

Queens BAR BULLETIN

Queens County Bar Association | qcba.org | 88-14 Sutphin Blvd., 3rd Floor, Jamaica, NY 11435 | 718-291-4500
October-November 2024 | Volume 92, No.2



Governor Signs Bill to Help Thousands of Coop Homeowners

BY GEOFFREY MAZEL, ESQ.
CO-CHAIR, COOPERATIVES AND CONDOMINIUMS COMMITTEE

Thousands of units of cooperative housing in Queens County have been hampered by a technical issue in their ground leases that made it impossible for potential purchasers to obtain conventional thirty (30) year mortgages backed by Fannie Mae. Thankfully, New York State Governor Hochul signed the Ground Lease Renewal Notice Bill (Stavisky-Braunstein Bill) on September 27, 2024, and effecting saving the homes of thousands of Cooperative homeowners.

By way of background, many Cooperatives in New York City do not own the land on which they sit. The land is owned by a third party, known as the Ground Lessor. These were mostly long-term leases that were inconsequential when first in effect, until the last few years with significant deadlines looming.

The issue deals with a swath of Cooperatives located mostly in Queens County of a technical nature. These Cooperatives were all built in the 1950's as cooperative housing. They all have a term of ninety-nine (99) years and an automatic renewal of an additional ninety-nine (99) years commencing in the 2050's. This issue is basically the terms of the Ground Lease would not let the Cooperative exercise their second ninety-nine years renewal until twenty-four (24) months prior to the expiration of the original term, which would be in 2050.

The fact that the renewal could not be exercised until 2050 was a major issue with Fannie Mae (the Federal National Mortgage Association). Despite repeated efforts by major lending institutions and elected officials, Fannie Mae found these affected

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Coop and Condo Committee Co-Chairs
Geoffrey Mazel and Mark Hankin with
bill sponsors Sen. Toby Ann Stavisky and
Assemb. Edward Braunstein



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The Docket

Being the official notice of the meetings and programs listed below. Due to unforeseen events, please note that dates listed in this schedule are subject to change. More information and changes will be made available to members via written notice and brochures. Questions? Please call 718-291-4500.

CLE Seminar & Event listings

NOVEMBER 2024

- Tuesday, November 5

Election Day – Office Closed
- Wednesday, November 6

CLE: Landlord & Tenant Update 2024
- Monday, November 11

Veteran’s Day – Office Closed
- Tuesday, November 12

CLE: Implications of Technology in Domestic Violence and Family Court Cases
- Wednesday, November 13

CLE: The Intersection of Mental Hygiene Law Article 9 and Article 81 Guardianship
- Tuesday, November 19

CLE: No-Fault Litigation 2024 Update
- Wednesday, November 20

Event: Friendsgiving at One Station Plaza – 6:30 pm
- Thursday, November 21

CLE: Kinship Proceedings Proving the Family Tree at Surrogate’s Court – 1:00 pm
- Thursday, November 21

EVENT: LGBTQ+ Fall Social at The Beast Next Door – 7:00 pm
- Thursday, November 28

Thanksgiving Day – Office Closed
- Friday, November 29

Thanksgiving Holiday – Office Closed

DECEMBER 2024

- Thursday, December 5

CLE: Criminal Court CLE
- Friday, December 6

CLE: Family Law Symposium: Supporting Safe Parent-Child Relationships; Substance Misuse, Cybersecurity and Domestic Violence
- Thursday, December 12

Holiday Party at Jericho Terrace – 5:30 pm
- Wednesday, December 25

Christmas Day – Office Closed
- Thursday, December 26-31

Christmas Week – Office Closed

JANUARY 2025

- Wednesday, January 1

New Year’s Day – Office Closed
- Thursday, January 9

CLE: Family Law Seminar
- Monday, January 20

Martin Luther King, Jr. Day – Office Closed

FEBRUARY 2025

- Wednesday, February 12

Lincoln’s Birthday – Office Closed
- Monday, February 17

Presidents’ Day – Office Closed

MARCH 2025

- Wednesday, March 5

Judiciary Night, Past Presidents & Golden Jubilarian Night at St. John’s Law School – 5:30 pm

APRIL 2025

- Tuesday, April 1

EVENT: NY Islanders Game

Upcoming CLE’s and Events

- Appellate Practice Update
- Equitable Distribution Update
- Ethics Update
- Judiciary Night, Past Presidents & Golden Jubilarian Night
- NY Islanders Game Night
- The Trial – Part 5

For more information on upcoming seminars, CLE’s and events, go to qcba.org/CLE-Courses

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Editor's Note

Zooming Towards Dissolution

By Paul E. Kerson

For more than four decades, my law partners and I have maintained a general law practice centered here in Queens County and also serving the surrounding counties.

From time to time, we would be faced with a business dissolution case under Business Corporation Law (BCL) Sections 1104 through 1112 or Limited Liability Company Law (LLCL) Sections 702 through 704.

In the past year, we have been retained on numerous cases of this type – more than we have ever had before.

Why?

What has changed? Why do we have more business dissolution cases than ever before?

I have reviewed my files to prepare this Editor's Note. The common factor is this: clients working from home using email, telephone and zoom, rather than seeing one's fellow LLC Members or BCL shareholders and officers every day in the office of the business.

Yes readers, we must face the ironic truth: the more advances we have in communication by machine, the less we actually communicate.

Running a small business is no easy task – there are constant issues with employees, customers, suppliers, the landlord, and government regulatory agencies at the federal, state and local levels.

The Members of the LLC or Shareholders and Officers of the corporation must meet each other every business day to discuss the resolution of these constant problems or - Guess what -we will be called upon to prepare and file the Order to Show Cause and dissolution petition.

Now comes the really unusual current situation.

How has our court system reacted to this increase in LLC and BCL dissolution cases?

Not well. New Part rules generally require "submission" of written arguments on the return date of the Order to Show Cause, with personal appearances waived.

The business is at war with itself. The owners are not communicating because they are sitting at home with their computer screens doing email, under the delusion that they are running the business. Thus, the relationships with the employees, customers, suppliers, landlord and government agencies are at risk.

These are all face-to-face relationships, forged over many years of building the small business by the now estranged founders.

BCL Sections 1104 through 1112 and LLCL 702 through 704 contemplate a meeting of all those interested in the warring business present in the courtroom on the return date of the Order to Show Cause.

