

Legal Notes



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

MARCELLO A. CIRIGLIANO
MEGAN R. CONROY
AUSTIN F. DUBOIS
BRIAN NEWMAN
DIANA PUGLISI
RAYMOND P. RAICHE
JEANINE GARRITANO WADESON

ARTHUR SHAPIRO,
of Counsel
DAVID S. RITTER,
of Counsel

IN THIS ISSUE:

- William A. Frank Named Partner
- Estate Planning For Second Marriages
- You're Being Watched! Think Before Running a Red Light
- Residential Real Estate: Live By The Appraisal; Die By The Appraisal
- It's The Law: On The Radio With Austin DuBois
- Educational Workshops

GOSHEN
10 MATTHEWS STREET
GOSHEN, NY 10924
PHONE: 845.291.0011



WARWICK
21 OAKLAND AVENUE
WARWICK, NY 10990
PHONE: 845.988.1515

WWW.MID-HUDSONLAW.COM

BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

ATTORNEYS AT LAW

William A. Frank Named Partner



Blustein, Shapiro, Rich & Barone, LLP is proud to announce that attorney William A. Frank has recently been named a partner of the firm.

“Since joining us a year and a half ago, Will has been responsible for very impressive growth within our Municipal Law department,” said BSR&B Managing Partner Michael Blustein. “We’re pleased to have this opportunity to recognize the positive impact his hard work has already had on the entire firm.”

Frank has been the primary attorney representing the Town of Wallkill, a municipality that spans 62.8 square miles and has a population of nearly 30,000, for the last several years. The firm also represents the Town of Warwick, the Minisink Town Board and Planning Board, the Village of Unionville, and the Village of New Paltz, among other Hudson Valley municipalities as Special Counsel.

In addition to municipal law, Frank has a strong background in the areas of commercial law, banking transactions, real estate, and litigation.

“I am extremely proud to be named a partner at a firm with such outstanding attorneys and top notch support staff in every department,” said Frank. “I look forward to the future, and will continue working hard to contribute to the firm’s success.”

Frank has practiced law in the Hudson Valley since 2004, and practiced in New York City for 12 years before that. He has served as a mediator for the U.S. District Court, Southern District of New York, for over a decade, and as an arbitrator for Legal Fee Disputes in the New York State Supreme Court, Ninth Judicial District, for the past seven years. He is a graduate of University at Albany, State University of New York and St. John’s University School of Law.

Frank’s community involvement includes serving as a member of the Board of Directors of Big Brothers/Big Sisters of Orange County, Inc. and as a past volunteer with both the Pine Bush Little League and the Middletown American Legion baseball program.

Congratulations, Will!

Estate Planning For Second Marriages

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



Blended families have become the majority family structure in the United States. Couples in second marriages are often conflicted with the desire to provide for the needs of the surviving spouse upon the first death, while ensuring that their own children receive their “rightful” inheritance.

All too often, the estate planning completed by remarried couples consists of simple “I love you” wills, which provide that all the couple’s assets will pass to the surviving spouse. Not only does such a disposition forfeit a number of planning advantages – **including preserving each spouse’s estate tax exemption, protecting assets from creditors, protecting assets should the surviving spouse require long-term care, and protecting assets from a potential remarriage of the surviving spouse** – but under this scenario, the first spouse to die (the “deceased spouse”) would have no assurance that the surviving spouse will leave the deceased spouse’s assets to the deceased spouse’s children.

A better solution is for each spouse to establish one or more trusts to hold their respective assets. Upon the deceased spouse’s death, his or her estate plan may provide that all, or a portion, of his or her trust assets passes to a “marital trust” for the benefit of the surviving spouse. **The marital trust would provide income from the trust to the surviving spouse for life, and may provide distributions of principal to, or for the benefit of, the surviving spouse at the trustee’s discretion.** Upon the surviving spouse’s death, the trust assets would be distributed to the deceased spouse’s children, either outright or preferably in a creditor-protected trust. The assets in the marital trust would be included in the taxable estate of the surviving spouse, with the assets passing to the deceased spouse’s heirs receiving a step-up in cost basis for capital gains tax purposes upon the surviving spouse’s death.

If there is a concern that the children of the deceased spouse may have to wait too long to receive their inheritance, a portion of the deceased spouse’s assets may go directly to his or her children upon death, either outright, or in trust.

In 2015, the first \$3,125,000 distributed to anyone other than a surviving spouse will be exempt from both federal and New York State estate tax.

Glossary

Marital trust: provides income from the trust to a surviving spouse for life, and may provide distributions of principal to, or for the benefit of, the surviving spouse at the Trustee’s discretion

Trustee selection is critical in these cases. Due to the inherent conflict of interest, it is poor practice to have the deceased spouse’s children serve as trustee of the marital trust for the surviving spouse. A better choice is typically a professional trustee, such as a trust department of a bank or other financial institution. Regardless of the trustee selection, it is important that the marital trust include explicit instructions describing the circumstances, if any, when the trustee may distribute trust principal to or for the benefit of the surviving spouse.

