



the SideBar

Fiduciary accountings are not actually about accounting; they are about accountability.

By *Maia Carroll*

So, you have been appointed as an executor, trustee or guardian and you have collected all assets, now what? After the payment of the debts, taxes and expenses, an accounting needs to be prepared. Acting as a fiduciary holds great responsibility, as you are accountable for properly collecting, maintaining and eventual distribution of assets. By following the guidelines listed below, you can be assured that when the time comes, you will be able to produce a full and accurate accounting. After all, fiduciary accountings are not actually about accounting; they are about accountability.

- Keep copies of all bank and brokerage account statements
- Arrange for the bank to print the canceled checks on the statements
- Keep copies of all deposits made
- In cases where an individual needs to be reimbursed for administration expenses advanced, all receipts must be received for each expenditure
- Create a bank account ledger using a spreadsheet to fully describe all payments and deposits made
- Prepare an asset list which can detail all account information; notations can be made regarding the current status of these assets

It should also be noted that all accountings do not

have the same starting point:

- An estate accounting commences with the values of the assets as of the decedent's date of death.
- A trust accounting commences with the date that the trust was funded.
- A guardianship accounting has various starting points and the guardian accounts for the assets as of the date that they are collected into the account (account has been titled in the name of the guardianship).

Generally, once prepared, the accounting will need to be approved by the interested parties. The fiduciary will only be relieved of liabilities once all receipts and releases have been received from the said interested parties, and the fiduciary has made distributions.

Our experienced staff is available to assist you with regard to the preparation of these accountings. Sample outlines can be found at <https://www.nycourts.gov/forms/surrogates/accounting.shtml> 

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New York State expands parental rights

By Joseph Trotti, Esq. and Joseph J. Milizio, Esq.

In a landmark decision, New York's highest court ruled "that the nonmarried, ex-partner of a biological parent may seek custody or visitation rights of children they once agreed to conceive and raise as co-parents with their exes," as reported in the New York Law Journal on August 30, 2016. Writing for the Court of Appeals, Judge Sheila Abdus-Salaam declared, "Basing visitation and custody rights chiefly on the biological relationship between adult and child has led to a 'needlessly narrow' interpretation of what a 'parent' is."

Key to the Court's decision was New York's public policy of enforcing equality for same-sex couples, and the Court's recognition that the prior legal framework for establishing one's standing (the capacity or right to bring a suit before the court) to seek custody of a child worked an injustice against a same-sex parent who was not a biological parent of the child. This involved a reinterpretation of Domestic Relations Law Section 70, which states, in part, "In all cases there shall be no prima facie right to the custody of the child in either parent, but the court shall determine solely what is for the best interest of the child, and what will best promote its welfare and happiness, and make award accordingly."

FACTS BEFORE THE COURT

The cases before the court involved same sex couples. While the facts of each case are different, standing and the best interest of the child were essential to both, in that they established:

- The partners were in a committed relationship with each other;
- They made their commitment known through becoming engaged or as domestic partners;
- They mutually agreed to have and raise a child;
- They co-parented before separating; and
- The non-biological parent maintained, or attempted to maintain, a relationship with the child.

PREVIOUSLY, THE COURT'S HANDS WERE TIED

In the many years prior to the August 2016 decision, courts were forced to permanently sever strongly formed bonds between children and adults with whom they had parental relationships, limiting their opportunity to maintain bonds that may be crucial to a child's development.



Joseph Trotti, Esq.



Joseph J. Milizio, Esq.

The court found itself in a legal landscape where a non-biological, non-adoptive parent may be estopped (a legal principle that bars a party from denying or alleging a certain fact owing to that party's previous conduct, allegation, or denial) from disclaiming parentage and made to pay child support, yet denied standing to seek custody or visitation. That was a disparity and inconsistency in the rights and obligations of parenting.

It would have been impossible – without marriage or adoption – for both former partners of a same-sex couple to have standing, as only one can be biologically related to the child. In contrast to partners in a heterosexual couple where biologically related to the child, both partners have standing, regardless of marriage or adoption.

IT ALL COMES BACK TO STANDING

The court indicated to establish standing the petitioner would have to prove by clear and convincing evidence that the parties entered into a pre-conception agreement to conceive and raise a child as co-parents. This decision addresses only the ability of a person to establish standing as a parent to petition for custody or visitation; the ultimate determination of whether those rights shall be granted rests in the sound discretion of the court which will determine the best interest of the child. **M**

Partner Joseph Trotti, practices in the firm's LGBT Representation, Matrimonial and Family Law and Commercial Litigation Practice Groups. He can be reached at jtrotti@vmmlegal.com/516.437.4385, ext. 140. Managing Partner Joseph J. Milizio practices in the firm's Business and Transactional Law, Exit Planning for Business Owners, Real Estate Law and LGBT Representation Practice Groups. He can be reached at jmilizio@vmmlegal.com or 516.437.4385, ext. 108.



WHO NEEDS A PRENUP? YOU DO.

By Joseph Trotti, Esq. and Eun Chong (EJ) Thorsen, Esq.

With over 2,000,000 marriages taking place in the United States each year and over 800,000 divorces or annulments, it makes great sense for couples taking the marriage plunge to consider the need for a prenuptial agreement. Recent statistics show four out of ten are remarriages for at least one of the future spouses and one out of five are remarriages for both parties.

Heterosexual and same-sex couples alike often come into the marriage having lived together and having likely accumulated assets prior to marriage, running the gamut from property ownership to jointly held savings and investment accounts to artwork, antiques and other valuables. And then children may be part of the picture.

