

# 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:

- Time Passages
- Our Government And You: The Freedom Of Information Law
- Is An LLC Right For Me?
- Three BSR&B Attorneys Recognized By Super Lawyers
- Educational Workshop

**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](http://WWW.MID-HUDSONLAW.COM)



## BLUSTEIN, SHAPIRO, RICH & BARONE, LLP

ATTORNEYS AT LAW

### Time Passages

By Michael S. Blustein, J.D.  
[mblustein@mid-hudsonlaw.com](mailto:mblustein@mid-hudsonlaw.com)



Time does not stand still. It seems like yesterday that my first daughter, Hannah, was born, and I left the Orange County District Attorney's Office to enter into private practice with my father. This month, Hannah will be joining BSR&B Partner Rich Shapiro's daughter, Emily, at the Cornell University School of Industrial and Labor Relations. More than 11 years have passed since I took over the responsibilities as managing partner of our law firm from my father.

In 1829, Supreme Court Justice Joseph Story stated: "[t]he law is a jealous mistress and requires a long and constant courtship. It is not to be won by trifling favors, but by lavish homage." Certainly, the day-to-day responsibility of practicing law and managing a business (the law practice) can be a grind, but when I think back at what we as a firm have achieved over the past 11 years, the results we have accomplished for our clients, and the people we have helped here in the Hudson Valley, it gives me a feeling of deep satisfaction.

Since 2004, we have transitioned from a firm that was somewhat dependent upon the ebb and flow of the local real estate market to a well-diversified law firm of significant size in Orange County. Our four major practice areas – estate planning and wealth preservation, transactional law, municipal law, and litigation – are all thriving under the leadership of firm partners, and the support provided by a team of extremely competent associate attorneys and support staff.

Our firm has steadily grown in size since the end of the "great recession." In the last year alone, we have hired two new associates directly out of law school. In addition, Will Frank was elevated to partner, and leads our growing municipal law department. The most recent growth has come from the retirement of long-time Goshen attorney Albert Pacione. He has delivered all of his active files to our office to see through to completion. Al's phone number, (845) 294-1895, will now ring through to our main receptionist in Goshen. We look forward to serving Al's past and present clients in any capacity necessary.

As time continues to fly by, I am increasingly confident that at Blustein, Shapiro, Rich & Barone, LLP, we are building the bedrock for a law firm that will become a generational law firm providing service to the businesses and residents of Orange County for years to come. Who knows, perhaps Emily Shapiro and Hannah Blustein will someday return home to join the firm that their grandfathers helped form many years prior!

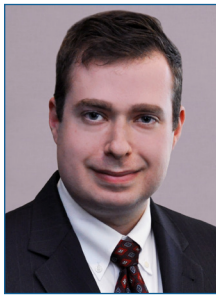
My best wishes to all of you, our clients, for your continued success and good health. Thank you for trusting us to take care of you and your family's legal needs, and for the continued business and referrals that have allowed us to grow our legal family.

---

# Our Government And You:

## The Freedom Of Information Law

By Brian M. Newman, J.D.  
bnewman@mid-hudsonlaw.com



New York State enacted the Freedom of Information Law (FOIL) to give the public the ability to discover what their government is up to, and to ensure that local governments, school districts, and other governmental agencies remain accountable. The law lays out the guidelines for how the public can request official government records, how the municipality must respond to such a request, and what records are exempt from being released.

**FOIL defines records to include any information kept, held, filed, or produced by a municipality, including items such as reports, memoranda, manuals, forms, designs, maps, photos, etc.**

Each municipality is given the authority to craft its own uniform policies for adhering to FOIL, provided those municipalities comply with the law. These requirements include stating the times and places for record inspection, the persons from whom the records may be obtained, and the fees, if any, for providing copies of records.

To obtain records from a municipality, school district, or agency under FOIL, you must make a written request that reasonably describes the materials you are seeking. Be specific, not only because it will make it easier for the municipality to process your request, but also because a municipality has no obligation, under FOIL, to create new documents in response to a request, and can interpret vague requests as asking for records that don't exist.

