



## ‘Gremophobic’ Charitable Bequests: How to avoid the New York State Estate Tax ‘Cliff’

By Michael Humphrey, Esq.

On March 31, 2014, the term estate tax ‘cliff’ was thrust into the New York estate planning lexicon due to the dramatic changes made to the New York State estate tax, a result of the Executive Budget of 2014-2015. Since there appears to be a trend to give catchy names to everything from celebrity couples to weather systems to taxes, we’ve coined the term ‘gremophobic’ using the Greek word gremos, which translates as cliff. Be warned: You should fear the cliff.



### MAJOR CHANGES RESULTING IN THE CLIFF

During the course of that budget process, the legislature made three major changes to the existing estate tax laws:

1. Taxable gifts made after April 1, 2014, and within three years prior to death, are now included in calculating the NYS estate tax;
2. The exclusion amount (amount of property one can pass free of NYS estate tax) was dramatically increased to the current amount of \$5,250,000; and
3. The exclusion amount is rapidly reduced to zero for estates with values in excess of the exclusion amount.

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Michael Humphrey, Esq.

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# Taking a proactive – and early – approach to selling your home

By Dennis Lyons, Esq.

If you are considering selling your home, a proactive approach in identifying certain issues early in the process can help you avoid unnecessary delays, costs and frustration. Once you have made a decision to sell, begin with an assessment.

## LOCATE A COPY OF YOUR DEED

- You will need to verify who appears on the deed as owners of the house. Generally all owners will need to join in the sale and be a party to the contract with the purchasers.
- In some cases, a co-owner may have died, in which case you will need to be prepared with that co-owner's death certificate and any estate documentation (if applicable).
- Other issues may arise, such as if an ex-spouse is still on the title, or if a family member took title in order to help you obtain financing. In both cases, the other individuals on title will have to join in the sale and sign the contract with the purchaser(s).

## LOCATE A COPY OF YOUR TITLE POLICY ISSUED WHEN YOU PURCHASED YOUR HOUSE

- Any survey of the property may help identify and/or resolve issues that arise during contract negotiations between your attorney and the purchaser's attorney.
- Copies of these documents should be delivered to your attorney as early as possible, as this can speed up the process of selling.

## INFORM YOUR ATTORNEY IF THE HOUSE HAS AN UNDERGROUND OIL TANK

- If it does, advise your attorney whether the tank is currently in use, no longer used, or legally abandoned (and locate the abandonment certificate if the tank was abandoned).



## TAKE INVENTORY OF ANY CONSTRUCTION WORK YOU PERFORMED ON YOUR HOUSE DURING YOUR OWNERSHIP

- Did you perform any major renovations or additions to the house, and if so, were the necessary permits for the work obtained and inspected by the local government once completed?
- Generally, you will need to deliver the house to the purchaser with all required certificates issued by the local government covering all structures and improvements on the property.
- Inform your attorney if there are additions or improvements that were made without the necessary permits. Depending on the nature of the work performed, your attorney may be able to negotiate for the purchaser to accept the property without approvals for specific improvements. If that is not possible, you will at least know early on that certain improvements will need to be legalized, and you can begin the process early in the transaction to minimize any delays to closing the sale.



Dennis Lyons, Esq.

## ACT EARLY TO DECREASE STRESS AND AGGRAVATION

The above issues are common impediments that may delay the sale of your home, requiring costly fixes if discovered late in the process of selling. By identifying these issues early and discussing them with your attorney, costs and delays may be minimized or avoided altogether. **M**

*Attorney Dennis Lyons practices in the firm's Business and Transactional Law and Real Estate Law Practice Groups. He can be reached at [dlyons@vmmlegal.com](mailto:dlyons@vmmlegal.com) or 516.437.4385, ext.128.*



# Marital Assets: Rules, exceptions and the blurred lines of the Domestic Relations Law – Part one

By Joseph Trotti, Esq.

