

## Beware! Another Corporate Scam Is In The Mail

By **Joseph G. Milizio, Esq.**

**MANY OF OUR CORPORATE CLIENTS** have been receiving notices in the mail that are designed to resemble correspondence from a governmental agency. The document carries the heading "CORPORATE RECORDS COMPLIANCE OFFICE NOTICE OF ANNUAL MINUTES COMPLIANCE" and bears the incorporation date of the corporation, the Secretary of State "Number" and a "return no later than" date. The notice states that New York corporations are required to hold annual meetings of shareholders for election of directors and to conduct other business. It also indicates that failure to comply may possibly result in personal liability of the corporation's shareholders, directors and officers for all corporate debts and obligations. The document gives directions to complete the form with the business name and address, contact person, email address, telephone and fax numbers and the names of all officers and directors. It then states that the form is to be returned with a \$120 check.



*Joseph G. Milizio, Esq.*



Although the information regarding corporate compliance with shareholders' meetings and the potential consequences thereof is accurate, it is NOT a governmental notice. It is a solicitation by a for-profit private company, to prepare minutes for the corporation based upon the information supplied by you on the form, all for a fee of \$120! Only at the bottom, in small type, does it say "This service has not been approved or endorsed by any government agency and this offer is not being made by an agency of the government."

If you are an owner or officer of a business corporation, read your mail carefully. The only non-tax document required to be filed with the Department of State is a Biennial Statement. Not surprisingly, the foregoing notice is very similar to the form of the Biennial Statement.

So what's the problem with completing the "Corporate Records Compliance" document and paying a \$120 fee? Well, aside from it being blatantly deceptive, the document that this entity prepares and returns to you based upon the information you supply may not be sufficient to adequately protect the corporation and its shareholders, officers and directors. Simply stating that certain individuals are the officers and directors of a corporation does not address other items that need to be reflected in corporate minutes. For instance, the approval of a major contract, lease,

– Continued on Page 2

## table of Contents

**Beware! Another Corporate Scam Is In The Mail**

By **Joseph G. Milizio, Esq.**

Page 1

**Domestic Workers Given Special Protection Under New Law**

By **Avrohom Gefen, Esq.**

Page 2

**VMM Welcomes**

**Parth N. Chowlera, Esq.**

Page 2

**To Sell Or Not To Sell? Capital Gains Surtax To Kick In 1/1/13**

By **John P. Gordon, Esq.**

Page 3

**Cases Of Interest**

Page 3

**News Brief: Family Health Care Decisions Act**

By **Morris Sabbagh, Esq.**

Page 3

**News & Events**

Page 4

**You've Been Appointed As Fiduciary Of An Estate: Now What?**

By **Mary L. Rhodes, Esq.**

Page 5

**News Brief: New No-Fault Divorce Law In Ny**

By **Joseph Trotti, Esq.**

Page 5



516.437.4385

[www.VMMLEGAL.COM](http://www.VMMLEGAL.COM)

**VISHNICK MCGOVERN MILIZIO LLP**

ATTORNEYS AT LAW

3000 Marcus Avenue, Suite 1E9, Lake Success, NY 11042

# Domestic Workers Given Special Protection Under New Law

By Avrohom Gefen, Esq.

**EVERYONE WHO** employs a domestic worker should be aware that on November 29, 2010 the New York Domestic Workers' Bill of Rights became effective. Among other things, the law, which is apparently the first of its type in the U.S., provides that housekeepers, nannies, companions to the ill or elderly or any person "employed in a home for domestic purposes" must receive overtime pay if they work more than 40 hours in a week (44 hours for "live-in" workers). The overtime pay is calculated at 1.5 times a worker's regular hourly rate of pay, which must be at least the minimum wage of \$7.25 an hour. Part-time babysitters and live-in companions, who were previously exempt from the New York Minimum Wage Act, must now be paid minimum wage. There remains an exception for part-time babysitters hired on a "casual" basis.

Additional important provisions of the law require employers to:

- procure disability and worker's compensation insurance for domestic workers working 40 or more hours per week;
- provide domestic workers at least 1 day off each 7 day work week (to coincide, where possible, with the day the worker traditionally reserves for religious worship); and
- provide domestic workers with three paid days off after one year of employment.

