

OCTOBER 2014 NEWSLETTER

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THE MOST COMMON MISUNDERSTANDINGS AND MISCONCEPTIONS ABOUT ESTATE PLANNING AND ADMINISTRATION

FIRM ANNOUNCEMENTS:

A. Pozzuolo Rodden, P.C. would like to welcome Bill Rhodes, a new associate to the firm. He graduated from the Beasley School of Law of Temple University. Mr. Rhodes received a Bachelor of Science Degree in Crime, Law, and Justice from Penn State University.

Prior to becoming an associate at Pozzuolo Rodden, P.C., Counselors at Law, Bill Rhodes clerked for Presiding Judge Walter Marshall in Gloucester County during Judge Marshall's final year on the bench. At the culmination of his clerkship, he received the Samuel G. DeSimone award for excellence in mediation for maintaining the highest successful mediation rate in the history of the program. Mr. Rhodes has developed his advocacy skills by working as a certified legal intern at the Gloucester County Office of the Public Defender and the Philadelphia

District Attorney's Office. In 2013, Bill Rhodes was among the first students to receive a certification in Trial Advocacy from Temple University.

Bill Rhodes is admitted to practice in Pennsylvania and New Jersey.

B. FREE ONLINE CLE/CPE CREDITS:

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", "How Middle Income Families Should Plan for Retirement Including Ethics" and "The Fundamentals of Starting a Business".

***How Middle Income Families Should Plan for Retirement- <http://bit.ly/ZvgNbr>**

***The Fundamentals of Starting a Business- <http://bit.ly/13Q8dei>**

***The Negotiation and Documentation of Commercial Real Estate Loan Documents- <http://bit.ly/17jfXSN>**

Any problems, please feel free to contact Chrissy @ chrissy@pozzuolo.com

Also, each of these seminars can be viewed without receiving credit on the internet at "Pozzuolo Rodden, You Tube" or at www.pozzuolo.com.

QUESTION OF THE MONTH:

**CAN AN EMPLOYER LIMIT THE TIME AN EMPLOYEE
HAS TO BRING SUIT?**

Answer-See Page 7 of this Newsletter

**The Most Common Misunderstandings and
Misconceptions about Estate Planning and Administration**

1. Estate planning is only for the wealthy.

Many people think they only need estate planning when they have significant assets to dispose of at their deaths. However, even for people with less material wealth, there are many reasons to have an estate plan in place. If you are a couple with young children, one of the most

important reasons to have an estate plan is to name a guardian of the person of your minor children in the event both parents die before the children have reached adulthood. Along the same line, many young parents take out life insurance policies to provide for their families in the event of their untimely death. In the event both parents die before the children reach the age of majority, it is very important that there is a plan in place so that the children do not receive the proceeds of what may be a very large life insurance policy the day they turn 18, 21, 25 or even 30 years of age. Having an estate plan in place can allow for the child's needs to be met and provide for gradual distributions of the money for their health, welfare, support, and education as they mature and become more capable of making financial decisions. Furthermore, if any of your children have special needs, a well drafted estate plan can allow them to receive the governmental benefits they may be entitled to while still enjoying the level of care and comfort they have enjoyed while you were alive.

Having an estate plan additionally allows you to name your fiduciaries for your will and any trust you might have created so that the person best able to complete the administration is the one appointed.

2. Probate must be avoided because it is always expensive and time consuming.

The time that the probate process requires is almost identical to or even less than the time that would be incurred even if there is no estate to probate and costs less. The assets of the decedent's gross estate will still have to be inventoried, valued, and a death tax return will have to be prepared. After that, the net assets of the estate, whether held in a revocable trust or passing by will or intestacy, will have to be transferred to the beneficiaries or sold. In the case of real estate or a business, the time and expense of selling these assets will be incurred regardless of whether they pass through probate or the trust. Furthermore, both a trustee and a personal representative have to account to the beneficiaries for the assets they received and disbursements made from the estate or trust.

Two large expenses that are incurred during an estate administration result from a failure to prepare a complete estate plan. An administrator who is appointed by the Register of Wills, as opposed to an executor who is appointed in the will, will have to post a bond to protect the assets of the estate and the cost of this expense is often more expensive than just preparing a will in which you can waive the bonding requirement. Second, by failing to create a comprehensive estate plan, your administrator will have to apply to the court for permission to sell your real property or to continue operating your business.

