

## FIRM NEWS

### **"Pardon Our Appearance While We Are Under Construction"**

*There is more than the usual excitement at the firm as we expand and renovate our offices.*

We have expanded our offices to 27,000 square feet to give us room for our growing group of attorneys and support staff, who look forward to serving your legal needs. The expansion also provides for a new, more spacious waiting room and additional conference/meeting rooms.

We anticipate the completion of this project by November and are excited about our opportunity to show you our "new" facilities.

#### ***LDEM Partners Honored***

The Women Lawyers in Monmouth Organization honored **Andrea White O'Brien** as one of their outstanding *Women of Achievement for 2006*.

The Western Monmouth Chamber of Commerce nominated **Bettina E. Munson** for the annual *ATHENA* award.

The New Jersey Commission on Professionalism in Law honored **Robert S. Bonney, Jr.** with a *Professional Lawyer of the Year Award*.

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## ***Sweeping Changes Made to Medicaid Eligibility Rules Under the Deficit Reduction Act of 2005***

**By: Robert F. Muñoz, Esq.**



On February 1, 2005, congress passed the Deficit Reduction Act of 2005 (DRA). This Act makes some of the most sweeping changes to the Medicaid laws since the 1993 amendments. The President signed the Act into law on February 8, 2006, but certain typographical errors in the law have raised issues concerning when the law becomes effective. At the present time, it appears that it was effective as of February 8th.

The DRA makes substantial changes in the law, but the most significant changes substantially affect the ability to do Medicaid planning. Those changes include the following:

1. The transfer penalty period often called "the look back period" has been changed from 3 years to 5 years for direct transfers similar to those applied to trusts. There may be little advantage to direct transfers as compared to putting assets in trust for purposes of Medicaid planning. Thus, Medicaid planning must now be completed at least five (5) years prior to potential eligibility rather than 3 years.
2. In the past, where a person could not qualify for a 3-year look back period, other techniques were utilized, including the so-called "half a loaf" theory. Under the previous law, an individual who gave away assets would be disqualified for a period of time equal to the average monthly cost for a nursing home as compared to the amount transferred. We would begin counting the months from when the transfer was made. Under the new Act, the time period would be counted not from the date of the transferor's depletion of the assets, but from when the applicant begins residing in a nursing home. Thus, there is no ability to engage in the former "half a loaf" process.
3. Another significant change is the home exemption. Under the prior law, a home was exempt regardless of its value. If an applicant was single and had an intent to return home, the applicant's home could be maintained. Under the new legislation, the home exemption is limited to the equity of the applicant's home up to \$500,000. A state may increase the limit to \$750,000 by regulation, but any equity in excess of the limit will be considered an available resource and must be liquidated to pay the costs of care. The only remaining exemptions, without affecting eligibility are transfers to spouses, a disabled child or a minor child living in the home.

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### WE ARE PLEASED TO ANNOUNCE THE NEWEST MEMBERS OF OUR FIRM:



**Michele Crupi** earned her B.A. cum laude from Seton Hall University and her J.D. from Brooklyn School of Law in 1997, where she was also a member of the Ethics Honor Society. She is admitted to practice law in the State of New Jersey and New York. Ms. Crupi clerked for the Honorable John J. Callahan, Superior Court of New Jersey, and for the Honorable Melvin S. Whitken, Presiding Judge of the Chancery Division-Family Part, Union County. She is a Certified

Mediator for the State of New Jersey and is a Certified Arbitrator for the Civil Court of New York. Ms. Crupi is a member of the New Jersey State and the Richmond County Bar Associations, and she specializes in Family Law.



**Daniel Santarsiero** earned his B.A. from Rutgers College and his J.D. from New York Law School in 1993. Mr. Santarsiero has been designated by the Supreme Court of New Jersey as a Certified Civil Trial Attorney. He has tried numerous jury and non-jury trials in the Law and Chancery Divisions and has over 13 years of experience in litigation. He has served as a court-appointed arbitrator and is admitted to appear before the United

States Court of Appeals in the Third Circuit. Mr. Santarsiero is a member of the Monmouth Bar Association and the New Jersey Chapter of The American Trial Lawyers Association.



