



## New York State's New Paid Family Leave Law

By Andrew A. Kimler, Esq.

Starting January 1, 2018, New York State will provide employees with Paid Family Leave, which will be phased in over a four-year period. Unlike the federal Family and Medical Leave Act ("FMLA"), which only applies to individuals working for employers with 50 or more employees, the new state law will apply to virtually every employer in New York. In addition, unlike the FMLA, which does not provide for paid leave, once it is fully phased in, the State law will provide for 12 weeks of paid family leave annually.

A key distinction between the two laws is that the FMLA provides for 12 weeks of unpaid

leave for an employee's own serious health condition; for the adoption or birth of a child; or to care for a spouse, child or parent who is ill. On the other hand, the State law does not provide paid family leave for the employee's own serious health condition. Under those circumstances, the employee would have to use his or her personal time off or disability benefits.



Andrew A. Kimler, Esq.

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# Why You Need a Survey

By James F. Burdi, Esq.

A survey is a diagram of real property, showing the location of the property relative to surrounding parcels, the dimensions of the property and the location of all structures, including any structures belonging to adjoining owners that might encroach on the premises.

## THERE ARE GOOD REASONS FOR A NEW SURVEY WHEN PURCHASING REAL ESTATE

- The survey is one of the best ways to determine if there are extensions or additional structures requiring legalization by the building department.
- By locating and measuring structures, the survey helps new owners to determine whether future improvements may require zoning variances. The survey also provides points of reference for installing fences or planting hedges or trees.
- One of the most important reasons to have a new survey prepared is to determine whether there are any objections to title, based on a legal theory known as “adverse possession.” Under this legal principle, an adjoining landowner actually can acquire title to property, by exclusive possession over a period of ten years or more. There are several criteria that have to be met; adverse possession can be very difficult to assert successfully. Even so, the potential for a claim will cause a title company to refuse to insure any of the property that may be affected.

– For example, if a fence stands significantly inside the property line (the title industry uses one foot as its criterion), the adjoining owner may have a claim to the isolated strip on the other side of the fence, depending on how long the fence has been up, whether the fence completely deprives the owner of access and other factors.

– Another example would be if a structure, such as a garage, toolshed or pool, stood partly on one parcel and partly on the other.



