

JULY 2013 NEWSLETTER

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HOT TOPICS IN ESTATE PLANNING-2013

NEWS ALERT:

A. Free Online CLE/CPE LawLine Seminar

Pozzuolo Rodden, P.C. is pleased to announce the opportunity to attend the following upcoming CLE/CPE seminar for free either in person or via webcast:

“The Fundamentals of Starting a Business”

Wednesday, July 10, 2013

New York, NY

Also available via Live Webcast

Presenter: Joseph R. Pozzuolo, *Esquire &*
Jeffrey S. Pozzuolo, *Esquire*
Pozzuolo Rodden, P.C., Philadelphia, PA

Further Ed/LawLine.com
61 Broadway, Suite 1105
New York, NY 10006

5:00p- 5:30p- Registration

5:30p-8:30p- Course Instruction

Register at: www.pozzuolo.com Click under Seminars and follow the link.-

B. Pozzuolo Rodden, P.C. is pleased to announce the opportunity to obtain free CPE/CLE credits by viewing the Lawline webcast courses previously taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo titled “The Negotiation and Documentation of Commercial Financing Documents Including The Use of Convertible Loans With Put and Call Options” and “How Middle Income Families Should Plan for Retirement Including Ethics”. Please contact chrissy@pozzuolo.com for the free credit link that allows you to watch the seminar, free of charge, and to obtain the credit as well.

C. Judith P. Rodden, Esquire will be presenting a CPE seminar for the Montgomery County CPA Society on Wednesday, July 10, 2013 at the Cedarbrook Country Club, Blue Bell, PA, entitled “The Role of the CPA in Family Law”. Please contact Diane McLeen at DMcLeen@Janne.com

D. Pozzuolo Rodden is pleased to announce that Jeffrey S. Pozzuolo received his Masters in Taxation law degree “summa cum laude” from Temple University’s Beasley School of Law last month. Jeff Pozzuolo also has JD/MBA degree from Temple University’s Beasley School of Law and the Fox School of Business and graduated magna cum laude from the University of Pennsylvania with a BS in economics (Finance and accounting) from the Wharton School and a BA in Mathematics from the College of Arts and Sciences.

QUESTION OF THE MONTH:

Do Grandparents Have Visitation Rights?

Answer-See Page 5 of this Newsletter

HOT TOPICS IN ESTATE PLANNING-2013

I. The American Taxpayer Relief Act of 2012 and the “end” of the Bush era tax cuts.

On January 1, 2013, the Bush era tax cuts expired. The Bush era tax cuts were various tax code changes that had been enacted during the George Bush’s presidency. Originally scheduled to expire at the end of 2010, the tax cuts were extended for two more years until the end of 2012. The expiration of the tax cuts, among other things, was supposed to cause the US to go over the “fiscal cliff”. However, on January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012, which reinstated many of the tax cuts, effective retroactively to January 1st.

The enactment of the American Taxpayer Relief Act of 2012 affected various tax provisions related to income taxes, transfer taxes, IRAs, and pensions. When reviewing the Act’s effect on gift and estate taxes, one sees that there was not dramatic change from the immediately prior year. However, there is good news in that the passage of the Act prevented severe tax rates from being implemented.

A. Estate Tax. The American Taxpayer Relief Act set the maximum federal estate tax rate at 40%. The Act also includes a \$5 million dollar estate tax exclusion which is adjusted for inflation. Immediately before the Act, the maximum estate tax rate was set at 35% with a \$5 million inflation adjusted exclusion. Had the Act not been passed, the top estate tax rate would have been 55% with an exclusion amount of only \$1 million, indexed for inflation. The practical effects of the Act are significant. If the Act had not been passed, a person dying with a \$2 million taxable estate could potentially have to pay over a \$1 million in estate taxes on the estate.

The American Taxpayer Relief Act also provides for “portability” between spouses. In other words, the estate of the first to die spouse may make a portability election to permit the surviving spouse to use the first to die spouse’s unused estate tax exclusion amount on the surviving spouse’s estate. The practical effect of this is to increase the surviving spouse’s estate’s exclusion amount to potentially \$10 million. Without enactment of the Act, portability would not be available. This could be problematic for those couples near the threshold of the estate tax exclusion in that while individually, neither of their estates was large enough to trigger taxes, but when coupled together, the value of the estate would cross the tax threshold. Thus, when the first spouse dies and leaves everything to the other spouse, the other spouse’s estate would potentially have to pay taxes on the accumulated estate.