**John Kaye** earned his B.A. from the University of Scranton and his J.D. from Dickinson School of Law in 1968. Mr. Kaye served for 23 years as the Monmouth County Prosecutor (longest in N.J. State history). He was President of the National Association of District Attorneys (1996-1997), and he represented the United States as an Executive Board Member of the International Association of Prosecutors (1997-2005). He has lectured nationally

and internationally. Mr. Kaye created the first Human Relations Commission in New Jersey and the first and oldest Drunk Driving Task Force.

*LDEM is pleased to announce that we have been retained by Bayview Condominium Association.*

#### Our Firm's Family Continues to Grow...

##### **Donna Lomurro-Woodside**

*had a baby girl. Congratulations to the proud parents, Donna and Mark!*

##### **Debbie Fatovic**

*had a baby boy. Congratulations to the proud parents, Debbie and Mike!*

## When Family Circumstances Change

By: *Christina D. Hardman, Esq.*



Parenting time, child support, alimony and equitable distribution are extremely important issues in any divorce. These issues generally take center-stage. Consequently, other issues may be put aside for another day. However, changes in family circumstance provide time-sensitive estate and tax planning opportunities and consequences. This article addresses

some of the many issues that should be considered if your family circumstances have changed.

#### **Pre-Divorce.**

1. Tax planning. Your settlement agreement will govern how your assets are divided and how your family will move forward. Carefully drafted settlement agreements can make a big difference in your post-divorce life. For instance, alimony is taxable income, while child support is not. The characterization of these resources will impact your future. Keep in mind that income, tax is not the only tax to be considered. While you are still married, there is no gift tax on transfers between spouses. On the contrary, after your divorce is final, there is only a short window of opportunity to take advantage of tax-free transfers. Thus, the timing of exchanges described in your settlement can affect the value of the exchange. We are fortunate to have both a Family Law team and an Estate and Tax team at the Firm. Please do not hesitate to take advantage of this resource.

2. Estate planning. Estate planning involves more than just your Last Will and Testament. Married couples name each other as beneficiary and fiduciary of their respective estate plans in a wide variety of ways. Naming another to speak for you or inherit from you bestows power and authority in your chosen designee. As your family circumstances change, your estate planning tools must change also. Wills, powers of attorney, living wills, trusts, guardianship designations, IRAs, qualified plans, insurance and joint bank accounts are just some of the items that must be carefully reviewed in light of your changing family life. In some instances, estate planning tools can be amended pre-divorce to reflect new fiduciary or beneficiary designations. However, some tools cannot be amended until after your divorce is final. It is important for your future and the future of your family to discuss your options with the planning professionals at LDEM.

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There are additional major changes in the law, which affect annuities, income first rule, the purchase of life estates and methodologies utilized in doing elder care planning. The real issue, of course, is to avoid the need for last-minute planning by doing planning early. In fact under the DRA, last-minute Medicaid planning may not even be available.

*For more information contact Robert F. Muñoz, Esq., at (732) 462-7170.*

## COMMUNITY ASSOCIATION HAD A DUTY TO INFORM

*By: Loren Rosenberg Lightman, Esq.*

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On December 16, 2005, the New Jersey Superior Court, Appellate Division, issued an opinion that could have significant liability consequences for community associations. The case imposed liability upon a condominium association for failing to warn owners of known problems with non-common elements located within individual units.

In *Siddons v. Cook*, the plaintiff, Sandra Siddons, owned a condominium unit located directly below the defendant, Cook's unit. In 2002, Siddons discovered that her unit was being flooded from the Cook's unit above. It was later determined that the source of the flooding was a worn or broken dishwasher hose located in the Cooks' unit.



When Wendy Cook purchased her unit from the developer in 1982, the dishwasher was already installed. In 1992, after Wendy Cook married David Cook, they moved from the unit, leasing it to various tenants up to the time the dishwasher hose broke. While living in the unit, the Cooks never experienced problems with the dishwasher. In fact, David Cook testified that he occasionally inspected hoses located under the sink "for cracks, dry-rot, [and] bubbles." The damaged portion of the dishwasher hose was located under the dishwasher and was not accessible. A plumber certified that the visible portion of the hose was in good condition, but the portion that was not visible had split, causing the damage.

