



Legal Notes

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GET INVOLVED WITH YOUR LOCAL GOVERNMENT



By William A. Frank, J.D.
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Your effort within local government can have a real impact on your community. Many issues that directly affect our lives are decided on the local government level. That is where you can contribute to your community and directly affect the lives of your friends and neighbors.

Local governments in our towns and villages are charged with many responsibilities including:

- Zoning
- Approval or Denial of Local Construction
- Infrastructure Creation & Maintenance
- Water & Sewer Service
- Transportation
- Property Tax Assessments
- Establishing Parkland
- Preserving Open Space
- Environmental Protection
- Policing

You don’t have to run for local office to serve your community. **Every local municipality has boards and commissions that provide opportunities for residents to volunteer their time** and make a direct impact on everyday issues. For example, a developer may want to build a large residential subdivision in your town next to an existing farm or park. That application must be presented to the local planning board, which is comprised of local residents appointed by the town board. This group of people decides whether or not the developer may build the project, and what conditions might be attached to the project approval. Similarly, members of the zoning board of appeals, among their other duties, decide whether to allow local residents to build within established setback areas by granting variances.

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3 NEPTUNE ROAD, POUGHKEEPSIE, NY 12601
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26 HAMILTON AVENUE, MONTICELLO, NY 12701
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**ON THE LOCAL LEVEL,
REGARDLESS OF
POLITICAL VIEWS OR
PARTY AFFILIATION, IT
ONLY TAKES ONE PERSON
JUST LIKE YOU TO REALLY
MAKE A DIFFERENCE.**

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Other ways to get involved with your local government include serving on advisory panels, such as:

- Historical Preservation Commission
- Architectural Review Board
- Environmental Policy Commission
- Board of Assessment Review
- Police Community Council
- Ethics Commission
- Community Center Committee
- Human Rights Commission

Town and village boards are always seeking volunteers to join such boards and commissions. The time commitment varies depending on the services that you choose to contribute. Often, service on such a board or commission becomes a springboard to other involvement in local government, including elected office.

Local government service is a great way for people of all ages to become involved in their communities. For youth, it provides an early introduction into the workings of the democratic process. For those in the workforce, it allows an opportunity to bring real-time practical issues into discussion. For retirees, it is a chance to share great perspective derived from a lifetime of varied experiences to resolve local issues.

The first way to get involved is to vote in local, state, and national elections. Next, attend regular meetings held by your town or village boards to get a feel for the operations of your local government and what might interest you. Beyond that, seek an active role by contacting your elected officials and expressing an interest in service. On the local level, regardless of political views or party affiliation, it only takes one person to really make a difference.

SPOUSAL REFUSAL: A POWERFUL “CRISIS PLANNING” MEDICAID TECHNIQUE



By Richard J. Shapiro, J.D., CELA
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For many married couples of advancing age, their greatest fear is that they may be forced to deplete virtually all of their assets if one or both requires long-term care. Given that **the private pay rate for nursing home costs in the Hudson Valley averages over \$12,000 per month, and 24-hour home care runs upwards of \$250 per day**, that fear is not unfounded.

In 2018, the spouse applying for Medicaid will be eligible if his or her non-exempt resources do not exceed \$15,150. The spouse of the Medicaid applicant, the “well spouse” (also known as the “community spouse”), may retain their residence and other “non-exempt” resources in the maximum amount of \$123,600 (the community spouse resource allowance [CSRA]).

Because there are no Medicaid penalties imposed for transferring assets from one spouse to another, rendering the ill spouse Medicaid-eligible is often as simple as putting nearly all of the couple’s assets in the community spouse’s name.

Besides the resource allowance, in 2018 the community spouse’s income allowance (the minimum monthly maintenance needs allowance [MMMNA]) is \$3,090 per month. If the community spouse’s own income is below the MMMNA amount, a portion of the institutionalized spouse’s income will be “budgeted” to the community spouse so that he or she will be entitled to receive enough of the institutionalized spouse’s income to bring the community spouse’s total monthly income up to \$3,090.

EXAMPLE:

If the community spouse has monthly pension and Social Security income totaling \$2,090 and her husband in the nursing home has monthly income of \$2,000, then \$1,000 of the husband’s income will be allocated to the wife to bring her total monthly income to \$3,090.

