

## CHANGES TO NEW YORK STATE POWER OF ATTORNEY LAW

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Financial exploitation of vulnerable older adults is the fastest growing form of elder abuse, according to non-profit groups, law enforcement, adult protective services, aging service providers, the legal community, bankers and others serving the senior population. In response, New York State has amended Article 15 of the New York general Obligations Law (Chapter 644 of the Laws of 2008) governing powers of attorney and the manner in which these powers must be documented. A subsequent amendment postponed the effective date of the new legislation until September 1, 2009. Durable powers of attorney properly executed prior to September 1, 2009 are grandfathered by the new legislation and will remain in effect.

The power of attorney allows a person (“the principal”) to grant another person (“the agent”) the authority to act on the principal’s behalf in regards to business and personal affairs. The agent has the authority to “step into the shoes” of the principal and exercise a very broad range of powers, including: the authority to sell, transfer or dispose of property, change beneficiary designations on life insurance or qualified accounts, establish trusts, open or close accounts, retitle accounts, etc. A durable power of attorney remains in effect even if the principal subsequently becomes incompetent. The distinct ability of the durable power of attorney to authorize a broad range of powers has traditionally made it a very effective Estate Planning, Asset Protection Planning and Financial Management tool recommended by estate and elder law attorneys. The Power of Attorney is a necessary estate planning document for clients young and old. Clients with a properly drafted durable power of attorney can avoid a costly guardianship proceeding if the worst happens and a family member becomes incompetent.

Under the old law, despite the extraordinary power and authority that a power of attorney could allow a principal to convey, the document’s execution was relatively simple (requiring only the acknowledgment of the principal’s signature before a notary public).

The goal of the new law is to reduce the incidence of financial exploitation by educating the principal and agent, along with holding the agent accountable if abuse occurs. The new law seeks to provide clarity and direction to both the principal and agent, and to ensure that a person executing a power of attorney recognizes the sweeping powers they are delegating to the agent. The law creates a new statutory short form that is not valid until it is signed by both the principal and the agent. The form required by the statute itself includes an explanation to the principal regarding the extent of the agent’s authority, and the nature of the fiduciary duty owed to the principal by the agent. The new form also includes a clear explanation of how a principal can revoke the power of attorney. Further, the new form allows the principal to designate a person called a “monitor” to oversee the activities of the agent. As an added safeguard, the law specifies that the monitor has authority to compel account statements and records of all transactions from the agent.

The new law contains several changes affecting the agent as well. The most notable change regarding the agent is the clear notice explaining an agent’s role, fiduciary obligations and legal limitations on the agent’s authority, along with the requirement that the agent sign the power of attorney, acknowledging those fiduciary obligations. When transacting business using the power of attorney, the agent is attesting that he or she is acting under a valid power of attorney, within the scope of authority conveyed by the instrument. Finally, if the principal designates, the new law specifies that the agent may be entitled to “reasonable compensation” in return for acting as an attorney-in-fact.

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## LACY KATZEN MOURNS THE PASSING OF OUR LONG TIME EMPLOYEE AND FRIEND

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In Memory of Molly S. Burden who worked at Lacy Katzen starting in 1952. She retired to raise a family and then came back. She retired again, but came back to work because we needed her. Our administrator wanted to share the following thoughts with you.

Sometimes you get lucky. That's what happened when I met Molly Burden. When I came to Lacy Katzen, Molly had been here a long time. She knew the policies and procedures in and out. This provided her with a knowledge she passed on to many associates and partners to make them as successful as possible.

Molly began working here in 1952, just 2 years after the founding of the firm. In her role as valued assistant, she made sure clients received great customer service, reminded attorneys to "get those items done," and watched the growth of the firm and its lawyers. Enter me, a new administrator fresh from the business world, with little legal background. There was plenty of reason for Molly to wonder just what I would do to her world.

True to the humor and honesty of her character, she met with me and shared some of the processes she thought should change and offered her help. She displayed her flexibility and love of learning by attempting to learn new technology. It became easier to push younger firm members into learning technology because Molly had eliminated the usual "I am too old to learn new things" excuse. Did she sputter about it – sure, but then she would laugh and move on.

Molly always reminded us about client needs. She knew what the client needed and pushed others to meet those needs. Every time I asked her to switch roles because of a firm need, she would do it. She showed flexibility, intertwined with humorous retorts, with every change of scenery and moves we made.

She assisted our founder Leon Katzen, even managing the video production for his 90th birthday celebration. Molly made sure she came into work despite her own aches and pains because she knew she had a job to do.

