



Wingate, Kearney & Cullen Welcomes Ashley Hawes

Ashley Hawes recently joined Wingate, Kearney & Cullen, LLP as an Associate. She concentrates her practice in the areas of divorce and family law, with an emphasis on parental rights, and religious, charitable and education law ...

Read more on pages1,3

Understanding New York's Religious Corporations Law

Religious freedom is a major foundational right of every person in the United States. It is inherently a complex issue which has spawned heated court cases over the years. While almost all agree that religious freedom must be safeguarded, there is much debate as to what exactly constitutes religious freedom ...

Read more on page.....1,2

How DIY Documents Can Lead to an Estate Planning Mishap

With the ever-increasing use of technology, do-it-yourself (DIY) online services are becoming more common. Many people use DIY services to file their taxes, apply for a loan, and obtain car insurance ...

Read more on page 2

What is a Limited Liability Company (LLC)?

As the owner of a business, it is important to ensure that all incorporating documents and legal requirements are in order ...

Read more on pages 3

PRACTICE AREAS:

- Trusts and Estates
- Religious, Charitable, Educational Law
- Corporate & Business Law
- Matrimonial and Family Law
- Banking
- Litigation
- Real Estate Transactions
- Cemetery Law

ABOUT THE FIRM:

Wingate, Kearney & Cullen, LLP was formed under the name Wingate & Cullen in 1864. Its founding partner was General George Wingate, a Civil War general. In 1996, it merged with Hurley, Kearney & Lane which itself was founded in 1892. The newly merged firm became known as Wingate, Kearney & Cullen. The Firm was general counsel to the Brooklyn Dodgers, personal counsel to Charles Ebbetts, counsel to the Long Island Rail Road, and counsel to many land developers. The Firm has produced three Surrogates, two former Surrogates in Kings County and one former Surrogate in Nassau County. The Firm continues to be involved with issues that help form Brooklyn and Queens to this day.

Wingate, Kearney & Cullen, LLP has achieved its diversity in its practice areas while maintaining its tradition of high standards of ethical and professional practice. Our Firm strives to provide a close, personal, working relationship with its clients, along with the affordable fees that are the hallmark of a small firm. Our attorneys have a well-earned reputation for providing high-quality representation, while working in a well-organized and professional manner.

Wingate, Kearney & Cullen Welcomes Ashley Hawes

Ashley Hawes recently joined Wingate, Kearney & Cullen, LLP as an Associate. She concentrates her practice in the areas of divorce and family law, with an emphasis on parental rights, and religious, charitable and education

law. She also handles matters on behalf of the Roman Catholic Diocese of Brooklyn, as well as individuals and charitable entities involved in litigation and contractual disputes.

Continued on page 3

Understanding New York's Religious Corporations Law

Religious freedom is a major foundational right of every person in the United States. It is inherently a complex issue which has spawned heated court cases over the years. While almost all agree that religious freedom must be safeguarded, there is much debate as to what exactly constitutes religious freedom. We will address additional aspects of religious freedom through our blogs and newsletters.

how religious institutions are to manage and govern their corporal assets. In short, the U.S. Constitution sets forth no guidance on how religious entities are to interface with civil entities. New York State, though, has created a law known as the Religious Corporations Law (RCL), which answers many of the questions not addressed by the U.S. Constitution.

The First Amendment of the U.S. Constitution firmly upholds the freedom to practice religion or no religion at all. It is the law that individuals, in public or private, are free to worship and observe religious practice without government influence or intervention. The U.S. Constitution, however, does not provide any specific guidelines to implement freedom of religion. It also provides no guidelines on

In general, an ordinary business will form as a corporation in order to become a separate legal entity under its state's law. Essentially, this will allow the corporation to act legally as a person in that it will pay taxes and can also sue and be sued. This protects a business in litigation, in that the plaintiff can only recover against the assets of the business and is unable to access the owner's personal assets. Churches and

Continued on page 2

Attorney Advertising • Prior results do not guarantee a similar outcome. • The information presented in this newsletter should not be construed to be formal legal advice nor the formation of a lawyer/client relationship.

