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DON'T LET YOUR FAMILY COTTAGE BECOME A FAMILY NIGHTMARE

Do you or your parents own a family cottage, country home or ski chalet? Typically, these properties were purchased by your parents many years ago and have been a source of great joy and memories for the members of your family. But mom and dad are getting older, or they may have already transferred the property to you and your siblings; but there is no real road map as to ownership interests and maintenance of the family cottage. Many people ignore succession planning for this family jewel when they think about their estate planning.

There are many issues to consider. Usually the property was purchased very cheaply many years ago. Now, the property is worth substantially more, the taxes have increased and transferring the property may have substantial tax implications, either now or in the future.

When the property was owned by mom and dad, there were no issues as to joint ownership. But now, the three children own the property. What happens if someone moves away, dies, gets divorced or has credit issues? You could end up owning the property with your sibling's divorced spouse or a trustee in bankruptcy!

Now that the property is owned jointly by you and your siblings, all of whom are married with children of their own, there is more pressure on the use of the property. In addition, the property has been in the family a long time, and now there are capital improvements that need to be made, but not everyone has the resources to pay their share.

There are many issues that I could raise in this article, but you are already aware of them because you or your parents own a family cottage, and you know they exist and can see them lurking on the horizon.

Planning for the future of the family cottage is best done well in advance of someone's death. It gives the family a chance to decide if joint ownership is desirable, or if the use of an entity like a trust or limited liability company would be better. It gives the owners a chance to determine who can be a transferee (owner) of the property in the future since you are trying to keep this asset in the family (your lineal descendants). It gives you a chance to address tax issues, transfer of interests in the property in the future, funding of the annual costs and capital improvements, usage of the cottage and how decisions are made by the joint owners. In short, advance planning for this family asset will give you and your family peace of mind.

LACY KATZEN PREVAILS IN DISCRIMINATION MATTER FOR CLIENT

Lacy Katzen clients recently prevailed in federal litigation in which a former employee, represented by a New York City firm, alleged multiple claims of employment discrimination under both state and federal law. After reviewing all of the facts that both sides presented on the motion, the Federal Judge held, in part, that there was insufficient "evidence from which a reasonable jury might infer discrimination, the creation of a hostile work environment, or retaliation." All six causes of action were dismissed with prejudice. The successful Lacy Katzen clients were represented by firm partner John Refermat.

DO YOU HAVE A MEDICAL MALPRACTICE CASE?

Lacy Katzen LLP is recognized by Best Lawyers in America as a Tier 1 Best Law Firm in Plaintiff's Medical Malpractice.

When Leonard learned he had stage 4 cancer, he confronted his fears and determined he would fight the disease. At age 53, he wanted to see his only daughter graduate from college and get married. He wanted to hold his grandchildren. He resolved to endure radiation and chemotherapy, nausea, vomiting, hair loss and the other side effects of the treatment. After beginning the treatment, Leonard realized how the disease and its treatment was impacting every facet of his life: he lost his job after consuming his vacation and sick time; he depleted his assets paying for his medical treatment; he missed pursuing his passion for hiking; he no longer exercised due to his decreased energy levels; and his wife was exhausted from carrying the burdens of working, managing the house and caring for him. Out of a desire to understand why these things were happening to him, Leonard asked for his medical records. When reading his medical records, Leonard discovered that abnormal test results suggesting cancer two years before he was diagnosed were ignored or overlooked. Leonard was never told of the test results. His doctor never told him that he should have a biopsy to determine if cancer was present. The delay in diagnosis meant that the opportunity to cure his cancer was lost. He trusted his doctor and could not understand why he had not been given a chance to identify and fight the disease years earlier. Because of the delay in diagnosis, Leonard's prognosis was grim.

This fictional account illustrates the element of human suffering caused by medical errors. Although our region is fortunate to have many highly qualified physicians and excellent hospitals, medical errors occur, causing life-changing injuries and death. According to the Journal of the American Medical Association (JAMA), medical negligence is the third leading cause of death in the U.S., trailing only heart disease and cancer.

Lacy Katzen LLP focuses on representing the victims of medical malpractice. Our team is led by attorney Peter Rodgers, named by Best Lawyers in America as the "Lawyer of the Year" for Plaintiff's Medical Malpractice in 2013 for Rochester, and also includes Jacqueline Thomas, chair of Lacy Katzen LLP's litigation department, and associate attorney John Wells. Our attorneys work with physicians and nurses to carefully review each case. Each case is assessed to determine whether the Statute of Limitations (time to bring the claim) has lapsed, whether a health care provider deviated from the standard of medical care, and whether the client will have sufficient evidence to prove the deviation caused the client's injuries. The Statute of Limitations for medical malpractice actions in New York State is 2 ½ years, unless tolled by one of various exceptions.

