

APRIL 2013 NEWSLETTER

POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com



ARE LIVING TRUSTS AN ESTATE PLANNING TOOL OR SCAM?

1. **ANNOUNCEMENTS:**

A. Pozzuolo Rodden is pleased to announce that Joseph R. Pozzuolo, Jeffrey S. Pozzuolo and Stephen P. Taylor have written an article titled “Using Trusts to Maximize Family Protection and Minimize Estate Taxes” which was published in the January, 2013 Practical Tax Strategies Publication of Thomson Reuters. A copy of the article is available by clicking here: <http://pozzuolo.com/PubsArticles.shtml>

B. Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire will be presenting a CPE/CLE seminar for Penn State University, Doylestown Campus, entitled “ The Basics Of Estate Tax Planning After The American Taxpayer Relief Act of 2012”. The seminar will take place on June 20, 2013 from 1-5pm. Please contact Theresa M. Bloom at: tmb17@psu.edu for reservations.

2. QUESTION OF THE MONTH:

How Do I Comply With The Department of Homeland Security, U.S. Citizenship and Immigration Services' New Form I-9 for Employment Eligibility Verification?

Answer-See Page 4 of this Newsletter

If there are any legal questions you would like this office to answer in the future, please email the question to us at info@pozzuolo.com. Each month, the question with the most relevance to our privately held business clients, advisors, and friends will be answered in our monthly newsletter. The questions can relate to any of the areas practiced by this office including business planning and transactions, corporate law, commercial litigation, employment law and litigation, commercial real estate and development, construction law and litigation, estate planning, estate administration, tax and pension law, family law litigation.

ARE LIVING TRUSTS AN ESTATE PLANNING TOOL OR SCAM?

Although Living Trusts are an important estate planning tool to consider they are not a cure-all estate planning tool. They are not an absolute necessary estate planning document and, even with a living trust, other estate planning documents are required to sufficiently administer a person's estate. Nonetheless, sales agents and trust mills market living trusts as an essential estate planning tool. They push these products onto susceptible consumers in a wholesale fashion without regard to whether a specific consumer actually benefits from a living trust. In reality, estate planning requires attention to individual needs and specific tailoring. Living trusts may or may not be part of those specific needs.

Living trusts, also called inter-vivos trusts, are legal documents which act as central vehicles for asset management. An individual, called a grantor, places his or her assets in the trust. A trustee manages the assets and oversees their distribution to beneficiaries. Usually, assets, like real estate or stocks and bonds, are titled in the name of the trust, and then on the death of the grantor, the trustee distributes the property to beneficiaries named in the document.

Living trusts may be useful estate planning documents for you. Their usefulness,

however, depends on your specific estate planning goals, assets, and other information. The most celebrated claim of a living trust is that by using one, a person may avoid probate of his estate.

Probate is a formal, court supervised process in which a person's estate is administered and distributed. When a person dies with a will, that will is admitted to the public record. Creditors are notified and may make claims against the estate. Meanwhile, it may take 6 to 12 months to complete probate of a simple estate and large estates with property usually take longer to finalize the probate of the estate and make final distributions to beneficiaries. The federal and state taxing authorities will usually take 2 to 15 months to complete an audit of the estate tax report depending on the size and complexity of the estate. By avoiding probate, the estate may be settled more quickly and efficiently, and beneficiaries may receive distributions sooner.

More specifically, for example, if you own real estate in several different states, you may want to establish a living trust and title the real estate in the name of the trust. Then, when you die, you may be able to avoid having to probate your estate in the different states where the real estate is located. If you desire to keep information about your estate as private as possible, avoiding probate should be a goal.

The value of avoiding probate, however, is often inflated. Probate fees and time depend on the size of your estate and if your estate is small, probate fees may be less than the cost of drafting a living trust. Probate may not be an issue anyway if your assets contain beneficiary designations or are payable on death accounts. Such kinds of accounts pass to the named beneficiary automatically by operation of law; they are not subject to administration.

Furthermore, probate is often described as a lengthy time consuming process. In reality, if your estate is well organized, whether you have a living trust or not, probate may take less than a year regardless of a living trust or not. Probate may be desirable if you anticipate that your beneficiaries and heirs will fight with each other, or if you anticipate third party claims against your estate. A court would oversee the administration during any controversies.

Living trusts are also touted as tax-saving vehicles. However, they do not shield your estate from federal or state death taxes. Federal estate taxes and state inheritance and estate taxes may, and almost certainly will, apply upon your death even if you have a living trust.

Finally, a will is still necessary even with a living trust. You will need a pour-over will to transfer any property not already titled under the trust to the trust upon your death. Establishing a living trust may be a waste of time and money. You should seek legal advice from an attorney, who reviews your entire estate plan and your legal, financial and personal needs, to determine whether you need a living trust.

It is because you need legal and professional consultation in creating an estate plan that trust mills are problematic. In fact, wholesale marketing of living trusts is so problematic that attorneys general of many states have published consumer alerts notifying the public of trust mills who sell them. Trust mills usually consist of non-lawyer salesmen, including insurance agents, financial planners, stockbrokers and others. They promote their products either door-to-door or over TV, radio or in workshops. Bill Lockyer, former attorney general for California, believed that thousands of people had been swindled by living trust scams.¹

¹ Chan, Sue "Beware Living Trust Scams", available at http://www.cbsnews.com/8301-500262_162-544102.html. February 11, 2009.