For example: suppose that you submit a request asking a municipality how much was spent on repaving a certain road last year. The municipality may not have a specific document that summarizes all the costs and may reject your request on the grounds that no responsive documents exist. Assume instead that you send in a request asking the municipality to provide copies of all invoices charged and all checks written with respect to the specific repaving project. This request contains the necessary specificity that tells the municipality exactly what you are seeking, and such documents should certainly exist.

After receiving your request, the municipality has five business days to respond in one of the following three ways:

- The municipality can make the requested record available;
- The municipality can provide a written denial of your request; or
- The municipality can provide a written acknowledgment of your request that includes a statement of an approximate date when your request will be either granted or denied.

This third option is usually the case for voluminous records requests. Such records may be difficult to identify or locate, or the municipality may initially determine that some or all of the requested records fall into a statutory exemption barring release.

If more than 20 days are needed to produce the requested records, the municipality must notify you of the delay, the reason(s) for it, and the approximate date the records will be available.

Not all governmental records are available for inspection or review. Examples of documents that are exempt from disclosure to the public include, but are not limited to:

- Documents which are specifically exempt by federal or state statute
- Documents that, if released, would create an unwarranted invasion of privacy
- Documents that would negatively affect contract awards or collective bargaining negotiations
- Trade secrets or other information divulged to the municipality by a business that, if released, would have a negative effect on the business' ability to compete
- Law enforcement documents that, if released, would impair criminal investigations and court proceedings, hurt a person's right to a fair trial, identify a confidential informant, or disclose confidential information and reveal non-routine investigation techniques or procedures
- Documents that, if released, could endanger the life and safety of another person

One thing to keep in mind when utilizing FOIL is the cost. When requesting paper copies of documents, the agency has the right to charge up to \$0.25 per photocopy on standard letter-sized paper. If it takes a municipality more than two hours to prepare the copies necessary to meet your request, **that municipality can charge you for any additional time beyond the first two hours at a rate based on the hourly wage of the lowest-paid employee with the skill to prepare the copies.**

FOIL is an important tool in illuminating the manner in which an agency conducts business and for providing the details of its financial activities. So long as you properly file a request, carefully target your request, and know what records you can and cannot examine, it can be a very effective tool as well.

---

# Is An LLC Right For Me?

By Megan R. Conroy, J.D.  
mconroy@mid-hudsonlaw.com



When starting a business, determining the right type of business organization to create is among the many decisions the business owner must face. With a number of options – sole proprietorships, partnerships, corporations, or limited liability companies (LLC) – it can be confusing to decide which type best suits your needs.

An LLC is a form of entity that merits serious consideration, offering a number of benefits and being relatively easy to form. **It is a hybrid entity that combines the pass-through taxation of a sole proprietorship or partnership with the limited liability protections afforded to a corporation.** While an LLC is not the best choice for every business owner, its flexibility allows the LLC to meet a variety of business needs.

## FLEXIBLE FORMATION

To create an LLC, the Articles of Organization (in some states called a Certificate of Formation) must be executed and filed with the state, along with a filing fee. New York is the only state to require the publication of the Articles of Organization or a notice of formation in addition to filing. The owner(s), called “members,” are also required to execute an Operating Agreement that sets out the members’ rights, powers, duties, liabilities, and obligations between themselves and with respect to the LLC. The Operating Agreement may also detail each member’s percentage of interests in the business, and his or her share of the profits. These aspects are all negotiated and determined by the members, emphasizing the flexible nature of the entity.

A further example of the malleability of the LLC structure is the owners’ ability to choose how the LLC will be managed. An LLC may have one member or consist of multiple members who share in the profits and losses of the entity. A member may be an individual, corporation, trust, partnership, another limited liability company, or any other legal entity. In a member-managed LLC, all of the members are involved in managing the business. Like a partnership, each member has the authority to enter into binding contracts and agreements on behalf of the LLC, and each is responsible for its operation and maintenance. The other option, called a manager-managed LLC, is where one or more managers are designated to run the business, similar to the president and other officers of a corporation.