The most likely reason people assume probate will be expensive and time consuming is because of horror stories people have heard where estates are tied up in litigation for years or where a personal representative mishandles or steals assets of the estate. These problems have less to do with the probate process and more to do with the family members who are beneficiaries of your estate and the person administering your estate. These problems can be avoided in large part by creating an estate plan wherein you appoint a fiduciary who will responsibly, capably, and efficiently administer your estate. Unfortunately, if your family members (or your family members who think they should be beneficiaries of your estate) choose to litigate, the lack of a probate estate will not stop them from attacking non-probate transfers such as trusts or the beneficiary designations of your life insurance policies and retirement plans

or assets passing outside of your probate estate such as joint accounts.

In fact, the probate fees in the four county Greater Philadelphia Metropolitan area are relatively low compared to the cost of preparing an estate plan. The Probate filing fees for the County of Philadelphia range from \$296.00 for a \$10,000 estate to \$1,290.00 for a \$1,000,000 estate. In Montgomery County, the filing fees range from \$66.00 for a \$10,000 estate to \$420.00 for a \$1,000,000 estate. In Delaware County, the filing fees range from \$83.00 for a \$10,000 estate to \$900.00 for a \$1,000,000 estate. In Bucks County, the filing fees range from \$75.00 for a \$10,000 estate to \$1,400.00 for a \$1,000,000 estate. It is clear from these dollar amounts that the probate fees themselves are not so expensive.

3. If I have a revocable trust, probate is not necessary.

In theory, this belief is true but in practice, it is the exact opposite. When you have a revocable trust, probate is not necessary if all of your assets are re-titled in the name of the trust, leaving nothing that passes by will or intestacy. What often happens is that individuals execute the documents that create the revocable trust but then fail to fund the trust or only partially fund the trust. Even if the trust is funded, the additional cost of preparing, filing, and recording all the necessary documentation must be taken into consideration because those fees will often have to be incurred a second time after your death when it is time to distribute the trust's property to the intended beneficiaries. Finally, you will still need a will that can act as a "catch all" for your tangible personal property and other assets that were not re-titled in the name of the trust.

4. Revocable trusts can be used to avoid death taxes.

Revocable trusts do not save federal estate taxes. In fact, property titled in a revocable trust is treated as if it were the grantor's own property for both income and estate tax purposes.

Revocable trusts are popular in part because of a misconception about how use of these trusts can affect death taxes, such as the federal estate taxes or state inheritance or estate taxes. The death tax savings technique used in revocable trusts to save on death taxes can just as easily be used in a will or a trust that takes effect after your death. This technique involves the use of what is called a "bypass" trust or a "credit shelter" trust which is normally used by married couples. This type of trust maximizes the use of the federal estate tax exemption, which under federal law is currently \$5,340,000 per person, so that each spouse can use their entire exemption. However, state estate taxes tend to have a much lower exemption so there will still be some estate tax due. The inheritance tax, such as in Pennsylvania, is not avoided through the use of a revocable trust because, although there is no tax on transfers between spouses, there will be tax due when the estate finally passes to other beneficiaries such as children, other family members or friends. If there is no bypass trust, the fact that the property is in a revocable trust is irrelevant for death tax purposes.

5. I don't need an estate plan because all my property is jointly titled.

Putting all your property into joint ownership with a right of survivorship is self-help estate planning in itself. However, there are several problems that can result from jointly titling your property. By jointly titling all your assets you may be wasting tax planning opportunities that will leave you and your spouse's estates with a higher tax bill when the second spouse dies. Moreover, if you and your spouse jointly own all your property with the intent that all of your

assets will pass to your children after your death, there is no way to ensure this will happen if your spouse remarries after your death. All the assets you accumulated during your lifetime could end up passing to the new spouse or the new spouse's children instead of your children.

Another problem with jointly titling property is that when you jointly title your property with your child as a joint owner with right of survivorship, you have potentially made a taxable gift to your child of one half of the value of the property and a gift tax return may have to be filed. Conversely, if your child dies before you, in Pennsylvania the savings or investment account will be subject to inheritance tax as a transfer from your child to you even though your child contributed nothing to the account. Moreover, by jointly titling financial accounts, you run the risk of the new joint owner spending all the money in the account during your lifetime instead of after your death. You also are placing your assets at risk because they can be levied upon by the joint owner's creditors. A portion of the value of the asset can also be deemed to be marital property of your child if he or she goes through a divorce and may be subject to redistribution to the ex-spouse.