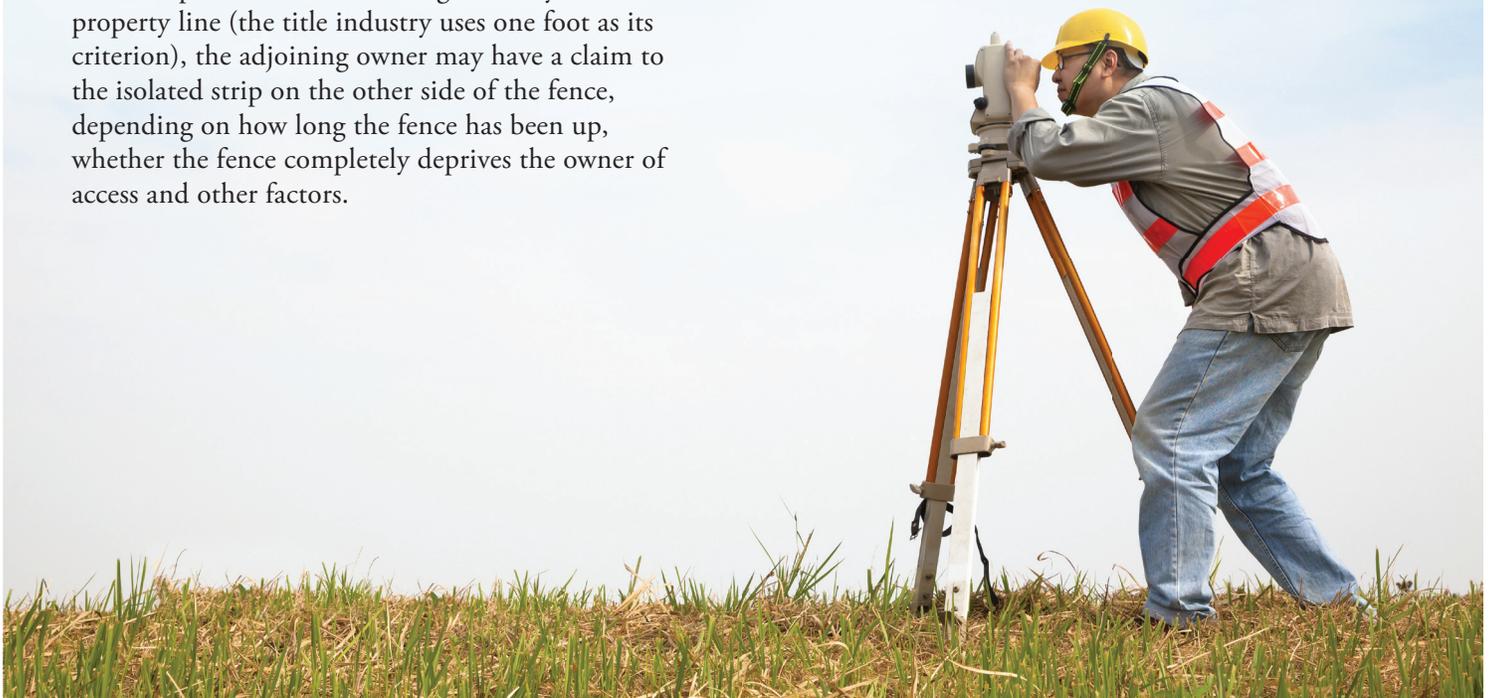
*James F. Burdi, Esq.*

## IT'S WORTH THE COST

These problems are not easily determined without a new survey. Once determined, they often can be resolved without significant delay in closing, preventing future controversy or claims.

A new survey generally costs between \$650 and \$850 and is a relatively minor expense, given the size of the investment and the exposure a purchaser faces. It is possible that the seller has had a survey prepared within the past few years. If it can be ascertained that the prior survey reflects the current state of facts, this expense can be avoided. Generally speaking, however, a new survey is recommended whenever you purchase real property. **M**

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# Marital Assets: Prenuptial Agreements and Irrevocable Trusts - Part Two

By Joseph Trotti, Esq.

In our last article, we discussed definitions, rules and exceptions as they pertain to marital and separate assets. The focus of this article is a discussion of the two important vehicles that can identify and protect the parties' rights and maintain their separate property: prenuptial agreements and irrevocable trusts.

## PRENUPTIAL AGREEMENTS

Prenuptial agreements are a relatively modern concept. These contracts have become more widely accepted only within the last 25 to 30 years. The agreement is a legal document in which couples can protect and preserve any assets identified. It also is designed to protect future income and future acquisition of assets, even those acquired or obtained during the marriage. Prenuptial agreements serve as a key method to classify and direct distribution of assets; more importantly, to avoid endless and costly divorce litigation.

Although useful and practical, the agreements often are challenged in court, and therefore it is imperative that the agreement is drafted properly. The Domestic Relations Law requires that a prenuptial agreement must be executed and acknowledged or proven in a matter required to enable a deed to be recorded. In addition to the strict adherence to the execution requirement, the failure of which will invalidate the agreement, there are many other significant factors to be considered. The non-monied spouse should be represented by independent counsel. The agreement certainly will be called into question if that spouse is not represented, or represented by an attorney chosen by the monied spouse.

There should be thorough financial disclosure in the agreement. It is important that spouses are completely aware of the nature and extent of any rights and obligations they are waiving in the agreement.

The issues of maintenance and waivers of rights to accumulation of assets and wealth also should be addressed in the agreement. The reference to a resolution of these issues must not be the product of fraud, duress or unconscious ability, or which could invalidate the agreement. Finally, the agreement should be executed far enough in advance of the date of marriage to rule out any issues of pressure, stress, duress or overreaching. There is no rule that an agreement is invalid if signed on the eve of the wedding; however, it would be prudent to execute the agreement with enough time to review before the potential wedding date.

Although prenuptial agreements were, at one time, mainly used for estate planning purposes, at present, they are important vehicles to deal with separate property, appreciation, business ventures, college tuition bills, licenses and degrees.



Joseph Trotti, Esq.

## IRREVOCABLE TRUSTS

An irrevocable trust is a trust that the creator cannot revoke or amend.

Although used primarily for estate planning, it also is an important and useful vehicle for "divorce planning," if the requirements concerning the trust are strictly adhered to. Typically, the creator of an irrevocable trust may or may not have access to the trust assets, depending upon the trust terms. However, if an asset is deemed to be separate, and if the creator is requesting that the court label the property as separate, then the creator must not have any access to the trust assets. The creator must give up all control of the trust, including the power to revoke the trust and the right to receive the benefit of the trust assets. Usually, the trust then will be treated as exempt from his or her creditors, including a spouse. In addition, and a fact often overlooked by parties and attorneys alike, any assets referenced by the trust must actually be transferred into the trust. The document cannot be simply a paper ploy used to deceive creditors and spouses alike. The assets must be transferred into the trust as is set forth in the trust and the creator relinquish any access to same. The courts will closely examine strict compliance with the trust language, as well as actual distribution of assets into the trust. Lastly, the creator should not be the trustee of the trust. Many arguments arise when the creator is the trustee and then the court is faced with a question of fact as to whether the trust is of a discretionary nature or whether the trustee can compel payments.

