

IN THE NEWS

Practices

- >> Business & Finance
- >> Employment & Labor
- >> Family Wealth & Estate Planning
- >> Intellectual Property
- >> Litigation
- >> Real Estate Development & Finance
- >> Secured Lending & Financial Recovery

Offices

Rochester, New York

700 Crossroads Building
2 State Street
Rochester, New York 14614
p 585.987.2800 | f 585.454.3968

Buffalo, New York

1900 Main Place Tower
350 Main Street
Buffalo, New York 14202
p 716-248-3200 | f 716-854-5100

Phoenix, Arizona

275 N. GateWay Drive
Suite 118
Phoenix, Arizona 85034
p 602.633.1793 | f 585.362.4614

Feature Article

Valuation Discounts:
Going, Going, Gone?

David P. Shaffer, Esq.
Partner

DISCOUNT! LIMITED TIME ONLY! We have all seen advertisements such as these in the local supermarket or online. We are not quite as accustomed to seeing this concept apply to U.S. Treasury regulations.

On August 4, 2016, the U.S. Treasury Department issued proposed regulations that, if finalized, will greatly limit certain estate planning strategies for family business owners. For many years, owners of family businesses have transferred business interests to the next generation, usually in a gradual and deliberate manner. The dual purpose of these transfers is to introduce their sons and daughters to the benefits and burdens of ownership while simultaneously accomplishing favorable estate and gift tax treatment. The tax efficiency stems from the ability to take discounts on the values being

transferred due to lack of marketability, lack of control and/or minority discounts on the shares or units transferred.

The new regulations will not prohibit such transfers, however, they will greatly reduce the tax appeal for wealth-transfer purposes by severely limiting the use of valuation discounts. The proposed regulations are not yet finalized, however, they will become effective once that occurs. We are in the midst of a 90-day period during which the Treasury Department is soliciting comments on the proposed regulations. A public hearing will follow on December 1, 2016. At that point, Treasury Department officials will review the comments and thereafter issue final regulations. Most expect this to occur by year end.

Given the uncertainty of when these regulations will become finalized, it is critical to act now. In other words, if you are considering a gift or transfer of certain business interests in your LLC, partnership or corporation, you should contact your Woods Oviatt Gilman LLP attorney for assistance as soon as possible.

David P. Shaffer, Esq. is a Partner in the firm's Family Wealth & Estate Planning Department. He can be reached at 585-987-2878 or Dshaffer@woodsoviatt.com

You've Been Named Power of Attorney; Now What?



Christen C. Bruu, Esq.
Associate

Estate planning attorneys receive this type of telephone call routinely: "My father has had a stroke, he's in the hospital, he has stabilized but the doctors are saying he is too weak to go home - they want him to go to a nursing home for rehabilitation - and I am being asked for my father's asset information. Is there something I should be doing so everything he has doesn't go to the nursing home?" Or, "My mother fell and broke her hip, she went to the hospital and then to a nursing home for rehab, but the doctors are saying she is not improving and requires 24-hour care. They want me to choose a nursing home off a list they gave me, but I am not familiar with any of them - and don't nursing homes cost a fortune? Will my mother lose everything she has?" One of the first questions the attorney asks is, "Does your loved one have a Power of Attorney?" If the answer is no, and assuming the loved one has mental capacity, that is the first order of business! Having power of attorney will allow access to funds, payment of bills, completion of paperwork, and most importantly, the ability to enter into additional planning to protect the loved one's assets.

"I've been named Power of Attorney." Let's clarify the lingo. You have been appointed by a **person** (the **principal**) as

his or her **agent**, in a Power of Attorney document, and the appointment gives you **power of attorney**.

The principal has authorized you to handle his or her affairs (not health-care decision-making; that is a different document) and has either specified which affairs or has authorized "all of the above." The principal may have granted you unlimited gifting authority in a Statutory Gifts Rider signed at the same time as the Power of Attorney document. The principal may have signed a Power of Attorney document that takes effect immediately, or one that "springs into effect" upon the principal's proven inability to handle his or her affairs. Most Power of Attorney documents are durable, meaning if the principal becomes incapacitated after signing, the power of attorney remains effective.

