



## The evolution of Matrimonial and Family Law...for the better

By Joseph Trotti, Esq.

### The time for change is long overdue

The future of the matrimonial practice in New York hopefully and dramatically may change in the near future. The persistent complaints by members of the matrimonial Bar, as well as parents and children, point to the inescapable conclusion that the system no longer works and needs immediate repair. Much has been written about the needs of families who are separating and in transition and the capacity (or incapacity) of our current court system to provide assistance in this



Joseph Trotti, Esq.

process. This fact, coupled with the adversarial tactics of certain attorneys that incite, rather than defuse, have led to poor results and in many cases, catastrophic events for families. Few that have gone through the divorce process that usually includes repeated contact with an antiquated court system, would say that the process is working efficiently. *While most recognize that a change is needed, the more difficult question remains where to begin and where to focus the modifications the system requires.*

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# Mental Health and Parental Rights

By Jordan Freundlich, Esq.

I have had the pleasure of serving on the appellate panel for the Office of Attorneys for Children for the past six years, representing children before the Appellate Division, Second Department. An especially interesting and ever-evolving area is mental health as it relates to parenting issues. As there remains a substantial stigma regarding mental illness, it is not uncommon for a parent's mental health to become an issue in proceedings involving his or her children. There were several interesting appellate decisions in 2017 on this topic; a sampling is discussed in this article.

One area where mental health issues are present is proceedings under Article 10 of the Family Court Act involving accusations that a parent with mental illness has neglected his or her children. In the *Matter of Tyler W.*, after noting that "proof of mental illness alone will not support a finding of neglect," the Second Department affirmed a finding of neglect against a mother who "made repeated unfounded allegations of abuse against the father, necessitating that the children undergo medical examinations and interviews regarding intimate issues."

Another interesting decision in 2017 was the *Matter of Hope P.*, in which the Appellate Division found that a mother

"derivatively neglected the subject child," based upon prior findings that the mother neglected the child's two older siblings, including one finding made approximately ten months before the subject child's birth. The Court made this finding even though the prior neglect occurred before the subject child's birth, based on the proximity between the prior neglect finding and the birth of the child, and because the mother had failed to address her mental health condition which was a factor in her prior neglect findings.



Jordan Freundlich, Esq.

Proceedings to terminate a parent's rights are another area often involving difficult determinations for the courts regarding mental health issues. One such example is illustrated in the 2017 decision in the *Matter of Duane II*, in which a divided panel affirmed the lower court's termination of a father's parental rights based on the report of a psychologist indicating the father suffered from multiple conditions, including mixed personality disorder with antisocial borderline and narcissistic features. Notably, the psychologist testified that, while he was certain that the father's mental illness rendered him currently unable to care for his children, he was only 90% sure that the father would be unable to provide adequate care for the foreseeable future, which is a required element to terminate parental rights. Two judges dissented, citing the psychologist's testimony that it was a "close call" whether the father would be unable to care for his children in the foreseeable future meant that there was not "clear and convincing" evidence to terminate the father's parental rights.

As can be seen in this sampling of recent appellate decisions, the courts are faced with a difficult balancing act when dealing with allegations of mental illness against a parent. Mental illness can be difficult to prove and continues to carry a stigma which may lead a parent to avoid treatment in fear of legal repercussions. However, the overarching principle remains, as it should: the children's best interest. **M**

Counsel Jordan Freundlich practices in the firm's Trust and Estate Litigation and Commercial Litigation Practice Groups. He can be reached at [jfreundlich@vmmlegal.com](mailto:jfreundlich@vmmlegal.com) or 516.437.4385, ext. 142.





# Trusts can alleviate the unanticipated headaches and heartache of joint home ownership

By Kenneth Renov, Esq.



Joint ownership of real property requires having faith in the other owners. Common forms of ownership do not address many issues encountered with co-ownership of property and that faith may be tested. This article will discuss how the use of trusts can alleviate some of the issues that arise from typical forms of home ownership.

## THE THREE MOST COMMON FORMS OF JOINT OWNERSHIP IN REAL PROPERTY

- **Tenancy in Common (TIC):** Each owner is invested with a separate share and can control the ultimate disposition of his or her interest. This can be a positive where the homeowners have children from previous relationships. In such a case, each owner's interest can be gifted during lifetime, or distributed under a will, to his or her own children or other family

members. On the other hand, this ability means the surviving owner may end up with an undesirable co-owner.

- **Joint Tenancy with Right of Survivorship (JTROS):** Purports to ensure that co-owners cannot grant their interest to others. JTROS operates as a "last man standing" scheme. If three individuals own property as JTROS, no matter what their individual wills state, any time an individual passes away, the remaining owners succeed to the deceased person's share, with the last person standing taking all.