These well written laws clearly favor the appointment of a Referee or Receiver to take charge of the business and all of the above listed interrelationships, and to hold an in-person Hearing to determine how best to proceed.

So the system limps along, and the problem is not solved, and the business and all its interrelationships continue to deteriorate.

The solution: Under these circumstances, lawyers for the warring business owners must increasingly take on judicial duties. Why wait many months for the Court to appoint a Referee? And what if the Court does not appoint a Referee quickly because of some technical "defect" in the pleadings or service, or because the Court's workload is just too large?

Counsel for the warring business owners can talk on the telephone (not ineffective email) and agree to jointly select a Referee or Mediator.

Prepare a Stipulation of Partial Settlement. Agree to equally share the costs of the Mediator. Agree to a Settlement Conference date at the Office of the Mediator (usually a lawyer just like ourselves).

Do not bang each other over the head with motion practice claiming that your client is "right" and his or her fellow business owner is "wrong". Under the current "submission" Part rules, that is a prescription for ruining the business by time delay and risking all of its hard-won working relationships now broken by over-reliance on email and zoom.

Long before email and zoom, there was an ancient courthouse dictum which experience always bears out: "Nothing substantive ever happens until everyone involved is in the same room at the same time."

Still true.

Do CPLR Article 31 discovery proceedings (with endless depositions and motion practice fights over which documents must be produced) apply to BCL and LLCL dissolution proceedings?

BCL Section 1106(a) permits an Order that the following discovery be given to the Court or Referee on the return date of the Order to Show Cause: a

statement of corporate assets and liabilities, the name and address of each shareholder, creditor, claimant and those with unfulfilled contracts with the corporation.

While the LLCL does not have this option clearly stated, LLCL dissolution Referees or Receivers should certainly make the same ruling as permitted under BCL Section 1106(a).

The Referee should be empowered to demand production of any other discovery he or she deems essential to settlement discussions or a resolution by a Hearing.

Thus, CPLR Article 31 dragged-out discovery proceedings should not be done. It delays the dissolution of a living web of human interrelationships essential to the economic well-being of all of those involved.

BCL and LLC dissolution proceedings are unlike the usual State Supreme Court civil case with one or more plaintiffs and defendants. In BCL and LLCL dissolution proceedings the dissatisfied co-owner is the petitioner and the corporation or company itself is the respondent together with the other co-owners.

But as a practical matter, everyone out there who did or does business with the corporation or company has an interest in the case and is invited to participate, including the New York State Department of Taxation and Finance for any unpaid taxes.

Another ancient courthouse teaching from before the days of Zoom and ineffective email – the dissatisfied co-owner should be bought out by his co-owners. The price should be one year's earnings of a co-owner in that corporation or company, including salaries and profits, or, in the alternative, an average of what competing appraisers think the business is worth if it could be sold. Not every small business can be sold, particularly if the "key man" is leaving.

Do we get to that point in the first month of litigation so the business can be preserved? Or does it take years, because the lawyers cannot persuade the clients to sit in the same room with each other, the Referee, Receiver or Mediator?

That is the unique skill we bring to the table. It doesn't always work, but it should be the continual goal of the entire proceeding. Otherwise, viable businesses go up in the smoke of the fire of the anger of the litigants.

The lesson for all of us is clear: As long as Zoom and email and "stay at home" work is out there, the face-

CONTINUED ON PAGE 4

Editor's Note

Zooming Towards Dissolution

CONTINUED FROM PAGE 5

to-face daily meetings of small business owners will be disrupted, and a significant percentage of our small businesses will fail.

It is up to us, the general practice lawyers, Justices, Court Attorneys, Mediators, Referees and Receivers, to put these disrupted businesses back together again, or to dissolve them in a fair-minded manner, and to do so as quickly as possible in order to avoid disrupting the local economy any further. And to get the warring owners back in the same room at the same time with a Third Party Neutral if that can be accomplished.



QUEENS COUNTY BAR ASSOCIATION
SURROGATE'S COURT ESTATES & TRUSTS COMMITTEE &
QUEENS COUNTY SURROGATE'S COURT PRESENTS



Kinship Proceedings Proving the Family Tree

THURSDAY, NOVEMBER 21, 2024 1:00 pm - 4:00 pm

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President's Message

A Call to Make a Difference in the Community and Beyond

By Zenith T. Taylor

In today's busy world, daily routine and stress often impact mental health and well-being, it is important to acknowledge the value of balancing responsibilities with service to our community. Serving the Queens community is not just a way to give back, but also a crucial part of maintaining a healthy work-life balance.

When attorneys volunteer or provide pro bono services, they significantly impact the Queens legal community. Beyond helping those in need, lawyers also gain valuable professional and personal experiences. The difference between volunteering and pro bono work is mainly semantic; the key is the positive effect on the community and the lives these acts of service improve.

The Queens Volunteer Lawyers Project (QVLP) allows attorneys to assist in areas such as foreclosure defense, consumer debt, family court, housing, and more. By offering pro bono services, lawyers can help bridge the justice gap while earning CLE credit. For more information on volunteer opportunities, please contact Mark Weliky at (718) 291-4500.

The New York Attorney Emeritus Program (AEP) offers a valuable volunteer opportunity for attorneys aged 55 or older with ten or more years of legal experience. Participants provide pro bono services across the state, including virtual representation for residents in rural areas. The AEP aims to ensure quality legal representation for low-income New Yorkers. Participants are exempt from the \$375 registration fee and Continuing Legal Education (CLE) requirements if they complete 60 hours of pro bono work within two years. For more information, contact aepcoordinatory@fordham.edu or (212) 930-8871.

The rewards of volunteer work in the community are deep-rooted. Legal assistance can mean the difference between not paying rent and not having enough food

to feed your family. The benefits outweighs the challenges to assist one to navigate the court system that would otherwise be insurmountable for a person with modest means. For many residents of Queens County, the support of a volunteer lawyer can be life-changing. It fosters a sense of community and trust, showing that the legal profession is committed and compassionate to the community's legal needs.

Engaging in pro bono work can improve mental health by providing a sense of purpose and fulfillment. It allows attorneys to reconnect with the core reasons they entered the legal profession: to help others and promote justice. The positive impact on their client's lives and the opportunity to use their skills in meaningful ways can significantly enhance well-being and reduce stress. According to recent statistics, approximately 50% of lawyers report symptoms of depression and 21% report symptoms of anxiety. Volunteering can assist in dealing with these challenges.

