

# OCTOBER 2015 NEWSLETTER

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## **ESTATE PLANNING FOR EACH OF THE EIGHT STAGES IN LIFE**

### **FIRM ANNOUNCEMENTS:**

#### **A. EDUCATIONAL SEMINARS ON YOU TUBE:**

Pozzuolo Rodden, P.C. is pleased to announce you can view the following seminars taught by Joseph R. Pozzuolo and/or Jeffrey S. Pozzuolo at "Pozzuolo Rodden, P.C.- You Tube"

\*The Negotiation and Documentation of Commercial Real Estate Loan Documents

\*The Fundamentals of Starting a Business

\*How Middle Income Families Should Plan for Retirement

## **B. BLOGS**

1. The following are a few of the business, tax and estate planning blogs posted on our main website [www.pozzuolo.com](http://www.pozzuolo.com) during the past month:

- a. Estate Planning- Donating A Collection To Charity;
- b. Estate Planning Guide For A Special Needs Child;
- c. ERISA Plan Administrators Must Specifically State Time Limits For Seeking Judicial Review In Their Benefit Denial Letters; and,
- d. Limited Liability Company VS. Corporation- Which Legal Structure Suits Your Business

**Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant business, estates and employment topics.**

2. The following are a few of the family law blogs posted on our family law website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) during the past month:

- a. The Terms Of Postnuptial Agreement Was Enforced Because Husband Supplied All The Funds Necessary To Purchase House;
- b. Wife Failed To Show Clear And Convincing Evidence To Invalidate Antenuptial Agreement;
- c. Mother Not In Contempt For Failing To Advise Father Of Teenage Child's Employment That Interfered With Visitation; and,
- d. Trust Established By Wife Is Ruled Marital Property For Equitable Distribution

**Please visit our website [www.pozzuolofamilylaw.com](http://www.pozzuolofamilylaw.com) for more information on these and other relevant family law topics.**

**Please visit our Facebook page to read all of our past and future blogs:  
Pozzuolo Rodden, PC**

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### **QUESTION OF THE MONTH**

**How are Spousal Support and Alimony Pendente Lite  
Calculated in Pennsylvania?**

Answer-See Page 7 of this Newsletter

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### **Estate Planning For Each Of The Eight Stages In Life**

As you age and as certain milestones pass, you need to reassess your current estate plan to determine whether your needs and goals are being met. At each stage in your life, questions that you should be asking yourself include:

- 1) Have I acquired any new assets that require planning? This includes not only making sure to incorporate the new assets into your estate plan but also ensuring that the assets are titled properly so that they do not pass in a way you did not intend.
- 2) Do the beneficiary designations on my retirement plans, life insurance, and other accounts accurately reflect who and how I would like those assets to be transferred in the event of my death?
- 3) Has my domestic situation changed? This generally encompasses all changes related to whom you are living with, such as marriage, divorce, birth of a child or death of a family member.
- 4) Does my current estate plan reflect my goals?

The answers to each of these questions will guide you and your attorney as you create or update your estate plan.

## **I. Young and Single**

Most young, single individuals without children do not need extensive or complicated estate planning but there are certain essential documents which should be prepared. Many young people think they do not have enough assets to need any estate planning but if you are a young professional with a job, you may be worth more than you think. If you have an employer sponsored retirement plan or life insurance, your total worth may well exceed \$200,000 as many employers offer group life insurance that is equal to or a multiple of your yearly salary. It's important to make sure you have executed beneficiary designations for these accounts or policies so that the money goes to your intended beneficiaries.

If you have no will, your probate estate will pass according to the state intestacy laws so if you are single and have no children, the entirety of your estate may pass to your parents. If your parents are at a point in their lives when they are financially secure, they may not need or want your assets in their estate. Furthermore, the assets in your estate would increase the size of your parents' estate and possibly cause them to be subject to additional death taxes. In that case, it may make more sense to have a will prepared to instead leave your estate to your siblings, other family members, close friends or a charity.