This article does not deal with the situation where a spouse is named as a beneficiary of a trust created by a non-party. Those fact patterns result in separate evaluations and analysis of the marital interest and the distribution of assets and income that may become the property of the party. **M**

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## New York State's New Paid Family Leave Law

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Finally, the State law will provide up to 12 weeks of paid family leave to assist with family obligations when a family member is deployed abroad on active military duty, or has been notified of an impending call or order of active military duty abroad.

### ELIGIBILITY

Private employers with at least one employee will be required to provide paid State family leave under the State law. Employees with a regular work schedule of 20 or more hours per week are eligible after 26 weeks of employment. Employees with a regular work schedule of less than 20 hours per week are eligible after having worked 175 days. It should be noted that employees do not have to take all of their sick leave and/or vacation time before using State Paid Family Leave. In other words, an employer may permit an employee to use sick or vacation leave for full pay, but may not require the employee to use this leave before seeking State Paid Family Leave. Moreover, employees may take the leave intermittently in any 52-week period. The 52-week clock starts on the first day the employee takes paid family leave. Citizenship and/or immigration status has no impact. In addition, an employee and his or her spouse with different employers are both eligible for Family Leave.

### CIRCUMSTANCES COVERED BY NYS'S NEW PAID FAMILY LEAVE LAW

#### • Maternity and Paternity Leave

– Whether a parent is expecting, fostering or adopting a child, the parent may take time to care for the child without losing his or her job.



– Paid Family Leave only begins after birth and is not available for prenatal conditions. A parent may take Paid Family Leave during the first 12 months following the birth, adoption or fostering of a child.

#### • Caring for a Close Relative with a Serious Health Condition

– A serious health condition is an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility; or continuing treatment or continuing supervision by a health care provider.



#### • Active Duty Deployment

– Paid Family Leave is available for families eligible for time off under the military provisions in the federal Family Medical Leave Act when a spouse, child, domestic partner or parent of the employee is on active duty or has been notified of an impending call or order of active duty.



### PREMIUM PAYMENTS

As of January 1, 2018, every disability benefits policy in New York State must include Paid Family Leave coverage. The State coverage is funded entirely by employees and not by the employers. Beginning January 1, the employee contribution/wage deduction shall be 0.126% of an employee's weekly wage, up to the annualized New York State Average Weekly Wage of \$1,305.92. This will be approximately \$1.65 per week.

### PHASED-IN BENEFITS

Starting in January, employees can receive 50% of his or her average weekly wage (AWW), capped at 50% of the statewide AWW, for a period of eight weeks. By 2021, employees will be eligible for 67% of their AWW, capped at 67% of the statewide AWW.

### NOTICE REQUIREMENTS

When an employee has a foreseeable situation, he or she should provide the employer with 30 days advance notice of the intention to use paid family leave. If the event was unforeseeable, the employee must notify the employer as soon as practical.

### EMPLOYER RESPONSIBILITIES

Employees generally are entitled to be reinstated to their same or comparable job upon return from paid family leave. Employers also must continue employees' health insurance coverage while they are on Paid Family Leave. Employers may, however, require that employees continue to pay their health insurance premium contributions. Employers should include Paid Family Leave information in their employee handbook

### TAX IMPLICATIONS

According to the New York State Department of Taxation and Finance, the new program has tax implications for New York employees and employers; it also notes that it is the responsibility of each employee and employer to consult with its tax advisor. **M**

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*Joe Milizio [left] is presented the 2017 Person of the Year award by Rick Allen Wilson, LICC Board of Directors Vice President.*

Managing Partner **Joseph G. Milizio** was named Person of the Year by Long Island Crisis Center (LICC) and was presented with an award at LICC's most significant annual event, "Let's Walk, Let's Talk...Stepping Together to Prevent Suicide" on the Long Beach Boardwalk on September 17. Joe's acceptance speech drove home the message that 'talking' is the most important means for combatting suicide among family and friends. In Joe's honor, Walk Team VMM, which included employees, their families and other supporters, exceeded its fundraising goal of \$10,000.

At its September meeting, the Nassau County Bar Association board of directors launched an LGBTQ committee, co-chaired by Mr. Milizio. "The Nassau County Bar Association prides itself on the inclusion of all minorities. We look forward to working with committee members to address equality in the law and legal concerns for the LGBTQ community in an unbiased way," states Mr. Milizio. Partner **Joseph Trotti** is a member of the new committee.

Mr. Trotti has been appointed to the Legal Outreach Attorney Mentoring Program, pairing urban high school students from underserved communities with attorney mentors. Long Island City-based Legal Outreach's partners include prominent law



*Joseph Trotti*

schools, law firms, financial institutions, real estate firms, government agencies, public interest organizations, judges and over 200 attorney volunteers. Mentors serve as role models, meeting with their mentees to assist with preparation for a constitutional law debate and other topics fostering their bond.