Make no mistake, volunteerism in the legal profession is not limited to providing direct legal services. Lawyers can also make a difference by:

- Judging Moot Court Competitions
- Assisting with Mock Trials
- Providing Internships
- Speaking at schools and the community

Participating in the above activities, and other service-oriented activities can be transformative for students, particularly those who may not have had such opportunities otherwise. It also provides those in the legal profession with a platform to share their knowledge and experience, inspiring the next generation of legal professionals and contributing to the growth of the legal community.

So, for the good of our community, our health and to extend goodwill between QCBA and the community, please consider participating in the Queens Volunteer Lawyers Program, the Attorney Emeritus Program, or another volunteer program that will allow you to be a part of something bigger and play a vital role in the ongoing quest for justice across New York State.

I encourage you to participate in one of the many upcoming events our committees are planning for the next few weeks including:

Landlord & Tenant Committee CLE:
"Landlord & Tenant Update"

Academy of Law CLE:
"Implications of Technology in Domestic Violence and Family Court Cases"

Elder Law Committee CLE:
"Intersection of Mental Hygiene Law Article 9 Proceedings and Article 81 Guardianships"

Civil Court and Supreme Court Committees CLE:
"No Fault Litigation Update"

Surrogate's Court, Estates and Trusts Committee CLE:
"Kinship Proceedings – Proving the Family Tree"

Criminal Law Committee CLE:
"Drug Treatment Courts"

Family Law Committee CLE:
Symposium – "Supporting Safe Parent-Child Relationships: Substance Misuse, Cybersecurity and Domestic Violence"

Young Lawyers Committee: "Friendsgiving", an evening to network and socialize while raising money to support *Dancing Dreams*, a local nonprofit program

LGBTQ+ Committee: "Fall Social Mixer" at The Beast Next Door in LIC

Holiday Party Committee: "Annual Holiday Party" at Jericho Terrace in Mineola

Details and registration information for each of these events can be found on our website at www.qcba.org.

As we approach Veteran's Day on Monday, November 11th, please take a moment to honor those who have bravely served our country and defended our freedoms. Their sacrifices remind us of the importance of participating in our democracy, especially in this presidential election. Your vote is a tribute to their service and a commitment to the values they fought to protect. Therefore, I urge each of you to vote in the upcoming elections. **Voting is a fundamental civic responsibility.** Your vote matters, regardless of your political affiliation. Remember, even a handful of votes can determine the outcome of an election.



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QUEENS COUNTY BAR ASSOCIATION
Landlord & Tenant Committee

LANDLORD & TENANT UPDATE
WEDNESDAY, NOVEMBER 6, 2024
5:30 PM -7:30 PM
VIA ZOOM

- HON. JOHN S. LANSDEN - Supervising Judge, Housing Court, Queens County
- HON. CLINTON J. GUTHRIE - Housing Court, Queens County
- PHILIP A. ROSEN, ESQ. - Moderator; Co-Chair, Landlord & Tenant Committee
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- RANDI B. GILBERT, ESQ. - Partner, Horing Welikson Rosen & Digrugilliers, P.C.
- GARY BARBERIO - NYC DSS Adult Protective Services Regional Manager-
APS Intake, Eligibility and Services
- THOMAS CATAPANO - NYC DSS Office of Legal Affairs Deputy General Counsel-
APS legal interventions (Guardian ad litem and MHL Article 81 Guardianship)
- GILI HERSHKOVICH-KIM - NYC DSS Adult Protective Services Deputy Commissioner-
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Governor Signs Bill to Help Thousands of Coop Homeowners

BY GEOFFREY MAZEL, ESQ.
CO-CHAIR, COOPERATIVES AND CONDOMINIUMS COMMITTEE

CONTINUED FROM PAGE 1

Cooperatives to be non-compliant and would not recognize the renewal time, since the option was not yet exercised.

This failure to find these Cooperatives in compliance has become an existential crisis for this community of Cooperative homeowners. Buyers of these units could no longer obtain conventional thirty (30) year mortgages and would have to settle for fifteen (15) or twenty (20) year mortgages. Needless to say, the failure of Fannie Mae to make these loans had a significantly deleterious effect for this market of cooperative housing.

This situation became so serious that NY State Senator Toby Stavisky and Assembly Member Ed Braunstein, whose districts included many of the stakeholders, took affirmative action to try to remedy this situation. They introduced New York State Assembly Bill 10467, known as the Ground Lease Renewal Notice Bill, and the companion Senate bill 9721, in June 2024. It passed the New York State Assembly by a unanimous vote and the New York State Senate by a vote of 39 to 21.

This bill received widespread support from Cooperative leaders and organizations throughout New York City and Westchester, including the President's Cooperative & Condominium Council, New York Council of Cooperatives; Queens County Bar Association, and the Builder's Realty Institute of Westchester.

The new law amends the real property law to allow residential ground lease cooperatives (such as housing development fund corporations and cooperative housing corporations) to renew or



Coop and Condo Committee Co-Chair Geoffrey Mazel addresses attendees at the Victory Celebration on October 17, flanked by Rep. Tom Suozzi, Beech Hills President Janice

extend their ground lease agreements before the lease's expiration. This applies to residential cooperative buildings in New York State that are subject to ground leases.

The bill permits cooperatives to exercise renewal or extension clauses at their sole discretion, if the other terms of the lease remain in force. It aims to provide more stability and predictability for cooperatives leasing land, giving their shareholders the ability to sell their cooperative units at full market value with the ability to obtain conventional Fannie Mae financing.

The Cooperative and Condominium Law Committee of the Queens Bar Association were thrilled to be a major player in the passage of this key legislation. Co-Chairs Geoffrey Mazel, Esq. and Mark Hankin, Esq. attended a "victory" celebration held at the Beech Hills Cooperative in Douglaston, NY on October 17, 2024. In attendance were the bills co-sponsors, Assembly Member Ed Braunstein and NY State Senator Toby Stavisky, Congress members Tom Suozzi and Grace Meng, and dozens of Co-op leaders representing thousands of units of housing throughout the region.



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Remembering George J. Nashak, Jr.

BY GREGORY J. BROWN, QCBA PAST PRESIDENT

I met George in the winter of 1977. That meeting ranks as one of the most monumental events of my life. I was waiting to be admitted, and George was looking for an associate for his growing practice. I sent him a resume, as I had been told by my father that he was looking for a young lawyer. My father in turn got this information from a fellow member (and George’s client) of one the largest, tightest fraternities on earth - the FDNY.

