



Legal Notes

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Lender Beware!

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Shakespeare was a man of many words, but perhaps his most prudent piece of advice was this: “Neither a borrower nor a lender be / For loan oft loses both itself and a friend.”

Despite this warning, many of us will find ourselves at one point or another in the position of both borrower and lender. It’s a situation that happens every day: your friend has a new business opportunity he wants you to invest in, your sister’s in a jam and needs cash now, or your customer doesn’t have the funds yet to pay up front. For many people, it’s just too hard to turn down a friend or client in seemingly earnest need.

Unfortunately, that altruism or a good business opportunity can result in negative, sometimes crippling financial consequences.

Banks and other lending institutions understand the dangers of loans better than anyone, which is why they have detailed, iron-clad contracts protecting themselves in pretty much any imaginable situation. But individuals and small businesses are often unprepared and unsure about how to handle the sensitive situation when a friend or customer fails to pay back the money they owe.

Sometimes a debtor will never be willing (or financially able) to pay off his or her debt; sometimes he or she will dispute the amount owed, or even that anything is owed; sometimes he or she will disappear altogether, leaving his or her debts in the dust.

If the situation has gotten severe enough that you decide to take it to court, you and your attorney must be able to show proof that you are owed this particular amount of money from this particular person. But getting a court Judgment in your favor only declares that you’re owed the money; it doesn’t actually put it back in your pocket.

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Obtaining a money judgment can be trickier than you expect, and enforcing it even more so. Many individuals, or even businesses, don't have the time or resources to devote to tracking down and collecting from their debtors. Therefore, the best way to ensure you are able to collect on a debt owed to you is to be proactive about it: take steps before loaning the money or working on credit. Here are some suggestions:

- If you question whether the debtor will ever have the financial means to pay you back, **ask for a personal guaranty from a reputable person who will agree to pay off the debt if the original debtor does not.** A guarantor may be the parent of a potential tenant, a more established business partner with ties to the community, or an individual member of an LLC.
- **Require collateral.** Although these safeguards are often associated with big-money loans, they can work just as well on an individual level – one of my elementary school teachers would ask for some “collateral,” like a book or a barrette, from any student who asked to borrow a pencil.
- For bigger loans, **ask to see a credit report, or even some personal references** to vouch for your potential debtor.

For any size loan, make sure to put your agreement in writing! While oral contracts are valid, a written, signed (and even notarized, for extra protection) agreement leaves little room to dispute the amount owed. Also consider including a provision for attorney's fees, so if you are forced to litigate, you may not have to worry about the additional costs of hiring an attorney.

Unfortunately, the most important proactive step you should take is to ask yourself if, in the end, you would still be able to get along if you can never get this money back, because there is no guarantee you will. Sometimes, after you've considered all the options, the wisest thing to do is to follow Shakespeare's advice: keep your money to yourself.

Poughkeepsie Office NOW OPEN

BSR&B recently opened a new office in Poughkeepsie, adding to its two existing locations, the main office in Goshen and the satellite office in Warwick.

“Our latest expansion will provide the residents and businesses of Dutchess County easy access to a full-service law firm,” said BSR&B Managing Partner Michael Blustein. “We're excited for this opportunity to provide the service of our experienced attorneys to a larger market.”

Heading up operations at the Poughkeepsie office will be BSR&B attorney and Poughkeepsie resident Raymond Raiche.

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RLUIPA & Your Local Zoning Laws: How Does One Apply to the Other?



By Jay R. Myrow, J.D.
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“Congress shall make no law respecting an establishment of religion...” *U.S. Constitution, Amendment 1*

The Freedom of Religion clause of the First Amendment to the U.S. Constitution affords religious institutions a special place in the law of land-use regulations. Any limitations on the location of churches, synagogues, mosques, and other places of worship in our communities have only been justified by the recognized high purpose and moral value of religious institutions. In recognition of the special status of religious institutions, the Protection Of Religious Exercise In Land Use & By Institutionalized Persons Act (RLUIPA) was enacted in 2000, and provides that:

“No government shall impose or implement a land-use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution:

- (1) is in furtherance of a compelling governmental interest; and
- (2) is the least restrictive means of furthering that compelling governmental interest.”

RLUIPA has been ruled applicable to zoning regulations that prohibit the location of religious facilities in certain zoning districts, general zoning provisions such as setbacks, height limits, and density controls, and other similar restrictions. When such regulations are enacted, they are only deemed valid if their application to a particular proposed religious use does not impose a substantial burden on the exercise of such use, the restriction furthers a compelling governmental interest, and is the least restrictive means of furthering that interest.

