



Mason, Griffin & Pierson, P.C.
Counsellors at Law • Since 1955

ESTATE PLANNING SEMINARS with Valerie L. Howe, Esq. and Allen N. Grossman, Esq.

Ms. Howe and Mr. Grossman will address various aspects of estate planning, including Wills, Living Wills, Powers of Attorney, and federal and New



Jersey estate taxes at two seminars to be held on **Tuesday, October 14** and **Tuesday, October 21** at 5:30 pm at the Nassau Club in Princeton. Valerie L. Howe has a Masters Degree in Tax Law and is a senior member of the firm's Estates & Trusts Practice Group. Allen N. Grossman is Of Counsel to the firm's Estates & Trusts Practice Group. Ms. Howe and Mr. Grossman are members of the National Academy of Elder Law

Attorneys and the Mercer County Estate Planning Council. The seminars are free and open to the public. A light buffet dinner will be served. Please



call 609-436-1239 or email j.jones@mgplaw.com to register for either seminar.

PRE-REGISTRATION IS REQUIRED.



FALL 2008

Counsellor

Timely News and Information from Mason, Griffin & Pierson, P.C.

ARBITRATION CLAUSES- CLARITY IS KEY

by Joseph C. Tauriello, Esq.

When resolving disputes, many businesses continue to look to binding arbitration as an alternative to traditional litigation. Arbitration is an effective way to preserve client relationships, maintain confidentiality, reduce litigation costs and shorten the duration of the dispute. In light of the current hiring freeze for judicial employees as well as the continued delay in filling judicial vacancies, the time that it takes to resolve disputes within the New Jersey Court system may soon become even more important to persons engaged in lawsuits. These factors may negatively impact the current backlog and delay the final court settlement. Accordingly, it is worth revisiting some general principles involving arbitration clauses as persons involved in lawsuits continue to look for effective dispute resolution alternatives. While New Jersey courts continue to uphold agreements to arbitrate, it is of

paramount importance that the terms of the contract be unambiguous. In a recent unpublished court opinion, the New Jersey Appellate Division emphasized this when it invalidated an arbitration clause within a consumer contract. The Court's opinion underscored the importance of ensuring that an arbitration clause contain an explicit agreement to arbitrate, as well as containing a clear waiver of one's statutory right to a jury trial. Among other things, the complaint alleged breach of contract. Specifically, it asserted violations of the New Jersey Consumer Fraud Act. The defendant asked the court to dismiss the suit and to compel arbitration according to the contract. Courts look to the specific language contained within the arbitration clause when seeking to determine whether a party has "clearly and unmistakably" waived its statutory rights to a

continued on back

NJ TOWNS CANNOT REGULATE RESIDENCY OF CONVICTED SEX OFFENDERS

by Allison S. Zangrilli, Esq.

On July 15, 2008, the Appellate Division of the New Jersey Superior Court affirmed two lower court decisions that invalidated municipal regulations restricting where convicted sex offenders could live. In the two cases, the Appellate Division considered municipal regulations similar to those enacted in over 100 municipalities in every county throughout the State of New Jersey. The

Court determined that State law ("Megan's Law") took precedence over municipal regulations which it said hamper the long-standing state-wide plan that limits where convicted sex offenders can live.

Over the last several years, towns throughout New Jersey have enacted regulations restricting where convicted sex offenders can live and work. These

continued on back

Arbitration Clauses-Clarity is Key *continued from front*

jury trial. The Court stated that other factors were also considered when it determined that the consumer had failed to knowingly waive their statutory right to a jury trial. Accordingly, the Court was concerned with the notion of fundamental fairness and whether parties had knowingly and intentionally waived the rights afforded to them under the law.

How we define fundamental fairness is often determined by defining what process is due in any given dispute resolution mechanism. The American Arbitration Association (AAA) has developed a statement of principles, collectively referred to as "Consumer Due Process Protocols," that embody generally accepted principles and may provide guidance in crafting effective and enforceable arbitration procedures (found at www.adr.org). The first Principle is that "All parties are entitled to a fundamentally fair Alternative Dispute Resolution (ADR) Process." The second statement of the Principles may have saved the arbitration provision that was struck down by the Court in the case referenced above. That Principle, entitled, "Access to Information Regarding ADR programs,"

states: "providers of goods and services should undertake reasonable measures to provide consumers with full and accurate information regarding Consumer ADR programs...[S]uch measures should include (1) clear and adequate notice regarding the ADR provisions...and (2) reasonable means by which consumers may obtain additional information regarding the ADR program."

While recent court opinions and private dispute resolution protocols provide guidance for ADR, now, more than ever, it is imperative that experienced legal counsel be engaged in drafting effective and enforceable arbitration clauses.



Joseph C. Tauriello is Of Counsel to the firm. He is an Associate Professor at Raritan Valley Community College teaching ADR, Business Law, Torts, and Criminology, and is an Administrative Office of the Courts Qualified Mediator. Mr. Tauriello is a member of the firm's Litigation Practice Group and can be reached at 609-436-1206 or j.tauriello@mgplaw.com.

NJ Towns Cannot Regulate Residency of Convicted Sex Offenders

continued from front

regulations generally prohibit the offenders from living and/or working within a certain radius of various locations including schools, parks, playgrounds, day care centers, recreation fields, bowling alleys, convenience stores, community centers, houses of worship, beaches and, in many cases, other places where children might gather.

While the municipalities argued that the regulations were intended to supplement Megan's Law by adding an extra layer of protection for the children of the communities, the Appellate Division disagreed. The Court concluded that Megan's Law is "pervasive and comprehensive" and should be the only law governing the supervision of sex offenders.

The Court specifically found that local regulations conflict with the provisions of Megan's Law that require sex offenders to live and/or

relocate only in places approved by their parole officers. Megan's Law also states that information received by municipalities about convicted sex offenders cannot be used to deny them housing. Unless the issue is heard by the New Jersey Supreme Court and the Justices decide differently, local sex offender residency regulations throughout the State will now be unenforceable.



Allison S. Zangrilli, Esq. is an associate with Mason, Griffin & Pierson, P.C. She is admitted to practice law in New Jersey, Pennsylvania and New York. She is a member of the Mercer County Bar Association and the Board of Trustees of the Megan Nicole Kanka Foundation. Ms. Zangrilli is a member of the firm's Local Government Law and Real Estate and Land Use Practice Groups and she can be reached at a.zangrilli@mgplaw.com or 609-436-1214.

Practice Groups

Business & Banking • Employment Law • Estates & Trusts • Litigation
Local Government Law • Real Estate & Land Use



Mason, Griffin & Pierson, P.C.
Counsellors at Law • Since 1955

101 Poor Farm Road • Princeton, NJ 08540 • 609-921-6543 • www.mgplaw.com

2 Tree Farm Road, Suite A230 • Pennington, NJ 08534 • 609-436-1270

DISCLAIMER: The material contained in this newsletter is published for informational purposes only. This newsletter is not offered, and should not be construed, as legal advice. Receipt of this newsletter is not intended to create an attorney-client relationship with the attorneys of Mason, Griffin & Pierson, P.C. You should not act or rely upon information contained in this newsletter without specifically seeking the advice of a legal professional.

*If you would prefer to receive our newsletter via email, or if you do not want to receive our newsletter, please let us know.
609-436-1261 or k.mason@mgplaw.com – Archived newsletters are at www.mgplaw.com/main/newsletter.asp*