BSR&B

NOVEMBER 2013 | VOL. 5 – NO. 6

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
DIANA PUGLISI

In This Issue:

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

THE FAMILY VACATION HOME:
Protecting A Priceless Legacy

By: Austin F. DuBois, J.D., LL.M.
adubois@mid-hudsonlaw.com

A family's vacation home is often the site of some of a family's most pleasurable bonding experiences.

The potential for an increase in property value is important, of course, but a secondary consideration nonetheless. Often, a vacation home is purchased with the hope that it will someday be passed on as a very special kind of legacy to one's children, grandchildren, and generations beyond.

A vacation home often has been transformed in the image of the family through the years. It is typically in a "destination" location, like at the beach, in the mountains, or on a lake. It is worn in with the antics of children, and includes decorations and furniture collected over a lifetime (or two or three).

While retaining and protecting wealth is a general concern, retaining and protecting a vacation home is far more personal.

We plan for a vacation home because we care not just about our family's financial stability, but because we truly care about our family's identity, and we seek to preserve its special character for generations.

And while individual family members' primary residences may come and go, **the vacation home, like the blood that binds the family together, is a place that can remain constant.**

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Still, preserving a vacation home for multiple generations of family requires a well-thought-out plan. There are a number of factors to consider:

- Is the primary purpose of the home strictly for family vacation, or is it also to be rented?
- What are the personalities of your children or other beneficiaries? Which of them will have a desire to continue using the home after your passing?
- What are the financial circumstances of your beneficiaries? Can they afford to contribute toward maintenance of the property or will they and their siblings be burdened?
- What fraction of your estate will consist of the value of the vacation home? Will there be enough liquidity to provide for uninterested beneficiaries or potential estate tax?

Addressing these and other questions may take some thought and, perhaps, frank conversations with your spouse and/or children. However, these questions can only be adequately answered, and a proper plan devised, with the guidance of an experienced attorney.

The likely course of action will include either a "Cabin Trust" or LLC entity in your estate plan. The reasons for choosing one or the other will be made clear to your attorney through your discussions, but they have one important thing in common: **each provides a clear, written, and fair plan.**

This plan will outline who will inherit the home, provide management instructions, and set out rights of beneficiaries. In some cases, it may include the purchase of life insurance to provide liquid assets for maintenance and upkeep of the vacation home, or liquid assets to other non-vacation home beneficiaries to roughly equalize their inheritance. Such a plan should reduce, and hopefully eliminate, bitter disagreements, unfair management, and eventual forced sale of your vacation home. **It will help to preserve the home that, itself, helps to preserve the unique and priceless character you have given to your family.**

SPOUSAL REFUSAL IN NEW YORK: *A Tool For "Crisis" Medicaid Planning*

By: Richard J. Shapiro, J.D.
rshapiro@mid-hudsonlaw.com

Many married couples of advancing age fear that they may be forced to deplete virtually all of their assets if one or both of them requires long-term care. Given that the private pay rate for nursing home costs in the Hudson Valley averages over $11,000 per month, and 24-hour-per-day home care runs about $250 per day, that fear is not unfounded.

Under current law, the spouse applying for Medicaid will be eligible if his/her non-exempt resources do not exceed $14,400. The "well spouse" – also referred to as the "Community Spouse" – is permitted to retain their residence and other "non-exempt" resources in the maximum amount of $115,920 (the "CSRA"). Because there are no Medicaid penalties imposed for transferring assets from one spouse to another, rendering the ill spouse Medicaid-eligible is often as simple as putting virtually all of the couple's assets in the Community Spouse's name.

In addition to the resource allowance, the Community Spouse's income allowance (the Minimum Monthly Maintenance Needs Allowance, or"MMMNA") is $2,898 per month. If the Community Spouse's own income is below the MMMNA amount, a portion of the institutionalized spouse's income will be "budgeted" to the Community Spouse so that she will be entitled to receive enough of the institutionalized spouse's income to bring the Community Spouse's total monthly income up to $2,898. For example, if the Community Spouse has monthly pension and Social Security income totaling $1,898, and her husband in the nursing home has monthly income of $2,000, $1,000 of the husband's income will be allocated to the wife to bring her total monthly income to $2,898, with $950 of the husband's remaining monthly income paying for his care (the husband is allowed to keep the other $50 in a personal needs account). On the other hand, if the Community Spouse's own income is in excess of the MMMNA, he or she will not be entitled to receive any portion of the institutionalized spouse's monthly income, which will be payable towards the institutionalized spouse's cost of care (less the $50 personal needs allowance).

In circumstances where the Community Spouse's resources and/or income exceed the CSRA and MMMNA exemptions, in most states, the Community Spouse would be required to "spend down" such excess amounts towards the cost of the other spouse's care. Faced with such a scenario, some Community Spouses may decide that their best option is to divorce the ill spouse to preserve as much of the couple's assets as possible.

Under New York law, however, divorce should rarely be contemplated, since a Community Spouse may submit along with their spouse's Medicaid Application a "spousal refusal." In effect, a spousal refusal provides that the Community Spouse refuses to make his or her income and/or resources available towards the cost of care for the ill spouse. Upon the filing of a spousal refusal, the Department of Social Services must consider only the resources and income of the applicant spouse in determining that spouse's Medicaid eligibility, regardless of the Community Spouse's net worth at the time the Medicaid application is filed.

But submitting a spousal refusal doesn't necessarily let the Community Spouse off the hook financially. In such a case, the Department of Social Services retains the right to bring an action in state Supreme or Family Court to seek support from the Community Spouse towards the cost of the other spouse's care. Historically, some counties have been more aggressive than others in seeking recovery against a refusing spouse, but even when recovery is sought, the Community Spouse's obligation to reimburse the County is at the Medicaid rate, which is significantly less (often 40-50% less) than the private pay rate.