Main Office:

45 Main Street
Suite 1020
Brooklyn, NY 11201
Phone: (718) 852-5900

Matrimonial and Family Law Office:

26 Court Street
Suite 1801
Brooklyn, NY 11242
Phone: (646) 620-6416

Banking Office:

445 Broadhollow Road
Suite 400
Melville, NY 11747
Phone: (718) 852-5900

Experienced Attorneys. Proven Results.

The attorneys at Wingate, Kearney & Cullen, LLP provide high-quality, cost-effective services to clients in the New York Metro area.

Understanding New York's Religious Corporations Law

Continued from page 1

other houses of worship are likewise protected in the same fashion by being permitted to incorporate.

New York law permits a house of worship as well as their governing bodies (i.e. a diocese, eparchy, cone, synagogue, mosque, etc.) to incorporate. A religious corporation is a non-profit organization associated with a particular religion which is legally incorporated. Though written in the 19th century, the Religious Corporations Law is progressive in that it expressly attempts to protect all religious freedom. The Religious Corporations Law expressly requires these entities to be subject to the "discipline, rules, and usages of the corporation and of its ecclesiastical governing body, to which the corporation is subject." Thus, the religious laws of each religion are inherently integrated into the governance of the religious entity incorporated under civil law. For example, as required by Section 5-a of the RCL, all investments of a Roman Catholic parish are subject to the approval of the diocesan bishop.

The RCL has specific sections for almost every religion. Each of these sections incorporates the governance norms of each religion into the governance of the church. Naturally, the RCL could not have sections for all religions or future religions unknown in America at the time. Therefore, it has provisions for incorporating and governance for all religions not specifically identified in the law.

Because religious corporations are recognized by state law, there are rules that states are allowed to set for these organizations to follow. One example of this is that sales of their real property are subject to either approval of the court or the attorney general. The religious entity must establish that the sale was for fair market value with certain exemptions to other related organizations and that the transaction will benefit the religious corporation at the time the sale closes.

For Roman Catholic churches, the sale must also have the approval of the bishop. The sale cannot proceed without his approval, even

if the church's trustees approve the sale. As to Protestant Episcopal churches, Ruthenian Catholic Churches of the Greek Right, and African Methodist Episcopal Zion churches, for example, their bishops' consent is also mandatory for a sale to be approved by the courts or the attorney general. However, as to a Presbyterian church, the law requires the approval of the presbytery before a sale can be completed. These are just some examples of how the RCL attempts to have each religious incorporated entity comply with the norms of its particular religion.

There are many provisions that come under New York State's Religious Corporations Law, and the paperwork to become an incorporated organization can be challenging. The attorneys at Wingate, Kearney & Cullen, LLP are experienced in drafting the incorporation papers for religious organizations and can help guide one through the legal process of becoming a corporation and obtaining tax exemption.

objectives. Estate planning mistakes can be costly and, oftentimes, people don't realize an estate planning mistake has been made until after the testator has passed away. Without a properly executed estate plan and without the individual present, it can be difficult to determine what his or her wishes were for establishing guardianships for minor children, distributing assets, and funeral arrangements.

An estate plan can benefit from a legal professional's thorough consideration and a careful eye. Just as you would consult an experienced medical professional to address a medical need, estate planning needs should be addressed with the assistance of an experienced estate planning lawyer.

Whether you are looking to update a current plan or establish a comprehensive estate plan for the first time, it is imperative that you consult the guidance of an experienced New York estate planning attorney. The attorneys at Wingate, Kearney & Cullen, LLP are experienced estate planning lawyers who can help you create an estate plan that can carry out your wishes and protect your legacy. Our attorneys are available to assist individuals throughout the five boroughs of New York City, as well as Nassau County and Suffolk County, with their estate planning needs.

What is a Limited Liability Company (LLC)?

As the owner of a business, it is important to ensure that all incorporating documents and legal requirements are in order. One way to structure a business is to create a Limited Liability Company (LLC), as it is considered to be the least complex way to form a business and more flexible than other types of corporations. By definition, an LLC prevents the members of the company from being held personally liable for the debts and liabilities of the company. Essentially, this means that the personal assets of the company's owners are kept separate from the assets of the company and the company's owners do not have to pay the debts or liabilities of the company from their personal bank accounts.

Advantages

Forming an LLC is best suited for those who go into business with more than one owner who would like certain liability protections. It provides legal protection against business debts and other obligations. In addition, it allows the business to avoid filing a corporate tax return, and instead requires that owners simply report their personal profits and losses from the business on their individual tax returns. Furthermore, an LLC does not require that you be a U.S. citizen or permanent resident to be an owner.