Another important aspect of blended family estate planning is the need for each spouse to sign a waiver of their spousal right of election. In the absence of such a waiver, in New York, the surviving spouse would be able to significantly alter the couple’s coordinated planning by simply asserting his or her statutory right to one-third of the deceased spouse’s testamentary assets.

While the challenges are many, a thoughtfully conceived, counseling-oriented estate plan will provide couples in second marriages with a planning solution that addresses all of their planning objectives.

You’re Being Watched! Think Before Running a Red Light

By William A. Frank, J.D.
wfrank@mid-hudsonlaw.com



You’re driving along late for work, school, a party, an appointment, or to pick up your children from daycare. The traffic light turns yellow. You look around and determine that the intersection is virtually empty and there are no police cars in sight. You put your right foot down and blow through the intersection after the light turns red. Safely through (this time) without getting pulled over by the police, you say to yourself: “I made it!”

Not so fast. About three months later, an envelope arrives at the home of the registered owner of the vehicle you were driving on the day you went through the traffic light. It contains a notice that an operator of his or her vehicle violated the law on that fateful day by failing to stop at a red light. The notice is accompanied by several color photographs of the vehicle during the incident, including a close-up shot of the license plate. The notification and photographic evidence are accompanied by a \$50 fine, also assessed against the owner.

This process has been deemed perfectly legal in New York State. **Vehicle and Traffic Law §1111-a provides that local governments receiving explicit legislative authorization, may “install**

and operate traffic-control signal photo violation-monitoring devices.” The images taken by the cameras may not identify the driver, passengers, or contents of the vehicle.

NYS V&T Law §1111-a: local governments may “install and operate traffic-control signal photo violation-monitoring devices”

Generally speaking, red light camera programs are administered for municipalities by outside vendors who supply the cameras, computer equipment, and paperwork to process the violations. The vendor will send the camera data by computer link to the local police department. A member of the department will review the photos and vehicle information to determine whether a violation notice is appropriate. The violation will then be mailed to the vehicle owner. **The maximum fine associated with a red light violation issued in this manner is \$50.** However, should the owner elect to ignore the violation notice, the municipality may assess an additional penalty of \$25. **Because the operator is not identified at the time of the violation, no points are assessed against the vehicle owner’s driving record.** It is important to note that an owner will not be liable for red light violations if the vehicle was reported stolen prior to the violations, or if the vehicle was being operated without the permission of the owner.

The violation systems implemented in New York provide the vehicle owner with a link to video on the internet for review. In addition, “offenders” have the ability to pay for their violation online or by phone. Should the vehicle owner receive a notice of violation that is erroneous in any way, the violation can be contested in court in the same manner as a traffic violation. Keep in mind, however, that the owner would need to prove that the vehicle did not travel through the red light as claimed, following submission of proper evidence of the violation by the government. Any photographs, microphotographs, videotape, or other recorded images evidencing the violation must be available for inspection in any proceeding to adjudicate the violation.

There is an ongoing debate about the effectiveness of red light camera systems. Opponents believe that the use of these cameras is merely a measure to raise revenue by cash-strapped municipalities; that the cameras are used to make easy money on the premise that most people will mail in the fine rather than take the time to contest the violation. The argument is also raised that the cameras are the cause of more rear-end collisions because motorists stop for red lights that they would otherwise drive through. Those in favor of the red light cameras argue that safety is the goal. They contend that rear-end collisions in such instances demonstrate: (1) motorists brake abruptly at the last minute because they are in the habit of rushing through traffic intersections to beat changing lights, rather than preparing to stop when the signal changes from green to yellow; (2) motorists follow each other too closely on roads with traffic lights.

Regardless of one’s personal view of red light cameras, they are a reality in parts of New York City, Long Island, Westchester, Albany, and Rochester. **Closer to home, there is a strong likelihood that the cameras will be coming to the Route 211 corridor in Town of Wallkill before year’s end.** Motorists would be

well-advised to refrain from hitting the gas to get through an intersection with a changing light if stopping safely can be accomplished. Running that red light to save a minute or two will not only endanger your safety and the safety of others, but it might very well lead to an unwelcome envelope arriving at your home.

Residential Real Estate: Live By The Appraisal; Die By The Appraisal



By Jeanine Garritano Wadson, J.D.
jwadson@mid-hudsonlaw.com

“The most important single central fact about a free market is that no exchange takes place unless both parties benefit.”
- Milton Friedman

Applying Milton Friedman’s theory to a residential real estate transaction, the free market principle should be dictated by the mutual benefit to buyer and seller – the exchange of the real property for the agreed-upon price. **The free market theory would say that the value of the property is whatever a buyer is willing to pay and a seller is willing to accept.** Presumably, when a deal is struck, the seller is happy with the price and the buyer feels she is getting a good deal for her money.