B. Gift Tax. Similar to its effect on the estate tax, the American Taxpayer Relief Act set the maximum federal gift tax rate at 40%. The Act also includes a \$5 million

dollar lifetime gift tax exclusion which is adjusted for inflation. Thus, a person still may gift up to \$5 million (or more) tax free during his lifetime.

C. Generation Skipping Transfer Tax. The American Taxpayer Relief Act set the maximum federal generation skipping transfer tax rate at 40%. The Act also includes a \$5 million dollar lifetime generation skipping transfer tax exclusion which is adjusted for inflation. The generation skipping transfer tax usually applies when a person makes a gift to a grandchild (or to someone 37.5 years younger than the gift-giver). Thus, a person still may gift, either during life or at death, up to \$5 million (or more) tax free to his grandchildren (or to anyone 37.5 years younger than he is).

Overall, the American Taxpayer Relief Act essentially preserved the recent status quo. Although the top estate and gift tax rate increased, the increase was not as great as it could have been. Furthermore, the estate and gift tax exclusion remains at a generous \$5 million. Most individuals may rest easy knowing they will be able to pass their wealth onto younger generations tax free.

II. Disposition of Digital Assets.

Considering that more and more people are online, the question of what to do with digital accounts and assets is becoming a bigger issue in the estate planning process. Digital accounts and assets generally include various intangible assets such as email accounts, domain names, social networking sites like Facebook, Twitter and LinkedIn, and electronic bank and investment accounts.

At least one major issue in estate planning for digital assets is the question of “account vs. asset” and the issue of ownership. Money in an online bank account is an asset and ownership of that asset is straightforward. However, ownership of other digital accounts is questionable. Often, a person merely agrees to “terms of use.” That person alone may use the online account. However, the accounts may not be transferable to others. The account holder does not necessarily have complete and unrestricted ownership. Thus, when a person dies, the terms of use agreement will govern.

Initially, the process of including one’s digital footprint in the estate plan is to manage the accounts and assets. This should include identifying the accounts and assets. If possible, categorize them as, for example, personal, business, financial or otherwise. Next, a list should be made of all the accounts and assets, their category, the passwords and usernames, account numbers, etc. The list should be kept in a safe location such as a safe-deposit box. The list should be shared with whoever is appointed fiduciary of your estate.

As for the fiduciary, he or she must notify the account provider of the decedent’s death. Furthermore the fiduciary should manage and change passwords to those that the fiduciary can control. The fiduciary should keep the accounts open for some time to make sure all relevant or valuable information has been saved and all vendors or other business contacts have been appropriately notified, and so all payables can be paid and accounts receivable have been collected. The accounts should be closed when reasonably possible and the information archived for the applicable statute of limitations period

III. Planning for Incapacity and Disability.

Estate planning attorneys will almost always go over issues of planning for incapacity

and disability with their clients when conducting overall estate planning. The issue of management of one's estate and of one's health and personal care is an important issue and should be addressed well ahead of time – that is, before one becomes incapacitated or disabled and it's too late. However, the concern of incapacity and disability planning is as great a concern as ever.

The fact is that everyone's health will fail eventually, their mental acuity will decline, and their ability to function and manage their day to day lives will falter. Furthermore, chances are that an individual will become disabled prior to death. With advances in healthcare and medicine, that individual may be kept alive for some period of time in his or her incapacitated state. The management of the person's estate and healthcare decisions will fall onto others.

Incapacitated individuals will need someone to handle the business of their lives such as paying bills, managing investments or making key financial decisions. They also will need someone to oversee their healthcare and make important medical decisions for them.