I like to think I impressed him so much at our meeting that he decided to hire me. I only learned much later that after I left, George’s wife, Madeline, told him “He is the one.” I did need all the help I could get. Once I had Madeline’s approval, I guess George had no choice but to hire me. And thus began my adventure in the practice of law with a great tutor, mentor, partner and friend.

George was old school. He had high expectations and set a high bar for me. He was honest and I quickly learned he always lived up to his word. He believed

in returning phone calls and being polite and kind to adversaries, clients, judges and court staff. He was reasonable. I never heard him shout at anyone or insult anyone. He treated everyone, and their time, with respect. I quickly learned he was highly respected. He was what I wanted to become as a lawyer. It came as no surprise to me that he was awarded the New York State Bar Association Professionalism Award.

George taught me that collegiality was not only an important factor in practicing law but also a path to enjoying it more. He sponsored me for membership in the Blackstone Club of Ridgewood and encouraged me to become active in the Queens County Bar Association. I treasure my memberships in these two organizations to this day. As most of you know, he was a Past President of the Queens County Bar Association.

George and I were partners for about 30 years. I feel confident that I met his expectations, otherwise that would not have been the case. I cherished every day that we practiced together and the time we spent time

together outside of the office. Even after his retirement he continued to be the “chairman” of a small birthday club in which we were involved. I fully hoped to enjoy his company for some time to come.

I was in Galway City, Ireland with family members when I received the news of George’s death. It felt as if I was hit in the stomach with a sledgehammer. My mentor and friend was gone. It was like losing my Mom and Dad.

George told me frequently that the two best things that happened to him were Madeline and me. I will be forever grateful I was designated “the one”.



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5:30 PM – 7:00 PM

IMPLICATIONS OF TECHNOLOGY IN DOMESTIC VIOLENCE AND FAMILY COURT CASES

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The Intersection of Mental Hygiene Law Article 9 Proceedings and Article 81 Guardianship

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Moderator:
HON. BERNICE D. SIEGAL - New York State Supreme Court,
Queens County, Guardianship Part

Panelists:
JAMIE A. ROSEN, ESQ. - Partner, Chair, Mental Health Law
Group, Meister Seelig & Fein PLLC
ROBERT GOLDMAN, J.D., PSY.D. – Attorney and Clinical
Psychologist
LISA CALIGIURI BORANIAN, ESQ. – Principal Attorney,
Mental Hygiene Legal Service, 2nd Department
TAL SIMHONI – Part 36 Court-Appointed Guardian

Overview: This panel will discuss the differences and interplay between Mental Hygiene Law Article 9 proceedings and Article 81 guardianship matters. We invite all guardianship practitioners to learn about the issues impacting individuals with serious mental illness and better understand the role of various court-appointees in navigating these difficult cases.

Topics:

- Overview of serious mental illness, diagnoses and common symptoms;
- Inpatient psychiatric care, Article 9 proceedings, and the role of Mental Hygiene Legal Service;
- Capacity vs. “functional limitations”;
- Less restrictive alternatives to guardianship;
- The role of the Court Evaluator;
- The role of the Guardian when the Incapacitated Person suffers from a mental illness.

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Self-Care and the Importance of Being

BY FRANK BRUNO, JR.

"Rest and self-care are so important. When you take time to replenish your spirit it allows you to serve others from the overflow. You cannot serve from an empty vessel." - Eleanor Brown

"When you say 'yes' to others make sure you are not saying 'no' to yourself." - Paulo Coelho

Self-care is essential for maintaining physical, mental, and emotional well-being. More than indulgent activities like spa days & bubble baths, self-care is specific consistent actions to foster a healthier, more balanced life. Self-care is the practice of taking care of your physical, mental, and emotional health. It involves making choices that promote your well-being and reduce stress.

Engaging in healthy habits improves overall physical health, enhancing longevity and reducing the risk of chronic diseases. It significantly reduces stress and helps prevent burnout, allowing individuals to navigate daily challenges with resilience.

Practices such as mindfulness and therapy have been shown to alleviate symptoms of anxiety and depression, leading to improved mood and emotional stability. When individuals prioritize their well-being, they often experience increased productivity, as a healthy mind and body contribute to greater efficiency in all areas of life. Your mind is your body. Describe a shoreline...is it the sand or the water? Is it one or both? You cannot limit the shoreline to either-or and say that the shoreline is the sand alone; it must be both.

Care for yourself as part of your routine, consider the following strategies: Imagine a trident, mind, body and spirit.

Body is foundational. Exercise regularly or at least walk. A friend told me that getting into the sunlight and walking daily would solve most every problem I thought I had. Walking, dancing, lifting light or heavy weights or yoga. I recently played pickleball and thought that was great. I am looking to play more so invite me to your next match! If you like the activity then you will continue with it. Your body requires good food and the diet section is replete with contrasting theories. Probably a balanced diet emphasizing whole foods, and prioritize getting 7-9 hours of quality sleep each night. Get a physical from a doctor and take the routine colonoscopy and mammogram-choose the appropriate one for your body type. An ounce of prevention beats a pound of cure.

"Iron rusts from disuse; water loses its purity from stagnation...even so does inaction sap the vigor of the mind." - Leonardo da Vinci

Mind is the second prong of the trident and for lawyers is fairly important as well. Mental Self-Care

involves nurturing your cognitive health. Practice meditation in whatever form to enhance focus and reduce stress; use an app or search YouTube for a Guided Meditation or do it Fridays at lunch with Diana and the Bar. Do crosswords, sudoku, puzzles, long form writing. (As an aside, I highly recommend Julia Cameron's The Artist's Way. She emphasizes the use of "Morning Pages." A simple project that reaps many rewards. So easy to learn. That effort goes a long way to resolving mental health issues.) Learn a language or a new skill. Reinvent yourself. Find support through groups or therapy; asking for help is a sign of strength. Practice gratitude daily—think of three things you are thankful for—to shift to a positive mindset.

Spirit is the third prong. Spiritual Self-Care connects you to a deeper sense of purpose. Spend time in nature to recharge your spirit. Reflect on your values. Participate in purposeful activities such as volunteering, pursuing hobbies or self-reflection can greatly enhance your overall well-being. Religious Self-Care emphasizes the importance of nurturing your spiritual beliefs as part of self-care. Engage in regular prayer or meditation to connect with your faith and find inner peace. Engaging with your faith community and performing acts of service through religious organizations can enhance your sense of purpose while contributing to others.

