

# Nassau Lawyer



THE JOURNAL OF THE NASSAU COUNTY BAR ASSOCIATION

October 2016

www.nassaubar.org

Vol. 66, No. 2

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NCBA COMMITTEE MEETING CALENDAR  
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## SAVE THE DATES

**JUDICIARY NIGHT**  
Thursday, October 20, 2016  
5:30 p.m. at Domus  
See Insert

**OPEN HOUSE**  
Thursday, October 27, 2016  
3-5 p.m. & 7-9 p.m.  
Volunteer lawyers needed to give consultations  
Contact Gale D. Berg  
(516)747-4070 or gberg@nassaubar.org

**NCBA HOLIDAY CELEBRATION**  
Thursday, December 8, 2016  
6:00 p.m. at Domus  
Details coming soon

**WE CARE**  
**GINGERBREAD UNIVERSITY**  
Saturday, December 10, 2016  
Details coming soon

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## OF NOTE

**NCBA Member Benefit - I.D. Card Photo**  
Obtain your photo for Secure Pass Court  
ID cards at NCBA Tech Center  
**Only For New Applicants**  
Cost \$10 November 8, 9 & 10  
9 a.m. - 4 p.m.

**PLEASE NOTE:** Existing Secure Pass holders do not need new photos and can now renew online at the OCA website [www.nycourts.gov/attorneys/registration/secure-pass.shtml](http://www.nycourts.gov/attorneys/registration/secure-pass.shtml)

## UPCOMING PUBLICATIONS COMMITTEE MEETINGS

Thursday, October 13, 2016 12:45 at  
Domus

Thursday, November 10, 2016 12:45 at  
Domus



Prospective NCBA Members and law students toured Domus guided by NCBA Treasurer Rick Collins, right, and New Lawyer Co-Chair Jennifer Koo, left. Photos by Hector Herrera

## New Ambassador Tours Target Prospective NCBA Members

### Renewing Friendships at Annual BBQ

By Valerie Zurblis

"This year's BBQ at the Bar will go down as one of the most successful and best BBQs in recent history," Nassau County Bar Association President Martha Krisel remarked. "The weather was perfect, the food was terrific, members and guests were warmly welcomed, and those new to the profession got an inside look at what our Bar Association is all about."

Each year the Bar hosts the popular BBQ not only to welcome all of its members back

from summer, but also to actively recruit new members. Officers, Committee Chairs and Vice Chairs, Sustaining Partners, New Lawyers, and Non-Members sport badges to make it easier to connect.

This year, a Special Ambassador project was initiated. Members of the New Lawyers Committee provided individual tours inside Domus to prospective student members to explain the building's history and the range of benefits of membership, and answer questions. "We want to introduce them to our building, give them some



history and talk to them about their legal careers," said Committee Co-Chair Michael DiFalco. Membership is free for law students and for the first year of admittance.

Wendy Dolce, on tour with New Lawyers Committee Co-Chair, Jennifer Koo, said she lived in Nassau County, practices in New York City and was now coming back to open her own solo firm. "I wanted to get rooted in the community. NCBA was the logical choice," she explained.

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## Remembering Past President Peter Affatato



Peter T. Affatato

Photo by Hector Herrera

Peter T. Affatato, who served as the Nassau County Bar Association President (1985-86), died at the age of 92 in Daytona Beach, Florida. Known to many as the "Dean of the Trial Bar," Affatato was a revered President who was one of the most honored officers in the history of the Bar Association.

"More than anyone I knew, Peter Affatato had the entire respect of the bench and bar," said Past President Stephen Gassman (1988-89), who served on the Executive Committee with Peter. "This Bar Association was the love of his life. He was an inspirational leader, one of the great presidents of the Association."

Peter was well-liked by just about everyone he met, taking the time to develop personal relationships with judiciary, peers, court employees and support staff alike and to appreciate their contribu-

tions to the legal community. At NCBA, he would bring in cakes and goodies for the staff every Friday, and occasionally treated them to dinner. To accommodate all who wanted to attend his installation as NCBA president, the ceremonies had to be moved to Supreme Court building.

In 2006, when NCBA wanted to acknowledge the contributions of court employees to the legal system, an award was created and named after the esteemed past president. The Peter T. Affatato Court Employee of the Year Award, presented at NCBA's annual Law Day celebration, recognizes a non-judicial court employee who exhibits professional dedication to the court system and its efficient operation, and who is exceptionally helpful and courteous to

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# Planning with Trusts

When first meeting with an elder law and/or estate planning attorney, clients



Deidre M. Baker

achieving this goal.

## Shelter from the Cost of Long-Term Care

Although it is an unpleasant thought, most individuals require some type of long-term care during their lives. Long-term care refers to the medical care an individual requires if he or she suffers from a chronic or degenerative physical disease or cognitive impairment. According to the New York State Department of Health, there are approximately 57,121 people currently residing in skilled nursing facilities in New York City and Long Island alone.<sup>1</sup> This does not include the individuals who receive home attendant or nursing services in the community. The average annual cost for a nursing home in the New York City and Nassau County area ranges from approximately \$145,000 to \$152,000.<sup>2</sup>

Families faced with expenses of this magnitude can go through a lifetime of savings in a very short period of time. Medicaid is an alternative to privately paying for long-term care costs. While New York, fortunately, has one of the most generous Medicaid programs nationwide, planning still needs to be done in order for individuals to maximize the potential benefits.