For estate planning purposes, our usual recommendation is that clients sign a durable power of attorney document that takes effect immediately and appoints a trusted individual as agent to handle all affairs. Then, should the principal become incapacitated (or is simply unavailable), the agent has the authority right away to access funds, pay bills and do any other appropriate planning for the principal. Often, spouses will appoint each other along with an adult child who could step in if both parents required assistance.

An agent has a fiduciary relationship with the principal, meaning the agent must act according to the principal's instructions or, in the absence of instructions, in the best interest of the principal. The agent must keep the principal's property separate from his or her own, and keep accurate records. The agent may be subject to liability for actions or inactions

that violate this duty.

The appointment ceases at the principal's death. After death, it is the representative (i.e., Executor or Administrator) of the principal's estate who has authority over the decedent's property.

Without power of attorney, if you need legal authority to handle your loved one's affairs, you must commence a proceeding in the court, to be appointed Guardian of the property. This is time consuming, which means it may result in missed planning opportunities, and will be expensive.

So, you have been appointed as agent under durable power of attorney effective immediately, now what? Keep the document in a safe place and step in for the principal immediately if asked or when needed. In the event the principal is your loved one, experiencing serious health challenges and possibly a move to a facility, your authority will be essential in handling routine matters, and doing "crisis planning" to protect the principal's wealth.

Powers of attorney are simple to create, but should be created under the guidance of a knowledgeable attorney. They give people peace of mind, knowing that if there is a need for assistance, a trusted person will have the authority to provide it.

If you would like further information, please contact your Woods Oviatt Gilman attorney.

Christen C. Bruu, Esq. is an Associate in the firm's Family Wealth & Estate Planning Department. She can be reached at 585-987-2895 or Cbruu@woodsoviatt.com

Slaying (or Defraying) the Zombie Scourge



John K. McAndrew, Esq.
Partner

On June 23, 2016, a bill (Senate Bill S8159 Assembly Bill A10741) was signed by Governor Cuomo and made law, covering multiple items, including several provisions dealing with real property maintenance and foreclosures. The press releases from the governor and others in his administration tout the law as an effort to preserve “The American Dream” and to combat the scourge of zombie properties.

When the housing market collapsed and the recession hit, many New Yorkers suffered. This unfortunate economic reality was compounded by the presence of many high-cost or sub-prime loans in the market. As a result of the combination of these, and many other factors, the number of foreclosures in New York State dramatically increased. In an effort to stem the growing tide of foreclosures, New York passed a series of laws, radically changing the foreclosure process in the state. While the new laws dramatically slowed the already lengthy foreclosure process in New York, they had the unintended consequence of stalling many foreclosure cases in the courts. While cases dragged on in our courts for years, many homeowners chose to walk away from their properties, especially when the amount due to the lender far exceeded the property values. These properties, now abandoned, remained the legal property of the homeowner;

however they were no longer occupied or being maintained. Such properties are referred to as “zombie properties.”

Abandoned and ill-maintained properties are by no means a new phenomenon. The only difference we now face is the scope of the problem and the question of who should bear the cost of maintaining these properties. Up until this point, the law was clear that property owners were responsible for their own properties. If an owner failed to maintain the property and it became a nuisance, the government had the authority to step in to remedy the problem and then charge the owner for the cost. Given the volume of abandoned properties and the current penchant for blaming the banks, the new legislation passed to combat this problem generally shifts that cost to lenders holding defaulted first mortgage liens on vacant, abandoned properties. Although the homeowners also retain responsibility, it is likely that municipalities will look to the banks to maintain vacant and abandoned properties.

The changes enacted, which become effective on December 20, 2016, include new provisions establishing a duty to maintain vacant abandoned residential real property, requirements for inspections, establishment of a vacant-property registry and penalties for noncompliance. This legislation extends the inroads previously made by the enactment of RPAPL § 1307 in 2009 (which imposed a duty on the plaintiff, in certain circumstances, to maintain a property once they had obtained a judgment of foreclosure and sale). Under the new law, the responsibility will arise from the mere presence of the defaulted mortgage lien on vacant abandoned residential real property, not from the entry of

the judgment of foreclosure and sale. This new law alters the concepts of legal responsibility, imposing costs and duties on a lienholder if the property which secures the loan becomes vacant and if the borrower defaults on the loan.