Self-care is essential for health. Work on the trident of health. Start this week with a walk in the morning sunlight and silently reflect on gratitude—that will be the tip of the spear for each domain in one tiny effort.

"People do not decide their futures, they decide their habits and their habits decide their futures." - F. M. Alexander.

The truth is, success is not a one-time decision—it's a series of small, consistent actions. The habits we build today shape the results we see tomorrow, both in business and life.

Long-term thinking really is the key answer to so many questions. It might take you 30 days to create a habit, but that habit could change your life for the next 30 years. Depending on what it is, a new behavior may become automatic for you in about 66 days. Wildly different statistics are touted for how long it takes for a habit to stick. According to a 2009 article published in the European Journal of Social Psychology, it takes 18 to 254 days for a person to form a new habit. It might take you 1 hour to complete a workout, but it will keep you in a good mood for the rest of the day. When you engage in high-intensity exercise, your body and brain produce hormones and neurotransmitters that have a positive impact on your mood, memory, energy levels, and sense of well-being. Some of these are

known as endorphins, the body's feel-good chemicals. This can result in the "runner's high" that joggers talk about. It might take you 30 minutes to complete a morning routine, but it will build momentum for the rest of the day. Research suggests that establishing a morning routine helps reduce stress, increase focus and productivity, enhance mood, and boost overall mental health. When you wake up and take control of your morning, you set a positive tone for the rest of the day. Remember to make your bed!

It might take you 5 hours to read a book, but you'll keep the knowledge forever. When you read every day, you stimulate your mental activity. Numerous studies have been conducted to understand the benefits of reading. One of the prime benefits of reading books is slowing down mental disorders such as Alzheimer's and Dementia. It happens since reading stimulates the brain and keeps it active, which allows it to retain its power and capacity. It might take you 3 months to learn a new skill, but that skill could make you millions. The white matter in your brain is called myelin, and it helps improve performance on a number of tasks. The more people practice a new skill they are learning, the more dense the myelin in their brains becomes, which helps them learn even better. New skills make a person more well-rounded; more well-rounded individuals have an easier time relating to others and have more things in common with them. Being a more interesting person will draw others to you and improve the quality of your life as your relationships improve and deepen.

I forgot to mention drinking water. Apparently, that is important. Literature would suggest half of your body weight in ounces per day, although I am hesitant due to fluoride and microplastics (look it up) in the water. Probably it is over emphasized because I know very unhealthy people carrying around jugs of water. Your mileage may vary, however if you can get a fantastic filter and drink from a glass or copper vessel then drink away!

"Everyone knows they're going to die...but nobody believes it. If we did, we would do things differently... [T]here's a better approach. To know you're going to die, and to be prepared for it at any time. That's better. That way you can actually be more involved in your life while you're living." - Mitch Albom

Stay focused on self-care. Live in the magic of your own wonderful mind, body and spirit.

Frank Bruno, Jr. is Past President of the QCBA, a Member of the Board of Managers, a regular contributor to the Bar Bulletin and a practicing attorney for more than 26 years.

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The Practice Page

A LOOK AT CPLR 325

BY HON. MARK C. DILLON

Serves on the Appellate Division, Second Department

The New York State Constitution was amended by popular vote, effective January 1, 2022, to increase the monetary jurisdictional limits of the New York City Civil Court from \$25,000 to \$50,000 (NY Constit. Art. VI, sec. 15). While a doubling of that court's monetary jurisdiction sounds significant, it is not as much as it sounds. The Civil Court's earlier \$25,000 jurisdictional limit was established in 1983, and factoring in over four decades of inflation, the recent increase does not even fully restore its monetary jurisdiction to the present-day value which had earlier been established. In other words, the increase was not truly an increase, but merely a partial adjustment for years of inflation.

That said, the state's Constitution was not amended for other courts of limited jurisdictions such as the various city courts outside of New York City, the county courts, the district courts on Long Island, and the town and village justice courts elsewhere in the state. As to those courts, we are still living in the pricing we knew roughly four decades ago, when the national average for gas at the pump was \$1.16 a gallon. The true value of the monetary jurisdictions of the local courts are, as a practical matter, a third of what they used to be accounting for overall inflation (Inflation Tool Calculator, <https://www.inflationtool.com/us-dollar/1983-to-present-value>). Yet, those courts are the ones "closest to the people" with many matters prosecuted or defended *pro se*, so that the lessening of the value of the dollar makes those courts even "closer."

The Supreme Court, and the Court of Claims as to matters against the State of New York, are the only trial-level courts of unlimited monetary jurisdiction. The topic of the jurisdictional limits of the "lower" courts implicates CPLR 325. If our labyrinthian court system is a ladder, each court has its own higher or lower rung. CPLR 325 allows for the transfer of cases from a lower court to a higher court, or from a higher court to a lower court.

If a civil action is commenced in a lesser court but is of the value of a higher court, it may be removed to a higher court of proper monetary jurisdiction (CPLR 325[b]; *Smith v Monarch Life Ins. Co.*, 66 AD2d 482). The late Professor

David Siegel and Professor Patrick Connors, in their leading textbook on New York Practice, advise that if the lower court lacked subject matter of the action in the first instance, it lacks the jurisdictional authority to send the case "up" to a higher court, as only the higher court is jurisdictionally authorized to remove a lower matter to itself (Siegel, David D. and Connors, Patrick, *New York Practice* [6th ed.], p. 41, sec. 25; see also *Spinell v Doris L. Sassower, P.C.*, 155 Misc.2d 147). Removals to superior courts will arise when an action is commenced in a court that lacks the monetary jurisdiction to hear it (CPLR 325[a]). It may also arise when a plaintiff wishes to increase the damages sought in a pending action to a sum beyond the jurisdictional limit of the original court (CPLR 325[b]). In that instance, the removal motion to the superior court must be accompanied by an application to increase the *ad damnum* clause of the complaint (*Martin v Waldbaum's Supermarket*, 172 AD2d 804).

But more frequently, the issue of monetary jurisdiction involves the sending of a case "down" the ladder from a higher court to a lower one. As to that there are two different scenarios. The first scenario is when the parties consent to a CPLR 325(c) removal of the action to the lower court. In that instance, the parties, upon removal, are each subject to the jurisdictional limit of the lower court receiving the action (*Cadle Co. v Lisa*, 46 AD3d 422). The *ad damnum* clause in the plaintiff's complaint is the easiest and simplest clue about the value of the case in controversy. Parties may decide to consent or not consent to the removal of an action based upon jury pool issues, the economics of the case, the backlog of the superior court, the speed of the lower court's calendar, the complexity of the issues, and the quality of the lower court's bench. A waiver of a jury in the original court is not controlling upon an action removed to a lower court (CPLR 325[c]).