Counseling clients about the nature, value dates and eventual disposition of the marital estate is the most important information a matrimonial law practitioner can disseminate at the first conference with a client. Parties already dealing with emotional issues now are confronted with the reality that the same income that maintained one household will have to be modified to pay for two. Clients also must be counseled about the gray areas of the Domestic Relations Law pertaining to the definition of assets.

## WHAT ARE MARITAL ASSETS?

Marital assets are defined as any asset acquired during the marriage. They will be valued and distributed between the parties and include real property, personal property, cash, securities, bank accounts and retirement accounts acquired during the marriage. However, the following are some exceptions to the rule concerning assets acquired during the marriage:

- Inheritances;
- Proceeds received from a personal injury action; and
- Gifts from a third party.

It is ironic that a gift from a spouse is considered marital and therefore would be distributed during a divorce proceeding. However, a gift from a third party (which could be a paramour) is separate and the party would be able to keep the asset.

## WHAT IS SEPARATE PROPERTY?

The exceptions above, related to the definition of marital property, fall under the category of separate property. If a party truly is able to keep these assets separate and not commingle them in any fashion, they would not be distributed during a divorce proceeding. Separate property also includes any asset that a party owned and obtained prior to the marriage. Again, the party asserting a claim that an asset is separate must demonstrate that it was owned prior to the marriage and has not been commingled during the marriage.

Although this may seem to be a relatively routine procedure to put into place, the application can become problematic. Adding to the confusion: certain aspects of separate property

can become marital, even if not commingled. The Courts recognize that the appreciation, income and any interest accumulated from a separate asset during the marriage may be marital.

For example, if a party owned a six-family residential building prior to the marriage, the asset is separate. Despite keeping the asset in his or her name throughout the marriage and throughout the divorce proceeding, the income that is derived from the property during the marriage becomes marital. In addition, the appreciation of the value of the real estate also may be marital.

Further, the income that a party earned prior to the marriage at his or her job, is separate. That very same income becomes marital the day of the marriage. All these factors are issues which must be resolved, even if there is no commingling. The longer the duration of the marriage, the more difficult it is to not commingle assets.

## WHEN THE COURT TAKES OVER

It is essential to understand that in the event of a divorce, and if the matter cannot be settled, the Court will take a three-step approach to assets:

1. Classify (whether it is separate or marital);
2. Value (assets valuation dates vary); and
3. Distribution.

## PRENUPTIAL AGREEMENTS AND IRREVOCABLE TRUSTS

In our follow up article, which will appear in the fall 2017 issue of *The SideBar*, we will discuss two important vehicles that can protect a party's right to maintain separate property: Prenuptial Agreements and Irrevocable Trusts. **M**

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*Joseph Trotti, Esq.*

## 'Gremophobic' Charitable Bequests: How to avoid the New York State Estate Tax 'Cliff'

(Cont'd from Page 1)

It is this latter change that the term estate tax cliff so aptly describes. For an estate valued at a mere \$10,000 more than the exclusion amount, New Yorkers are now faced with the prospect of having a state estate tax bill of \$24,803 in 2017.

For an estate valued at \$200,000 in excess of the exclusion amount, the NYS estate tax bill would balloon up to \$390,000. The drastic results of the estate tax cliff affect all estates that exceed the exclusion amount by \$1 through \$478,182, where the effective tax rate exceeds 100%. Thus, there is incredible incentive to reduce or eliminate such additional value in an effort to avoid falling off the estate tax cliff.

### DEDUCTIONS FOR CHARITABLE BEQUESTS

As long as the legislature does not

eliminate the estate tax deduction allowed for charitable bequests to tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code, estate plans that contain 'gremophobic' charitable dispositions should provide sufficient safety barriers to prevent any unnecessary interactions with the NYS estate tax cliff. The language of such 'gremophobic' dispositions should be particularly tailored to be effective only for:

- New York State domiciliaries at the time of death;
- Estates with values in excess of the New York State estate tax exclusion in effect at the time of death; and
- Limited to an amount that is equal to or less than the amount of NYS estate tax payable without the bequest (\$478,182 for 2017).