Irrevocable trusts are a good vehicle for sheltering assets from the potential expenses related to long-term medical care, including the care itself and liens on property after the services are complete. Irrevocable trusts can not only allow an applicant to qualify for Medicaid without spending down excess resources, they can also allow the family to avoid a Medicaid payback lien for the cost of care down the road.

An irrevocable trust is an entity created to hold assets for the benefit of certain persons or entities, with a person other than the grantor serving as trustee to manage the trust. The trust document provides terms and conditions upon which it will be conducted. In addition to the protection offered by irrevocable trusts, the assets used to fund the trust, as well as any appreciation they generate, escape estate tax upon the death of the grantor.

When deciding whether or not to execute an irrevocable trust, clients tend to be most hesitant about a perceived loss of control over the assets transferred into the trust. While it is true that irrevocable trusts do not offer the same flexibility and control over assets that revocable trusts do, they are not as rigid as they appear at first glance. For example, properly drafted trusts typically include provisions which outline how the agreement can be revoked or amended. In the event that no such

provisions exist, New York law provides statutory mechanisms for these trusts to be amended or revoked.<sup>3</sup>

## Avoidance of Probate and Lifetime Management

There are a variety of other benefits to utilizing trusts as part of an estate plan. Trusts, when properly funded, allow the beneficiaries of an estate to inherit property without the need for a probate proceeding, saving families

*Once the trust has been properly executed and funded, it is important that clients and their attorneys review the estate plan periodically. A common error made by clients is to execute estate planning documents, only to file them away and forget about them.*

time and expense, and allowing the decedent's estate plan to remain private. While many probate proceedings in New York are fairly straightforward, the Surrogate's Court in many counties is backlogged, and any issue with the estate, such as a lost relative, can result in significant delays.

A revocable trust, also known as a living trust, is a trust that is established during life, and allows the grantor to revoke or amend the trust as he or she wishes. Revocable trusts allow the grantor to serve as his or her own trustee, thus maintaining lifetime control over the trust assets. These vehicles also allow for continuous property management in the event of the grantor's incapacity through the use of successor trustee appointments. Upon the death of the grantor, the successor trustee can make outright distributions or manage funds for the benefit of minor or incapacitated beneficiaries. Trusts obviate the need for the appointment of guardians ad litem for disabled beneficiaries, which would otherwise occur in a probate proceeding, often resulting in substantial savings to the estate.

While revocable trusts offer grantors flexibility in managing assets during life, they are not an effective tool for sheltering assets from long-term care costs or other creditors. New York law dictates that where a grantor retains absolute control over an asset, that individual remains the owner of that asset, leaving it open to claims and liens from creditors.<sup>4</sup> Essentially if the grantor has unfettered access to an asset, so will potential creditors who wish to use it to satisfy a debt.

Revocable trusts are great estate planning tools for individuals who, although not worried about potential creditors or the costs of long-term care, do have other concerns. For example, individuals owning property in more than one state are great candidates for revocable trusts as the trusts avoid ancillary probate proceedings. For those individuals leaving behind only distant relatives, revocable trusts allow your trustee at your death to avoid having to locate these relatives and notify them of your passing and their potential interest in your estate.

Additionally, if a family member is to be disinherited or receive a smaller portion of your estate, a revocable trust is an efficient way to avoid a will contest or litigation.

## Funding and Review

Clients often believe their work is finished, once they have executed a trust. However, important steps remain in order to create an effective estate plan. For attorneys, it is critical

terms of his or her trust, but if, for example, the asset designates a child as beneficiary, instead of the trust, the goals of the client are not met.

Once the trust has been properly executed and funded, it is important that clients and their attorneys review the estate plan periodically. A common error made by clients is to execute estate planning documents, only to file them away and forget about them. Planning that made sense for your clients when they had minor children will rarely mirror their goals when their first grandchild is born. Smart estate planning means utilizing all available tools and trusts are one of the most important tools at the disposal of clients and attorneys.

Deidre M. Baker is an associate attorney with the Elder Law firm of Makofsky & Associates, P.C., located in Garden City, New York. The firm concentrates its practice on trusts, estates and Medicaid planning, Medicaid applications, guardianships, and estate administration. The attorneys can be reached at (516) 228-6522.

1. New York State Department of Health, [https://www.health.ny.gov/facilities/nursing/rhcf\\_bed\\_need\\_by\\_county.htm](https://www.health.ny.gov/facilities/nursing/rhcf_bed_need_by_county.htm)
2. New York State Department of Health, [https://www.health.ny.gov/facilities/nursing/estimated\\_average\\_rates.htm](https://www.health.ny.gov/facilities/nursing/estimated_average_rates.htm)
3. N.Y. Est. Power and Trust Law §7-1.9; N.Y. Est. Power and Trust Law §10-10.6.
4. *Id.*

## THE LAW FIRM OF SCHWARTZ, FANG & KEATING, P.C.

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