

PLANNING for the FUTURE



Important issues facing our elder population and families of adults and children with special needs, brought to you by the law firm of Littman Krooks LLP.

LITTMAN KROOKS
LLP

www.littmankrooks.com

SUMMER 2007

A MESSAGE FROM BERNARD A. KROOKS



DEAR FRIENDS:

It is with great pleasure that we bring you the summer edition of "Planning for The Future." As always, I am delighted to share with you the recent happenings at Littman Krooks LLP and update you on important information in Elder Law and Special Needs Planning and Advocacy.

It has been over a year since Congress significantly tightened the transfer of asset rules and limited the ability of seniors and those with disabilities to obtain much-needed long-term health care. While the laws may have changed, many planning opportunities still remain for clients who take the initiative and plan ahead. We have been working diligently with our clients to develop and implement new strategies to protect their hard-earned assets for their loved ones. We are seeing increased interest in the use of long-term care insurance, trusts, and reverse mortgages as part of a comprehensive plan to ensure access to the highest quality health care.

Special Needs Planning continues to be a growing part of our practice. More and more families are recognizing the importance of putting a plan in place now to ensure their family's well-being in the event of an untimely demise. Unfortunately, we are too-often reminded of how fragile our lives truly are. Although we cannot control the future, we can certainly take steps to make sure our loved ones are taken care of.

As part of the Special Needs Planning process, many families have requested our assistance with Special Education Advocacy on behalf of their children. In many cases, children are entitled to free services from the school district in order to receive an appropriate public education. Often, those services are denied by the school district and the parents must commence legal action to get what their children are entitled to. To better assist you in this growing practice area, Littman Krooks is pleased to announce that Andrew K. Cuddy Esq. has joined the firm as Of Counsel. Andy's practice focuses on Special Education Law and he has recently written a book titled "The Special Education Battlefield: A Guide to the Due Process Hearing and Other Tools of Effective Advocacy."

In this newsletter, we also get the opportunity to know Ely J. Rosenzweig. Ely is a partner in the firm and also a full-time practicing Rabbi at congregation Anshe Sholom in New Rochelle. Ely has been with Littman Krooks for nine years. His ability to juggle two full-time careers and blend them together is truly amazing. Ely is one of the hardest working individuals you will ever meet. Ely's practice focuses on Medicare and Medicaid appeals, guardianships, labor and employment law and Medicaid recovery claims. The firm and our clients are very fortunate to have such a zealous advocate on our side.

Our two featured articles are "Should I have a Will?" by Amy C. O'Hara and "Emergency Planning for Families of Those with Disabilities" written by Adrienne J. Arkontaky. We have also included a "Have You Heard?" piece on new legislation allowing individuals to designate, in writing, a person who shall have the right to control the disposition of his remains when he dies.

I wish you all a peaceful and happy summer and hope that you get to spend quality time with family and friends.

Sincerely,

Bernard A. Krooks



TUNE IN! NEW SEASON BEGINS FALL 2007

Listen to "Bernie the Attorney"
on WFAS 1230AM from
6:05 to 6:35 pm on Thursday evenings.
Bernie interviews professionals and
advocates who specialize in the areas
of special needs planning and elder law.

COMMUNITY OUTREACH

Amy O'Hara and Adrienne J. Arkontaky participated recently in the Walk For Hearing at the Franklin D. Roosevelt State Park. The Walk was able to raise over \$125,000 to support the Hearing Loss of America's efforts to raise awareness of hearing loss and provide adaptive equipment and resources to those affected.

Amy O'Hara is proud to serve on the Hudson Valley/Rockland/Westchester New York Alzheimer's Association Committee to organize the 2007 Memory Walk scheduled for Sunday, September 30, 2007 in White Plains, NY.

HAVE YOU HEARD?

In 2006, Public Health Law § 4201 was enacted which allows an individual to designate, in writing, a person who shall have the right to control the disposition of his remains when he dies. This is an important component of estate planning and one that should be given careful thought and consideration. Even though you can make burial designations in your Last Will & Testament, your remains are often taken care of long before your Will is probated or even looked at. Absent such a designation, you are subjecting the control over who decides what is done with your remains to ever-increasing litigation. Absent such written designations, you will not have control over what is done with your remains. This may lead to litigation within your family.