Approximately \$950 of the husband’s remaining monthly income will pay for his care (the husband may use his income to pay his monthly Medicare and Medicaid premiums and retain \$50 in a personal needs account). On the other hand, if the community spouse’s own income is over the MMMNA, he or she may not receive any portion of the institutionalized

spouse's monthly income, which will be payable towards the institutionalized spouse's cost of care (less the \$50 personal needs allowance and payments for the institutionalized spouse's monthly Medicare and Medicaid premiums).

If the community spouse's resources and/or income exceed the CSRA and MMMNA exemptions, in most states the community spouse would be required to "spend down" such excess amounts toward the cost of the other spouse's care. Faced with such a scenario, some community spouses may decide that their best option is to divorce the ill spouse to preserve as much of the couples' assets as possible. Under New York law, however, divorce should be rarely contemplated, since a community spouse may submit with their spouse's Medicaid Application a "spousal refusal." **A spousal refusal provides that the community spouse refuses to make his or her income and/or resources available towards the cost of care for the ill spouse.** Upon filing a spousal refusal, the Department of Social Services (DSS) must consider only the resources and income of the applicant spouse in determining that spouse's Medicaid eligibility, regardless of the community spouse's net worth at the time the Medicaid application is filed.

However, submitting a spousal refusal doesn't necessarily let the community spouse off the hook financially. In such a case, DSS retains the right to sue in New York Supreme or Family Court to seek support from the community spouse towards the cost of the other spouse's care. Historically some counties have been more aggressive than others in seeking recovery against a refusing spouse, but even when recovery is sought, the community spouse's obligation to reimburse the County is at the Medicaid rate, which is considerably less (often 40-50% less) than the private pay rate.

For a community spouse with resources significantly above the CSRA level (often the case after a couple's assets have been transferred solely to the name of the community spouse), **one planning technique is for the community spouse to consider using a portion of their excess resources to purchase**

an immediate annuity. This effectively converts the excess resources into a stream of income.

EXAMPLE:

Assume a community spouse with total excess resources of \$300,000 uses those funds to purchase an immediate annuity that pays her \$1,500 a year per life (the actual income stream will be determined by the community spouse's age at the time the annuity is purchased and the prevailing interest rate). If the community spouse's other income was \$2,000 per month, the additional annuity income will bring her recurring income to \$3,500 per month. Although that sum is over the MMMNA amount of \$3,090, DSS will request a spousal contribution of only 25% of the community spouse's income above the MMMNA level.

In the above example, the spousal contribution would be only \$102.50 per month (or 25% of the difference between the community spouse's monthly income of \$3,500 and the \$3,090 MMMNA amount). Although in using this technique the community spouse may forfeit the right to receive any of the ill spouse's income, the community spouse would also remove any threat that they can be sued for having excess resources, which may be of paramount importance.

Used appropriately, spousal refusal can help a couple preserve a significant amount of their hard-earned assets. Consultation with an experienced elder law attorney is advised whenever long-term care needs arise.

Spousal Refusal: a planning technique where the community spouse refuses to make his or her income and/or resources available towards the cost of care for the ill spouse

2018 MEDICAID "BY THE NUMBERS": Nursing Home Care

INSTITUTIONAL/NURSING HOME CARE	APPLICANT	COMMUNITY SPOUSE* (or well spouse)
Resource Allowance	MAX: \$15,150	MAX: \$123,600 + Residence (known as the community spouse resource allowance [CSRA])
Income Allowance (or the minimum monthly maintenance needs allowance [MMMNA])	\$50	\$3,090

*With a properly executed Spousal Refusal, a Community Spouse can typically retain assets in excess of these limits.

Source: NYS Department of Health; all figures effective January 1, 2018



SENIORS:

HOW TO USE MEDICAID TO GET THE CARE YOU NEED WITHOUT GOING BROKE

THURSDAY, SEPT. 20TH

3 p.m. - 5 p.m. | BSR&B Education Center (1st Floor)

Everyone needs a plan, regardless of financial wealth. Join us for a FREE workshop to learn more about utilizing Medicaid benefits to pay for the rising costs of long-term care, as well as estate planning tools and techniques to preserve your legacy for your loved ones.