Disadvantages

While structuring your business as an LLC can be less complicated and provide legal protection, there are certain disadvantages that may not make it the best option for your business. One of the most notable is that, when one member dies or declares bankruptcy, the LLC must be dissolved. Other regulations that may hinder your business operations as an LLC include:

- LLCs cannot be sold as shares of stock on an open market to investors, which may limit your business' growth
- Profit from an LLC may be subject to a self-employment tax when filing your tax returns

What may make an LLC more complicated is that each state has different regulations regarding LLCs, which can become a problem if you have business locations in multiple states.

How Do I Create an LLC?

Creating an LLC requires that you first choose a legal name and file the Articles of Incorporation with the Secretary of State. You may then need to apply for a business license and obtain any other licenses or certificates required for the specific industry in which your business operates. In addition, you will need to obtain an Employer Identification Number from the IRS.

Because the regulations and requirements for forming LLCs can be complex and differ from state to state, it is important to contact an experienced corporate lawyer to help you file the necessary paperwork and meet the specific requirements. The Brooklyn and Long Island corporate and commercial lawyers at Wingate, Kearney & Cullen, LLP have successfully guided their clients through the creation of business entities, including limited liability companies, and have handled many other corporate matters on behalf of their clients.

Steps to Creating an LLC

- 1 Choose a legal name and file the Articles of Incorporation with the Secretary of State
- 2 Apply for a Business License
- 3 Obtain an Employer Identification Number
- 4 Contact an experienced corporate lawyer

How DIY Documents Can Lead to an Estate Planning Mishap

With the ever-increasing use of technology, do-it-yourself (DIY) online services are becoming more common. Many people use DIY services to file their taxes, apply for a loan, and obtain car insurance. Individuals choose to use DIY services because they believe it is a cheaper means to accomplish what they want to get done. However, when it comes to estate planning, the cheaper option isn't always the best.

Lack of Customization

Oftentimes, DIY estate planning services use a generic, one-size-fits-all template that may not meet each person's estate planning needs. Every individual has unique wishes and concerns about their legacy. An experienced New York estate planning attorney can review a person's wishes, address any concerns, and create a comprehensive estate plan to protect assets for the future.

Mistakes Can Be Made

Filling out estate planning documents can be difficult and, oftentimes, people make mistakes. The average person typically does not have a thorough understanding of the legal terminology used in these documents and are often unaware of their state's laws regarding trusts, probate, and estate taxes.

When it comes to the execution of estate

planning documents, the requirements vary from state to state. Certain estate planning documents will only require the testator's signature, while others, including New York, require the signatures of multiple witnesses.

Furthermore, if there was a mistake made during the creation or execution of a Last Will and Testament, it may be subject to a challenge. Probate litigation can be a lengthy and costly process, and if the Last Will and Testament was executed improperly, it may be denied probate.

Unforeseen Circumstances

DIY estate plans rarely plan for unforeseen circumstances, which can lead to issues down the line. Some of the unforeseen circumstances individuals should plan for with the guidance of an experienced estate planning lawyer include:

- Incapacitation
- Divorce
- Remarriage
- Birth or adoption of children and grandchildren
- Death of children before parents

Less Money Now, More Worry Later

While a DIY estate plan may be a cheaper option now, in the end, individuals may not end up with an estate plan that meets their

Firm Welcomes Ashley Hawes

Continued from page 1



Ashley Hawes

In 2014, Ms. Hawes graduated from the University of Florida with Bachelor of Arts degrees in Political Science and Mandarin Chinese. In 2017, she graduated *magna cum laude* from Fordham University School of Law, where she received the Archibald R. Murray Public Service Award for her significant accomplishments in pro bono and community service.

While in law school, Ms. Hawes interned at the Lincoln Square Legal Services Consumer Litigation Clinic and Criminal Defense Clinic and the Offices of the Public Defender for Putnam and St. Johns Counties in Florida. In addition, she was a dean's fellow, in which she performed research for the professors at the law school's Neuroscience and Law Center. She also served as a staff editor of the *Environmental Law Review*.

Ms. Hawes is a member of the New York State Bar Association and is admitted to practice in the state of New York.