Once a religious institution demonstrates that a zoning regulation substantially burdens its rights, the municipality must prove that the zoning regulation furthers compelling governmental interest. Such interests must be of the “highest order,” and have been described as matters of public health, safety, and welfare that rise to the level of “only the gravest abuses, endangering paramount interests” that may justify such regulations.

A zoning regulation that may address a compelling governmental interest may still be invalid if it is not the least restrictive means of regulating such interest. In fact, a zoning board considering that application of a particular zoning regulation must suggest reasonable measures to mitigate the impact of the regulation so as to allow the proposed religious use.

While religious uses are not exempt from zoning laws, the zoning restrictions on such uses shall be subject to the strictest scrutiny by the courts. General regulations prohibiting religious uses in residential districts and the application of setback and other density regulations that would prohibit the placement of such uses on particular parcels of land are usually overturned if there is no specific compelling municipal interest protected by such regulation.



Estate Planning Team Hosts Successful Business Succession Workshop

BSR&B partners Richard Shapiro and Austin DuBois hosted a special breakfast and business succession workshop at the Harness Racing Museum in Goshen, N.Y. in May. Rich and Austin were joined by Melvin “Buddy” Glazier, Jr. of Highland Capital Brokerage, who contributed his 30 years of experience in insurance and business planning to the conversation.

The presentation provided business owners with valuable insight about the options available when it comes time to retire and leave the business.



The Estate Planning Conversation



By Austin F. DuBois, J.D.
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One of the most difficult conversations for an adult child to start with their parents is the estate planning conversation. The child is likely to have legitimate concerns.

- Is a well-thought-out plan in place?
- Does each parent have a decent power of attorney, health care proxy, and other documents?
- Have long-term care issues been considered and addressed?

Of course, the well-intentioned child is worried about coming off like he or she is eager to get an inheritance. But the concerns are likely more about whether he or she will have the right tools, if needed, to help his or her parents with their health care, finances, and yes, any issues that may come up upon the death of a parent. Depending on the family, there may be more specific concerns, such as with a problematic family member.

The “tools” do not have to be fancy, but they must work. Not all wills, trusts, or powers of attorney - which are really just types of “tools” - are created equal. If they don’t coordinate with each other within an overarching plan, they may not serve the needed function.

Ideally, it should be the parent or parents who bring up the conversation. Although many of you may have adult children, you are still the parent, and that means that you still have a certain amount of responsibility to ensure that your affairs are in place, and that your children are not unduly stressed.

Taking care of a family member who requires long-term care can be extremely difficult, both financially and emotionally. A well-thought-out plan can help families avoid additional confusion, conflict, or unnecessary financial burden.



BSR&B Welcomes Attorney **Rebecca C. Johnson** to its Litigation Team

BSR&B recently expanded its litigation department with the addition of Associate Attorney Rebecca Johnson.

Rebecca is a graduate of Boston University School of Law. Under the direction of BSR&B Partner Gardiner "Tad" Barone, she will focus her practice on civil litigation and family law.

"Ms. Johnson's exemplary undergraduate work and the vast practical experience she acquired during law school made her a real stand-out among the quality candidates we considered," said Barone. "Her earnest desire to protect the rights of our clients and advocate for their needs is perfectly aligned with our existing team."

Estate Plans That Work™ Workshop Goes Digital



BSR&B partner Richard Shapiro and Associate Attorney Megan Conroy hosted BSR&B's first-ever webinar on May 17th, bringing the long-running Estate Plans That Work series to the web.

The community was offered the option to attend in person, or to view the presentation live online in the comfort of their own home or office. The expanded format was a success, and will definitely be offered again in the future.

"The webinar format has made our workshop more accessible to attendees who are unable to make the trip to our office," Shapiro said. "It also allows a larger audience to learn more about proper estate-planning techniques, tools, and processes from our experienced estate planning team."

FREE EDUCATIONAL WORKSHOPS

Estate Plans That Work™

TUES., JUNE 14, 2016
3:00 P.M. - 6:00 P.M.

WED., JULY 20, 2016
3:00 P.M. - 6:00 P.M.

TUES., AUGUST 23, 2016
3:00 P.M. - 6:00 P.M.

Except as otherwise noted, the above workshops will be held at the BSRB Education Center, 10 Matthews St., Goshen, New York, 1st Floor

We'll explain little-known pitfalls and the best methods to protect your loved ones' inheritance after you're gone.

To register for a workshop, call **845.291.0011** or email receptionist@mid-hudsonlaw.com

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