- **Tenancy by the Entirety (TBE):** Similar to JTROS in that the interests pass to the surviving owner, rather than by gift or by will, but is exclusive to property purchased by a couple married at the time of the purchase.

## BEWARE OF THE POTENTIAL CONSEQUENCES

While many real estate professionals laud JTROS and TBE as ways of preventing ownership of property with unintended co-owners, there are two caveats:

- "Last man standing" schemes cannot predict who will survive whom, and can lead to unintended consequences. For example, with second marriages, the entire property may automatically pass to the surviving spouse/owner, and then ultimately to the survivor's children, leaving out the children of the first owner to die.
- Second, JTROS cannot guarantee that the surviving owner will not have unintended co-owners. In New York, for example, one tenant in a JTROS can unilaterally break up, or "sever," the joint tenancy, and bequeath or gift the share to anyone he or she desires. In fact, though under recent laws the severing document must be recorded, the severing co-owner does not have to even inform the other joint tenant directly that the joint tenancy has been severed. If the unwitting co-owner never does a record search, he or she may not discover that the joint tenancy was severed until someone comes forth claiming to be the new co-owner of the property.



*Kenneth Renov, Esq.*

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What may be most troubling is the apparent resistance of the Matrimonial Bar to change, while it continues to “profit” from the inefficiency.

### Mediation offers a more efficient and humanitarian approach

Professionals who deal primarily with children have written extensively about the adverse effects the current court system can have on parents and children going through divorce. Many are proponents of a mediation process which has been hailed as a beneficial system to properly resolve child custody disputes. *Mediation may be the process to efficiently and humanely resolve issues that harm both children and ongoing parenting relationships – while providing a speedy resolution and leaving control to the parties as opposed to judges or lawyers.* In many jurisdictions, it is a common practice to encourage the parties

to attend mediation. Even if mediation does not produce an agreement, the parties are still encouraged to avoid a custody litigation and undergo a formal child custody evaluation.

### Collaborate divorce: an interdisciplinary approach

Many practitioners are fearful that any movement away from the current system may be a sign of weakness and/or perceived as an inability or unwillingness to litigate. These insecure practitioners are more concerned with their livelihood than with assisting their clients in a difficult period. I believe that proper preparation and planning outside the court system actually is a sign of strength, which can and will lead to better results. There are many in the mediation community who have known the benefits of problem-solving through cooperation. *Collaborate divorce proponents*

*formally incorporate an interdisciplinary approach which has helped families and children.*

This system may be the best way to improve the current divorce process and have families and children transition into their new lives. There always will be cases and situations requiring the use of courts when litigation is inevitable. However, if conferences and good faith settlements, as well as mediation and the collaborative process, can take the place instead of court appearances, we finally may be on our way to a better process and a better future for these families in transition. **M**

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## Trusts can alleviate the unanticipated headaches and heartache of joint home ownership

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### WHY THE USE OF A REVOCABLE TRUST HAS BENEFITS

Using a revocable trust can provide many of the benefits of co-ownership, while minimizing the downsides.

- If properly owned in one or more trusts, the owners can reside in the house for both of their lifetimes, but divide the property, for example, equally among children from prior marriages, when the surviving owner passes away.
- Further, the trusts can become irrevocable upon the first death, guaranteeing that the survivor cannot alter the disposition of the house after the first person dies.
- Aside from planning for after the owners' lifetimes, the trust(s) can address the disposition of the property in the

event the owners' relationship dissolves during their lifetimes, easing the division of the property in the trust(s).

- Lastly, while each party is living, the trust(s), if set up correctly, can still allow each individual to revoke his or her trust(s), but unlike the JTROS, require each individual to inform the other of the termination of the trust(s), rather than being able to surreptitiously record a severing instrument.

Each common form of ownership has potential unintended consequences. The use of trusts can anticipate these consequences and grant homeowners peace of mind...rather than relying on faith. **M**

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# news & Events



*Joseph G. Milizio*

Managing Partner **Joseph G. Milizio** was featured in the January 5-11, 2018 issue of *Long Island Business News* as one of the managing partners who weighed in on “2018: Destination Unknown,” providing a forecast for the firm and the legal industry. To read Joe’s comments, visit <http://www.vmmlegal.com>

and click on News and Publications/VMM In the News.

Partner **Andrew A. Kimler**, along with **Irv Miljoner**, District Director of the Long Island District Office for the U.S. Department of Labor’s Wage and Hour Division, presented a program entitled, “New Rules and Directions from the U.S. Department of Labor; Updates to Wage and Hour Laws and Regulations” at the Long Island Tax Professionals Symposium on November 17, 2017. Andy was joined by VMM Partner Avrohom Gefen for another program at the Symposium, “Just Weeks Away from Implementation: New York State Paid Family Leave Program.”



*Andrew A. Kimler and Avrohom Gefen*

In other news, Andy has been elected for the 2017-2018 term to the board of trustees of the Reform Temple of Forest Hills, where he is serving on several committees.