For Community Spouses with resources significantly above the CSRA level (which is often the case after the couple's assets have been transferred solely to the name of the Community Spouse), one effective technique is for the Community Spouse to consider using a portion of their excess resources to purchase an immediate annuity, which effectively converts the excess resources into a stream of income. For example, assume a Community Spouse with total excess resources of $300,000 uses those funds to purchase an immediate annuity that pays her $1,500 a year per life (the actual income stream will be determined by the Community Spouse's age at the time the annuity is purchased as well as the prevailing interest rate). If the Community Spouse's other income was $2,000 per month, the additional annuity income will bring her recurring income to $3,500 per month. Although that sum is over the MMMNA amount of $2,898, DSS will request a spousal contribution of only 25% of the Community Spouse's income above the MMMNA level. In the above example, the spousal contribution would be only $150.50 per month (or 25% of the difference between the Community Spouse's monthly income of $3,500 and the $2,898 MMMNA amount). While it is true that in using this technique the Community Spouse may forfeit the right to receive any of the ill spouse's income, the Community Spouse would also remove any threat that they can be sued for having excess resources, which may be of paramount importance.

> Used appropriately, spousal refusal can help a couple preserve a significant amount of their hard-earned assets.

Consultation with an experienced elder law attorney is advised whenever long-term care needs arise.

WHAT CONSTITUTES NEGLIGENCE?

By: Danielle Baran, J.D.
dbaran@mid-hudsonlaw.com

It is important to understand negligence to better understand your legal rights and responsibilities associated with an accident. A majority of accidents take place because of the negligent actions of one or more individuals; however, when an accident occurs, determining the legal responsibilities of the individuals involved can be difficult.

Negligence is a legal term used to describe behavior that is careless and causes, or contributes, to an accident. For example, a person might be negligent if he/she fails to stop at a red light and hits a vehicle as it is coming through an intersection. In these cases, the individuals involved are generally held to the standard of the reasonably prudent person. The reasonably prudent person always exercises average care, skill, and judgment. Therefore, **a person is deemed negligent when they fail to act as a reasonably prudent person would in the given situation.**

In most accidents, a person must be negligent to be held legally responsible for the injuries sustained by another.

> In New York, people owe a duty of care to all those who are foreseeable victims.

For example, a duty of care is owed to other drivers on the road because it is foreseeable that your actions will affect them.

While most people are held to the reasonably prudent person standard, the standard of care used to determine negligence can change. For example, a child's standard of care is determined by how a child of similar age, physical ability, and mental ability would reasonably act or be expected to act. Professionals, however, are held to a higher duty of care and are expected to act similar to their professional peers in the community.

For someone to be held liable for their negligence, causation must be present. New York requires a two-pronged approach to causation to prove negligence.

- **The first prong** is actual causation. Actual causation means that your actions actually caused the damages or injuries suffered by the other individual in the accident.
- **The second prong** is proximate cause, which means that the damage or injuries caused were a foreseeable result of the actions of the negligent party.

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The determination of damages is the last step in a negligence case. In many accidents, more than one person may be at fault. Even if someone was partially at fault, they can still receive compensation from the other individual who contributed to the accident through their negligence. New York follows a system of comparative negligence, which is a rule of law applied in accident cases to determine responsibility and damages based on the negligence of every party directly involved in the accident. Under comparative negligence, responsibility for the damage or injury caused by an accident is computed on the basis of each party's degree of negligence. For example, if Party A was 10% at fault and Party B was 90% at fault, Party B must pay 90% of the fair compensation for Party A's injuries.

Negligence laws impose a duty of care on every person. They set the standard for the way individuals are expected to act and allow for recovery when injuries are caused by people who fail to act the way a reasonably prudent person would act in the same situation.

Glossary:

Comparative negligence: a rule of law applied in accident cases to determine responsibility and damages based on the negligence of every party directly involved in the accident

Negligence: a legal term used to describe behavior that is careless and causes, or contributes, to an accident

Actual causation: your actions actually caused the damages or injuries suffered by the other individual in the accident

Proximate cause: the damage or injuries caused were a foreseeable result of the actions of the negligent party

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.

Firm Highlights

Blustein, Shapiro, Rich & Barone Welcomes **Diana Puglisi**

BSR&B is pleased to welcome the arrival of Diana Caccioppoli-Puglisi, an alumna of Adelphi University and New York Law School. Puglisi was admitted to the New York State Bar in May of 2007.

"I've known of the firm and its expertise since relocating to the area seven years ago," said Puglisi, a Florida, N.Y. resident. "It's ideal for me to move to a firm where I can expand my knowledge and branch out into other real estate-related fields."

Puglisi will concentrate her practice in real estate and banking. Her most recent appointment was with the Law Office of Norman L. Horowitz, LLC and Register Abstract Company Inc., where she specialized in real estate matters.

"Everyone here at BSR&B is pleased to have Diana on board, myself included," said Managing Partner Michael Blustein. "Her experience and her enthusiasm are real assets to the firm."

Puglisi joins a number of recent hires carefully selected to enter the growing ranks of Blustein, Shapiro, Rich & Barone, including Marcello A. Cirigliano.

FREE EDUCATIONAL WORKSHOPS:

Estate Plans That Work™

Nov. 14, 2013 ~ 3:00 p.m. to 6:00 p.m.
Dec. 10, 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.

2013 Client Update Meeting

Nov. 19, 2013 ~ 4:00 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.