Emergency Preparedness

for Persons with Disabilities and Caregivers

By Adrienne J. Arkontaky, Esq.

On July 12, 2006 during rush hour, the sky above my home in Hawthorne New York grew extremely dark. The winds became so strong that lawn furniture on the deck was knocked over and planters outside the house tumbled across the grass.

I realized something was wrong. Never did it occur to me that an F-2 tornado had just touched down in the hamlet of Hawthorne, until my husband called me on the cell phone. He was clearly shaken by the fact that one half mile from our home, a car had been tossed in the air by the twister and a commercial building in close proximity had suffered significant damage. Fortunately, our home was undamaged. However, neighbors' homes were without power and telephone service for weeks and several homes suffered significant roof damage. Trees were uprooted and there was significant flooding in nearby areas due to the intense rain.

Two of my daughters, Jenna, eight and Jordan, fifteen were home at the time. My oldest daughter, Justine was working at her job as a sales associate at a local mall when the tornado hit. My immediate reaction was to call Justine. We did lose phone service for a short time. However, because I have a text message feature on my cell phone, we were able to communicate and we were both relieved when we knew the family was safe.

My next concern was my daughter, Jordan's safety. Jordan is multiply-handicapped and is non-ambulatory. It is difficult for caregivers to lift her quickly and transport her in the event of an emergency especially when carrying her up and down stairs. I remember trying to quickly remove the safety harness from the wheelchair so that we could lift her quickly if necessary and transport her to a safer place. Jordan also has a respiratory problem and uses a nebulizer on a daily basis which requires a power source. During the summer months, she must be kept in an air-conditioned room since she lacks the capacity to regulate her body temperature. What would happen if we lost power?

These are only a few concerns that arise during natural and other disasters. They intensify when one is dealing with a loved one with disabilities. Even people with disabilities who are self-sufficient under normal circumstances may not be able to function as well in an emergency situation. Persons with special needs often need extra time to make preparations for an emergency.

All families should take the time to develop an emergency plan and emergency kit. It is important to anticipate what the lowest level of functioning will be for the loved one with special needs and plan for it accordingly. Remember that in many emergencies, you will not be able to travel the way you normally would. Families should try to anticipate the challenges ahead such as lack of power, phone service, housing, transportation, food and water.

Families should know how disasters may affect the emotional well-being of loved ones with disabilities. They may become anxious, irritable and extremely fearful. Another important factor to consider is the effect of the emergency on caregivers and even service animals. Guide dogs may become disoriented and very frightened. Caregivers may not be able to care for the person with disabilities due to the effects of the disaster on the caregiver. I recommend that families include "comfort items" in their emergency kits such as books, music, toys etc. to assist in calming the child or adult with disabilities.

When a disaster occurs, the first priority is to provide for everyone's basic needs. A person with disabilities may have very different basic needs so families must plan carefully. A basic tenet is to provide seven days or more of food and hydration. For some people with disabilities, that may mean seven days of g-tube feedings,

oxygen, medications, battery power to supply a power source for nebulizers and respirators. Work with health care providers to get extra supplies of medications and extra copies of prescriptions for the emergency kit.

Agree on alternate means of communication during disasters. Remember that disasters may result in family members in the same location not being able to easily communicate with one another. You may decide on a signal or whistle to communicate. You may discuss using a visual sign such as a flag outside your home to indicate assistance is needed.

Organize a "network" or "personal support" team that will check on the loved one with disabilities in the event of an emergency. Give these people written instructions on how to care for the loved one with disabilities during an emergency. Keep written instructions on how to use appropriate medical equipment and give the support team copies. Make sure that the support team knows the loved one's capabilities and limitations during an emergency. One of the most important

things you can do is to compile an emergency information list for the person with disabilities. This list should identify the medical needs and providers' contact information in case of an emergency. The list should include the names and dosages of all medications.

Identify safe places to go during an emergency, depending what type of disaster has occurred. Remember that you may need to do extra planning when you have a loved one with special needs due to problems with transporting the individual, so plan carefully. Steps and doorways may present extra challenges. Practice different ways out of a building in case stairways and halls are blocked. Rehearse lifting techniques for non-ambulatory individuals.