The law also removes the domestic worker exemption from the Human Rights Law and creates a special cause of action for domestic workers who are subjected to sexual, racial

or other types of harassment. More specifically, domestic workers were previously excluded from the Human Rights Law and most employers with less than four employees cannot be sued for violations of the Human Rights Law. Under the Domestic Workers' Bill of Rights, however, a domestic worker can now sue an employer for violations of the Human Rights Law regardless of the number of employees. On a practical level, these provisions allow a domestic worker to sue his or her employer for sexual, racial and other types of harassment, even if that worker is the sole employee.

Employers of domestic workers should take steps to protect themselves from potential claims by domestic employees and to ensure they comply with other potentially applicable provisions of New York law. One important step is maintaining records showing the domestic worker's hours worked, rate and frequency of pay, gross pay, deductions and net pay. Since New York law permits claims for unpaid overtime and other wages to be brought up to 6 years after they were earned, these records should be kept for at least that long. While the effects of this legislation remain to be seen, the implications are enormous. Contact an Employment Litigation attorney at VMM for further clarification of this new law. **M**

*Avrohom Gefen, Esq. is an Associate in Vishnick McGovern Milizio's Litigation Department. He practices in the areas of commercial litigation and employment law. Avrohom can be reached at 516-437-4385, ext. 119 or via e-mail at [Agefen@vmmlegal.com](mailto:Agefen@vmmlegal.com).*



*Avrohom Gefen, Esq.*

## Another Corporate Scam...

*Continued from page 1*

purchase or sale of assets or the borrowing of money, should be properly reflected in minutes of the shareholders and directors. Otherwise, it may be possible to "pierce the corporate veil" and subject the principals to liability. Moreover, the lack of complete minutes among shareholders and directors could result in disagreements among the parties, which often escalates to litigation.

If you require assistance with preparation of corporate minutes and the requirements thereof, please do not hesitate to contact our transactional department. **M**

*Joseph G. Milizio, Esq. is the Managing Partner of Vishnick McGovern Milizio LLP and heads the firm's Transactional (Business) and Real Estate Practice Groups. His expertise encompasses all areas of transactional law, with an emphasis in general business transactions, including acquisitions, entity and owner representation, commercial leasing and transactional real estate matters. He can be reached at 516.437.4385 Ext. 108 or via email at [Jmilizio@vmmlegal.com](mailto:Jmilizio@vmmlegal.com).*

## VMM Welcomes Parth N. Chowlera, Esq.

Vishnick McGovern Milizio LLP is pleased to welcome Parth N. Chowlera, Esq., who will join the firm on January 3, 2011 as an Associate in the Trusts and Estates

Department. With an LL.M. in Taxation from New York Law School and a J.D. from St. John's University School of Law School, Mr. Chowlera will focus his practice on complex estate accountings. Mr. Chowlera is a member of the New York State and New Jersey Bar Associations, and serves as Treasurer on the South Asian Bar Association of New York ("SABANY").



# To Sell Or Not To Sell?

## Capital Gains Surtax To Kick In On 1/1/13

By John P. Gordon, Esq.

**YOU MAY HAVE RECENTLY HEARD** about or received a chain e-mail about a new 3.8% tax on every real estate sale. As is often the case, it may only tell part of the story. The recent health care overhaul brought with it a Medicare surtax on investment income that will apply after 2012. Investment income includes not only income from what is commonly considered an investment such as stocks and bonds, but also income from passively held real estate and profits from its sale. This can include your principal residence, second or vacation homes, investment and commercial real estate. If you've been thinking about selling, now may be the time to plan, considering the current state of the real estate market and the extended period of time it may take to find a buyer. However, that does not mean that everybody whose real property is worth more than they paid for it will be hit with the tax.



To begin with, the first \$250,000 of gain on the sale of a primary residence is free from capital gains tax (\$500,000 for married couples filing jointly) if the seller lived in and owned the home for at least 2 out of the 5 years prior to sale (many people mistakenly believe the old rules about reinvesting the proceeds in a new house still apply). Capital gains covered by this exclusion are not subject to the additional 3.8% surtax. Vacation homes, investment properties and commercial properties do not receive the benefit of this exclusion, so the tax burden will hit sellers of these types of properties harder.