I think that says it all. Molly showed support and respect for others, and received it in return from all those she met. She never demanded respect, she did it the hard way... she earned it.

We miss Molly. We miss her coming into our offices and giving us a good idea. We miss her laugh and determined attitude. We will miss her Christmas gifts of tasty special nuts she made. We miss her work ethic. We miss her flexibility. We miss her frankness. Most of all we miss her caring attitude for our clients, staff, and attorneys.

Lacy Katzen was lucky to have had Molly as an integral part of our firm. *Molly passed away on February 4, 2009.*

## LACY KATZEN STRENGTHENS SATELLITE OFFICE NETWORK

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Lacy Katzen is pleased to announce it is opening an office in Batavia, located at 319 West Main Street, to enhance our services to our clients in Genesee County.

Since its inception over 55 years ago, Lacy Katzen has used satellite offices in order to better serve its clients. Founding partners, Leon Katzen and Herb Lacy opened offices in the communities of Bergen and Hilton, respectively, although their principal office was located in downtown Rochester. Over the years, this model proved to be successful and the concept has been expanded to 8 locations, including the new Batavia office.

### SATELLITE OFFICE UPDATE

The Bergen office will receive a facelift this year, and partner Dan Bryson will hold regular office hours Monday and Wednesdays, from 4 pm to 6 pm. As always, attorneys will continue to meet clients for specified appointments.

The Pittsford office, located in the Powder Mill Office Park, was recently relocated within the same complex Park. The office is now located in a suite of offices at 1173 Route 96, Building 6, Suite 120.

The Greece, Hilton, and Charlotte offices remain active and available for our clients who live and work in the northern and western portions of Monroe County. The Greece and Charlotte offices are staffed on a fulltime basis. The Hilton office remains available by appointment. Similarly, the Ontario office (Wayne County) and the Canandaigua office (Ontario County) round out the Firm's ability to meet with clients in the eastern and southern Greater Rochester area and also are staffed on a full time basis.

All satellite offices are easily accessible and have free parking (including handicap accessible), available a few steps from our office door. Conference rooms are available at all locations. We hope that our many office locations make doing business with Lacy Katzen LLP convenient for each of our valued clients.

## TACTICS TO REDUCE ACCOUNTS RECEIVABLE

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For many small and mid-sized businesses the control and collection of Accounts Receivables is a major concern, especially in tough economic times. When a business extends credit to a customer it is acting as a bank or lender. If businesses keep this in mind when extending credit, then problem accounts (those that don't pay as agreed) will be minimized. If a business is not getting paid as agreed, the cash flow coming into the business is diminished and the ability to pay its vendors in a timely manner is also affected. Discounts which are lost and interest payments incurred will also lessen the "bottom line."

If a company that extends credit to its customers thinks of itself as a bank, then it needs to act like a bank when extending credit. A bank wouldn't lend money to one of its customers without a credit application and agreement to pay the money back. Once the decision is made to sell on credit a simple application and agreement should be presented to the customer. The customer should be required to provide information about the business, including tax identification number, date it was formed, other creditors, names and addresses of individuals authorized to make purchases, names and addresses of officers of the business (if a corporation or LLC). If the business is a sole proprietorship or partnership, the names, addresses, telephone numbers, birthdates and social security numbers of the owners or partners should be required. If the customer is a corporation or LLC then a personal guarantee may be in order. While corporations and LLC's can go out of business, the only way an individual can go out of business is by filing a bankruptcy petition or dying. If a person is not willing to sign a personal guarantee, this should be a red flag to the business and the decision to extend credit should be considered very carefully. Your Lacy Katzen attorney can assist you in the preparation and design of the credit application, agreement and personal guarantee.

In those instances when a customer (whether an individual or business) is not paying, there are certain things that should be done before contacting an attorney to assist in the collection of the debt. The most important thing is to communicate with the debtor. Why isn't the bill being paid? Is the customer unable to pay or is there something wrong with the goods or services provided? Is the customer experiencing cash flow problems and will be able to pay in a month or two? Once a determination is made as to why the bill is not being paid, you should make a decision as to the next step. In any event, monthly statements should be sent to the customer, payment arrangements should be confirmed in writing and follow up calls should be made. The worst thing to do is to ignore the problem. Remember, a bank would not ignore the problem if one of its customers were not paying the loan.

