a mid-sized Orange County employer by a former employee who alleged she was fired for refusing the sexual advances of her supervisor. We proved that the former employee was, in fact, terminated for poor attendance.

## FREE EDUCATIONAL WORKSHOPS:

### Estate Plans That Work™

**May 14, 2013** ~ 3:00 p.m. to 6:00 p.m.

**June 13, 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.*

The above workshops and meeting will be held at the  
**BSR&B Education Center (1st floor)**  
**10 Matthews Street**  
**Goshen, New York**

**Our workshops are FREE, but seating is limited.**

**To register for a workshop, call Donna at 291-0011 x.242, or register online at [www.mid-hudsonlaw.com](http://www.mid-hudsonlaw.com) by going to the "Upcoming Events" link.**