The tax only applies to taxpayers with adjusted gross income over \$200,000 (\$250,000 for married filing jointly), and only to the extent their income exceeds these threshold amounts. However, it is possible that the gain from the sale of the real estate can put the taxpayer who would not otherwise be subject to this tax over the threshold, creating a so-called "rich for a day" problem.

Other investment income will also be subject to this tax, including net rental income from such properties, unless the property qualifies as actively managed pursuant to the Internal Revenue Code.

If you need to review the implications of this new tax on you or your business, or any other matter concerning the ownership, sale or purchase of real estate, please feel free to contact our real estate department. **M**

*John Gordon, Esq. is an Associate in the Real Estate and Business Law Practice at Vishnick McGovern Milizio. If you have any questions about this article or would like a recommendation for a real estate professional, John can be reached at 516-437-4385, ext 143 or via email at Jgordon@ymmlegal.com.*

## Cases of Interest

### The Verdict Is In And Vmm Prevails!

Partner **Andrew Kimler, Esq.**, together with Senior Attorney **Michael Stacchini, Esq.** and Associate **Eun Chong Jo (EJ), Esq.**, recently completed a Federal jury trial involving contract claims made by a Korean-based mineral water distributor against its Colorado supplier. After a three year legal battle and a six day jury trial, our firm prevailed with a unanimous verdict in our client's favor.

### Senior Attorney Michael J. Stacchini Prevails In The Appellate Division

Walter v. Starbird-Veltidi, 1010 NY Slip Op. 08095, (2nd Dept. 2010). Plaintiff and Defendant (who was represented by VMM) were divorced in 1998. The Plaintiff sued the Defendant to reform a portion of the parties' divorce settlement and judgment on the grounds that the provisions relating to the Plaintiff's retirement benefits were unconscionable and contrary to the parties' intent. The lower court granted the Defendant's motion to dismiss the complaint on the grounds that the allegations lacked merit and were barred by the applicable statute of limitations. The Appellate Division upheld the lower court's ruling.

## News Brief

### The Family Health Care Decisions Act

**The Family Health Care Decisions Act** became effective in New York on June 1, 2010. The law expands the right of certain family members and close friends to make health care decisions for their loved ones who are incapacitated and are in a hospital or nursing home. While this may be good news for the families of people who do not have Health Care Proxies, the Act should not be relied upon as a substitute for a Health Care Proxy and Living Will. The Act is limited in many ways. For example, it does not permit decision making if the incapacitated person is living at home or in an assisted living facility. In addition, only with a Health Care Proxy can a person ensure that the appropriate person will be appointed to make decisions for them and that their wishes, and moral and religious beliefs will be known. For more information, please contact Morris Sabbagh in our office or via email at Msabbagh@vmmlegal.com.

Contributed by Morris Sabbagh, Esq.



# news & Events

## Seminars

### The Impact Of Social Networking On The Workplace

On October 8, 2010, Vishnick McGovern Milizio LLP sponsored and co-hosted a seminar entitled, "The Impact of Social Networking on the Workplace." The seminar, which was attended by more than 60 people, featured **Andrew A. Kimler, Esq.** who spoke about the legal ramifications of social media for employers. Other speakers included the Human Resources Director of a major Long Island food manufacturer, the IT Director of Long Island's largest accounting firm; and a social media and video expert.

### Seminar For Senior Citizens & Their Families

On November 13th, Vishnick McGovern Milizio co-hosted a "Resource Seminar for Senior Citizens and Their Families." Attendees learned how to plan for the future by understanding options in terms of living arrangements, health care planning, downsizing, financial and legal considerations. **Morris Sabbagh, Esq.**, Partner and Elder Law Attorney at Vishnick McGovern Milizio spoke about "Planning for the Unexpected: An Overview of Legal Considerations for the Elderly." As part of his presentation, Mr. Sabbagh discussed the ramifications of the new Family Health Care Decision Act and the recent changes to the New York State Power of Attorney laws, which took effect on September 12, 2010.