PRESENTED BY:

Elder Law Attorney

Austin F. DuBois, J.D., LL.M.

Partner, Blustein, Shapiro, Rich & Barone, LLP

FREE AND OPEN TO THE PUBLIC.

To register, call Lauren at 845.291.0011 or email ldillon@mid-hudsonlaw.com.



CONGRATULATIONS ASSOCIATE ATTORNEY MEGAN R. CONROY, J.D.

Awarded 2018

OUTSTANDING NEW LAWYER

by the Women's Bar Association
of Orange and Sullivan Counties

The Outstanding New Lawyer Award is presented annually to a WBAOSC member who has been practicing fewer than 10 years, and who has made noteworthy contributions to the WBAOSC, to the profession of law, and to the community at large. Ms. Conroy, an Orange County native, joined BSR&B three years ago as a member of its Estate Planning and Elder Law Department.

TOTTEN TRUSTS: A TECHNIQUE FOR DISTRIBUTING YOUR ASSETS AT DEATH



By **Brian M. Newman, J.D.**

bnewman@mid-hudsonlaw.com

The most common method of distributing assets after death is by a will. **A will has precise legal requirements, can sometimes require a lengthy probate proceeding, and should be drafted by a legal professional to ensure it adequately protects your interests regarding your assets (a house, a car, jewelry, furniture, even pets).** However, when it comes to money, a Totten Trust can provide a simpler alternative.

A Totten Trust is a special bank account that anyone can set up at any bank they do business with. A Totten Trust account is specifically marked as being “in trust for” a particular person (or multiple persons) other than yourself, such as a child or grandchild. Banks will note this designation on the account card that opens up the bank account.

In life, a Totten Trust functions as a normal bank account. You can make deposits and withdrawals for your own personal benefit. The person that the account is being held “in trust for” has no interest in the account while you are alive, and has no say in what you do with the money in it. The money in the account remains yours to use as you choose.

After death, if the Totten Trust still exists and has funds, it vests in the designated beneficiary, and passes to him or her free of your estate. All the beneficiary needs to do is to provide the account owner’s death certificate to the bank at which the Totten Trust account is established, and the bank will pay the money to the named beneficiary. **A Totten Trust effectively serves as a way for you to designate money to go to a particular person (or people) without having to go through probate.**

However, there are exceptions to this automatic vesting. For example, **a Totten Trust is an asset against which a surviving spouse can use his or her right of election, which in general provides a surviving spouse with a right to receive at least one-third of the deceased spouse’s total estate.** A Totten Trust is also available for your creditors to seek compensation from, though generally courts will only allow creditors to go after Totten Trusts if the decedent’s testamentary assets are insufficient to pay these obligations. Otherwise, the trust beneficiaries remain entitled to the entire balance of the trust.

It is important to know **establishing a Totten Trust is not irrevocable.** You can freely revoke the beneficiary designation at any time, and can name one or more new beneficiaries as desired. A simple way to revoke a Totten Trust is to withdraw all of the money from the account. Revocation is also accomplished by providing a signed written document, usually notarized, to the bank requesting the termination of the Totten Trust designation. Another way to revoke the Trust is by a designation in your will, so long as the designation specifies the exact account, the beneficiary of the account, and the financial institution holding the account. If you wish to revoke a Totten Trust via your will, make sure to inform the attorney tasked with drafting your will.

If the proper steps for a Totten Trust revocation are followed, then the former beneficiary of the trust has no standing to demand any of the money formerly in the trust account. Again, beneficiaries of a Totten Trust, prior to the death of the depositor, have no vested interest and only possess a “mere expectancy” in the trust.

A Totten Trust provides a simple way of distributing monetary assets to specific people following your death. That being said, it is only applicable to money, and any other property you own would have to be distributed via a will or a living trust. A Totten Trust, therefore, is not a substitute for a well-designed estate plan. Anyone seeking to create a Totten Trust as part of an estate plan should consult with an estate planning attorney to see if it is appropriate in their case.

Totten Trust: a special bank account that anyone can set up at any bank with which they do business; specifically marked as being “in trust for” a particular person (or multiple persons), such as a child or grandchild

BSR&B is pleased to welcome

Associate Attorney

STEPHANIE TUNIC

to its team of legal
professionals.