Other provisions in the new legislation include changes to the 90-day pre-foreclosure notice, changes to the Help for Homeowners notice served with the Summons and Complaint, changes to the settlement conference procedures (including standards for good faith negotiations and penalties for failure to meet those standards), establishing an expedited foreclosure process for abandoned properties and changes requiring that the foreclosure sale take place within 90 days of the Judgment of Foreclosure and that the property be placed on the market within 180 days of acquiring the foreclosure deed.

Although this new legislation may result in more lenders paying closer attention to the condition of the properties securing their loans, the reality is that most responsible lenders already inspect and secure abandoned properties. To fully address the issue of zombie properties, the glut of pending cases must be moved through the foreclosure process to a final resolution. Acknowledging this fact, the new legislation does provide a mechanism to seek an expedited Judgment of Foreclosure on vacant and abandoned residential property. It remains to be seen whether lenders will avail themselves of this process and whether the courts will be receptive to such motions.

John K. McAndrew, Esq. is a Partner in the firm's Secured Lending & Financial Recovery Department. He can be reached at 585-987-2885 or Jmcandrew@woodsoviatt.com

What's in your water?

Do you need to find out?



Greta K. Kolcon, Esq.
Partner

The Flint Water Crisis has focused the nation on water-quality standards and testing. Questions abound, but consistent themes include how did this situation occur and how do we prevent it from happening again. The increased focus has led to widespread review of our nation's water infrastructure, and there are new pieces of proposed legislation at federal and state levels. Drinking-water-quality issues have replaced fracking articles in newspapers across the country.

The Safe Drinking Water Act: Limited in Scope

The principal federal legislation dealing with water quality for drinking water, the Safe Drinking Water Act (SDWA), was originally passed in 1974 and amended and reauthorized in 1986 and 1996. However, it only applies to public water systems, which are those systems having at least 15 service connections or serve at least 25 people for at least 60 days a year. Pursuant to this legislation, the Environmental Protection Agency has authority to establish national standards for drinking water to protect against health effects from exposure to naturally occurring and man-made contaminants. If you receive your water from a public water system, you may be familiar with the annual disclosure report of testing of that water. The

Environmental Protection Agency posts municipal water-quality reports at www.epa.gov/safewater.

The important thing to understand about the Safe Drinking Water Act is that it does not regulate all drinking water, including private wells. It also does not ensure that water coming out of a tap is safe. While the water supply may be considered safe, and the water coming through the supply line may be considered safe, there may be lead

Fresh water is better than stale because water sitting in lead pipes has more time to absorb leaching from pipes.

Cold water is better than hot because lead dissolves more easily in hot water.

TIP: Let cold water run for 30 seconds before drinking or cooking with it.

pipes between the supply line and the tap. Although installation of lead water pipes was outlawed by federal law in 1986, some fixtures that contained up to 8 percent lead were still allowed to be labeled as "lead free." Perhaps more importantly, the law impacted new plumbing installations. Lead pipes in older homes and buildings may not have

been removed, and may contribute to increased, and even unsafe, levels of lead in water from a tap.

New Emergency Regulations in Effect for Schools in New York State

Until just recently, schools in New York were not required to test their drinking water for lead, although schools could participate in a voluntary program. New York Governor Andrew M. Cuomo signed landmark legislation on September 6, 2016, which mandates that schools across the state test drinking water for lead contamination. Emergency regulations were promptly issued by the New York State Department of Health, which require testing to be completed and reported by October 31, 2016.

Unsafe Water May Impact Human Health and Create Liability

Lead in water is only one potential contaminant that impacts human health, but it is a dangerous one. Above ground, lead poisoning of children due to the prevalence of lead-based paint used throughout heavily populated urban areas before 1978 has been a source of widespread litigation over the last few decades. According to the United States Department of Health and Human Services, lead poisoning is the number one environmental threat to the health of children in the United States. The effects of lead poisoning can be extremely serious, including permanent injuries to the brain and nervous system, and even death.