Other essential documents for young people are a general power of attorney and an advanced healthcare directive. When you were still a minor, your parents could automatically make all financial and healthcare decisions on your behalf but once you turn eighteen, you need to designate a person to make these decisions for you if you are ever incapacitated. A general power of attorney is necessary to ensure that your bills continue to be paid and other financial matters are taken care of if you are ever incapacitated and an advance healthcare directive allows you to express your healthcare treatment preferences in the event you are physically or mentally unable to do so at the time treatment is necessary.

## **II. Single but in a Committed, Long Term Relationship**

If your marital status is single but you are in a long term, marriage like relationship, you may want to leave a portion or all of your estate to your significant other. If that is the case, you will need to have a will or trust drawn up to specifically provide for this because otherwise your significant other has

no rights to any part of your estate.

Estate planning for unmarried individuals should especially be considered when you are living with your significant other and you are each contributing to the household expenses or a mortgage on a home you purchased together. Furthermore, if you purchased the house with your significant other, the titling of the house will govern who the property goes to in the event of your death. If you purchase the home as joint tenants with right of survivorship, your significant other will receive the entirety of the property but if the home was purchased as tenants in common, your one half interest in the house will become part of your probate estate. If you have no will, it would then pass according to the laws of intestacy in the state where you live, potentially creating a very tense situation between your significant other and the heirs of your estate.

### **III. Engaged to be Married**

Before you get married, and while the relationship is still strong, is the best time to commit in writing to how you and your future spouse will handle financial matters during your marriage and what your rights and responsibilities will be in the event of divorce. Financial discord is one of the most common reasons for divorce so having a thorough discussion about your finances before getting married is always advisable.

A prenuptial agreement is especially advisable if one or both spouses has significant assets acquired prior to the marriage. A prenuptial agreement is your best opportunity to decide how those assets, and any appreciation in their value during the marriage, will be treated upon divorce. If you fail to enter into a prenuptial agreement and then divorce, you may be forced to give your ex-spouse a significant portion of your assets, such as business or real property holdings, if you were the only spouse working during the marriage or you were the primary wage earner. This could significantly reduce the amount of money you have saved for retirement or what you will have left to leave to your heirs. Additionally, if you have or expect to eventually receive a large inheritance or an interest in the family business, your prenuptial agreement should provide that such an interest would not be subject to equitable distribution during a divorce, even if that is your only asset. In a prenuptial agreement, you can come to a fair and equitable agreement about how such assets would be divided in the event one spouse is working part time, does not work or stops working full time to raise children, and also whether and how much alimony would be paid in those situations. By discussing these issues ahead of time, you can ensure your estate is not shockingly depleted after a divorce.

### **IV. Newly Married**

Now that you have just gotten married, it is time to update your estate plan. If you have an old will and an old power of attorney and advance healthcare directive, you may want to have new documents drafted in favor of your new spouse. Most states give a surviving spouse the right to at least thirty percent of the deceased spouse's estate, so at a minimum your estate plan should provide for how that right to a portion of your estate will be satisfied.

Regardless of whether you plan to leave all or a portion of your estate to your new spouse, you should also review all of your beneficiary designations on life insurance policies and retirement plans, especially workplace retirement plans. Most of these will probably need to be updated or else they will

pass by operation of law to whomever you previously had named as beneficiaries, such as your parents or siblings.

Finally, if you want your new spouse to be able to make financial and medical decisions for you if you are incapacitated, your advance healthcare directive and general power of attorney should be updated.

#### **V. Raising Your Children**

The next time most people will need to update their estate plan is upon the birth of a child because you need to have a plan in place in the event one or both parents die before the child reaches adulthood. The two most important issues that must be addressed are: 1) who will raise your children; and, 2) how the costs of raising your children will be paid for.

In your will, you can nominate a person who will serve as guardian of your children if both parents of the children die before they reach the age of majority. This person will still have to be confirmed as guardian by a court, but most judges will defer to a parent's wishes about who will be guardian unless there are any compelling reasons why that person would be unfit to be the guardian. If you fail to name a guardian, your family members will have to petition the court to determine who will be named as guardian, which can be a long, stressful and expensive process for both your children and the family members who want to serve as guardian. This office has handled too many cases where siblings and both set of grandparents are petitioning to become the guardian of wealthy minor children.