Lacy Katzen LLP has successfully represented our clients in medical, surgical and hospital malpractice cases across a broad spectrum, including:

Failure to timely and correctly diagnose and promptly treat various cancers, heart attack, infectious disease and pulmonary embolism;

Failure to accurately interpret diagnostic testing;

Emergency medical failures; and

Failure to recognize the impact of certain medications.

(For a full list, please see our website at www.LacyKatzen.com)

If you believe you or a loved one has been the victim of medical malpractice and don't know where to turn for help, please call our experienced and caring attorneys.

NY ESTATE TAX CHANGES 2014

The New York State budget for 2014-2015, effective as of April 1, 2014, included several changes to the estate tax in New York. Perhaps most notably, the budget provides for an increase in the New York State estate tax exemption amount from its current \$1 million. The exemption amount will increase over a number of years as follows:

| Date of Death | Exemption Amount |
|---|------------------|
| Between April 1, 2014 and March 31, 2015 | \$2,062,500 |
| Between April 1, 2015 and March 31, 2016 | \$3,125,000 |
| Between April 1, 2016 and March 31, 2017 | \$4,187,500 |
| Between April 1, 2017 and December 31, 2018 | \$5,250,000 |

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NY ESTATE TAX CHANGES 2014

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Beginning in 2019, the New York estate tax exemption amount is slated to match the federal estate tax exemption amount, which is currently indexed for inflation. The maximum estate tax rate remains at 16%.

Another change under the 2014-2015 budget relates to the rules regarding lifetime gifting. Beginning on April 1, 2014, any lifetime taxable gifts made by the deceased person within three years prior to death will be added back to the estate for purposes of determining the size of the person's taxable estate.

For more information, please contact any member of our Estate Planning and Wealth Management department.

STOPPING PAYMENT ON (MOST) CHECKS

Clients ask questions about stopping payment on checks. This issue can be confusing and complex.

The first source of confusion is recognizing a check. A check is a written document signed by the drawer (the owner of the checking account) containing an order to a person/entity engaged in banking (banking means accepting deposits and making loans) to pay a specific sum of money immediately when presented to the bank by a person lawfully in possession of the writing. A check is different from money, electronic funds transfers, promissory notes, contracts with additional terms, lines of credit, passbook accounts, and other writings.

There are several types of checks, some of which are not even called checks. There are the everyday checks that your bank/credit union provides when you open a checking account. There are also cashier's checks (a check signed and issued by the bank, payable by the bank); tellers check (a check signed by the bank, but payable at a different bank); a certified check (a check a customer draws on the bank which the bank agrees by writing or stamping on the check to pay when presented); a money order (a check purchased from a bank which is signed by the purchaser ordering the bank to pay a designated person); a travelers' check (a purchased check requiring – usually – that the purchaser sign twice to verify the signature); and counter checks, register checks, and bank drafts (usually all names for money orders).

There are three sets of rules about stopping payment of checks. The first rule applies only to cashiers' checks, certified and tellers' checks. Payment of these checks can only be stopped by the purchaser of the check or the person to whose order the check is payable and only after more than 90 days have passed since the bank issued or certified the check, unless the check has been destroyed, lost or stolen by a person who cannot be found or sued and the person requesting the stop payment puts the facts in written, sworn form. The account owner (and only the account owner) of the account on which the check is drawn can stop payment of all other checks for two weeks by oral or telephonic notice given to the bank at which the account is maintained. The stop payment order can be extended to six months by confirming the stop payment order in a signed writing delivered to the bank, before an oral or telephonic notice expires. If the oral/telephonic stop payment order expires, the written stop payment order will start a new six-month stop payment period. Stop payment orders can be extended in writing for additional six month periods.

Every stop payment order should clearly identify the check the bank customer seeks to prevent being paid. The better the customer identifies the check, the more likely the check will not be paid. The identifying features are the check number, the date, the amount, and the payee(s) (the person to whose order the check is written named on the face of the check). There may be other distinguishing marks on a check, but the listed features are best suited to identify it.