The key here, as in all estate planning, is to plan ahead. Documents such as powers of attorney, living wills, and advanced healthcare directives can lay out one's guidelines and directives regarding who will be their fiduciary and representative, and who will make decisions on their behalf once they become incapacitated. These documents can also proscribe treatments and medical procedures an individual wishes to be performed in the event he is incapacitated. Perhaps such individual wants all life-saving treatments withdrawn when terminally ill and in a no-code situation. A living will would be the proper mechanism to state such desires. It is important to address one's management of money and personal care, in addition to the collection and disposition of one's assets, when planning an estate. Once an individual is incapacitated, it may be too late to do so.

IV. Repeal of DOMA.

When the U.S. Supreme Court recently struck down the federal Defense of Marriage Act (DOMA) in *United States v. Windsor*, gay married couples became entitled to the same benefits under federal law that heterosexual couples enjoyed. The decision opens up new estate planning benefits and considerations to gay spouses that previously did not exist.

For example, the estate, gift and GST tax provisions discussed in Part I. above now apply to legally married gay couples. Thus, gay couples will be able to enjoy portability between their estates and will be able to enjoy the marital deduction thereby allowing them to gift any amount of money to each other tax free. Furthermore, the surviving spouse in a gay marriage may be entitled to receive social security benefits when the first spouse dies.

It is important that legally married gay couples contact their estate planning attorneys to review their estate plan in light of the potential gift, estate and tax planning ramifications of the Supreme Court's recent decision.

QUESTION OF THE MONTH:

Do Grandparents Have Visitation Rights?

In early 2011, new child custody legislation was enacted in Pennsylvania. These statutes directly address a grandparent's right to custody and visitation, whether physical or legal, of a minor child. Typically grandparents will seek court intervention with regard to either partial custody (custodial periods less than the majority of the time) or visitation. The difference between custody and visitation is that with a grant of custody the grandparent will be able to leave with the minor child *without* the supervision of the minor child's legal guardian, whereas with a grant of visitation a grandparent will be allowed to visit with the minor child under the supervision of the child's legal guardian.

Prior to the new statutory scheme, both the Supreme Court of the United States in Troxel v. Granville, and the Supreme Court of Pennsylvania in Hiller v. Fausey examined the constitutionality of a grandparent's right to visitation or custody of a grandchild. Both Courts recognized that the liberty interest of a parent in the care, custody and control of their children "is perhaps the oldest of the fundamental liberty interests recognized by this Court." Due to the fundamental rights that parents have over the control of their children, the Courts ruled that grandparents seeking custody or visitation have the burden of proof to show that an award of custody or visitation would be in the best interest of the child.

Under the recently enacted Pennsylvania law, a grandparent may petition the Court for partial physical custody or supervised visitation with the minor child in the following circumstances: (1) where the parent of a child is deceased; (2) where the parents of the child have been separated for a period of at least six months or have commenced and proceeded with an action to dissolve their marriage; or (3) when a child has resided with the grandparents for a period of twelve (12) consecutive months.

In accordance with the constitutionality concerns and Pennsylvania statutory law, if there is a dispute between the parent of a minor child and a non-parent, such as a grandparent, involving custody or visitation there is a presumption that a fit parent is capable of making decisions related to the care, custody and control of his/her child. This assumed presumption can be overcome by "clear and convincing evidence." However, every custody and visitation dispute is decided based on the specific facts and circumstances and on the Court's consideration of what is in the child's best interest.

The Court will take into consideration the following relevant factors when determining whether a grant of partial custody or visitation with the grandparent is in the best interest of a child, including, but not limited to, the existing relationship between the child and the

grandparent, the amount of time the child and the grandparent have spent together, the relationship between the grandparent and the child's parents, the time sharing arrangement which exists between the parents with regard to the child if the parents are divorced or separated, any history of physical, emotional or sexual abuse or neglect by the grandparent, the time which has elapsed since the child last had contact with the grandparent and the child's overall well-being. Animosity and hostility between the petitioning grandparent and the minor child's parent can cause the Court's to deny the grandparent's petition if the Court determines that custody or visitation with a grandparent would cause harm to the minor child's relationship with their parent or legal guardian. However, the Pennsylvania Courts like all states look out for the child above and beyond anything else. The Courts have consistently granted that it is in the children's best interest to preserve and nature those relationships which are meaningful while avoiding situations which might prove harmful.

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- 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.
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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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