Most people leave the entirety of their estate to their children in the event they are predeceased by their spouse. If the children are still minors, someone will have to serve as guardian or custodian of those funds until they are legally able to hold title to property. The problem with bequeathing the property to your children in this fashion is that your children will be legally entitled to the entirety of the funds when they turn 18 or 21, depending on the state where you live. This could potentially be a very large sum of money and most 18 year olds are not mature enough to responsibly manage large sums of money. A better option is to leave your estate in trust for your children so that you can direct how the funds will be used and provide for your children to receive the funds monthly for their health, support, maintenance and education and outright in increments after attaining the age of maturity so they can become accustomed to managing money responsibly.

#### **VI. Divorce and Remarriage**

One of the first things you should do once your divorce is finalized is change your estate plan, that is, write a new will and change the beneficiary designations on all of your life insurance policies and retirement accounts. The last thing you will want after getting divorced is having your former spouse receive any share of your estate when you die. Additionally, you will need to name a new agent under your new general power of attorney and name a new healthcare surrogate under your new advance healthcare directive.

In most states, life insurance beneficiary designations and bequests in favor of a former spouse under a will are automatically revoked upon the final decree of divorce. However, if you have a retirement plan at work, your beneficiary designations will not necessarily be revoked upon the final

decree of divorce. Workplace retirement plans are governed by federal law and therefore the state laws that revoke bequests under your will and life insurance designations are of no effect. Some retirement plans specifically provide that designations in favor of your spouse are automatically revoked upon a decree of divorce being entered but even if it does it is still prudent to designate a new beneficiary so that it is clear to the plan administrator who will receive the plan benefits. Once you get divorced, you should immediately update your retirement plan beneficiary designations to remove your former spouse and name a new beneficiary(ies) that corresponds with your updated estate plan.

If you remarry after the divorce from or death of your first spouse and if you have children from the first marriage, you will have some estate planning to do, both before the second marriage is official and afterwards. Before you tie the knot, you should discuss with your intended spouse what your intentions are with your estate plan, especially if you would like to leave the bulk, a portion or the entirety of your estate to your children from the previous marriage. In most states, a widow/er has the right to approximately thirty percent of the deceased spouse's estate in the event that they are not provided for in the estate plan of the deceased spouse and this right is known as the elective share. If it is your intention to leave your entire estate to your children, you and your future spouse should execute a prenuptial agreement wherein you each waive all rights to an elective share in each other's estate or come to an agreement about how you will limit rights in each other's estate.

## **VII. Middle Aged**

If you already have an estate plan, now is the time to review your documents to make sure your goals are being met. If your children are now responsible adults, you may want to name them as primary, co-fiduciaries or back up fiduciaries in your will and trust or name them to serve as your agent under your power of attorney or advance healthcare directive.

This is also a time when you should assess the total value of your assets and determine whether you are on track to retire comfortably and still meet your estate planning goals. One of the biggest expenses you may have to pay for during your retirement is the cost of long term care, whether it is in home care, an assisted living facility, or a nursing home. Most Americans will need some form of long term care so you need to have a plan for how you will pay for that care. Nursing homes care can cost between \$7,000 and \$10,000 per month. If you do not think you will be able to pay cash for that expense, you may want to explore purchasing a long term care insurance (LTCI) policy or even a life insurance policy that provides for the option of using those benefits for long term care costs. Many companies have exited the LTCI market or have scaled back their products. Further, LTCI prices have increased 9% this past year and women now have higher costs because they are living longer and have no caregiver at home. Now the premiums are as much as 40% higher.

## **VIII. Retirement**

When you are ready to retire, you should reassess life insurance needs now that your children are grown and you no longer need to provide for their support. Additionally, if you had taken out a life insurance policy to support your spouse or pay off the family home in the event of your untimely demise, it may not be necessary to hold onto that policy any longer if the cost of the policy will outweigh the final benefit.