Choose an emergency meeting place where you can all meet following a disaster. Choose several meeting places depending upon the type of emergency at hand.

Inquire as to what facilities are available in your community in case of a disaster and whether those facilities are capable of handling persons with disabilities (look at accessibility issues). Alert your local fire department, police department and power company that a person with disabilities resides in your home and what the specific needs are of the individual. Many times, the power companies will provide a back up generator if the individual has medical needs

that require a power source. Consider privately purchasing a back-up generator.

You may also want to check with your insurance agent about the types of disasters your insurance covers.

Agencies such as the American Red Cross and Centers for Disease Control and Prevention are great resources for helping families with loved ones with disabilities plan for an emergency. They provide emergency checklists and literature on how to prepare for emergencies.

Also remember to review your emergency plan on a regular basis and be sure that your supplies are kept current.

In closing, we can never predict if or when a disaster will strike. Persons with disabilities face additional challenges in efforts to prepare for emergencies. We can take precautions to lessen the impact in many instances. With careful planning, at least we will have peace of mind that we have done everything within our control to plan for our loved one's safety and well-being.





"A master of economics and a student of Talmud, an accomplished lawyer and dedicated Rabbi, a community leader and devoted father, Rabbi Rosenzveig has excelled in all facets of life. More important than his accomplishments, however, is the love he has for his five wonderful children, for his wife and the model he sets not only for his congregation, but for the entire community around him."

These are the words Representative Nita Lowey used when she introduced Rabbi Ely Rosenzveig to speak to the United States House of Representatives on May 9, 2001. Ely delivered the opening prayer that day, speaking of the need for unity, respect and honor for fellow human beings. What I find most striking is that when I interviewed Ely for this profile, he spoke of the same qualities when I asked him what he would like to be remembered for in life.

The first time I met Ely Rosenzveig was when I interviewed for a position as an attorney with Littman Krooks in August 2005. Anxious to make a good impression on my prospective employer, I "googled" each Partner at the firm and attempted to find out as much information as possible. I was a bit intimidated by Ely's background. He is a graduate of the University of Michigan Law School and received his rabbinical degree from Yeshiva University. He was an adjunct professor of law at Notre Dame and a member of the executive committee of the Rabbinical Council of America.

At the interview, I found myself thinking why would a full time Rabbi with a thriving congregation want to practice law? How does a Rabbi, whose responsibilities include counseling congregants and being the spiritual leader to hundreds of families, manage both careers? Also, how did this Rabbi who was featured in the Westchester Gannett newspapers for his role in the revival of a traditional orthodox synagogue that had experienced a reduction in members over several years, come to Littman Krooks over nine years ago? My hope that day was to obtain a position with the firm and yes, find out the answers to these questions (hopefully, in that order).

Ely was incredibly courteous at the interview. He spoke of the firm's attributes and the expectation of excellence from every member. He used words like "loyalty" and "diligence" when discussing the duty

owed to our clients. He described the fact that Littman Krooks was very much like a family and that each staff member has a unique ability that is respected and valued.

He described his own journey that led him to Littman Krooks. He spoke of the fact that he was very grateful to Bernard A. Krooks, our founding partner, for giving him the opportunity to practice law after an absence from active practice for a few years. He noted the fact that the firm was made up of individuals who were committed to serving the community and how proud he was of the work that Littman Krooks was doing in the areas of elder law and special needs planning. He spoke with passion and commitment. He answered one of my questions without even realizing it. He came to Littman Krooks because he was able to use his skills as a spiritual leader in his work as a lawyer, dedicated to helping the elderly and those with disabilities solve the many challenges they face in today's society.

He asked many questions that day, thoughtful and each with a definite purpose. One could see that he took the responsibility of interviewing candidates very sincerely. (After joining the firm, I joked with Ely that I often felt the urge to "confess" to him that I had eaten that extra piece of chocolate when I made the commitment to diet). This comfort with sharing information has made Ely a sounding board for many clients and staff members alike.

Personally, I came to Littman Krooks to focus on special needs planning, knowing that the firm was already at the forefront of planning for those with disabilities and hoping that I could add value to an already successful practice. Ely stressed that the firm welcomed my ideas and commitment to such goals. Another question answered, definitely a progressive thinker and open to new ideas.

