

# LGBT SideBar

A Newsletter From

VISHNICK MCGOVERN MILIZIO LLP

Specifically for the Lesbian-Gay-Bisexual-Transgender  
(LGBT) Community

## A Letter from the Managing Partner

**WELCOME** to the second issue of Vishnick McGovern Milizio LLP's *LGBT SideBar*. With a dedicated LGBT Representation practice, we've been working to ensure that our LGBT clients, friends and community at-large recognize our firm as a valuable resource and powerful advocate. That's why we're so pleased to announce the launch of our new LGBT-focused website:

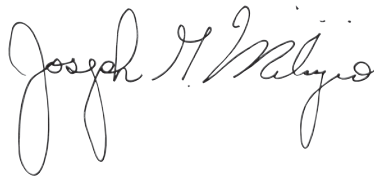
[www.LGBT-VMMLEGAL.com](http://www.LGBT-VMMLEGAL.com)

At [www.LGBT-VMMLEGAL.com](http://www.LGBT-VMMLEGAL.com), you'll not only find a comprehensive description of our legal services for the LGBT Community, but also LGBT-related events, publications, articles and press mentions. We encourage you to visit often, as we will be adding topical and timely content on a regular basis.

In addition to providing valuable information and legal counsel to our LGBT clients and friends, our firm is working to become an integral part of the conversations and issues that affect the LGBT community. To this end, we are actively speaking on legal topics and solutions for same-sex couples at various organizations, and have lent our support to the Human Rights Campaign as they begin an event series that engages political leaders in LGBT issues. In fact, as you'll see below, we are hosting the first such event, which will bring Nassau County Executive Tom Suozzi to speak at our offices. We hope you can join us for this exciting evening.

In the meantime, we hope you enjoy this issue of the *LGBT SideBar*. As always, if you have any questions about the topics you see here or any other legal questions, please don't hesitate to contact us at 516-437-4385 or email me directly at: [JMilizio@vmmlegal.com](mailto:JMilizio@vmmlegal.com).

Best wishes for a joyful holiday season!




Joseph G. Milizio, Esq.  
Managing Partner

## table of Contents

### Page 1

A Letter from the Managing Partner  
Joseph G. Milizio, Esq.

Tom Suozzi to Speak at VMM Office on  
November 23rd!

### Page 2

Discrimination in Co-Ops  
By John P. Gordon, Esq.

Legal Brief: Calling Someone a  
Homosexual is Not Defamation Per Se –  
Judge Says

### Page 3

Legal Brief: Bills That Significantly  
Benefit People Living With HIV Pass  
NY State Senate

Events

Fun Fact

### Page 4

Legal Brief: New NY Power of Attorney  
Law Is Especially Important for LGBT  
Community

Legal Brief: NY State Bar Association  
Joins Forces With The American Bar  
Association To Push For A Repeal For  
A Part Of DOMA

## Tom Suozzi to Speak at VMM Office on November 23rd!

Vishnick McGovern Milizio LLP will host the Human Rights Campaign event: "A Conversation with Nassau County Executive Tom Suozzi." This is the first in a series of conversations on Long Island, organized by the Human Rights Campaign, that will feature local political leaders addressing issues that affect the LGBT community. We hope you can join us.

**Details on Page 3!**



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# Discrimination in Co-Ops

By John P. Gordon, Esq.

There is a long-standing rule of law, called the business judgment rule, that protects boards of directors from being second-guessed by courts on their decisions. As long as the decision was made within the scope of the board's authority, and the decision is made to further a legitimate corporate purpose and not in bad faith, the decision will not be reviewed by the court. Simply stated, courts will not second-guess business decisions made by corporate boards. In New York, the courts have applied this rule to cooperative boards and condominium boards.

The purchase or sublease of a cooperative apartment always requires board approval. A co-op board can, and often will, reject an applicant with no stated reason. Boards do not have to give an explanation for the rejection. This is often frustrating to shareholders who are trying to sell their apartments, and applicants who suspect that there is a discriminatory reason for the rejection.

However, if challenged in court, the board will have to provide a legitimate and non-discriminatory reason for the decision. Laws prohibit making housing decisions based on, among other things, a person's sexual orientation. If the individual presents a "prima facie case" of discrimination, then the co-op board must prove that the given reason is not a mere pretext for an underlying discriminatory motivation.