At some point it becomes clear that the customer is not going to pay voluntarily. Ben Franklin said, "Creditors have better memories than Debtors." Our job at Lacy Katzen is to improve the debtor's memory. The first thing we do is to get the documentation from the client. What kind of business entity is the debtor? Is there an agreement to pay interest or finance charges? Is there a personal guarantee? Is there an agreement to pay attorneys' fees if the account is referred to an attorney for collection? Were monthly statements sent? Was this a bill arising out of the construction of a home or improvement of real estate? Is the filing of a mechanics' lien appropriate? Once these questions are answered, the next step would be to send a demand letter to the customer. Lacy Katzen complies in all respects with the Fair Debt Collection Practices Act (FDCPA) which governs the collection of consumer debt. The client is sent an acknowledgement of the claim and is advised to contact Lacy Katzen if the customer/debtor contacts the client.

If the demand letter does not produce a payment then we decide whether a lawsuit is a viable alternative. There are several factors involved, including the cost of filing suit, the likelihood of recovery, the relations with the debtor in the future, the location of the debtor and the possibility of a counterclaim. A counterclaim is a claim made in a lawsuit against the person bringing the lawsuit. Once the decision is made to sue, Lacy Katzen prepares the papers (Summons and Complaint) and sends them to the client to sign and have notarized. Once we receive the papers back, we file them with the appropriate court and send them out to be served on the debtor. Assuming that there is no response from the debtor, a judgment is entered and enforcement proceedings are commenced.

A judgment is a determination by a court as to the liability of a party to the lawsuit. There are several enforcement devices that are available, including bank restraints, sale of property, income executions, executions against bank accounts, depositions of debtors, and installment payment orders. Depending on the size of the judgment, any one or all of the enforcement devices are available. Sometimes the debtors make payment arrangements and those are usually set down in writing with the consent of the client.

If payments are received, the client is paid on a monthly basis and an accounting of the payments is included with the remittance. The attorneys and staff at Lacy Katzen are accessible to answer questions at any time during the process. The Collections and Creditors' Rights Department is supported by a state of the art computer system so that information is always available to people in the Department and, in turn, to our clients. The Collection and Creditors' Rights Department has the reputation of being the best in the community for the collection of bad debts. Feel free to call Michael Schnittman at (585) 324-5704, Mark Stein at (585) 324-5706, or Matthew Ryen at (585) 324-5701 to assist you in this practice area.

## IS YOUR REAL PROPERTY OVER ASSESSED?

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Whether it's a small claims review of a single family home or a nuclear power plant, the basic valuation issue is the same: what is the fair market value? Indeed, Article XVI, Section 2 of the New York State Constitution prohibits assessments from exceeding full market value.

The concept of market value has many dimensions. For example, the Uniform Standards of Professional Appraisal Practice ("USPAP") defines the term as follows:

a type of value, stated as an opinion, that presumes the transfer of a property (i.e., a right of ownership or a bundle of such rights), as of a certain date, under specific conditions set forth in the definition of the term identified by the appraiser as applicable in an appraisal.

In addition, not all municipalities value properties at full, or 100%, market value. For a variety of reasons, these jurisdictions may assess properties at a fraction of full market value. The ratio of assessed value to full market value is known as the "equalization rate."

A basic method of ascertaining market value is well known to anyone who has ever purchased or sold a home: comparable sales. If there is a measurable market for the type of property at issue (sometimes called the "subject" property), appraisers will look to sales of comparable properties in attempting to value the subject. Adjustments are then made for factors such as location and sale conditions.

If the real property produces income such as rents (as opposed to income purely from business operations not dependent on realty), a second approach to valuation may be used: the capitalization of income method. Essentially, this methodology rests on the principle that income from real property can determine market value using, among other data, costs and a capitalization rate. Where both a market (comparable sales) and income approach are used in an appraisal, the results of each will then be reconciled into an overall estimate of value. Although the approaches differ somewhat in their methods, they share in common the fact that the higher a property's expected net income, the greater will be the price expected from a prospective purchaser.

Unique, "specialty" properties (for which there are no comparable sales and which do not generate income) may be measured a third way: the cost method. Essentially, this approach evaluates how much it would cost today to reconstruct the subject property. This methodology tends to result in higher values than the market and income approaches, and is less favored by appraisers and courts.

Overvaluation is not the only basis on which an assessment may be challenged. Other theories include illegality (e.g., where a property is assessed as taxable when it is entitled to at least a partial exemption); misclassification (in assessing units that distinguish between homestead and non-homestead properties); and inequality (where a property is assessed at a higher percentage of full value than other comparable properties).

