

**BROOKS
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BROOKS, LLP**



REAL PROPERTY TAXES

If you change your mailing address, let the taxing authorities know!

A recent Court of Appeals case illustrates the importance of being sure people know how to find you. This case is all too typical of what can happen when a property owner fails to pay real estate taxes and a dispute results about whether the owner has been given adequate notice of the tax foreclosure proceedings. In virtually all of these cases, the owners lose to the County and are at the County's mercy to obtain their property back. Orange County Commissioner of Finance v. Helseth, 18 N.Y. 3d 634 (2012) is a typical case of a property owner changing an address and the County records not be updated. Why is this so important? Because the constitutional requirements for a county tax foreclosure is to (1) mail a personal notice to the landowner by certified mail *at the landowner's last known address on record in the county real property tax office*, (2) publish a notice of foreclosure in the local newspaper and (3) post the notice in "conspicuous" places at the county finance office, county clerk's office and the county courthouse. As is usual with these cases, the certified mail winds up being returned as unclaimed.

So, if the unfortunate landowner does not happen to see the tax foreclosure notice against him or her in the newspaper or in the "conspicuous" places around official county offices, the landowner will never know the foreclosure process has started and will eventually, some months later, wind up losing his or her property to the County.

Does this really happen? Yes. We have had several calls over the years of people that have been foreclosed on by the County and were anxiously scrambling to try to get their property back. Some counties are more generous than others, so seeking forgiveness and asking for your property back is not the best course of action. Advising your local assessor, tax collector and the county department of real property tax services of your new address (and I would send it certified mail) is always the best choice. Of course, if the reason for your change of address is the fact that you sold the property to somebody else, then future taxes on that property are not your problem anymore.

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Free Workshops

October 23, 2012

Frewsburg American
Legion
6:30 to 8:30 p.m.

November 8, 2012

Westfield YWCA with
Andersen Cuddihy, Inc.
6:30 to 8:30 p.m.

HEALTH CARE PROXY LAW UPDATE

Over a year ago the Elder Law Section of the State Bar Association proposed an amendment to the Health Care Proxy Law, which if passed, would permit the agent to make decisions about transporting a patient to a particular hospital or other facility when the patient is unconscious or unresponsive. The proposed amendment is intended to cure the problem created by a 2009 federal court case, *Stein v. County of Nassau, et al*, which held that when outside of a hospital or other medical institution, a health care agent does not have the authority to direct where a patient is transported. The Court relied upon a provision in the law that requires the agent to first consult a medical professional in a medical facility before making any decisions.

Of particular note in the Stein case was the fact that the patient had fairly recently undergone treatment at one particular hospital and all of his records and attending physicians were there. The rescue EMT's were under the obligation to transport Mr. Stein to a different facility, only a mile or two away from Mr. Stein's hospital. Given the short distance between the two, it would seem to have made more sense to send Mr. Stein to the hospital that had his records and where his attending physicians were. Because of the interpretation of the current law, it became necessary for the Elder Law Section to champion an amendment to the law to give the agent the right to make these types of decisions.

I am pleased to report that the State Senate and Assembly have both passed the proposed amendment, and at last report, it was sent to the governor's office for signature. As of the time of this writing, we cannot confirm that it has been signed, but if not, it should be very shortly.

There is one limiting factor to an agent's ability to make transportation decisions. The power to make this decision does not apply in cases involving major medical trauma, when a patient requires immediate medical treatment. In that case, it will be the EMT's decision to transport to the closest medical facility.

We give you this information so that you may be informed of the new law and the agent's new right to make this type of decision. *Caveat: We have not been able to confirm that the Governor has indeed signed the legislation and the above information is given with that limitation.*

ADDITIONAL NOTE: Because the use of a Health Care Proxy can be in very critical situations, on an emergency basis, it is important to be sure that your Health Care Proxy will be accepted in the states other than New York. People do travel and New Yorkers do winter in southern and western states. To meet this challenge, we at Brooks & Brooks have for some time added language to our Health Care Proxy forms to specifically reference a "surrogate" appointment for Florida and appointment language used in other states. This is to ensure that health care professionals (doctors, nurses and most importantly, EMT's) recognize language in our Health Care Proxy forms that is applicable in their states, and therefore, not raise a question of the document's applicability in their state. When traveling, it is always advisable to have a copy of your Health Care Proxy in your pocket, suitcase or glove compartment of your car. That way, in an emergency situation it is much more likely that the document will be available and the agent contacted, if need be.