Cooperative boards are also prohibited from discriminating in making the decision of whether to make repairs to an individual's apartment who is in a protected class. This is the central issue in a case that is scheduled to be heard next month,



involving a Kew Gardens, Queens cooperative board. In that case, the three apartments on the top floor are all owned by homosexual shareholders. The board is being accused of refusing to make repairs to the apartments, after a leak was found from the terrace to their units. The plaintiff in the case also had her apartment damaged by a broken pipe in the building, and the board refused to fix the damage. The board and other shareholders are also accused of making anti-gay slurs against these shareholders.

The court will decide the factual issues involved based on the evidence available, but one thing is clear, boards in the future will think twice before making a decision that could negatively affect a shareholder. Otherwise, they may find themselves having to explain their decisions in a public forum – the courthouse. **M**

*John P. Gordon, Esq. is an Associate in Vishnick McGovern Milizio's Business and Real Estate Practice Group. He can be reached at 516-437-4385 ext. 143, or via email at: [Jgordon@vmmlegal.com](mailto:Jgordon@vmmlegal.com).*

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## Calling Someone a Homosexual is Not Defamation Per Se – Judge Says

*In a 58 page decision, U.S. District Court Judge Denny Chin recently ruled that calling someone a "homosexual" is not considered defamation per se.*



### The Case

This ruling was the result of a high-profile case between Howard K. Stern, the former attorney and lover of the late model and tabloid sensation Anna Nicole Smith, and Rita Cosby, a journalist and Smith biographer. In her book about Smith's life, Ms. Cosby claimed that Mr. Stern had engaged in sex with Larry Birkhead, the man who fathered Ms. Smith's daughter. Mr. Stern brought the suit for this statement, as well as 18 other, what he described as, "defamatory statements."

### The Issues and The Outcome


Prior to Stern v. Cosby, New York's highest court had never confronted this issue. After careful consideration and in an attempt to predict how the high court would rule, Judge Chin ruled that due to a "veritable sea change in social attitudes about homosexuality," calling someone a homosexual is not defamation per se.

It should be noted, however, that Judge Chin's position runs counter to an opinion of a Southern District colleague and several state Appellate Division rulings. He noted that he is not bound by these decisions. In explaining his decision, Judge Chin said there was insufficient evidence of malice on the part of Ms. Cosby (a criteria for defamation), though he found the actions which led her to make statements in her book "extremely troubling." Judge Chin did concede, however, that statements asserting homosexual conduct might be susceptible to a defamatory meaning by a jury and therefore Stern will have to prove special damages. Of particular interest is Judge Chin's reliance on papers filed by the Lambda Legal Defense and Education Fund, which argued that "because it is 'neither shameful nor disgraceful to be identified as lesbian or gay, it is not defamatory per se to describe someone as gay.'" **M**

## legal Brief

### Bills That Significantly Benefit People Living With HIV Pass NY State Senate

Three bills that have the capacity to significantly benefit people living with HIV and enhance HIV prevention efforts passed the NY State Senate over the summer.

1. S2664 is a bill that provides that persons living with clinical/symptomatic HIV or AIDS, and who are receiving housing assistance or an emergency housing allowance, shall not be required to pay more than 30% of the household's monthly unearned and/or earned income towards housing costs, including rent and utilities.
2. S3164, known as the Family Health Care Decision Act (FHCD), grants medical decision-making authority to loved ones of an incapacitated patient who does not have a health care proxy or other advance directive. It permits an individual's family member, domestic partner and close friends to make health care treatment decisions when the individual no longer has decision making capacity.  
  
Note: Although the bill could benefit any person who has not previously signed a health care proxy or living will, if a health care decision is disputed, or a person who would otherwise be entitled to act as a decision-making surrogate (such as a blood relative), objects to the decision by the first appointed surrogate (such as a partner), the matter must be brought to an administrative tribunal for decision. Vishnick McGovern Milizio attorneys recommend that clients have the proper documents in place before an emergency occurs.
3. S3842 is a bill that provides for review by the Department of Health of policies and practices regarding HIV, AIDS, and Hepatitis C virus at correctional facilities in New York State. This bill passed the Assembly and was signed into law by Governor Paterson. 

## fun fact

### Ben & Jerry's Honors Gay Marriage with a modified flavor: Hubby Hubby

On September 1st, gay and lesbian couples in Vermont won the legal right of marriage. Vermont-based ice cream icon Ben & Jerry's celebrated this legal milestone by temporarily renaming its popular Chubby Hubby flavor to Hubby Hubby. Scoops of Hubby Hubby were offered through the month of September.



## news & Events

### OCTOBER

#### 10•8

Joseph G. Milizio, Esq. of Vishnick McGovern Milizio delivered a speech on Thursday, October 8, 2009 on the use of planned giving vehicles used to create legacy support of non-profit organizations. The presentation was given specifically for LIGALY and SAGE-LI.