Salesmen pressure consumers into purchasing their estate planning toolkit consisting of the living trust and other documents. They often misrepresent the usefulness of living trusts as a one-size-fits-all approach to estate planning. They promise that by drafting a living trust and transferring assets, the client will have a cure-all for his or her estate plan. The salesmen charge significant fees, running into the thousands of dollars.

On top of misrepresenting the usefulness of living trusts, sales agents obtain and misuse the consumers' personal, confidential financial information. The sales agents sell themselves as estate planning experts or trust advisors. In reality, they are usually not attorneys or experts in estate planning. In the process of selling the living trust, the agents have consumers fill out questionnaires related to their finances and assets. They often try and sell the consumers various other financial products like life insurance, annuities or other cash heavy investments, which the consumers do not need. They may not advise the consumer of potential legal or tax consequences of creating a living trust and transferring assets to it.

The bottom line is that these sales are scams. Only consultation with an experienced disinterested licensed attorney, who sells zero products or investments, will determine whether you need a living trust.

QUESTION OF THE MONTH:

HOW DO I COMPLY WITH THE DEPARTMENT OF HOMELAND SECURITY, U.S. CITIZENSHIP AND IMMIGRATION SERVICES' NEW FORM I-9 FOR EMPLOYMENT ELIGIBILITY VERIFICATION?

The Form I-9 for Employment Eligibility Verification (hereinafter "Form I-9") was first issued by the Department of Homeland Security, U.S. Citizenship and Immigration Services (hereinafter "USCIS") in relation to the Immigration Reform and Control Act of 1986. The Form I-9 is required to be completed by all employees at the time of hire and must be retained in the records of all employers. The purpose of the Form I-9 is to permit employers to verify that new hires are authorized to legally work in the United States.

On March 8, 2013, the USCIS issued a revised Form I-9 for Employment Eligibility Verification. All employers must begin to use the revised Form I-9 for all new hires by no later May 7, 2013. The USCIS recommends that employers immediately begin using the revised Form I-9, even though the regulations allow a sixty (60) day grace period before mandatory implementation on May 7, 2013. Employers may download the revised Form I-9 on the USCIS' website. (<http://www.uscis.gov/files/form/i-9.pdf>.) Following the release of the newly revised Form I-9, the USCIS also published a revised version of its *Handbook for Employer, Guidance for Completing Form I-9* (hereinafter "Handbook"). The Handbook provides a comprehensive overview for employers and is available on the USCIS' website. (<http://www.uscis.gov/files/form/m-274.pdf>).

The revised Form I-9 differs from previous versions by providing data fields for an

employee's telephone number, email address and foreign passport information, if applicable. Although the Handbook expressly states, "Providing an e-mail address or telephone number is voluntary." The revised Form I-9 also has a new layout and redrafted instructions to guide employers and employees on completing the revised Form I-9 and to help minimize errors.

Both the revised Form I-9 and the Handbook contain antidiscrimination warnings stating that it is illegal for an employer to discriminate against any individual authorized to work in the United States based on the individual's "citizenship status, immigration status or national origin."

The revised Form I-9 also contains a list of acceptable documents that an employee may present to verify his/her eligibility for employment in the United States. The revised Form I-9 and Handbook state that an employee can choose which document he/she provides to complete the Form I-9 from the list of acceptable documents. It is also illegal for an employer to specify which documents an employer will accept from an employee and any such specifications may violate antidiscrimination provisions. For example, it is illegal for an employer to specify that it will only hire a United States citizen with a valid passport.

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Publications

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: [http://pozzuolo.com/Pubs Articles.shtml](http://pozzuolo.com/Pubs%20Articles.shtml)

Corporate/Tax Articles

Bankruptcy - How To Prevent It And How To Cope With It Should It Happen To Your Business

Deferred Compensation Rewards And Retains Key Employees

Design Buy-Sell Agreements For Maximum Utility

How An S Corporation Avoids The Double Taxation Incurred When Excessive Compensation Is Treated As A Dividend

How Mortgage Lenders Should Draft Broker Agreements To Avoid RESPA Violations

How To Look, Act And Sound Like A Professional Corporation

How to Structure a Suitable Buy-Sell Agreement

How To Use Non-Qualified Deferred Compensation Arrangements As A Business, Retirement And Tax Planning Tool

Money Purchase Pension Plan Falls Out Of Favor

Protecting A Client's Business From Unfair Competition Using Restrictive Covenants

Structuring Loans From Qualified Plans - How To Handle The Strict Tax Rules

What Type of Qualified Corporate Retirement Plan Best Serves Your Business, Tax And Retirement Needs

Why An Employment Contract Is Mandatory

Estate Planning Articles

Adapt Estate Planning Strategies to Fit the Needs of Same-Sex Couples

College Funding Tool Offers Estate Planning Advantage

Diversify Strategies For An Effective Estate Plan

Divorce and Estate Planning

Divorce Raises The Need For Performing An Estate Planning Review

Drafting The Durable Power Of Attorney For Wealth Protection Purposes

Estate Planning For Pet Owners

Remarriage Situations Can Raise Special Estate Planning Considerations

Six Proven Estate Planning Techniques

Special Needs Trust - An Estate Planning Tool For The Disabled

The Limited Liability Company -A Sophisticated Tool For Estate Planning

Using Trusts To Maximize Family Protection And Minimize Estate Tax

Why Living Wills- Advance Directives Are An Essential Part Of Estate Planning

Actual resolution of legal issues depends upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects. It is to provide insight into legal developments and issues. You should always consult with legal counsel before taking any action on matters covered in our updates.

This newsletter is courtesy of Pozzuolo Rodden, P.C.

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