Again, a taxpayer wishing to pursue one or more of these theories in court must be sure to include them, in the first instance, in the administrative grievance complaint. Also, many property owners have achieved reductions in their assessments by presenting comparable sales or other data to their assessor or Board of Assessment Review. However, the fact that your neighbor's home may be underassessed does not, by itself, entitle you to a reduction. The relevant issue, again, is whether your property is assessed at market value.

In defending assessment challenges, municipalities and school districts have many factors to consider. For example, it is frequently in their interests to seek opportunities to resolve tax certiorari cases early in the process, meaning within the first year or two of the litigation. This can reduce the payment of refunds in cases where property is overvalued, and dismissals can be achieved by attorneys experienced in the specialized procedure that governs tax certiorari actions.

Though they both depend on revenue from property taxes, school districts and assessing jurisdictions can have differing interests. For example, school districts usually receive the greatest percentage of tax revenue and may be less willing to resolve cases by paying refunds. By contrast, municipalities, frequently desire to preserve their tax base in future years. Of course, municipalities control key parts of the assessment process while school districts, who are significantly affected by the outcome of tax certiorari disputes, often must take affirmative steps (such as intervening in litigation) to ensure that their interests are represented. Municipalities and school districts who communicate effectively can work together productively toward their shared goal of defending the assessment base. John Refermat is ready to answer your questions and work with you. Please contact him at (585) 324-5762.

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## NEWS OF THE FIRM

John Refermat presented a CLE course on Zoning and Land Use in February at the NBI (Nat'l Business Institute) in Rochester & Syracuse.

Michael Schnittman, Craig Welch, David MacKnight, Peter Rodgers, and Karen Schaefer have been named to Super Lawyers for 2009 edition.

Karen Schaefer just held a seminar for lawyers and accountants sponsored by the Business Law Section of the Monroe County Bar Association on "Succession Planning Strategies for the Closely Held or Family Owned Business."

Tim Muck was the moderator of "Business Law Nuts & Bolts" presented by the Business Law Section of the MCBA in February 2009. The program provided attorneys with an introduction to business entity choices, taxation, employment and intellectual property issues, and ethics.

Matt Ryen was a panelist on the Strategic Planning

Session of the 2009 annual meeting of the New York State Agricultural Society in Liverpool, New York.

Lisa Arrington presented at a seminar for NYSBA on Basic Elder Law Practice, May 5th, in Rochester.

Dan Bryson was recently re-elected to serve a three year term as a Trustee for the Arc Foundation of Monroe. The Foundation is the endowment arm of the Arc of Monroe County whose mission is to raise and manage funds to support people with developmental disabilities. Dan also serves on the Arc of Monroe's Guardianship committee.

Lisa Arrington has been accredited to present claims for Veteran's benefits before the Department of Veterans Affairs.

Peter Rodgers has been named as the Vice Chair of the Board of Trustees of McQuaid Jesuit School.

## CHANGES TO NEW YORK STATE POWER OF ATTORNEY LAW

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Another significant change in the new legislation is the treatment of gifting. The new law requires that a grant of authority to make major gifts and other asset transfers (such as change of beneficiary designations) be set out in a "major gifts rider," which must be executed at the same time as the statutory power of attorney. The major gifts rider must be signed by the principal and notarized and signed by two witnesses (who are not named in the documents as recipients of gifts or other transfers) in the same manner as a will. Alternatively, a person wishing to grant gifting authority to an agent may execute a non-statutory power of attorney signed by the principal and two disinterested witnesses and a notary. Again, the purpose of the major gifts rider is to alert and educate the principal and allow anyone granting gifting authority to an agent to make an informed decision whether the agent may make gifts to third parties as well as to the agent himself or herself.

Finally, the new law seeks to ensure that third parties accept a properly executed durable power of attorney. In the recent past, this has not been the case. Many institutions instead required that a principal execute a document prepared by that particular institution. Obviously, this practice negated the purpose of a durable power of attorney (one that remained in effect if the principal became incompetent) and created substantial difficulty in cases where the principal became incompetent and could not legally execute another document.

Also, the amendment expands the definition of financial institutions beyond banks to include security brokers, securities dealers, securities firms and insurance companies. The law sets out that these institutions must accept a valid power of attorney, cannot require the institution's special form, and can only refuse to honor a power of attorney for "reasonable cause" (which is now specifically defined in the statute). When a third party unreasonably refuses to accept a power of attorney, the statute authorizes an agent to get a Court Order compelling that institution to accept the power of attorney. All these changes are designed to insure that institutions comply with the law. Hopefully, this will result in more uniform policies and practices with regard to the use and acceptance of powers of attorney.