Stephanie Tunic is an associate practicing land use and municipal law, civil litigation, real estate, banking, and commercial transactions. She recently joined Blustein, Shapiro, Rich & Barone, LLP after graduating with her Juris Doctor degree and Certificate in Environmental Law from Elisabeth Haub School of Law at Pace University. She is admitted to the New York State Bar.

Ms. Tunic has worked at all three levels of government: interning at the NYC Department of Parks and Recreation in the Governmental Relations Division, completing a legal externship with the NYS Department of Environmental

Conservation in the Office of General Counsel, and interning with the U.S. Environmental Protection Agency's Division of Enforcement and Compliance Assistance. During law school, Ms. Tunic worked as a law clerk, and also as a judicial intern.

An Orange County resident, Ms. Tunic graduated cum laude from the University of Massachusetts Amherst with a Bachelor of Science in Environmental Science and a double major in Legal Studies. Currently, she belongs to the Women's Bar Association of Orange and Sullivan Counties.



BSR&B & ASSOCIATE ATTORNEY DIANA L. PUGLISI EARN READERS' CHOICE HONORS

BLUSTEIN, SHAPIRO, RICH & BARONE, LLP
ATTORNEYS AT LAW

"Best Law Firm" Winner

-and-

Diana L. Puglisi

"Best Real Estate Attorney" Winner

in the Times Herald-Record 2018 READERS' CHOICE AWARDS



PARTNER AUSTIN F. DUBOIS APPOINTED TO ST. LUKE'S CORNWALL HOSPITAL BOARD OF TRUSTEES

Blustein, Shapiro, Rich & Barone, LLP Partner Austin F. DuBois was recently appointed to the St. Luke's Cornwall Hospital (SLCH) Board of Trustees by a unanimous vote of the SLCH board members.

Mr. DuBois helps people protect their assets from nursing home and long-term care costs, designs and implements complex and high net worth estate plans, and is general counsel to a select group of businesses.

In addition to St. Luke's Cornwall Hospital, Mr. DuBois serves on various civic and charitable boards of directors, such as Inspire and the Inspire Foundation, the Orange County Partnership for Economic Development, Pattern for Progress, and the City of Newburgh Industrial Development Agency.

Congratulations, Austin!

“This session was very easy to sit through
- especially considering the subject.”

- Timothy S.

SECURE YOUR LEGACY

Estate Planning Workshop for Today's American Family

Thurs., Sept. 13th | Tues., Oct. 16th

3 p.m. - 6 p.m.

BSR&B Education Center (1st Floor), 10 Matthews St., Goshen, NY

Reserve your spot today and get the critical information you need to work with an attorney to create an estate plan that protects you and your loved ones.

Call 845.291.0011 or email receptionist@mid-hudsonlaw.com

OUR WORKSHOPS ARE FREE, BUT SEATING IS LIMITED.

WHY CHOOSE A CERTIFIED ELDER LAW ATTORNEY?

When selecting an attorney to assist you and your family with a special needs or elder law issue, a certified elder law attorney should be your first choice. The Certified Elder Law Attorney (CELA) certification demonstrates the attorney possesses an in-depth working knowledge of the legal issues that impact the elderly.

The CELA designation identifies those lawyers who have the enhanced knowledge, skills, experience, and proficiency to be properly identified to the public as Certified Elder Law Attorneys. Becoming certified is a demanding process, which includes a stringent peer review process, continuing education requirements, and a five-and-a-half-hour exam that historically has only a 35% pass rate.



Partner **Richard J. Shapiro, J.D., CELA**

Blustein, Shapiro, Rich & Barone, LLP Partner Richard Shapiro, the head of the firm's Estate Planning, Probate, and Elder Law Departments, counsels clients of both modest and higher net worth in creating tax-efficient legacy plans that provide asset protection throughout generations.

- **The only Certified Elder Law Attorney in the Mid-Hudson region**
- **1 of only 36 CELAs in New York State**
- **1 of fewer than 500 CELAs nationwide**

The National Elder Law Foundation (NELF) is the only national organization certifying practitioners of elder and special needs law. NELF's Certified Elder Law Attorney designation is itself certified by the American Bar Association.

