

# MARCH 2016 NEWSLETTER

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## **HOW INCORRECT TITLING OF ACCOUNTS AND BENEFICIARY DESIGNATIONS CAN RUIN YOUR ESTATE PLAN**

### **FIRM ANNOUNCEMENTS:**

#### **A. MARY N. YURICK, JD, BA**

Pozzuolo Rodden, P.C. are pleased to announce that Mary N. Yurick has joined the firm as an associate attorney. Ms. Yurick is a 2011 graduate of Rutgers School of Law. Prior thereto, she worked as an Associate Attorney at a center city litigation law firm. Prior thereto she participated in the Family Law Domestic Violence Clinic and clerked for the Honorable David W. Morgan in the New Jersey Superior Court in both Salem and Gloucester Counties. Ms. Yurick will primarily work with Judy Rodden, Esquire in sophisticated commercial and family law litigation.

#### **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. Frivolous Tax Arguments Completes The IRS “Dirty Dozen” List Of Tax Scams For The 2016 Filing Season;
- b. Estate Planning: 5 Hot Retirement Planning Topics For 2015;
- c. Estate Planning: Using A No-Contest Clause To Prevent Heirs From Challenging A Will Or Trust; and,
- d. Trustee/Executor Of Trust And Estate Removed For Cause

**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. Imputation Of Income For Child Support Order;
- b. The Moving Parent Must Prove That The Child Relocation Would Not Be Inimical To The Child;
- c. Ex-Spouse Granted Power Of Attorney to List And Sell Family Home When Party In Possession Refuses To Remove Ex-Spouse From Mortgage; and,
- d. Parental Grandmother Is Not The Psychological Parent And Had No Standing To Oppose Child Relocation

**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**

### **C. 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

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## **HOW INCORRECT TITLING OF ACCOUNTS AND BENEFICIARY DESIGNATIONS CAN RUIN YOUR ESTATE PLAN**

Regardless of whether you have executed a will or just plan to let your estate pass according to the

laws of intestacy, the titling of your property and updating of your beneficiary designations can completely derail your intended plans for how your estate will be distributed after your death. Simple and unintended errors have the ability to drastically alter how your property will pass after your death, override your will and cause significant family strife and discord.

### **Re-titling Property for Convenience**

One of the most common do-it-yourself estate planning mistakes people make is to re-title bank and brokerage accounts or real property such that one child or a trusted individual is named as a joint owner of the property. This is most often done with savings, checking and brokerage accounts for the convenience of the elderly owner when he or she has reached a point in his or her life when handling day to day finances has become too much of a burden. In most cases, this is done in lieu of executing a power of attorney and providing that document to the bank or brokerage firm. Some individuals might feel that having the power of attorney prepared is too inconvenient or expensive at that time, but when compared to the potential costs of litigation after the death of the property owner, the attorney's fee for the cost of preparing the document is insignificant.

The problems most often arise after the death of the property owner because the property owner has inadvertently made a gift to the co-owner of the property thereby overriding his or her will. By titling the property as joint tenants, the property owner has given the person named as the co-owner of the saving, checking and brokerage accounts the right to the entire account upon his or her death. This is true even if the property owner only added the second person to the account for the convenience of having help handling his or her finances because it can be very difficult to prove that the property owner did not intend to make such a gift. The property owner's other children who were not added as joint owners of the accounts would understandably feel slighted or angry which could result in fights among the siblings if the sibling named as a joint owner does not equally share the money or assets in the accounts with his or her siblings. This is the case in the vast majority of instances. Additionally, the costs of litigating such

an issue can quickly become prohibitively expensive.

It is especially important to note that even if you do have a will which equally divides your estate among your children, if you have re-titled savings, checking or brokerage accounts to add another person as a joint owner, even for convenience sake, the property will pass to that co-owner child outside of your will by operation of law. Unless the second owner is willing to divide the money with the intended beneficiaries under your will, the only way the transfer can be challenged is in court where the aggrieved children will have the burden of proving by clear and convincing evidence that a gift to the co-owner of the accounts was not intended.