There are many other contaminants that can impact drinking water, including pesticide runoff, cleaning products, parasites, bacteria, and cosmetic products like plastic microbeads. The EPA maintains a list of contaminants,

New Faces at the Firm

but the standards are not necessarily strict enough to ensure water “safety.” If your home was built before lead-free pipes were mandated in 1986 or if you use well water, a test is the best way to assess the quality of the drinking water at your home. Water filters may help improve the quality of water, but without appropriate testing, you will not really know what is in your water. And, while boiling water may kill bacteria, it could also concentrate other harmful contaminants like nitrate, arsenic and lead. If your water is tested and is not safe, consider further investigation. Removal and replacement of lead water pipes under your sink may be less expensive and less hazardous in the long run than using a water filter.

If you are running a daycare or a business – and even if you are not currently required by statute or regulation to test your water – you should be prepared to have your patrons, customers, or employees asking questions. The reasonable standard of care often changes as public education develops, so the failure to test drinking water at your business five years ago may be viewed through a different lens than the failure to test drinking water at your business today. Additional new laws will likely proliferate as our country begins to focus on the infrastructure under the ground and the safety and security of our drinking water supply.

For legal assistance or specific recommendations regarding your situation, please contact your Woods Oviatt lawyer.

Greta K. Kolcon, Esq. is a Partner in the firm's Litigation Department and can be reached at Gkolcon@woodsoviatt.com or (585) 987-2812.

Robert C. Carbone is an Associate in the Litigation Department. He concentrates his practice in business and civil litigation, including commercial litigation, corporate governance,



business divorce, personal injury, mass torts and products liability and construction and surety law litigation. Mr. Carbone received his B.A. degree from Canisius College and his J.D. degree, *cum laude*, from SUNY Buffalo Law School and was awarded the Robert J. Connelly Award for Excellence in Trial Technique.

Cassie T. Dogali is an Associate in the firm's Default Servicing Group. She represents creditors and servicers throughout New York State in all aspects of residential foreclosure proceedings. Ms. Dogali received her J.D. degree from New England Law / Boston and her B.S. degree, *cum laude*, from Drexel University.



Leslie H. Gleisner is an Associate in the firm's Default Servicing Group. She represents creditors and servicers throughout New York State in all aspects of residential foreclosure proceedings and in title resolution proceedings. Ms. Gleisner received her J.D. and B.S. degree from State University of New York at Buffalo. Prior to joining Woods Oviatt Gilman, LLP, Ms. Gleisner represented buyers, sellers, and lenders in real estate closing transactions in the Atlanta, Georgia, area.



Lindsey C. Loosen is a Law Clerk in the firm's Real Estate group. She works with attorneys representing commercial lenders, real estate developers and residential buyers in New York State. Mrs. Loosen received her J.D. degree from the University at Buffalo School of Law and her B.F.A. degree, *magna cum laude*, from Rochester Institute of Technology.



Joshua M. O'Neill is an Associate in the firm and a member of the Family Wealth and Estate Planning Department. He concentrates his practice in the areas of Estate Planning, Estate and Trust Administration, Long Term Care Planning and Medicaid Planning. Mr. O'Neill received his J.D. from the Syracuse University College of Law and his B.A. in Political Science from Middlebury College.



Anjelie Y. Patel is an Associate in the firm's Default Servicing Group. She represents creditors and servicers throughout New York State in all aspects of residential foreclosure proceedings, including litigation and loss mitigation. Ms. Patel received her J.D. degree from Northeastern University School of Law and her B.S.B.A from Boston University.



Lauren Russo is an Associate in the firm's Default Servicing Group. She represents creditors and servicers concentrating in down-state New York in loss mitigation foreclosure matters. Ms. Russo received her J.D. degree from Touro College, Jacob D Fuchsberg Law Center and her B.A. degree from SUNY at Albany.





Anthony L. Eugeni, Esq. was appointed to the Board of Directors for Robert-James Sales, Inc.