Of great importance to the case was the fact that three units within the Association had experienced similar problems with their dishwasher hoses prior to the incident at issue in the case. Each affected unit owner or occupier had notified Association management as to what had occurred. The manager responded that the broken hoses were not the Association's responsibility.

There was no question in this case that the dishwasher hose was not a common element and that the by-laws of the Association, therefore, placed the responsibility for their inspection and maintenance upon the unit owners. The question was whether the Association had a duty to warn unit owners of the potential defect in the dishwasher hoses after the Association was put on notice of the defect.

In its decision, the Court noted that under the New Jersey Condominium Act, the condominium association is responsible for the administration and management of the condominium. The Court noted that the Association's operations are governed by the Act, along with the Association's master deed and by-laws. The Court cited the Act, which states that among the powers afforded to a condominium association is the right to "have access to each unit from time to time...as may be necessary for the maintenance, repair or replacement of any common elements therein or accessible therefrom or for making emergency repairs necessary to prevent damage to common elements or to any other unit or units."

The Court then turned to the case law, noting that the governing body of a condominium association has a fiduciary obligation to the unit owners "similar to that of a corporate board to its shareholders," *Kim v. Flagship Condo. Owners Ass'n*. The Court also cited the *Kim* case for the proposition that a condominium association's governing body has "the duty to preserve and protect the common elements for the benefit of all its members."

While the Association was held to have no duty to inspect or maintain the non-common elements located within the Cooks' unit, because the Association knew of the potentially dangerous condition – which was not open and obvious to the unit owners – it had an affirmative duty to warn all unit owners of the potential danger.

Overall, the Court found that when a defendant's conduct may be corrected relatively easily and the harm sought to be prevented is serious, it is fair to impose a duty to inform.

For more information regarding this article or a Community Association law issue please contact *Loren Rosenberg Lightman, Esq.* at (732) 462-7170.

**Post-Divorce.**

So, now you have your final judgment of divorce, and you're ready to move on. It is imperative to remember those items that you put aside for another day. Certain estate planning tools are available to married couples that are not available to single people. Your Will may have included tax planning trusts or other tools, which are no longer appropriate for your new life. On the other hand, there may be new opportunities for estate and tax planning that may not have been available to you while you were married. Drafting an appropriate estate plan will give you much deserved peace of mind.

Tying up the loose ends involves more than just your Will. You may also need to change fiduciary choices and beneficiary designations. A phone call to your life insurance company or broker is not enough. It is important to fill out new beneficiary designation forms for tools such as, but not limited to, insurance, IRAs and qualified retirement plans. The failure to amend these documents could have serious, unintended consequences for your loved ones. For example, you may unintentionally benefit your ex-spouse while omitting loved ones who you would have rather benefited. In some instances, these same loved ones may be forced to pay death taxes on those omitted amounts nonetheless. Now is the time. The items that stayed backstage while other issues took center-stage must now be addressed. The estate and tax planning professionals at LDEM will work with you to complete the process and to help you move forward toward your new life.

**Some items to review when faced with changed family circumstances:**

Insurance (life, disability, accident, etc.) • Powers of attorney • Will, Health Care Directive, Living Will • Plans of family members –Did your parents name your ex-spouse? Did your sibling name your ex as guardian for her/his children? • IRAs, 401Ks and ERISA governed qualified plans • Pensions • Joint accounts • Shareholder, partnership and operating agreements • Real estate.

This list is not exhaustive, and you may have other areas for review. For more information, contact Christina D. Hardman, Esq. [chardman@lomurrolaw.com](mailto:chardman@lomurrolaw.com) (732) 462-7170 or Robert F. Muñoz, Esq. (732) 410-2357 [rmunoz@lomurrolaw.com](mailto:rmunoz@lomurrolaw.com).

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