In light of the sweeping changes to the New York Power of Attorney Statute going into effect September 2009, it would be prudent for clients to contact their attorney so that their power of attorney can be reviewed and updated if necessary. As always, we will keep our clients informed regarding any issues that may arise as the new power of attorney law is implemented. Lisa Arrington at (585) 324-5722; Dave Anderson at (585) 324-5715; Terry Emmens at (585) 324-5713 and Karen Schaefer at (585) 324-5718 are available to help you.

## PROTECT YOUR LIFE SAVINGS FROM THE EXPENSIVE COST OF NURSING HOME CARE

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Congress passed the Deficit Reduction Act of 2005, which tightened Medicaid eligibility by changing the penalty period rules and extending the look back from three years to five years. **Many people erroneously believe they must spend down their life savings before Medicaid will cover their Long Term Care costs.**

Often well meaning professionals - from financial advisors, to bankers, to hospital social workers, to discharge specialists, to nursing home admissions personnel - will repeat and reiterate this incorrect information, perpetuating the myth that spouses, families and individuals must spend down their assets prior to applying for Medicaid coverage for Long Term Care costs. **As a result of well-meaning but incorrect advice, many families and individuals are spending thousands and in some cases hundreds of thousands of dollars on nursing home care, when lawful strategies still exist to save these assets for spouses or families without affecting in any way the nursing home resident's quality of care.** As a general rule, the attorneys in the Elder Law Practice Group at Lacy Katzen LLP can save substantially all of a married couple's assets when one spouse needs nursing home care. Further, we can lawfully save between 40% and 70% of a single person's assets after they are admitted to a nursing home.

Without careful planning these assets are typically "spent down". **However, spending down creates a trap for unsuspecting families.** If there were prior gifts or unexplained cash withdrawals (for home care or groceries) that cannot be documented, a period of ineligibility called a penalty period may be imposed. The result will be an unpaid nursing home bill. Unfortunately, if the resident's assets are gone, nursing homes are increasingly suing family members or Powers of Attorneys in an attempt to get paid. Many nursing homes are also requiring a "responsible individual" to sign the Admission Agreement along with the resident and; thereby, attempting to extend liability for the resident's unpaid bill to an unsuspecting family member.

Finally, there has also been a disturbing trend of organizations employing lay people who provide assistance to individuals by preparing and filing Medicaid Applications after the resident's assets have been "spent down". Often the nursing homes recommend these organizations to residents and their families. Many go so far as to have authorizations for these organizations included in the home's admissions agreement. We have heard of instances where some homes may pressure families telling them they must agree to use these organizations if they want a bed at their facility. In some instances, nursing home personnel will discourage residents and their families from contacting an elder law attorney. There is a financial incentive for nursing homes to encourage all residents to spend down all of their assets. The fee these lay people charge for preparing a Medicaid Application is substantially less than an elder law Attorney's fee. But, beware; these non-lawyers do not possess the legal knowledge or skill to engage in lawful asset protection planning to maximize the savings for nursing home residents or their families. Even worse, these groups are not versed in methods to cure penalty periods for prior transfers or for cash withdrawals and are not concerned if the resident or a family member is left with an unpaid nursing home bill after the Medicaid Application has been filed. Their job is only to file the Medicaid Application.

If you, a family member, or friend is in the unfortunate circumstance to have a loved one in need of home care, in the hospital or at a nursing home, we strongly recommend that you contact Terrance W. Emmens at (585) 324-5413, David E. Anderson at (585) 324-5715 or Lisa C. Arrington at (585) 324-5722 for a free consultation to review asset protection strategies.

## WHEN MEDICAL ERROR CAUSES HARM

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Serious harm or death sometimes occurs resulting from surgical, hospital or medical error profoundly affecting patient and family. The law refers to "medical malpractice" as the negligence of a medical provider. Lacy Katzen LLP has successfully represented victims of medical malpractice for decades.

Medical malpractice cases are among the most difficult legal claims to prove at trial, with the vast majority of reported cases tried to verdict resulting in a verdict for the defense. Lacy Katzen LLP has helped victims of medical malpractice with a high rate of success through meticulous analysis of potential claims and the highest dedication to preparation of a case once it has been accepted.

Peter T. Rodgers is listed in the Best Lawyers in America directory in the field of medical malpractice. With partner Jacqueline Thomas and medical professionals, Lacy Katzen LLP focuses on both the needs of our clients and the careful research necessary to win cases often accessing the most highly qualified medical experts in the country.