On January 22, 2018, Partner **Joseph Trotti** attended a seminar under the auspices of New York State Unified Court System Child

Welfare Court Improvement Project. A segment of the “Strong Starts Court Initiative Training Series,” this two-part legal education program included “Evidence Based Infant/Parent Interventions for Court Involved Families” and “Promising Evidence that Early Head Start Can Prevent Child Maltreatment.”



*Hon. Edward W. McCarty III*

Hon. **Edward W. McCarty III**, Of Counsel to VMM, was interviewed and quoted by *Newsday* reporter Anthony M. DeStefano for an October 18, 2017 article entitled, “Family of late FDNY member files legal papers seeking recognition.” Judge McCarty represents the family of Thomas F. O’Brien, the firefighter who died in 1935. The family is looking to have their grandfather granted “Line of Duty” death status.

VMM Attorney **Constantina S. Papageorgiou** presented a seminar for the membership of the North Queens Homeowners Civic Association on February 8, 2018. Held at the Lexington School and Center for the Deaf in East Elmhurst, she addressed “The Law and You: Estate Planning and Asset Protection.” On January 3, 2018, Constantina spoke at the Holy Trinity Greek Orthodox Church in New Rochelle on the importance of estate planning.



*Constantina S. Papageorgiou*



# news & Events



VMM is pleased to welcome two new staff members, receptionist **Lena Bair-Bey** and paralegal **Lois DeNardo**. Lena handles the busy telephone lines at VMM, along with an array of administrative duties. Lois works closely with partners **Andrew Kimler** and **Avrohom Gefen** in the Employment Law, Commercial Litigation and Alternative Dispute Resolution Practice Groups.



*Partner Joseph Trotti and Firm Administrator Terry DeStasio attended the annual dinner and dance held at Villa Barone in the Bronx on December 3, 2017 of the Marconi Club, a society that carries on the traditions of Sannicandro di Bari.*

## Spotlight on VMM's Exit Planning for Business Owners Practice Group

Managing Partner **Joseph G.**

**Milizio** has been named a member of the steering committee of the Long Island Chapter of the international



Exit  
Planning  
Institute

Exit Planning Institute. The purpose of the Long Island Chapter is to create a forum where local professional advisors can collaborate to address unique needs of the community; develop educational programs for business owners and professional advisors to build awareness and better prepare an owner for the successful exit of their business; develop, encourage and foster the adoption of best practices for the exit planning profession; and promote the common business interests of those business advisors engaged in the profession of exit planning.

*The launch of the Long Island Chapter of the Exit Planning Institute will take place from 8:30 to 11:00 AM on Wednesday, March 28, 2018 at the Stony Brook University Wang Center Theater. There is no cost to attend, but registration is required. Visit <http://www.exit-planning-institute.org/chapter/long-island/> to register and read more about the event and the Institute.*



*John P. Gordon*

In 2017, Counsel **John P. Gordon** received the credential of Certified Exit Planner (CEXP™) from the Business Enterprise Institute, Inc. This elite designation distinguishes professionals who have attained advanced expertise in exit planning through a rigorous three-part professional education and training process, which includes study, testing and ongoing education.

# VMM ACADEMY SPRING 2018 SEMESTER

DATE	TOPIC	SPEAKERS
Wednesday, March 28, 2018	The New Normal: Planning for Blended Families	Joseph Trotti, Esq. Jordan Freundlich, Esq. Kenneth Renov, Esq.
Wednesday, April 25, 2018	Alienation and Mental Health Issues in Family Law	Joseph Trotti, Esq. Additional speaker(s) to be announced
Wednesday, May 30, 2018	Exit Planning for Business Owners	Joseph G. Milizio, Esq. John P. Gordon, Esq.

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

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

**Please include this information  
in your registration:**

- Name of attendees
- Attendee places of business (if applicable)
- Email addresses and phone numbers for all attendees

**All programs are held  
from 5:45 – 7:30 PM at**

**Vishnick McGovern Milizio LLP  
3000 Marcus Avenue, Suite 1E9  
Lake Success, NY 11042**

**Light refreshments are served  
~ Seating is limited**



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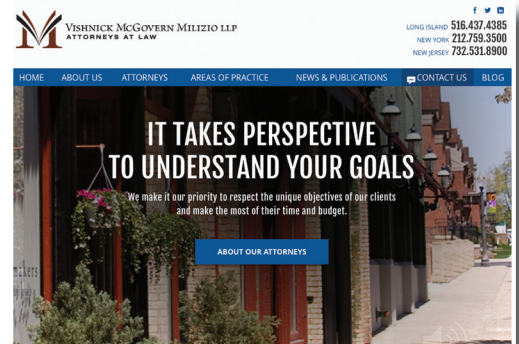
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