Nevertheless, higher courts such as the Supreme Court may remove matters to lower courts *without the consent of the parties* under CPLR 325(d) (Uniform Rule 202.13[a] through [i]). The justice in the superior court must determine from whatever information is available that the value of the action

likely falls within the monetary jurisdiction of the lower court (*Clark v Garth*, 36 AD2d 1012). The lower court to which the action is removed must have subject matter jurisdiction but for the amount of the damages demanded (*Chung v Kim*, 170 AD2d 232). Under those circumstances, the parties are not bound by the monetary jurisdictional limit of the lower court. In effect, the lower court hears the action with the monetary jurisdictional limit of the referring court (*Caffrey v North Arrow Abstract & Settlement Services, Inc.*, 160 AD3d 121). The amount of awardable damages is subject to one qualifier, that the lower court's jurisdiction is capped by the amount of damages demanded in the plaintiff's complaint (*Gordon v Board of Educ. of New York City*, 134 Misc.2d 284). A noteworthy case is *Reid v Incorporated Vill. of Floral Park*, 107 AD3d 777, where the Supreme Court dismissed the plaintiff's contractual claims as time-barred. Upon dismissal, the timely remaining claims were removed to a lower court, without the parties' consent, as they fell within the monetary jurisdiction of the lower court.

An interesting tidbit: When an action is removed upon the parties' consent, costs are awarded under the cost schedule of the court to which the action is removed. But if the removal is without consent, costs are awarded as if the action remained in its original court of filing (CPLR 8104).

Which brings our discussion back to the increase of the monetary jurisdictional limit of the New York City Civil Court. Predictably, more actions will now be removed from the Supreme Court within New York City to the Civil Court there, when the value of those actions appears to fall within the now-raised \$50,000 limit. Good news for the dockets of the Supreme Courts as each removal qualifies there as a "disposition," but not so much for the Civil Courts sitting in the same five counties comprising the City of New York. CPLR 325 shall have no greater or lesser effect upon the city courts elsewhere in the state, the District Courts on Long Island, and the town and village justice courts, whose monetary jurisdictional limits remain where they were in 1983.

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The Practice Page

May Astronauts Vote From Space?

BY HON. MARK C. DILLON

Serves on the Appellate Division, Second Department

It is election season. The Election Law has been in New York State's legal news lately, with cases involving whether the New York State Independent Redistricting Commission could timely propose a second congressional redistricting plan after an earlier plan had been judicially adopted and used (*Hoffman v New York State Independent Redistricting Commission*, 41 NY3d 341 [2023] [the commission could permissibly do so]), whether undocumented persons may constitutionally vote in New York City elections (*Fossella v Adams*, 225 AD3d 98 [2nd Dep't. 2024] [holding *inter alia* that citizenship is a requirement for voting]), and whether the language of the state constitution permits mail-in voting procedures other than for absentee ballots based upon travel or physical infirmity (*Stefanik v Hochul*, __ NY3d __, 2024 WL 3868644 [decided Aug. 20, 2024] [the state's Early Voter Act was found to be constitutional]).

Let us zoom out from New York State to the larger planet. American astronauts Suni Williams and Butch Wilmore are presently in orbit upon the International Space Station (ISS). They went into orbit aboard the Boeing Starliner spacecraft in June 2024 (Clayton Sandell, "Voting in Space: NASA's Got You Covered," *Scripps News*, available at <https://www.scrippsnews.com/politics/america-votes/voting-in-space-nasas-got-you-covered>). They were expected to have returned to earth by now but have been unable to do so because of ongoing mechanical and safety problems with the Starliner. The astronauts are over 200 miles above earth and traveling within the ISS at the speed of 17,500 mph (Amy Stamm, "How Do Astronauts Vote From Space?" *National Air and Space Museum*, available at <https://airandspace.si.edu/stories/editorial/how-do-astronauts-vote-space>). The Starliner has been found by NASA to be insufficiently reliable to return the astronauts to earth. Elon Musk's company, SpaceX, has been recruited to bring the

stranded astronauts back to earth aboard its Crew Dragon Aircraft, though SpaceX cannot do so until February 2025 (Ed Malaker, "Stranded in Space: Why NASA Is Counting on SpaceX After Boeing's Starliner Glitches," *Geeksided*, available at <https://geeksided.com/posts/stranded-in-space-why-nasa-is-counting-on-spacex-after-boeing-s-starliner-glitches-0lj6cce1mbrg#:~:text=The%20Mission%20That%20Went%20Awry,in%20the%20first%2024%20hours>). In the meantime, there are federal and state elections scheduled to be conducted on November 5, 2024. May the stranded astronauts vote? Can they access absentee ballot material from space? Or, by virtue of being unexpectedly stranded on the ISS this fall, are they unable to avail themselves of the right to vote in the 2024 election?

Most astronauts reside in the State of Texas within a commutable distance from the Johnson Space Center (*Id.*). In 1997, the Texas legislature enacted Administrative Code section 81.35, which provides that "[a] person who meets the eligibility requirements of a voter under the Texas Election Code, Chapter 101, but who will be on a space flight during the early-voting period and on Election Day, may vote." How may they do so, particularly if a lengthy stay in space is unexpected as with astronauts Williams and Wilmore? The Texas legislation provides that upon request, an electronic ballot can be uplinked to the astronauts by the Johnson Space Center's Mission Control. The astronauts may access their ballots by using a set of unique credentials sent to each of them by e-mail, fill out their ballots, and then downlink them back to earth. They must list their current address on the ballot as "low earth orbit" (Kassandra Brabaw, "Election 2022: How Astronauts Vote From Space," *Space.com*, available at <https://www.space.com/how-astronauts-vote-from-space>).

Voting from space, like law, can be complicated. The astronauts' filled-out ballot initially travel electronically from orbit to NASA's Near Space

Network, managed by NASA's Goddard Space Flight Center in Greenbelt, Maryland. From there, the ballot travels through a Tracking and Data Relay Satellite to a ground antenna located at the White Sands Complex in Las Cruces, New Mexico. From New Mexico, NASA transfers the ballot to the Mission Control Center at the Johnson Space Center in Houston, and from there, to the particular county clerk's office responsible for accepting and casting the ballot (*Id.*). Encryption of the transmissions maintains the secrecy of the astronauts' votes.