### **Re-titling Property as Do-It-Yourself Estate Planning**

Some people engage in do-it-yourself estate planning in order to avoid having to write a will or because he or she thinks that death taxes can be avoided by titling property in joint names. Unfortunately, titling property in joint names is not an effective method to avoid death taxes and is only partially effective for the Pennsylvania Inheritance Tax. If property has been held in joint names for more than one year prior to the property owner's death, then only the property owner's interest in the property is subject to Pennsylvania inheritance tax. For instance, if there are two joint owners for more than one year, only fifty percent (50%) of the value of the property is taxable for Pennsylvania inheritance tax purposes. For federal estate tax purposes, one hundred (100%) percent is included in the decedent's taxable estate. However, re-titling accounts for this purpose can have unintended consequences if the co-owner (often a child of the property owner) predeceases the original parent property owner. In that instance, the parent would be subject to Pennsylvania inheritance tax on his or her child's one-half interest in the parent's own property. If the property that was re-titled was a primary residence of significant value, the inheritance taxes due could be quite large.

Furthermore, this kind of do-it-yourself estate planning can cause significant issues among your

intended beneficiaries if you have not evenly divided the various accounts or assets among your children. Bickering and fighting among your children can occur when the accounts each child is named on does not result in each child inheriting the same amount of money. Unless you make it clear to your children that you intend to leave certain of your children more money or assets than others, they may come to resent the child or children who are joint owners of more valuable accounts if those children are not willing to take extra steps to ensure that all of your children have received an equal share. Moreover, if you intend that your estate be divided evenly among your children, it is especially inadvisable to name only one of your children as the joint owner of your accounts with the oral instruction that he or she should share the accounts equally with his or her siblings. Although you may believe that this child would follow your wishes, you cannot really predict how that child or his spouse will act once the money or assets are titled solely in his or her name. That child may convince himself or herself that you really intended for the money or assets to pass solely to that child for any number of reasons, including all of his or her assistance to you during your later years thereby resulting in your other children being disinherited.

It is much simpler to have a will and power of attorney prepared which will serve the same function as joint titling of accounts to ensure that your executor and attorney in fact will handle your finances as you intended if you are unable to do so.

### **Titling Property in a Second Marriage**

If you are in a second marriage and have children from a prior marriage, how your property is titled is a crucial detail that must be attended to if you do not want to disinherit the children from your first marriage. If all of your property is held in joint names with your second spouse, your property will pass by operation of law to your surviving spouse regardless of whether you made any provision for the children of your first marriage in your will. Your surviving spouse can then choose whether to leave any of that property to your children at his or her death or leave all of his or her estate including your assets to entirely different beneficiaries including to his or her own children. Therefore, it is essential that your

property remain in your name alone so that your children can receive it either immediately after your death, such as through an outright bequest, or after the death of your surviving spouse, through the use of a life estate as the remainder beneficiaries of a QTIP trust.

### **Updating Beneficiary Designations**

Another way your estate plan could potentially be derailed is by failing to update your beneficiary designations on your life insurance, retirement plans, or pay on death accounts as your situation in life changes. Beneficiary designations need to be updated after a divorce to remove your former spouse and name new beneficiaries. Although state law may provide that life insurance or retirement plan beneficiary designations or bequests in a will are revoked upon the entry of the final divorce decree, these laws do not apply to all of your beneficiary designations. Retirement plans that are governed by federal law are not required to follow such state laws and therefore the beneficiary designations on your workplace retirement plan will not be automatically revoked. Unless you are required to maintain your spouse as the designated beneficiary pursuant to a Qualified Domestic Relations Order, it is strongly advisable to name a new person or persons, including your children as your designated beneficiary. Some retirement plans provide that designations in favor of a former spouse will be automatically revoked upon the entry of the final divorce decree but you should not rely on such a provision. It is better to take the affirmative step of naming a new beneficiary in case the terms of the retirement plan are amended and the automatic revocation provision is removed.

If your estate plan utilizes a trust for your intended beneficiaries, you must be certain sure that your beneficiary designations are updated to reflect that you want the funds in your retirement plan or your life insurance policy proceeds be distributed according to the terms of the trust. The trust should be expressly named as the beneficiary instead of naming the individuals who are the beneficiaries of the trust. If your trust contemplates making gradual distributions to the beneficiaries so that the money is received over several years instead of all at once, your estate plan could be essentially meaningless if your

beneficiaries instead receive hundreds of thousands of dollars immediately from a life insurance policy or retirement plan at your death. Your beneficiary designations must be updated to ensure that the other aspects of your estate plan are not unintentionally negated.

If you have questions about titling your property and updating your beneficiary designations as part of your estate plan, our experienced estate planning attorneys are here to help.

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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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