#### 10•13

VMM Partners Joseph Trotti and Joseph G. Milizio, in collaboration with Peter Carrozzo, Esq., conducted a "Town Hall" meeting in our office on the history of the Defense of Marriage Act, commonly referred to as DOMA. The presentation was well attended, and focused on how and why DOMA is unconstitutional.

### NOVEMBER

#### 11•14

Joseph Milizio, Esq. spoke on the topic of LGBT Family Law at the Long Island Gay and Lesbian Film Festival that ran from November 13th through the 19th.

#### IN THE MEDIA

Look for Joseph Milizio's article on "Estates for Life" in the fall issue of Outlook Magazine.

#### 11•15

Joseph Milizio, Esq. spoke on the topics of Granting Full Equality to Same-Sex Couples and Families, and Adoption by Same-Sex Couples at the Parents, Families & Friends of Lesbians and Gays (PFLAG) L.I. Chapter meeting. For more information, please visit: <http://pflagli.org/events.html>

#### 11•23

### Nassau County Executive Tom Suozzi to speak at VMM for Human Rights Campaign Event!

**Date:** Monday, November 23rd  
**Time:** 7:30 pm  
**Place:** Vishnick McGovern Milizio LLP  
3000 Marcus Avenue, Lake Success, NY 11042

**RSVP REQUIRED** as space is limited! If you would like to attend, please RSVP by November 19th to Sandy Shannon via email at: [sandyshannon@optonline.net](mailto:sandyshannon@optonline.net)

### DECEMBER

#### 12•15

Joseph Milizio, Esq. will speak on the topic of Religious Freedom and Gay Rights at the Theodore Roosevelt American Inn of Court.



## New NY Power Of Attorney Law Is Especially Important For LGBT Community

We recommend powers of attorney to most of our clients, but particularly to our LGBT clients, since same-sex couples do not enjoy the same protections under law. As you may know, New York law recently made drastic changes to the power of attorney laws, creating a new statutory power of attorney form effective September 1, 2009.

### Drastic Changes to NY Power of Attorney Laws Took Effect on 9/1

While the old form will still be legally valid if executed prior to September 1, 2009, as the circulation of the new form increases, it may become more difficult convincing banking institutions and others to accept the old form. For estate planning

purposes, execution of the new form is recommended. The most substantial change from the old form is the new requirement that a separate “Statutory Major Gifts Rider” must be attached in order to permit gifts exceeding \$500. Because the Statutory Major Gifts Rider must be executed in the manner required for the execution of a Will, it will now be more important than ever to consult your attorney when executing the new form.

If you have any questions about establishing power of attorney, please contact us at 516-437-4385. 


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## NY State Bar Association Joins Forces With The American Bar Association To Push For A Repeal For A Part Of DOMA

It's been a busy time advocating for same-sex marriage. As we told you in the spring of this year, the Special Committee on LGBT People of the New York Bar Association was successful in leading the passage of a resolution that states, “should New York wish to create equality between same-sex and opposite-sex couples, it has no choice but to reject the second-class model of civil unions and to endorse full marriage equality.”

Just a few months later, the NY State Bar association elevated its efforts to advocate for equal protection for same-sex couples. In August 2009, the NY State Bar Association co-sponsored an American Bar Association resolution urging Congress to repeal part of the federal Defense of Marriage Act, more commonly known as DOMA.

By way of a little background, determining who can marry has traditionally been a state function – not a federal one. DOMA, however, usurps that function by providing that states need not recognize a marriage from another state if it is between persons of the same sex. Thus the co-sponsored resolution aims to restore the traditional authority of states in determining who may marry within their jurisdictions.

Vishnick McGovern Milizio is well-versed in the issues surrounding DOMA. To learn more or to discuss how DOMA may affect you, please contact Joseph Trotti or Joseph Milizio at 516-437-4385. 



Find out the latest news at:

[www.LGBT-VMMLEGAL.com](http://www.LGBT-VMMLEGAL.com)

Vishnick McGovern Milizio LLP attorneys advocate for and strongly believe in the rights of gay, lesbian, bisexual and transgendered individuals. The LGBT community has the same concerns, and the same needs, as the larger community. Unfortunately, society does not automatically grant the same legal rights, or offer the same legal benefits to the LGBT community. However, with proper planning, many of those rights and benefits can be fulfilled. Whether counseling individuals, families, or businesses, we understand the issues and are well versed in strategies that protect our clients and satisfy their wishes.

We offer a number of services that uniquely address the issues that matter most to the LGBT community.

The content of this newsletter is for informational purposes only. Please contact us if you would like legal counsel.



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