We discussed my need for flexibility as I was raising three children (one with disabilities) and I hoped that the firm would be interested in offering me a position which would allow me to spend time with my family (I had already experienced the first year associate's "burning the midnight oil syndrome"). Ely explained how much he and the firm respected a commitment to family. We discussed an accommodating schedule. His manner and tone were unique and definitely an off-shoot of his rabbinical experience. He was definite in what the firm was looking for in a new hire but he listened to my needs as well. I could see that he was trying to see if there was a good fit. Now I understand how Ely had managed to almost double the congregation's size at Anshe Sholom in the last few years. It was clear this man was flexible yet he honored the tenets on which the firm was based. My sense was that he carried this value over from his personal life.

I remember leaving the interview thinking what an extraordinary law firm Littman Krooks is, allowing a person to pursue a career as a lawyer and respecting that there are other aspects of a person's life that need to be valued.

Since I began working at the firm, I have had many conversations with Ely about his work as a Rabbi and as a lawyer at Littman Krooks. He has been with Littman Krooks since 1998. He was made a Partner in the summer of 2005. We have had many conversations regarding our various commitments. I felt a bond since he also worked a "part-time" schedule with the firm, shuttling between the synagogue and the offices. We have had many conversations about managing it all and the sacrifices that we make in order to make it all work. I remember sending e-mails to Ely requesting guidance on cases at late hours and laughing because I would receive an almost immediate response to my inquiry. Ely would ask if I minded if he called me in the evening to discuss the status of a case (always respectful of my family time). I would answer that after 9:00 pm was perfect. Again, our schedules meshed. The answer to the question I pondered at the interview was at hand. He managed his life the same way I did, using every minute of the day to its fullest and hoping that it was enough.

I remember a case where Ely did not hear from one of his clients after several attempts to reach the gentleman. He drove to the client's home only to find him in desperate need of health care. He was able to facilitate the transfer of the client to a hospital immediately. If not for Ely's efforts, the outcome could have been tragic.

What does Ely hope that clients remember about him once he finishes work on a case? He would hope that the clients feel that he zealously represented them to the best of his ability. I have seen the outcome of many of Ely's cases and I do not think that will ever be questioned.

Ely works with such agencies as the Department of Social Services on accessing healthcare services for our elderly. He is involved in guardianship matters for incapacitated persons. He also assists clients with Medicare, and Medicaid appeals and practices in other areas such as labor and employment law, real estate transactions, worker's compensation law, Social Security Disability issues, insurance law and other matters.

Last year, the firm held our annual holiday party for attorneys and staff. Ely offered an opening statement. He thanked everyone for their contributions over the past year and expressed how grateful he was for the opportunity to work with each of us. I have never seen Ely speak to his congregation but I imagine that the eloquent manner in which he spoke that evening can only mirror his delivery at the services where he officiates.

In closing, it has been a privilege to write this piece on Ely. Although he constantly reminds us all how grateful he is for our support and diligence in serving our clients, I am sure that I speak for everyone at LK when I say that we all are grateful to him for his dedication and commitment to Littman Krooks and the guidance he has given us over the years.

CONGRATULATIONS & BEST WISHES

Welcome to Angelo Grasso. Angelo joins us as an attorney. His practice focuses on trusts and estates litigation, Medicaid issues and guardianship.

Westchester ARC honored Bernard A. Krooks for the firm's role as an employer of persons with disabilities.

Andrew Cuddy joins the firm as Of Counsel. Andrew practices in the area of Special Education law and recently wrote a book titled "The Special Education Battlefield." The book assists parents advocate for their children with special needs.

Bernard A. Krooks has been elected to Exceptional Parent magazine's Advisory Board.

Bernard A. Krooks and Adrienne J. Arkontaky are featured in the August edition of Kiplinger's Personal Finance for their work in the area of special needs planning.

An article by Bernard A. Krooks was published in the June 2007 issue of Exceptional Parent magazine.

SHOULD I HAVE A WILL?

By Amy C. O'Hara, Esq.

Brenda and Todd have been married 6 years and have 2 children, ages 4 and 3. They have a nice home they own in the suburbs of New York City. Todd works for a logistics company in Manhattan and Brenda is a stay at home mom. Aside from the family home which is jointly owned between Todd and Brenda, Todd has about \$450,000 in assets and Brenda about \$25,000 in their individual names.