*Morris Sabbagh, Esq.*

## Milestones

Congratulations to Associate **Eun Chong Jo (EJ), Esq.** on her engagement to Sean Thorsen, Esq.

Congratulations to Eileen and **Bernard McGovern** on the birth of two granddaughters! Stephanie Grace Painter was born on September 13, 2010 to Kristen and Jed Painter, and Julia Krishna Chainani was born on November 8, 2010 to Meaghan and Sandeep Chainani.

Congratulations to Yonina and **Saul Elnadav** on the birth of their daughter Elisheva, who was born on November 4, 2010 at 7 lbs 15 oz.



## In The News

On October 13, 2010, **Joseph Trotti** was quoted extensively in **Newsday** *Newsday* for an article on New York State's new no-fault divorce laws that replaced old legislation that required couples to prove abuse or abandonment. Mr. Trotti was quoted saying, "The new law basically allows you to get divorced without having to testify in court about allegations of infidelity or domestic violence."

*Long Island Business News* sent a reporter to cover VMM's Social Networking seminar on October 8. The article, which appeared in the October 18-21, 2010 issue, quoted **Andrew A. Kimler** extensively and covered how employees can protect themselves against lawsuits related to employee rights and the use of social networking at work.



## Accomplishments

**Andrew A. Kimler** has once again been awarded an 'AV Preeminent Rating' by Lexis Nexis (Martindale-Hubbell). This AV Peer Review Ratings™ identifies Mr. Kimler as an attorney who has attained the highest rating in legal ability and ethical standards.

Congratulations to VMM Managing Partner **Joseph G. Milizio** on being named one of Long Island's "50 Around 50" Business Leaders by *Long Island Business News*. This award recognized Mr. Milizio for his accomplishments and leadership.

**Joseph Trotti** was re-elected as President for the Community Education Council 28th District.

Congratulations to Senior Partner **Bernard Vishnick** on being appointed to the Grievance Committee for the Second, Eleventh and Thirteenth Judicial Districts. Mr. Vishnick was appointed to this post by the Appellate Division, Second Judicial Department and will hold this position until July 2014. Mr. Vishnick was also installed as the 1st VP of the Brandeis Club by the Chief Judge of the State of NY, Jonathan Lippman.



*(L to R) Bernard Vishnick, Alan J. Schiff, Guest, Justice Bernice Siegal, and Justice Lee A. Mayershohn*



# You've Been Appointed As Fiduciary Of An Estate: Now What?

By Mary L. Rhodes, Esq.

**AN EXECUTOR OR** an administrator of an estate is a fiduciary who has a duty of impartiality towards the beneficiaries and is held to a higher standard. The main goal of a fiduciary of an estate is to collect the decedent's assets; pay his or her debts and estate taxes if there are any; and to then distribute the remainder of the assets whether by the terms of the decedent's last will and testament, or by the laws of intestacy. In other words, the job of a fiduciary is to wind up the affairs of the decedent.

Control must be taken of assets as soon as possible to prevent wasting. If there is real estate, property taxes must be paid and upkeep maintained until the property is transferred or sold. Debts of the decedent have to be identified and settled. However, before final distributions can be made there are many responsibilities to be fulfilled by the fiduciary, some of which have deadlines. These may include the filing of federal and state estate tax returns, if necessary; the filing of the decedent's final personal income tax returns; and the filing of fiduciary income tax returns.

The first step is to identify and obtain specific date-of-death valuations of the decedent's assets for the purpose of determining whether the gross estate is taxable under either or both the federal or state laws. The gross estate includes the following:

- The value of individually-owned bank accounts, stocks and bonds, real estate, automobiles, and other personal property;
- The value of assets that are held jointly with other parties;
- The value of assets that are owned by the decedent and have named beneficiaries, such as life insurance, annuities, certain types of trust accounts, and retirement accounts; and
- The value of the decedent's share in a business.

Appraisals of real and personal property will also have to be obtained. If there is a business, a proper business valuation must be performed. In addition, there may be post-mortem estate planning decisions that you as the fiduciary may have to facilitate. These decisions may impact the tax liability of the decedent's or beneficiary's (ies') estate(s).