## EASY MAINTENANCE

**As a general matter, the members and managers of an LLC are not liable for the LLC’s debts, obligations, or other liabilities to third parties.** Thus, an LLC makes sense for businesses that engage in moderate to high risk activities, including operating businesses and those involving ownership of investment real estate. This protection is not absolute, however, and a member of an LLC can be held personally liable if he or she:

- Personally and directly injures someone;
- Personally guarantees a bank loan or a business debt on which the LLC defaults;
- Fails to deposit taxes withheld from employees’ wages;
- Intentionally commits fraudulent, illegal, or reckless activity that causes harm to the company or to someone else; or
- Treats the LLC as an extension of his or her personal affairs, rather than as a separate legal entity.

A business owner who is careful not to stumble into one of those pitfalls will find that LLCs are otherwise relatively easy to maintain. Unlike corporations, LLCs have minimal administrative and formal record keeping requirements, and no annual meetings need be held.

For those LLC’s who elect to be taxed as partnerships, LLCs avoid the double taxation that is a feature of C corporations. Instead, the members pay income tax on the profits of the LLC. This pass-through taxation is one reason a business owner might elect an LLC over a standard C corporation. On the other hand, members of an LLC that is taxed as a partnership might end up paying more self-employment tax than will the shareholders of an S corporation. With “check-the-box” taxation, however, LLC owners are allowed to make an S corporation election on their tax returns which results in the LLC being taxed as an S corporation rather than a partnership. Such an election, however, would require that the LLC conform to many of the restrictions applicable to S corporations, thereby eliminating some of the advantages that draw many business owners to an LLC in the first place.

## WHO SHOULD USE AN LLC?

For small businesses engaging in fairly low risk activities, or for exceedingly large businesses that require multiple investors, an LLC may not be appropriate. Likewise, owners looking to offer fringe benefits and stock options are likely better off opting for a corporate structure. Also, when choosing which business organization is right for you, it is important to keep in mind that LLCs are fairly new. The laws surrounding them are still developing, and, because LLCs are a statutory creation, the rules of formation and operation are not uniform in every state. A business that operates in several states may face varying degrees of liability and tax consequences.

**LLCs appear to be the obvious choice, however, for small business owners that require the added protections of a corporation without the need for the added burden of formal record keeping requirements.** For those businesses, the protection, flexibility, and simplicity afforded by an LLC likely outweigh any drawbacks associated with this type of structure.



**SUPER LAWYERS LIST**

**Gardiner "Tad" Barone**

Business Litigation  
*(4th consecutive year)*



**SUPER LAWYERS LIST**

**Richard J. Shapiro**

Estate Planning & Probate  
*(2nd consecutive year)*



**RISING STARS LIST**

**Austin F. DuBois**

Elder Law  
*(2nd consecutive year)*

Blustein, Shapiro, Rich & Barone, LLP Partners Gardiner "Tad" Barone and Richard J. Shapiro were once again included on the Upstate New York Super Lawyers list in the fields of business litigation, and estate planning and probate, respectively. This is Barone's fourth and Shapiro's second consecutive recognition by Super Lawyers. Austin F. DuBois, an associate with the firm, was selected for a second year in a row to the Rising Star's list in the field of elder law.

No more than five percent of the lawyers in New York State are selected to the Super Lawyers list, and no more than two and a half percent receive the honor of inclusion on the Rising Star's list.

"We are proud that these three talented attorneys are once again being recognized for the great work they do," said BSR&B Managing Partner Michael Blustein. "We know that all of the attorneys at our firm are second to none, but it always feels great to receive positive recognition from our peers."

Super Lawyers is a national and independent third-party rating service of outstanding lawyers from more than 70 practice areas who have attained a high degree of peer recognition and professional achievement. The patented selection process is multi-phased and includes independent research, peer nominations, and peer evaluations.

Rising Stars are selected through the same process as Super Lawyers, but must be 40 years old or younger, or have been in practice for 10 years or less.

Barone, Shapiro, and DuBois's profiles will appear in Super Lawyers Magazine, which is published in all 50 states and Washington, D.C., reaching more than 13 million readers.

**FREE EDUCATIONAL WORKSHOP:**

**Estate Plans That Work™**

**Sept. 15, 2015 | Oct. 22, 2015**

**3 p.m. to 6 p.m.**

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

**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!**