Astronaut David Wolf was the first American to vote from space, which occurred in 1997 while on board the Russian Space Station, Mir ("How NASA Transmits Votes From the Space Station," *NASA*, available at <https://www.nasa.gov/missions/station/how-nasa-transmits-votes-from-the-space-station/>). More recently, astronauts Jasmin Moghbeli and Loral O'Hara voted from the ISS in the Super Tuesday primaries held on March 5, 2024 (Oren Oppenheim, "NASA Astronauts Say They Cast Their Super Tuesday Ballots From Space," *ABC News*, available at <https://abcnews.go.com/Politics/nasa-astronauts-cast-super-tuesday-ballots-space/story?id=107825624>). The Texas voting procedure is available to astronauts Suni Williams and Butch Wilmore, if either or both wish to vote in the November 5, 2024 election.

Technology is a remarkable thing. Voting from space is good news, though perhaps out of this world.

Mark C. Dillon is a Justice of the Appellate Division, 2nd Department, an Adjunct Professor of New York Practice at Fordham Law School, and a contributing author of CPLR Practice Commentaries in McKinney's.

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Preserving Your Legacy: A Guide to Protecting Assets & Inheritance

An elder law estate plan revolves around crucial questions that shape your choices. Firstly, it addresses the fate of your assets after you pass away. Secondly, it anticipates the scenario of needing long-term care and how it might impact your assets. A well-rounded plan seamlessly addresses both issues, ensuring not only the smooth transfer of assets to your beneficiaries but also safeguarding them from being depleted by long-term care expenses.

Securing long-term care insurance stands as the most effective defense against the financial challenges associated with extended care needs. When contemplating this insurance option, critical considerations involve defining an appropriate daily benefit amount and incorporating an inflation rider to match the escalating costs of nursing home care. Notably, long-term care insurance goes beyond by covering the expenses of home health aides, empowering individuals to gracefully age within the familiarity and comfort of their own homes, steering clear of the need for relocation to a facility. In case you're unable to obtain long-term care insurance, there's a backup plan called Medicaid Asset Protection (MAPT). Assets held in MAPT for at least five years are shielded from nursing home expenses, and upcoming laws may extend protection to two and a half years for home care.

Explore the option of using trusts instead of wills to bypass probate, which is a legal process initiated when you pass away with assets solely in your name. Trusts are harder to challenge than wills, especially if you're disinherit a child. In general, trusts streamline the estate settlement process, saving both time and money.

Opt for Inheritance Protection Trusts when leaving assets to your children instead of direct distributions. These trusts serve as a protective measure during your children's divorces, ensuring that in the unfortunate event of your child's passing, the inheritance is preserved for your grandchildren rather than being vulnerable to claims from your children's spouses.

Elder law estate planning is a comprehensive approach tailored to address the unique legal and financial concerns that individuals face as they age. Moreover, elder law estate planning aims to mitigate potential tax liabilities, ensuring that as much of the estate as possible goes to the intended heirs rather than being depleted by taxes or other financial burdens.

In essence, an elder law estate plan does three main things: (1) safeguards your assets from long-term care expenses, (2) passes assets to your heirs while minimizing taxes and legal fees, and (3) ensures your grandchildren inherit while shielding the legacy from your children's divorces.

Elder law estate planning offers a holistic approach to secure the well-being of seniors, protect their assets, and provide a clear roadmap for the distribution of their estate according to their wishes. By taking a proactive stance, individuals can steer the complexities of aging with confidence and ensure a legacy that aligns with their values and goals.



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- Elder Law & Estate Planning
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Family Law Committee Update

BY JOSHUA R. KATZ, ESQ.
FAMILY LAW COMMITTEE CO-CHAIR

Happy New Year 5785 to those who celebrate. Or Year 148 of the Queens County Bar Association! This also happens to be my 10th anniversary as co-chair or vice chair of the Family Law Committee. I am humbled and honored to contribute this Family Law Update on behalf of our distinguished committee and my co-chair, Ravi Cattry.

So, what has changed in 2024? Very little. It is exciting to have stability with the same justices sitting in our four matrimonial parts, and to welcome back retired Judge McGowan as a JHO handling trials and helping to move calendars with alacrity.

In case you missed it, this year we saw the maintenance “cap” increased to \$228,000 and the child support “cap” bumped to \$183,000.

On the legislation front, we are anticipating a new Article 515 to be added to the CPLR mandating that actions for divorce be filed in the County where one of the parties resides. Legislative comments indicate, “This bill is designed to further access to justice by

distributing judicial resources more fairly, speed the processing of divorce cases in counties overburdened by non-resident filings.” Notably, no such “overburdened” county is mentioned. I ask this: How does forcing us to file all our uncontested divorces in Queens, an overburdened county working on 11-month back-ups in the matrimonial clerk’s office, and preventing us from filing those in an upstate county with only a 3-week back-up, help accomplish this goal? If Governor Hochul is reading this, I beg you not to sign this bill into law.

I’m not sure if it’s the stress of an election year, post-Covid blues, inflation, or escalating International wars, but my colleagues consistently tell me they’ve been extra busy this year. Seems the divorce business is booming in Queens. Here are some issues I’ve encountered this year that are discussion-worthy:

Custody: Forget the XYZ Generations. Children today seem to be the “Me” Generation. Perhaps I’m becoming an old man, soon to be sitting on a rocking

chair yelling at the kids to get off my lawn. The job of the Court is to determine the best interests of the children involved in custody disputes, by weighing a multitude of factors. One of those factors is the desire of the children. But, at what age does a child’s preference matter? Should a 6-year-old telling the Court that mommy is better at Fortnite or daddy cooks better spaghetti be considered? Should the Court bother appointing an AFC for a 3-year-old? Does a spoiled 9-year-old get to decide? Are we placing too much reliance on the position of the AFC, further empowering “Me” Generation children?

When a parent is accused of domestic violence or substance abuse, must the Court require supervised parenting time? If so, for how long? How long must the Court monitor sobriety. Quick plug: join us December 6 on Zoom for a 3-CLE credit Family Law Symposium (presented in conjunction with FamilyKind, Our Family Wizard and Soberlink) where a panel of experts will discuss these important issues.