Tammy L. Garcia-Klipfel, Esq. has been named Social/Networking Committee Co-Chair for the Young Lawyers Section of the Monroe County Bar Association.



R. Thompson Gilman, Esq. has joined the Board of Trustees of Al Sigl Foundation



Darice Hickey, Esq. was recently appointed to the Board of Directors for the Women's Bar Association of Western New York and serve as the University of Buffalo law liaison.



Greta K. Kolcon, Esq. was named a Vice President for Women's Bar Association of the State of New York (WBASNY)



Timothy P. Lyster, Esq. has been named Secretary of the Monroe County Bar Association's Board of Trustees and he also serves as chairperson of the Bankruptcy Committee for the MCBA.



Richard A. Marchese, Esq. has been named the Chair of the Monroe County Bar Association's Elder Law Committee.



Yimell Suarez Abreu, Esq. has joined the Board of Directors of the Villa of Hope.



Danielle M. Wanglien, Esq. has been elected to the Board of Directors of the Young Lawyers Section of the Monroe County Bar Association and also serves as a co-chair of the Social/Networking Committee.



Duwaine Bascoe, Esq. has been named to the Rochester Business Journal's Forty Under 40 list. Honorees are professionals under 40 who demonstrate leadership in the community and the workplace. Duwaine will be honored along with the other recipients at a luncheon on November 17 at the Convention Center.



Paul Farnsworth, the firm's Executive Director, received the Association of Legal Administrators' (ALA) award for the "Outstanding Association Volunteer" at the ALA Annual Meeting in Los Angeles. Each year the Board of Directors of ALA identifies ALA members who have made significant contributions to ALA. Paul is a Past President of the ALA.



R. Thompson Gilman, Esq. has been named a "Leader in Law" by *The Daily Record*. The Leader in Law award recipients are selected because of their tremendous dedication to the legal profession and selfless, tireless commitment to the community. Tom will be honored with the other award recipients at a dinner on November 10 at the Hyatt Regency.



Brian D. Gwitt, Esq. and **William F. Savino, Esq.** have been named to the "Legal Elite of Western New York 2016." Brian was also named a runner-up for the Top 10 Legal Elite. Legal Elite is a peer-driven selection process which recognizes the most well-respected attorneys in their areas of expertise.



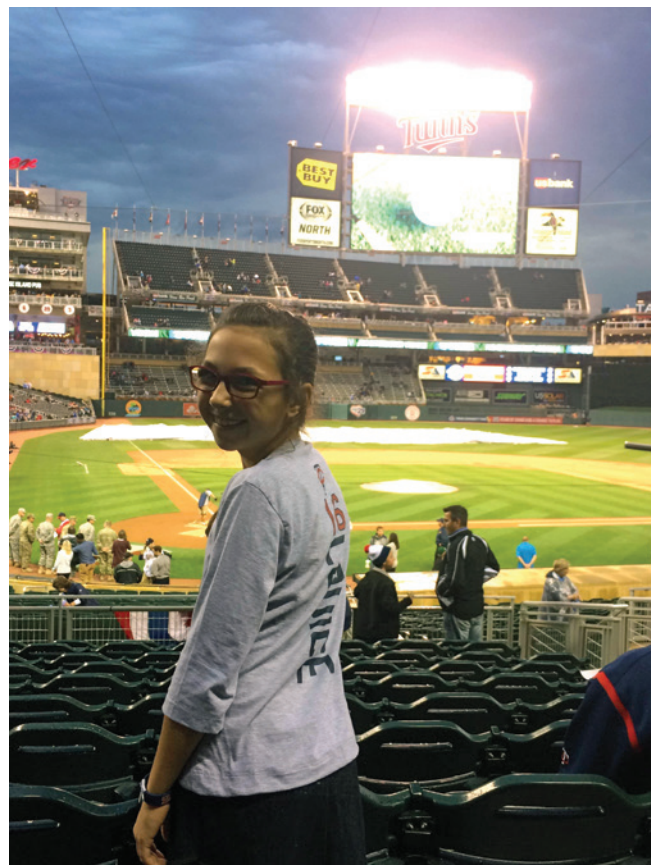
Danielle Ridgely, Esq. has been named one of "Rochester's Finest Young Professionals" by the Cystic Fibrosis Foundation. The winners are selected for their outstanding contributions to local organizations and the community. Danielle and the other award recipients will be honored at a dinner at Locust Hill C.C. on Thursday October 13th.