Stop payment orders need to be given to the bank as early as possible. The bank needs an opportunity to notify its personnel to refuse payment of the check whose payment has been ordered stopped. A check can be collected through deposit at a bank other than the one at which the writer of the check maintains an account. The law provides for short times for a bank to decide to honor and pay a check drawn by its customer. Other banks also must act reasonably promptly to collect a check given to it to collect. Collection can be sped up by presenting electronic copies to the bank holding the account. Also the holder of a check can cash the check at the bank on which the check is drawn and be paid immediately. The bank is allowed a reasonable time to arrange to stop payment of a check. What is reasonable depends on all of the facts and surrounding circumstances. Generally the larger the financial institution holding the account, the more time likely will be allowed to stop payment on a check. It would be unlikely any financial institution could stop payment the instant it receives a stop payment order. Thus, speed in requesting a stop payment counts.

As noted above, stop payment orders are not good forever. Fortunately, checks become stale (that is, the bank is not

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STOPPING PAYMENT ON (MOST) CHECKS

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required to pay a check when presented) after six months. Although, the bank is not required to pay stale checks, a check on which payment was stopped may be paid (absent the bank agreeing that it will not do so) after the six month stop payment expires, up to the time the check is no longer enforceable in a court (six (6) years in New York). Cashiers', tellers' and certified checks will not be paid after payment is stopped because the bank will refund the sum paid to the person properly stopping payment (usually in a few days) at least in New York because the bank is no longer liable for the check.

Payment of checks is viewed as a service a bank provides to its customers, not a right held by anyone in possession of a check. Thus, the everyday check can be stopped only by the bank's customer, the person with an account at the bank. Tellers', certified and cashiers' checks can be stopped by the purchaser or the payee.

Liability by the purchaser or payee of tellers', certified or cashiers' checks, even though payment is stopped may run to a subsequent holder or endorsers of the check who are forced to pay the check after payment has been stopped, though the check purchaser or payee may have defenses to the claim. [More of liability for the debt]

COMMUNITY MEDICAID HOMECARE UNDERGOING TRANSITION TO MANAGED LONG TERM CARE

Effective March 1, 2014, anyone receiving homecare services in upstate New York paid for by Medicaid will be required to choose a managed care provider. The change is a part of Governor Cuomo's Medicaid redesign plan and an attempt to save taxpayer dollars and reduce the cost of the Medicaid program in New York. The Medicaid program will now pay providers a set amount for each Medicaid homecare recipient, and the managed care provider will determine care needs and number of hours per day of services required for each individual's safe homecare plan. The provider must then manage the costs of services provided for all of their clients, basically shifting the risk of high need (expensive) applicants to the providers, leaving New York State with more stable and predictable costs.

The issue for those receiving care will be whether they can get the number of hours a day of care they need. Under the old system the care provided was determined by a collaborative setup with a Medicaid nurse and the licensed homecare agency providing the care, determining a "safe" care plan. Under the new system the provider determines the services. The recipient of services can appeal with the managed provider for additional care, or choose a different managed care provider. In Monroe County, there are several managed care providers to choose from including Elderplan/Homefirst (a VNS affiliate), ElderONE (formerly Independent Living for Seniors), and Fidelis Care. ElderONE is a fully capitated program (meaning all services are provided by ElderONE from homecare to nursing home care). The others are partially capitated (meaning some services are not included as part of the managed care program). As the transition progresses other providers may become available.

As this new system is implemented there will be questions regarding Medicaid fair hearings and the issue of aid continuing during the appeal process – both very important issues for individuals who receive in home care and count on these services to remain in the community.

GUNS, ESTATES, THE SAFE ACT, AND YOU

Imagine the following scenario: Jill Smith's father, Jack Wesson, has been an avid hunter all of his life and owns a small hunting camp in the Adirondacks. Jack passes away at age 98. At the time of his death, Jack owned three hunting rifles, a pistol, and an antique revolver. Jack's Will names Jill as the Executor (representative) of Jack's estate. As Executor, what are Jill's responsibilities and obligations regarding the guns?

As you are likely aware, on January 15, 2013, Governor Andrew Cuomo signed into law New York's SAFE (Secure Ammunition and Firearms Enforcement) Act. The SAFE Act made many changes to New York law, banning many types of assault weapons and requiring universal background checks on gun purchases. As relevant here, the SAFE Act also amended the Surrogate's Court Procedure Act, or the law that governs practices and procedures in Surrogate's Court. The Surrogate's Court in New York handles all probate and estate proceedings. Under the Surrogate Court's rules, estate representatives in many circumstances are required to file with the Surrogate's Court a list or inventory of the assets making up the estate. The SAFE Act amended the Surrogate's Court Procedure Act to require that, when such an inventory of assets is filed, the estate representative must also file a "Firearms Inventory" that contains a list and description of every firearm,

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NEWS WITH THE FIRM

John Refermat Esq. recently presented at the State Bar CLE on Summary Judgment Motion Practice in Federal Courts.