Finally, if you will be subject to federal or state estate taxes, you may want to start making gifts to your family to remove assets from your final taxable estate. In 2015, you can give \$14,000 a year to everyone you know and not incur any gift transfer taxes and also reduce your final taxable estate. Depending on whether you will only be subject to state inheritance or estate taxes but not federal estate taxes, you may want to make even larger gifts to remove more assets from your taxable estate.

If you have questions about creating or updating your estate plan based on your current needs and situation in life, an experienced estate planning attorney should be consulted.

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### **QUESTION OF THE MONTH:**

#### **How are Spousal Support and Alimony Pendente Lite Calculated in Pennsylvania?**

In Pennsylvania, a dependent spouse is entitled to support once the spouses have separated and during the pendency of the divorce action. The two types of support which can be received prior to divorce are called spousal support and alimony pendente lite (“APL”). Although the amount due for the two types of support is calculated in exactly the same way, there is an important difference between them- spousal support is paid after the parties separate, but before a divorce is final, and may be ordered before a divorce action is even filed; APL is a temporary order for support which can only be made after the divorce action is filed.

A dependent spouse may receive either APL or spousal support, but cannot receive both at the same time. There is also a set term that the support lasts for- typically, this would be until a divorce decree is entered or a divorce agreement is reached. It is important to note that spousal support and APL are considered taxable income for the dependent spouse. On the other side, spousal support and APL payments can be deducted from the income of the payor for tax purposes.

When the Court orders that spousal support or APL must be paid, the amount owed is calculated by a statewide set of guidelines. The formula is located at Rule 1910.16-4 of the Pennsylvania Code, which also includes financial tables that can be used to determine the amount owed. The formula is based on the net monthly income of the parties, as follows:

#### **Example 1**

Husband and Wife separate. They have no children. Husband’s net monthly income is \$9,000. Wife’s net monthly income is \$5,000. To apply the formula, you start with the difference between the two monthly incomes- in this case, the difference is  $(9,000 - 5,000 = )$  \$4,000. Because Husband and Wife have no children, the dependent spouse (in this case the Wife, who makes less than her husband) is entitled to receive 40% of that \$4,000. Accordingly, the spousal support or APL owed would be \$1,600 per month.

In Example 1, the divorcing couple has no children. However, in situations where there are minor children, it is likely that child support is being paid. Accordingly, in those situations the formula is

adjusted to take into account child support payments.

### **Example 2**

Husband and Wife separate. They have twin five year old girls. Husband's net monthly income is \$8,000 and Wife's net monthly income is \$5,000. However, Husband is already paying \$1,000 a month in child support. That \$1,000 in child support is deducted from his monthly net income, leaving him with \$7,000 a month. After accounting for the monthly child support payments, the formula is applied the same way as demonstrated in Example 1, by finding the difference between the two monthly incomes. In this case, the difference is (7,000 - 5,000=) \$2,000.

A minor child also changes the percentage that is applied to the difference between the net monthly incomes. Instead of 40%, the dependent spouse is only entitled to 30%. In this case, the wife is entitled to 30% of the \$2,000, or \$600 a month.

There are factors which permit the court to deviate from this formula, such as unusual expenses or needs, but this happens much less often than simply sticking to the statutory formula. If there are any significant changes to one of the spouse's circumstances after a spousal support or APL order has been entered (loss of job or becoming disabled, for example) a spouse may file a motion to modify the order.

Finally, it should be noted that one of the most important differences between spousal support and APL is that there are almost no defenses to a spouse's claim for APL. In contrast, with spousal support, the spouse being ordered to provide the support can argue that the dependent spouse is not entitled to receive that support. These defenses usually arise in situations where the spouses have separated based on the fault of the dependent spouse, such as abuse or infidelity by the dependent spouse. However, even if a request for spousal support is denied based on one of these defenses, as soon as the divorce action is filed the dependent spouse can file for APL and that request will likely be granted.

An experienced family law attorney should be consulted for all questions or concerns about your obligations or rights regarding spousal support and alimony pendente lite. Please feel free to contact this office and meet with one of our experienced attorneys about any such questions or concerns.

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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](mailto: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.

To subscribe, unsubscribe, or for any questions, please contact us at [INFO@POZZUOLO.COM](mailto:INFO@POZZUOLO.COM).