Congratulations to attorney Constantina S. Papageorgiou and her husband Joseph Alexander, who welcomed their second daughter, Olivia, on September 17.

*Olivia cradled by her thrilled big sister Stella.*

VMM is pleased to welcome attorney **Kenneth Renov** to the firm's Trusts and Estates Practice Group. Mr. Renov's legal work includes asset protection planning, Medicaid planning and the drafting of wills and trusts. Further, he carries out the full life cycle of estate planning, conducting analysis of client tax returns, insurance and annuity policies, as well as other documents. Mr. Renov is admitted to practice law in New York State and New Jersey. He earned a Juris Doctor degree with a triple concentration in Taxation, Corporate Law, and Family and Matrimonial Law from Benjamin N. Cardozo School of Law in New York City.



*Kenneth Renov*

# news & Events



Andrew A. Kimler

Partner **Andrew A. Kimler** lent his expertise to an article written by Jamie Herzlich and published in *Newsday* on September 18 entitled, “Off-duty behavior can be grounds for firing, experts say.”

Visit <http://tinyurl.com/zfzpv8g> to read Mr. Kimler’s remarks on the topic.

Partner **James F. Burdi** will present a Continuing Legal Education program at St. John’s University School of Law on November 5. A St. John’s Law alumnus, Mr. Burdi will speak on “Overcoming Unexpected Issues in Probate Proceedings.”

VMM appeared in the *Long Island Business News* “On Our Island” feature in the September 29-October 5 issue.



*Vishnick McGovern Milizio LLP was a sponsor of the HRC (Human Rights Campaign) Greater NY Tee Off for Equality Golf Outing and Dinner. (From left, standing) Tawni Engel, Joseph Milizio, Kevin Claus, Michael Humphrey; (seated) Fran Karliner, Joseph Trotti, Andrew Kimler and Bernard McGovern.*

Counsel **Michael D. Humphrey**, who leads the firm’s Charitable Bequest Management Practice Group, is a member of the Association of Fundraising Professionals – Long Island Chapter faculty at its 30th annual Philanthropy Day conference, being held on November 17. Mr. Humphrey will conduct a workshop entitled, “Cultivating Your Planned Gifts and Maximizing Your Yield.”



Michael D. Humphrey



**Joe Milizio** presented a seminar on exit planning for business owners on October 15 at the Metro Regional Symposium of the New York State Society of Opticians, Inc. (NYSSO), a professional association providing its 1,200 NYS members with effective communication and education.

On October 20, Mr. Milizio discussed relevant legal issues with the United Federation of Teachers Pride Committee, comprising of UFT members and staff who share a vision of inclusiveness and aim to advocate for LGBTQ issues.



## IMPORTANT NOTICE

Beginning in 2018, *The SideBar* will become a primarily digital publication. If you are receiving a print version of *The SideBar*, WE NEED TO HEAR FROM YOU!

A limited number of print SideBars will be mailed to those who indicate that is their preference. If you currently receive a print version and wish to receive *The SideBar* digitally in 2018, please make sure we have your email address by calling or emailing Mindy Wolffe at 516.390.3027/[mwolffe@vmmlegal.com](mailto:mwolffe@vmmlegal.com).

We want all our subscribers to receive *The SideBar* in the format they prefer. Please note that if we do not hear from our print subscribers and we do not have your email address on file, your free subscription to *The SideBar* will lapse at the close of 2017. Thank you.

# DON'T MISS VMM ACADEMY'S NOVEMBER PROGRAM



## *Elder Law and Medicaid planning: For seniors and their care providers.*

*Speakers: James F. Burdi, Esq. and Constantina S. Papageorgiou, Esq.*

*Wednesday, November 29, 2017*

### **WHERE:**

**Vishnick McGovern Milizio LLP  
3000 Marcus Avenue, Suite 1E9  
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### **AGENDA:**

**5:45-6:10 PM: Check in, networking  
and refreshments  
6:15-7:15 PM: Program  
7:15-7:30 PM: Questions & Answers**

**THERE IS NO FEE TO ATTEND VMM ACADEMY, BUT  
ADVANCE REGISTRATION IS A MUST! SEATING IS LIMITED.**

**FEEL FREE TO SHARE THIS INVITATION WITH YOUR FRIENDS, RELATIVES,  
NEIGHBORS AND COLLEAGUES.**

**CONTACT MINDY WOLFLE AT [mwolfe@vmmlegal.com](mailto:mwolfe@vmmlegal.com)  
or 516.390.3027.**



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