Mark H. Stein, Esq. recently presented a seminar on collections to the Wayne County Landlord Tenant Association. Topics included ways of collecting and enforcing judgments through the judicial system.

Congratulations to Timothy C. Muck! Tim was made a Partner of the Firm effective January 1, 2014. Tim's practice has been focused in the areas of Estate Planning, Trusts and Estates as well as helping small businesses as a member of the Corporate Department.

Congratulations to Robin Folts! Robin was made a Partner of the Firm effective April 1, 2014. Robin's practice has been focused on Elder Care and Estate Planning.

We are happy to welcome Rachelle H. Nuhfer as an Associate Attorney in the Trust & Estates Department. Before joining Lacy Katzen LLP, Rachelle spent two years as an Appellate Court Attorney with the Appellate Division, Fourth Department, where she handled both civil and criminal appeals. Rachelle received her Juris Doctorate degree from University of Buffalo Law School and undergraduate degree from St. Bonaventure University. Rachelle and her husband Dan live in the city of Rochester.

In addition to receiving Best Law Firm distinction for several practice areas, we had many of our lawyers recognized as Best Lawyers for 2014 including Jennifer Chadwick, Terry Emmens, Mary Fisher, David MacKnight, Peter Rodgers and Karen Schaefer.

Peter Rodgers was inducted as a Fellow of the American College of Trial Lawyers. Founded in 1950, the College is

composed of the best of the trial bar from the United States and Canada. Fellowship in the College is extended by invitation only and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.

Craig Welch has joined the Management Committee of the Law Firm.

The Volunteer Legal Service Project recently established an endowment fund in the name of our retired Partner, Michael Schnittman in recognition of his service to the community.

Dan Bryson was recently elected to serve as Secretary of the Arc Foundation of Monroe. Mr. Bryson previously served as Chairman of the Foundation and is also a Member of the Arc of Monroe's Guardianship Committee.

In the last few months we have welcomed several new employees to the Firm including Jamie Vahue (Trust & Estates); Katie Schmeer (Elder Law); Kim Heller (Collections).

Congratulations and best wishes to Kara Gibbs of our Collections Department who is the proud mom of daughter Grace and to Timothy Muck, Partner in our Corporate Department who is the proud dad of son Owen.

Milestone Anniversaries: Celebrating 20 years of service is Holly Krossber who works in our Canandaigua office and celebrating 10 years at Lacy Katzen is Robin Folts, a Partner in our Trust and Estates Department and Chris Zirbel, also of the Trust and Estates Department.

GUNS, ESTATES, THE SAFE ACT, AND YOU

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shotgun, and rifle that are part of the estate. A copy of this "Firearms Inventory" must also be filed with the New York State Division of Criminal Justice Services.

Let's turn to Jill's situation. First, Jill should exercise caution and be aware that estate representatives have no particular exemption under New York law from licensing requirements for possession of firearms. Jill would be well advised to contact her local police agency, which may take custody of the firearms and issue Jill a receipt for those firearms until Jill is prepared to transfer or otherwise dispose of them. Meanwhile, Jill has collected all the rest of Jack's assets and has prepared an inventory of those assets which she is ready to file with the Surrogate's Court. Under the provisions of the SAFE Act, Jill must also complete a separate Firearms Inventory that lists and describes Jack's three hunting rifles and the pistol. Jill will need to file this Firearms Inventory with both the Surrogate's Court and the Division of Criminal Justice Services. For privacy reasons, this Firearms Inventory will be kept in a secure location where, unless the court directs otherwise, it may be reviewed only by court personnel and people interested in the estate proceeding and their attorneys.

Now, what about the antique revolver? New York's penal law specifically excludes "antique firearms" from its definition of a firearm. This means that, if the antique revolver meets the definition of an "antique firearm," Jill need not include it on the Firearms Inventory. An antique firearm is defined as a pistol or revolver with a certain type of ignition system or one that uses certain cartridges that are not readily available for purchase. If Jill is unsure whether Jack's antique revolver constitutes an "antique firearm," it may be wise for her to simply include the antique revolver on the Firearms Inventory.

Legal Notes

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Legal Notes

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*The phone numbers for these locations are answered at our main office.

**The phone number for this location is now being answered at our Greece office.