Child Support: As shared residential custody grows in popularity, judicial discretion and inconsistency continue as a theme for protracted litigation in this area. Until our Legislators (the same ones proposing CPLR 515!) or Appellate Courts provide clear guidance, the amount of child support to be paid in a 50/50 custody situation remains a mystery.

Quick cautionary tale: if there’s a child support order and the parents reconcile, go back to Court to vacate the order! Or be prepared to pay arrears if you break up again.

Equitable distribution: Why do I still encounter experienced divorce lawyers who attempt to apply Majauskas to deferred compensation plans? Shameless plug #2: on January 9 at 5:30 pm via Zoom, we are hosting 1-credit CLE sponsored and presented by Tova QDRO and Pension Valuators. Learn the right way to draft settlement language for retirement assets. We all need to attend!

Businesses are not generally distributed equally. The burden is on the non-titled spouse to prove value, and to prove contribution. If separate property appreciates during a marriage, the non-titled spouse must prove contribution to make a claim to share in the appreciation. Join us for our annual Equitable Distribution Update in April.

Counsel fees: Quick reminder: While there is a presumption that counsel fees shall be awarded to the lesser monied spouse, our judges have discretion. There is no mathematical formula contained in the statute, and the Courts should consider the relative merits of each party’s position, delays or unnecessary litigation tactics.

Quick advice: prenups are growing in popularity for a reason. They might not be romantic, but a properly drafted prenuptial agreement can save tens of thousands of dollars and years of litigation.

Hope to see you at our upcoming CLE’s! And now for a quick exit so as not to delay or protract this update.



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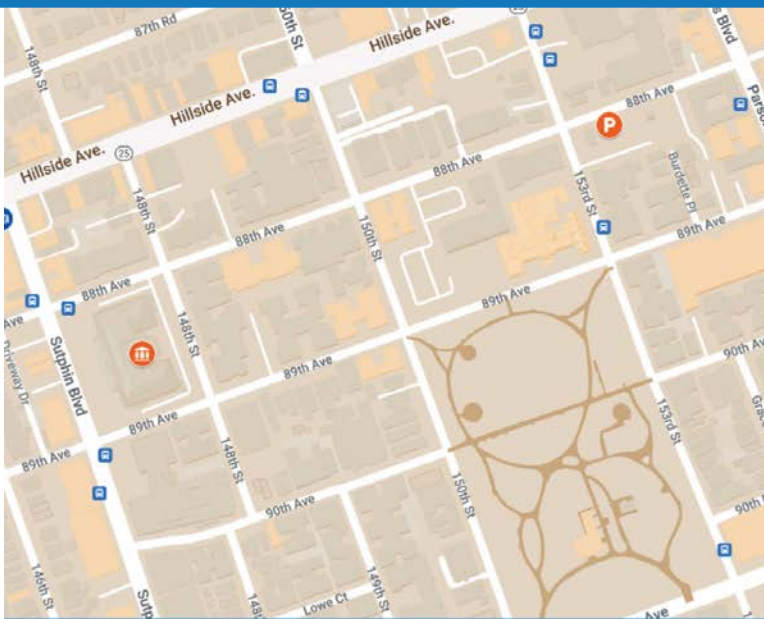
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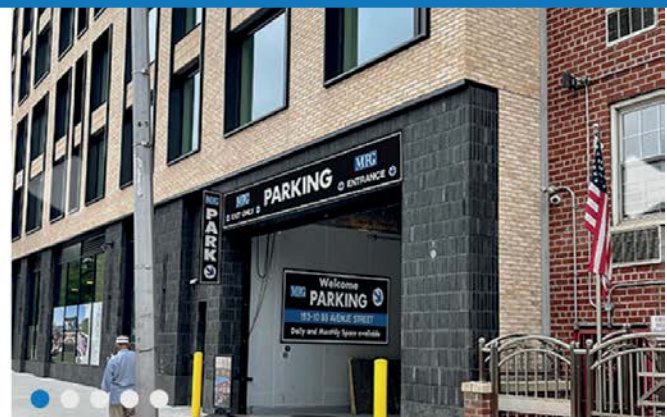
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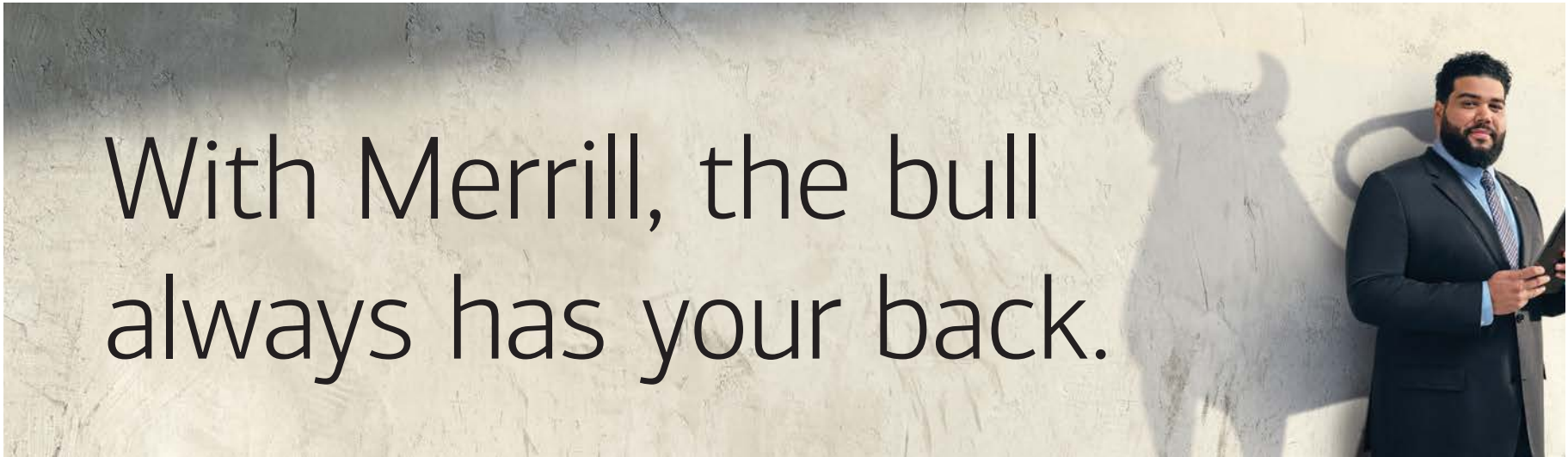
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