Rather than looking at a prenup as the harbinger of a divorce to come, it's wise to recognize that a prenup allows for the creation of an agreed-upon foundation for their future financial life. A prenup allows the spouses – not the court – to determine their own rights and responsibilities in the event of a breakdown in a relationship. This can minimize legal fees and prevent a long, drawn-out legal battle. Prenups also play an important role in the event of the death of one of the spouses.

It's undeniable that a prenup changes the dynamics should a divorce take place and that's good for both parties. Premarital bliss aside,

some of the issues for couples to take into consideration prior to marriage include:

- Division of properties, income, businesses, investments, inheritances, and other assets
- Spousal support
- Estate planning
- Children from a previous relationship
- Debts of either party coming into the marriage

For those who may have opted against a premarital agreement, it is not too late to define each spouse's financial rights and responsibilities. A couple can achieve similar results by entering into a post-marital agreement after they marry. **M**

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news & Events

January 2017 started with the announcement of promotions for three of our firm's outstanding associates.

Partner Eun Chong (EJ) Thorson, Esq.
Partner Avrohom Gefen, Esq.
Counsel John P. Gordon, Esq.



NOTABLE DECISION

Jordan Freundlich, Counsel in VMM's Litigation Practice Group, recently obtained a successful decision from the New York State Supreme Court Appellate Division, First Department, in a multi-million dollar action concerning claims made against our Estate client by the decedent's brother under a purported agreement, the authenticity of which was disputed by the Estate.



Jordan Freundlich, Esq.

In *Eshaghgian v. Eshaghian*, Index No. 654481/15, the Appellate Division affirmed the decision of the lower court and found that the Decedent's brother's claims were previously tried and rejected before the Surrogate's Court, Queens County, in which the claims against the Estate were declared to be invalid. The Appellate Division also affirmed the assessment of sanctions against the Decedent's brother for commencing a frivolous action. Notably, former First Department Justice James Catterson unsuccessfully argued the appeal on behalf of the Decedent's brother.

SPEAKING ENGAGEMENTS

- Partner **Avrohom Gefen** addressed the Touro Law School LAMBDA Law Students Association on November 15, 2016 on the impact of the proposed Equality Act of 2016. Also among the other speakers was Dawn Lott, executive director the Suffolk County Human Rights Commission.
- Partner **Eun Chong (EJ) Thorson** served as guest lecturer on negotiation to first year law students at St John's University School of Law on January 17, 2017.
- Partner **Joseph Trotti** spoke to congregants of the Garden City Community Church on October 30, 2016 about the expansion of parental rights in New York State for nonmarried, ex-partners of biological parents.

- Attorney **Constantina Papageorgiou** was a member of the distinguished panel discussing issues of the elderly at the June 15, 2016 meeting of the Hellenic Medical Society of New York. She covered the topic of the importance of planning ahead.



Left to right: Maria Scaros-Mercado, Jack Soteriakis, MD, George Liakeas, MD, Ms. Papageorgiou and Panagiota Andreopoulou, MD.

- Chief Marketing Officer **Mindy Wolfe** was the guest instructor on October 24, 2016 on the topic of professional business writing for a Hofstra University graduate class in the Master of Arts in Public Relations program.



On January 27, 2017, Partner Eun Chong (EJ) Thorson received the 2017 Recent Graduate Service Award from St. John's University School of Law Alumni Association. Pictured in attendance are, back row, left to right: VMM attorneys Dennis Lyons, Joseph G. Milizio, Bernard Vishnick, Andrew A. Kimler and Joseph Trotti. Front row, left to right: VMM attorneys Constantina S. Papageorgiou, Ms. Thorson, James F. Burdi and Bernard F. McGovern.

news & Events



VMM, a longstanding supporter, sponsored opening night, October 14, 2016, of the Long Island Gay and Lesbian Film Festival held at the Cinema Arts Centre in Huntington.

Counsel **Michael Humphrey** took second place in the Babylon Junior-Senior High School “Souper Bowl of Caring” on January 28, 2017 with his recipe, “Mike’s Undue Influence Chili.” His ingredients included cubed tri-tip beef, seven kinds of chili powder and no beans. Mike’s chili was the first and only chili to run out of samples, long before the close of the event. The mission of the Souper Bowl of Caring is to mobilize and inspire youth to fight hunger and poverty in local communities and transform the weekends before the Super Bowl into the nation’s largest youth-led weekend of giving and serving. Mike and his colleagues at VMM donated over 50 pounds of canned goods to benefit Habitat for Humanity and Rock Can Roll.



John P. Gordon was named head of the Residential Real Estate Practice Group in December 2016, coordinating the efforts of the department, with responsibility for all aspects of residential real estate within the firm, together with the other members of the group. For more news on Mr. Gordon, see our promotions announcement on the next page.



John P. Gordon, Esq.



Joseph Trotti, Esq.

Joseph Trotti, partner in the firm’s Commercial Litigation, Matrimonial and Family Law, and LGBT Representation Practice Groups, has added the new role of Partner-in-Charge of the firm’s marketing initiatives. In this capacity, Joe works closely with the chief marketing officer and all attorneys in establishing business development goals and outcomes.

Partner **Andrew A. Kimler**, head of VMM’s Alternate Dispute Resolution Practice Group, has become a member of the Mediation Committee of the New York State Bar Association’s Dispute Resolution Section.



Andrew A. Kimler, Esq.



Partner Eun Chong (EJ) Thorsen, president of the Queens County Women’s Bar Association, leads the Pledge of Allegiance at the Queens Supreme Court Dr. Martin Luther King Jr. celebration on January 20, 2017. Standing are the Honorable Joseph Zayas, Randall Eng, Howard Lane and Jeremy Weinstein.

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 Wolfle at 516.390.3027/mwolfle@vm-mlegal.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 subscription to The SideBar will lapse at the close of 2017. Thank you.



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NOTICE ABOUT SIDEBAR
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