As a general rule, tax savings should be one of the least important benefits when considering making charitable donations and/or bequests. However, from a pure economic perspective, the estate tax cliff changes that general rule for estate planning purposes. When each dollar deducted from the taxable estate results in saving more than a dollar of tax, all estate plans for anyone concerned about the New York State estate tax cliff should incorporate 'gremophobic' charitable dispositions. **M**

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## Estate tax portability: A second bite at the apple

By Morris Sabbagh, Esq.

### WHAT IS ESTATE TAX PORTABILITY?

In simple terms, portability of the federal estate tax exemption between married couples means that if the first spouse dies and the value of the estate does not require the use of the deceased spouse's federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse so that he or she can use the deceased spouse's unused exemption plus his or her own exemption when the surviving spouse later dies.

### HOW OFTEN DO YOU GET A SECOND CHANCE AT MILLIONS OF DOLLARS IN TAX SAVINGS?

Not often! But on June 9, 2017, the IRS issued Revenue Ruling 2017-34, which will provide many estates a second chance to preserve an otherwise lost estate tax exclusion of \$5 million or greater.

If you or someone you know is the surviving spouse of a U.S. citizen who died after December 31, 2010 and failed to file an estate tax return by the due date (including extensions) to elect "portability" of the deceased spouse's estate tax exclusion, take note! The IRS has granted certain qualifying estates an extension of time to make the election until the later of January 2, 2018, or the second anniversary of the decedent's death. For many surviving spouses, this means a second chance to increase his or her estate tax exemption to as much as \$10,490,000 or more. **M**



*Morris Sabbagh, Esq.*

*Partner Morris Sabbagh practices in the firm's Estate and Trust Administration and Planning Practice Groups; Elder Law; and Exit Planning for Business Owners Practice Groups. For additional information on Revenue Ruling 2017-34, the portability election and filing of estate tax returns, please contact him at 516.437.4385, ext. 120, or [msabbagh@vmmlegal.com](mailto:msabbagh@vmmlegal.com).*

# news & Events



Managing Partner **Joseph G. Milizio** has been named Long Island Crisis Center's (LICC) "Person of the Year" and will be honored at the organization's premier annual event, "Let's Walk, Let's Talk...Stepping Together to Prevent Suicide." Joe has been selected for his longtime support of LICC, especially its "Pride for Youth" division, which provides services and programs for LGBT young people. Taking place Sunday, September 17 on the Long Beach boardwalk, we invite supporters to join our Team VMM on the Walk or to make a donation by visiting <http://liccwalk.crowdsterapp.com/vmmlegal>.



*Joseph G. Milizio*

Partner **Eun Chong (EJ) Thorsen**, immediate past president of the Queens County Women's Bar Association, will serve as co-chair of the 2018 Women's Bar Association of the State of New York (WBASNY) Convention, to be held at the Otesaga Resort Hotel in Cooperstown. She also is a member of WBASNY's Judiciary/Courts committee, which considers the qualifications of candidates for Federal appellate courts and candidates proposed by the State Judicial Nominating Commission for the Court of Appeals of the State of New York.



*Eun Chong (EJ) Thorsen*



*Joseph Trotti*

Partner **Joseph Trotti**, a member of the Long Island City Partnership (LICP), was featured in the organization's Member Spotlight in its May 11 newsletter, which stated, "Not many people can claim to be Long Island City natives...Joe's participation in the LICP is a direct outgrowth of his formative years on 36th Avenue." Joe attended the LIC Summit 2017 on June 20,

a comprehensive day of discussions on a range of sectors vital to LIC's economy.



*Jordan Freundlich*

Counsel **Jordan Freundlich**, a board member of the Riley's Way Foundation, was an "usher ambassador" at the New York Society for Ethical Culture on May 18, when the organization brought together over 750 fourth and fifth grade students and teachers from the four Riley's Way Program schools for an interactive assembly with RJ Palacio, author of *The New York Times* bestseller *Wonder*.