At the time of this writing, for decedents who passed away in 2010, it does not matter how large the gross estate is as the Federal Estate Tax has been abolished, and no Federal Estate Return will have to be filed, unless Congress acts and makes changes that are retroactive to January 1, 2010. (See SideBar Winter 2010 issue.) However, any gross estate valued at over \$1 million would cause a New York State Estate Tax Return to be filed. This return is due nine months from the date of death.

All assets that the decedent had sole ownership of, and any in which he or she held a joint tenancy, must be reported

as part of the gross estate. New York State estate tax rules are the same as the federal rules had been prior to their 2010 repeal, and 100% of the value of any asset held in a joint tenancy is to be reported in the estate of the first to die unless the joint tenant is a spouse, or a non-spouse joint tenant who furnishes proof of his or her contribution to the asset. Many people are under the false impression that because a jointly-owned asset will pass to the joint owner, the asset is not includable in the estate of the first joint tenant to die.

As assets are collected and/or liquidated, the proceeds will be placed in an estate or brokerage bank account. Care must be taken to observe the limitations of FDIC insurance, and if necessary, multiple estate accounts must be maintained.

The fiduciary will be responsible for preparing an accounting report that should include: the assets collected; income earned by the estate; and debts and administration expenses paid; gains or losses from any assets that are liquidated; and the proposed distribution of the assets remaining on hand in the estate. If the beneficiaries have no objections to the accounting, the appropriate Receipt and Release will be obtained from them, and the fiduciary will be released from further responsibility and liability. **M**

*Mary L. Rhodes, Esq. is an Associate in the Trusts & Estates Department. She focuses her practice on Estate Planning and Administration, and can be reached at 516-437-4385, ext. 141 or via email at [Mrhodes@ymmlegal.com](mailto:Mrhodes@ymmlegal.com).*



Mary L. Rhodes, Esq.

## News Brief

### New No-Fault Divorce Law In NY

On August 13, 2010 Governor David Paterson signed into law No Fault Divorce in NY State. The law amends the domestic relations law in relation to no fault divorce by adding a ground: irretrievable breakdown of the marriage. The new law also introduces a new formula for determining the amount of temporary maintenance and may ultimately impact permanent maintenance. Lastly, the new law also amends the previous law concerning interim award of counsel fees and litigation expenses, including fees for experts. For more information on the new law, please contact Joseph Trotti at 516-437-4385 Ext. 140 or via email at [Jtrotti@ymmlegal.com](mailto:Jtrotti@ymmlegal.com).

Contributed by Joseph Trotti, Esq.



VISHNICK MCGOVERN MILIZIO LLP  
ATTORNEYS AT LAW  
3000 Marcus Avenue, Suite 1E9  
Lake Success, NY 11042

www.VMMLEGAL.COM

PRSR STD  
US POSTAGE  
**PAID**  
NEW YORK, NY  
PERMIT # 6008



VISHNICK MCGOVERN MILIZIO LLP  
ATTORNEYS AT LAW

## in this Issue

### elder law

News Brief: The Family Health Care  
Decisions Act

*By Morris Sabbagh, Esq.*

### estate planning

You've Been Appointed As Fiduciary Of An  
Estate: Now What?

*By Mary L. Rhodes, Esq.*

### real estate law

To Sell or Not to Sell? Capital Gains Surtax to  
Kick In 1/1/13

*By John P. Gordon, Esq.*

### business law

Beware! Another Corporate Scam Is In The Mail

*By Joseph G. Milizio, Esq.*

### employment law

Domestic Workers Given Special Protection  
Under New Law

*By Avrohom Gefen, Esq.*

### matrimonial/ family law

New No-Fault Divorce Law In Ny

*By Joseph Trotti, Esq.*

### litigation

Cases Of Interest



If you'd like to receive The  
Side Bar electronically, please  
call us or email your request  
to: [Sidebar@vmmlegal.com](mailto:Sidebar@vmmlegal.com)

516.437.4385  
[www.VMMLEGAL.COM](http://www.VMMLEGAL.COM)