One evening, on the way home from a baseball game, Todd is tragically killed in an automobile accident. Aside from dealing with the grief and devastation of losing her husband, Brenda is faced with another shock. The \$450,000 that Todd owned individually in a brokerage account will not fully pass to Brenda as Todd and Brenda had always planned. For the last couple of years, Brenda and Todd kept saying how they needed to make an appointment with a lawyer to get their Wills done - yet it always fell to the bottom of their "to do" list. Now, Todd had unexpectedly died without a Will, and Brenda had to deal with the consequences.

If you die without a Last Will & Testament, not only does New York State law determine how your estate is distributed, but significant consequences can result as well.

When you die, your gross estate is made up of "non-probate" and "probate" property. Non-probate property passes outside of your Will and includes such assets as jointly held bank accounts, jointly held real property, and any asset with a beneficiary designation such as life insurance, annuities and pensions. Probate property generally includes any asset that is in your name alone and does not have a beneficiary designation. For estate tax purposes both your non-probate and probate assets are included.

Dying without a Will means you die "intestate." New York's intestacy laws provide that if you die leaving only a spouse, your spouse will take your entire probate estate. If you die leaving a spouse and children, your surviving spouse will receive \$50,000 plus one-half of the balance of the probate estate; your children will receive the remaining one-half. If a child predeceases you and leaves children, then your grandchildren will share in your estate as well.

If you are not survived by a surviving spouse, children, or grandchildren at the time of your death, the next in line to share in your estate is your parents (provided either of them is still living). If there are no living parents, then brothers, sisters, nephews and nieces, aunts and uncles, and finally cousins inherit your estate in that order.

Now, Brenda is faced with only receiving \$250,000 of the \$450,000 brokerage account. (The first \$50,000 plus one half of the remaining \$400,000). The other \$200,000 will be divided equally between the 2 minor children. Further, the money the children receive will be placed in a guardianship account held under court control and Brenda will have to be appointed guardian over those funds for her children. Every time she wants to make a withdraw of funds she will have to petition the court for their approval.

Chances are, like Todd, this is not how you would like your estate distributed at your death. For example, if you die leaving a spouse and children, you may want everything to go to your spouse, and then to your children after your spouse dies. New York law does not provide for this. Additionally, if you die leaving no spouse, children, or grandchildren (or even great-grandchildren for that matter), but elderly parents, your elderly parents will take your estate. Not only may you have wanted to leave your estate to your nieces and nephews and favorite charities, but this can also have severe consequences to your elderly parents should they be in a nursing home and receiving Medicaid, or other government assistance. Likewise, if you have a special needs child who will inherit your estate, and your child is receiving government benefits due to his or her disability, that child's benefits can be significantly impaired or eliminated.

Further, without proper planning, your estate can incur significant tax consequences if you die without a Will and leave a taxable estate. Also, if you die without a Will you do not get to say who handles the administration of your estate or who can be guardian over your minor children. The court will decide.

These are all just a few of many examples of why having a Will is so important. No estate is too small for a Will. Proper planning with a Last Will & Testament will make certain your wishes will be taken care of after your death.

SEEN AND HEARD

Bernard A. Krooks, Ellyn S. Kravitz, Elizabeth Valentin and Amy O'Hara recently spoke at Elder Law Programs sponsored by the New York State Bar Association.

Adrienne J. Arkontaky recently spoke at the John A. Coleman School and the Hearing Loss of America's monthly meeting on the importance of estate planning and special needs planning.

Ellyn Kravitz and Adrienne J. Arkontaky recently spoke at various SKIP of New York meetings on special needs planning and guardianship.

Vincent Mancino recently spoke at several area hospitals on the effect of the new Medicaid laws on our seniors' ability to secure long term health care.

Adrienne J. Arkontaky and Andrew Cuddy recently presented a seminar on special education law and how to advocate for a quality education, to families of children with special needs.

Adrienne J. Arkontaky recently attended the COPAA (Council of Parent Advocates and Attorneys) conference held in Baltimore, Maryland. The conference focused on special education advocacy issues.