*Andrew A. Kimler*

Partner **Andrew A. Kimler** was an expert panelist on June 20 at a program presented by the Federal Bar Association, Eastern District of New York Chapter, entitled, "Second Fair Labor Standards Act- Cheeks 2.0." He addressed handling FLSA cases through Alternative Dispute Resolution.

Attorney **Constantina S. Papageorgiou** continued as a volunteer attorney through a New York State Bar Association public service project, addressing elder law and trust and estate planning issues at the Life Enrichment Center in Oyster Bay on June 6; HANAC (Hellenic American Neighborhood Action Committee) Ravenswood Senior Center in Astoria on June 19; and Club 33 Senior Center, serving the Kips Bay/Murray Hill area of NYC, on July 25.



*Constantina S. Papageorgiou*

Partner **Avrohom Gefen** was quoted extensively by columnist Jamie Herzlich in a March 27 *Newsday* article entitled, "Noncompete agreements often not justified for lower-wage workers."



*Avrohom Gefen*

# news & Events



*Theresa DeStasio*

Firm Administrator **Theresa DeStasio**, a member of the Association of Legal Administrators, Long Island Chapter, has been elected by the organization as 2017-2019 co-chairperson of its Public Relations/ Membership committee.

Promoted from receptionist to legal assistant in the Elder Law Practice Group, **Kathleen Romaniello-Vera** provides assistance to the firm's attorneys, particularly in the preparation of institutional and community-based Medicaid applications.



*Kathleen Romaniello-Vera*

Assuming the role of receptionist is **Nancy Casseus**, whose duties include handling incoming calls; ordering and inventory of office supplies; data entry; client relations; and office preparation for meetings and other gatherings.



*Nancy Casseus*



*VMM was a sponsor of the 2017 Korean American Lawyers Association of Greater New York (KALAGNY) Gala, held on June 15 at Capitale. Pictured, left to right: President Minsun Kim, Presiding Justice Randall Eng, Eun Chong (EJ) Thorsen, the Honorable Judy Kim, Joseph Trotti, Andrew Kimler and Past President Samuel Ahne.*

*Partner James F. Burdi and Attorney Constantina S. Papageorgiou presented a program on long-term care, estate planning and asset protection on June 6 as guests of the Garden City branch of Astoria Bank. Pictured, left to right: Thomas Lake, Lincoln Financial Distributors; Mr. Burdi; William Blackford, LPL Financial; Ms. Papageorgiou; Liz O'Brien, Astoria Bank; and Patricia Donnelly, Astoria Bank.*



## 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 Wolfe at 516.390.3027/mwolfe@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 subscription to The SideBar will lapse at the close of 2017. Thank you.

# VMM ACADEMY

## FALL SEMESTER 2017

### MARK YOUR CALENDAR NOW!

*Expand your understanding of the intricacies of laws that have an impact on your personal and work lives*

|                                 |   |   |
|---------------------------------|---|---|
| <b>Wednesday<br/>9/27/2017</b>  | <b>Exit planning for<br/>business owners</b>  | <b>Joseph G. Milizio,<br/>Esq. and<br/>John P. Gordon, Esq.</b>           |
| <b>Wednesday<br/>10/25/2017</b> | <b>Wage wars: Proper pay<br/>practices to avoid<br/>employee lawsuits and<br/>government audits</b> | <b>Andrew A. Kimler,<br/>Esq. and<br/>Avrohom Gefen, Esq.</b>             |
| <b>Wednesday<br/>11/29/2017</b> | <b>Elder Law and Medicaid<br/>planning: For seniors<br/>and their care providers</b>                | <b>James F. Burdi, Esq.<br/>and Constantina S.<br/>Papageorgiou, Esq.</b> |

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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 [mwolfle@vmmlegal.com](mailto:mwolfle@vmmlegal.com)  
or 516.390.3027.**



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**READ THE IMPORTANT  
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