Reading Contest

On August 29th, Woods Oviatt hosted the 14th Annual "Take Me Out to the Ballgame Reading Contest" night at Frontier Field. We had 4,000 entries in the contest from 25 branches of the Monroe County Library. Our 25 branch winners all received tickets to the Red Wing's game and two round-trip airline tickets courtesy of Allegiant Airlines. Our two first-prize winners, Owen Yudachik and Gabriella Zayas, both won limo service to and from the Red Wing's game and dinner at the Dinosaur BBQ. Our grand-prize winner, Lauren Lodice, won a trip for two to a Minnesota Twins game. Thank you to the Rochester Red Wings and the Monroe County Library System for supporting our contest every year!



Our contest winners were very excited when we surprised them with two round-trip airline tickets courtesy of Allegiant Airlines.



Our grand-prize winner, Lauren Lodice, had a great time at the Twin's game on Sept. 24th.



Jim McElheny and our two first-prize winners, Owen and Gabriella, get ready to walk to the mound to throw out the first pitches of the game.



Owen and his siblings had a great afternoon on their limo ride to Frontier Field, they even took time to stop at a playground before the game!



The art of representing people®

WoodsOviatt.com

Areas of Practice

BUSINESS & FINANCE

- Business Counseling
- Business Succession Planning
- Corporate Governance
- Employee Benefits / Executive Compensation
- Franchising, Distributions & Dealerships
- Health Care
- Intellectual Property, Licensing & Technology
- Investment Management
- Mergers, Acquisitions, Divestitures
- Not-For-Profit & Tax-Exempt Organizations
- Private Equity & Venture Capital
- Public Companies / Securities
- Special Investigations
- Tax Controversies
- Transactional Tax Planning

EMPLOYMENT & LABOR

- Education & School Law
- Employment & Labor Litigation
- Employment & Non-Competition Agreements
- Employee Benefits / Executive Compensation
- Employment Counseling & Compliance
- Immigration Law
- Union / Collective Bargaining
- Wage & Hour Litigation
- Workplace Safety / OSHA

FAMILY WEALTH & ESTATE PLANNING

- Adoptions
- Asset Protection Planning
- Business Succession Planning
- Charitable & Foundation Planning
- Elder Law/Long Term Health Care & Medicaid Planning
- Estate & Trust Administration
- Estate & Trust Litigation
- Estate & Trust Taxation
- Florida Estate & Trust Practice
- Family Wealth Planning
- Guardianships
- Pre/Post - Nuptial Agreements
- Retirement Benefit Planning

REAL ESTATE DEVELOPMENT & FINANCE

- Commercial Leasing
- Commercial Real Estate Development
- Commercial Real Estate Finance
- Commercial Real Estate Transactions
- Condominiums & Associations
- Construction Law
- Environmental Law & Litigation
- Land Use & Zoning
- Residential Transactions
- Section 1031 Tax Free Exchanges

LITIGATION

- Appellate Litigation
- Business Litigation
- Construction & Surety Law Litigation
- Estate & Trust Litigation
- Employment & Labor Litigation
- Education & School Law
- Environmental Law & Litigation
- Government & Municipal Law
- Insurance Coverage & Risk Management
- Insurance Defense
- Intellectual Property Litigation
- Medical Malpractice
- Products Liability / Mass & Complex Torts
- Personal Injury Litigation
- Professional Malpractice Defense
- Securities & Shareholder Litigation
- Securities Arbitration
- Tax Assessment & Condemnation
- Toxic Torts / Lead Paint Litigation

SECURED LENDING & FINANCIAL RECOVERY

- Debt Collection & Asset Recovery
- Commercial & Asset-Based Lending
- Creditors' Rights
- Financial Institution Regulatory Matters
- Financial Restructuring & Bankruptcy
- Default Servicing
- Landlord / Tenant
- Public Finance
- Real Estate Litigation