

LEGALLY SPEAKING

Mauro, Savo, Camerino & Grant, P.A.
77 North Bridge Street
Somerville, New Jersey 08876
(908) 526-0707 (phone) 908 725-8483 (fax)
www.maurosavolaw.com

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Major Changes to Look Back Rule in Medicaid Law

Increased from Three to Five Years

The Deficit Reduction Act of 2005 contains major changes in the Medicaid laws. Most significantly, the Deficit Reduction Act lengthens the lookback period for the transfer of assets from three years to five years. The longer look back rule would only affect transfers after the date of enactment. The three-year rule would apply to prior transfers.

Another major change made by the Deficit Reduction Act is the beginning date for the penalty period. Under the prior rules, the penalty period would commence on the month following the transfer. Under the new rules, the penalty period would not begin to run until the person is institutionalized, has exhausted his or her assets and is ready to apply for Medicaid.

The home has always been an exempt asset when only one spouse is institutionalized. Under the Act, equity in the marital home will be considered a resource if the equity is more than \$500,000. A state may at its option increase the equity limit to \$750,000.

It is important to review your Medicaid planning in light of these significant changes in the Medicaid Transfer Rules. Given the longer look back rule, it is even more important to start your Medicaid Planning early.

-Ellen M. Gillespie, Esq.

Ms. Gillespie is a partner who concentrates her practice in estate planning and elder law.

Things Everyone Should Know About Employment in New Jersey - The Basics

Do you understand what your rights are as an employee in New Jersey? Do you understand what it means to be an “at will” employee in New Jersey?

New Jersey is one of the most liberal and employee-friendly states in the entire country as far as laws to protect employees in various employment situations. In many states, the best protections given to employees are through Federal discrimination and civil rights laws, which are limited at times. By contrast in New Jersey, our laws often provide many times more protections than the Federal laws.

In New Jersey, as in most states, most employees are considered “at will” employees. If you do not have a contract of employment, and most employees do not, unless maybe you are an executive of a corporation, an athlete or an entertainer, then you are considered an “at will” employee. An at will employee can leave a job for a good reason, bad reason or no reason at all. Likewise, an employer of an at will employee can terminate the employee for a good reason, bad reason or no reason at all, but for certain exceptions which I will explain below.

The theory behind “at will” employment makes a lot of economic sense. It gives employees freedom to pick up and leave a job at their choosing without unnecessary restraints. It allows an employee to make a living at the employer of his or her choice. By the same token, it gives employers the freedom to terminate employees of its choosing. The courts in New Jersey are not in place to second guess employer’s decisions to terminate employees. If the courts had this function, they would literally be flooded with countless lawsuits.

The exceptions to the above rules are specific. Despite at will employment, an employer cannot make employment decisions based on, among

other things, age, sex, disability, race, sexual orientation, marital status or national origin, and an employer cannot retaliate against an employee who is a “whistle blower.” These are the types of cases that most often show up in the courts of New Jersey.

The employment laws in New Jersey are complex and require specialized knowledge. If you have an employment issue or question, please call me today.

–*Charles Z. Schalk, Esq.*

Mr. Schalk is a partner who concentrates his practice in the field of employment, discrimination, civil litigation and criminal defense.

Palimony and Divorce

Every family law case is evaluated according to an established framework set by statutes and case-law. It is this body of law that determines which factors are relevant and should be considered in a judge’s decision.

The New Jersey Supreme Court recently addressed the relevance of marital fault in the award of alimony and counsel fees. New Jersey jurisprudence has steadily eroded the role of marital fault, such as infidelity, in determining the right to receive alimony payments. Modern courts have treated alimony as an economic right, not a punishment for the payor nor a reward for the payee. For example, a spouse who is unfaithful is no longer denied the right to collect alimony that they would otherwise be entitled to receive. However, application of these standards was sometimes inconsistent.

In Mani v. Mani, 183 N.J. 70 (2005), the New Jersey Supreme Court held that marital fault is irrelevant to the award of alimony except in two narrow circumstances: (1) cases where the fault has affected the parties’ economic life; and (2) cases where the fault “so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice.”

Of these two instances, the extent to which a parties' marital fault affected the parties' finances could be a factor in determining the amount of alimony which should be paid. The second instance would be considered in the initial determination of whether alimony should be awarded at all. The Supreme Court went on to apply the same standards to the award of attorney's fees.

The law has also evolved in favor of requiring support in some instances where the parties have not been married at all but have lived together in a marriage-like relationship. In a case reported earlier this year, Levine v. Konvitz, 383 N.J. Super. 1 (App.Div. 2006), the New Jersey Appellate Division considered the role of co-habitation in a suit for palimony payments.

Beginning with a New Jersey Supreme Court decision in 1979, New Jersey courts have clearly recognized a claim for ongoing support where the parties were never married. The term "palimony" came to describe this type of claim.

The Levine case clearly sets forth the requirements that must be met before palimony payments may be ordered. These requirements are: (1) the parties lived together (2) in a marriage-like relationship (3) and during the time the parties lived together, the defendant promised the plaintiff that he or she would support the plaintiff for life and (4) that this promise was made in exchange for valid consideration. In the Levine case, the plaintiff was seeking palimony even though she never lived with the defendant. The court found that a common residence (co-habitation) was an indispensable element of a palimony claim and denied her claim.

-Laura J. Genecki, Esq.

Ms. Genecki is an attorney who concentrates her practice in family law, divorce, child support, custody, property settlements, domestic violence and visitation.

Buying or Selling Your Home -

The Value of Investing in a Good Real Estate Lawyer

I have been practicing in the area of transactional real estate for nearly twenty years. During that time, I have represented buyers and sellers of more than 7,000 homes in Somerset, Hunterdon, Morris and Warren counties. Lawyers who are retained to conduct real estate closings are expected by their clients to have a crystal ball: they are expected to know with exact certainty how much longer roofs are going to last; when the water heater will fail; will the septic system last for ever; and even how much a home will be worth seven years from now – all for under \$1,000.00.

Real estate lawyers are supposed to know everything about everything: from chimney flue linings to the quality of the roof joists; from the dangers of Fire Retardant Plywood and asbestos insulation to the length of time you can live in a home with radon concentration levels within EPA guidelines before you get lung cancer. It seems that with every new transaction there is a new issue.

Given the complexities of a real estate transaction, I can not "get my arms around" the fact that most people choose their real estate lawyers, not based on their experience or reputation, but by their price. For most people, buying a home is the largest investment they will ever make. When I get a call from a prospective client "just looking for prices", I always ask them, "do you really want the cheapest lawyer you can find to represent you in such a significant, life-altering event?" I understand that when someone is buying a home, they must watch what they spend, but you really do get what you pay for.

A lawyer plays a very significant role in the real estate closing process. One of the most important functions of the real estate lawyer is to protect their clients against buying a home with problems. These problems could be title related, defects in the home that the seller refuses to repair, or that it is just simply a bad deal for the buyer.

If you are buying or selling a home, the real estate lawyer will be the best value you get in your transaction. If it were me and I was making the biggest investment of my life, not to mention the choosing where my children were going to grow up and go to school, I would want as much attorney involvement as possible.

-Howard J. Apgar, Esq.

Mr. Apgar is an attorney who concentrates his practice in real estate, municipal and government law, business and corporate, and land use and zoning.

Our Firm Provides Both Business Services and Individual Services:

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