To succeed at trial, you must prove that the medical provider failed to follow the medical standard of care and that injury or death was proximately caused by the departure or failure to follow the medical standard of care. Proving a failure to follow the standard of care but failing to prove causation will result in a defense verdict. Both elements require expert medical proof to successfully prosecute a medical malpractice claim.

Lacy Katzen LLP has successfully handled cases involving surgical error, failure to timely diagnose serious illness including cancer and infectious disease, emergency room negligence and the failure to accurately evaluate diagnostic testing.

In accepting a medical malpractice case, Lacy Katzen LLP commits its resources, talent and experience on behalf of its client in this most challenging area of the law.

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## RETIREMENT PLAN CHANGES MAY BENEFIT YOU

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If you are a participant or beneficiary of a 401(k), IRA or other type of qualified retirement plan, 2008 was likely a difficult year you would as soon forget. Many retirement accounts lost 30% or more of their values as a result of the precipitous drop in the stock and bond markets. For many, this evaporation of wealth was compounded by having to take a required minimum distribution, or RMD, from a retirement plan during 2008 (based upon the plan's value at the end of 2007), further depleting the plan's value. The Worker, Retiree and Employer Recovery Act of 2008, passed into law in December 2008, waives the requirement that retirees and beneficiaries of qualified retirement plans take an RMD in 2009. Additionally, this new law requires retirement plans to give qualified beneficiaries the ability to roll over their proceeds to an "inherited IRA," thus allowing beneficiaries to stretch the payout of the benefits out over their life expectancies, potentially deferring significant amounts of income taxes.

Most retirees over the age of 70½ and beneficiaries of retirement plans know the yearly drill: make sure to take your RMD before December 31st each year, otherwise, substantial penalties may be imposed by the IRS. Depending on your age, the RMD is a percentage of the retirement plan's value at December 31st of the prior year.

For 2009, whether you are a participant or beneficiary of a retirement plan, the law has temporarily changed so that you do not have to take an RMD. However, should you decide to withdraw money from the retirement plan, you will still be required to report and pay income tax on that amount. In addition, any amounts you withdraw in 2009 will not reduce or offset future RMDs. Looking forward to 2010, unless the law changes in the interim, you will once again be required to take your RMD pursuant to the applicable distribution schedule.

Although the IRS has waived RMDs for 2009, keep in mind that other laws may nonetheless, require a distribution to be taken. For example, certain persons receiving Medicaid may be required to take a distribution in order to maintain eligibility for the program. Failing to comply may have disastrous, unintended consequences.

One of the more positive developments in recent years was a tax law change allowing non spouse beneficiaries of retirement plans to roll over their benefits to an "inherited IRA," thus enabling them to stretch payments (and therefore income taxation of the payment) over their life expectancies. This stretch feature allows the retirement plan benefits to grow on a continuing tax deferred basis. Prior to the law change, the ability to defer distributions was limited only to a spouse named as a beneficiary of a retirement plan or to qualified beneficiaries of an IRA.

Unfortunately, this tax law change did not require retirement plans to make the inherited IRA rollover an option for non spouse beneficiaries. Many retirement plans either did not offer inherited IRA rollovers or did so only with strings attached. In many cases, beneficiaries were required to withdraw plan benefits and pay income tax immediately, or over no more than five years.

Beginning in 2010, the law has been changed to require all qualified retirement plans to offer non spouse beneficiaries the opportunity to roll over their benefits to an inherited IRA. No longer will a retiree, during his lifetime, be required to roll over a 401(k) account to an IRA to give his or her children the ability to stretch out plan benefits over their life expectancies. Retirement plans have until 2010 to comply with the change, but you should take more immediate action. A review of the beneficiary designations on your 401(k), 403(b) or other retirement plans will ensure they meet your overall estate planning objectives, and that you take advantage of this highly beneficial planning opportunity.

Our business clients with qualified retirement plans should make sure their retirement plans comply with these new provisions.

The challenges involved in dealing with retirement benefits can be overwhelming and complex. Significant opportunities for income tax deferral may be lost or overlooked. If you wish to learn more about retirement plan alternatives or other estate planning options, both Tim Muck, at (585) 324-5727 and Karen Schaefer, at (585) 324-5718, of our Trusts and Estates department are available to discuss your retirement and personal estate planning needs.

## Legal Notes

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### Legal Notes

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  - Collections
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  - Elder Care Services
  - Employment Law
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