In the real world, however, buyers need mortgage loans, so residential real estate transactions are not simple free market exchanges between buyer and seller. **They are three-party transactions: buyer, seller, and buyer’s lender.** Enter the lender, who wants to make sure that they are also getting a good bargain in making the deal. From the lender’s perspective, a good bargain means that the lender is obtaining a lien against a sufficiently valued asset in exchange for their investment – the mortgage loan to the buyer.

When a buyer and seller come to a meeting of the minds for the purchase and sale of real property, a contract is prepared that makes a buyer’s obligation to proceed with the purchase contingent upon the buyer obtaining a mortgage loan. **There are, of course, many factors that play a role in whether a buyer qualifies for a mortgage loan as an individual, including income, assets, credit scores, etc.** The typical buyer works hard and prepares in advance to make sure all of those elements will survive the scrutiny of the mortgage underwriters. An often overlooked issue is the second prong of the mortgage loan, the approval of the value of the property itself.

Lenders have specific guidelines that must be followed in determining the merits of a particular mortgage loan. While many



It's The Law: On The Radio With Austin DuBois

Our very own Austin DuBois debuted his weekly radio show in July on WTBQ (93.5 FM/1110 AM). The 30-minute broadcast, entitled *It's The Law*, airs every Friday morning at 10 a.m.

"I want to give listeners more and better information that they can use to help plan for and navigate difficult situations, and avoid unforeseen pitfalls," said DuBois, whose legal experience includes estate planning, elder law, asset protection, business formation, and business succession planning. "I'm excited to share what I've learned over my years of practice. I really believe that the only bad decision is an uninformed decision."

It's The Law, which features other BSR&B attorneys as well as guests from other firms and professions, addresses a range of legal and financial issues that bear directly on everyday people. Topics include legal and financial considerations for home buyers and sellers, retirement planning, insuring long-term care, and prenuptial agreements and divorce.

Listeners are encouraged to call in (845.651.1110) or text (845.397.7743) any questions they may have during the show.

"We encourage engagement on the show so that listeners can benefit from the exchange of situations and ideas," said DuBois.

WTBQ broadcasts on 1110 AM and 93.5 FM in Orange County, part of Sullivan County, and Northern New Jersey, as well as Pike County, Pa. You can stream WTBQ live at www.wtbq.com.

"unconventional" loan products are available under various circumstances, for our purposes here we will address the standard "80/20" loan, in which a buyer is contributing 20 percent of the purchase price of the property and seeking financing for the remaining 80 percent. The 80 percent threshold of a property's value is typically the maximum amount a mortgage lender will give without requiring additional obligations from a purchaser.

While a buyer and seller may be willing to consider certain intangible or even emotional factors in determining the value of a property, the mortgage lender is much more black-and-white. The lender will contract with a third-party appraiser who will visit the property, prepare an analysis of the property, and determine its economic worth. That number, whether it is more, less, or the same as what the buyer and seller have determined the price to be, will dictate whether a mortgage loan can be granted. If the value of the property is significantly less than the contract price, a bank may not be willing to grant a loan sufficient to allow the buyer to proceed with the purchase.

For example, if a buyer is purchasing a home for \$300,000 and has managed to save \$60,000 as the 20 percent down payment, she will need to seek a mortgage loan of \$240,000, or 80 percent of the purchase price. The lender sends an appraiser to the property who issues his report to the lender. If that appraiser determines that the fair market value of the property is \$280,000, the lender – under the standard 80/20 loan program – will now only be willing to issue a mortgage loan of \$224,000, thereby making it exceptionally difficult for the buyer to proceed.

In our example, the mortgage contingency in the contract has not been satisfied, as the buyer cannot get a mortgage loan. The contract, therefore, may be cancelled and the buyer is entitled to the return of her or his down payment. Of course, the purchase price can be renegotiated between buyer and seller to comply with the appraiser-determined value. Alternatively, the realtors involved can be of great assistance in offering additional information to the appraiser – typically in the form of supplementary comparable properties – in the hope of convincing him to revise his report. Absent such accommodations, in the end the fair market exchange between buyer and seller is out the window.

So while we may indeed live in a free market society, just remember, as with everything else in life, there are practical limits to the freedom to bargain.

FREE EDUCATIONAL WORKSHOP:

Estate Plans That Work™

Aug. 25, 2015 | 3 p.m. to 6 p.m.

The workshop will be held at the
BSR&B Education Center (1st floor)
10 Matthews Street, Goshen, NY

Call 845.291.0011 x242
or email receptionist@mid-hudsonlaw.com
to reserve your spot!

WWW.MID-HUDSONLAW.COM

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.