Jointly titling property can also lead to significant discord among your family members if the distribution of your assets is not equal. Even if you name one child as a joint owner of a savings or investment account only for the convenience of having someone assist you with handling your finances and paying bills, that child will be entitled to all of the assets in the account upon your death. There is a presumption that you made a gift to the one child to the exclusion of your other children and this presumption can only be rebutted by clear and convincing evidence in court if your other children want to share in the account. There can be resentment and years of fighting if the division of assets is not exactly equal.

Finally, as discussed in more detail below, estate planning involves more than just preparing a will or trust.

6. Life insurance is not taxable.

In certain limited instances, this belief is true. In both Pennsylvania and New Jersey, life insurance is not subject to inheritance tax when the policy is payable directly to the beneficiary and not to your estate. However, for both the federal estate tax and New Jersey estate tax, life insurance is included in your gross estate if you retain any incidents of ownership at the time of your death. Incidents of ownership include the right to name beneficiaries and the right to terminate the policy, among other rights, in addition to simply owning the policy. If you plan to use life insurance as part of your estate plan and your gross estate is greater than the current federal exemption of \$5,340,000, having an experienced estate planning attorney draft an irrevocable life insurance trust is one way to remove the life insurance policy benefits from your taxable estate. If the trust is properly drafted, funded and managed, it can be a valuable tool for passing a large sum of money to your beneficiaries free of death taxes.

7. Estate planning only refers to having a will prepared.

The will is certainly an important part of estate planning but it is only one component of a complete estate plan. Estate planning also includes preparing a power of attorney and advance health care directive or living will. These documents are vital for ensuring proper management of your affairs if you are ever incapacitated or otherwise unable to make decisions for yourself.

As people are living longer now than ever before, the odds of developing dementia or other age related diseases has significantly increased and will continue to do so. Approximately 5 million Americans are currently living with age related dementias. If you wait to prepare these documents until you are actually losing the ability to care for yourself and manage your affairs, you risk not being able to execute a valid document in time and your family will have to go through the costly processing of applying to the courts to become your guardian.

If you plan on making gifts to family or friends below or above the annual exclusion amount (\$14,000 in 2014) as part of your plan for reducing the assets that pass at your death and which would be subject to tax, it is important that your attorney in fact have the power to make such gifts in the power of attorney and that he or she understands your planned giving goals and limits.

In addition to these documents, estate planning also encompasses the beneficiary designations on your accounts and title to your property. Having the correct beneficiary designation is critical to an effective estate plan because the asset, such as a retirement plan or investment account, will pass according to the beneficiary designation regardless of what your will says. For example, if you plan on dividing your assets evenly among your children under your will but you have one of them named as a beneficiary or joint owner of an account, the actual distribution of your assets may not be what you intended. Furthermore, if you have a trust in your will or living trust that provides for the distribution of trust assets to your children over a number of years, naming your children as designated beneficiaries will result in the outright distribution of the money once they are 18 years of age instead of passing according to the terms of the trust and not many 18 year olds have the financial acumen to manage such large sums of money.

8. My child with the most free time should be my fiduciary.

One of the most important decisions a person makes when creating their estate plan is choosing who will be the fiduciary responsible for administering the estate or trust and who will be named as attorney in fact for financial and health care decisions. Initially, it might seem that oldest child or the child who has the most time should be the one who is given this responsibility. However, one should think very carefully about whom in their lives is best equipped to take on these responsibilities. Fiduciaries in these situations need to be able to make responsible financial decisions and, for health care decisions, it must be someone who is capable of making difficult decisions in potentially very emotional situations. Your fiduciary should also recognize situations when he/she is in over his/her depth and need legal assistance to carry out their duties, instead of making decisions that could result in costly expenses and taxes.

Please feel free to contact this office and meet with one of our experienced estate planning attorneys to further discuss these issues and create an estate plan that fits your needs.

QUESTION OF THE MONTH:

CAN AN EMPLOYER LIMIT THE TIME AN EMPLOYEE HAS TO BRING SUIT?

Recently in Rodriguez v. Raymours Furniture Company, Inc., the Superior Court of New Jersey, Appellate Division, considered whether an employer can contractually limit the time an employee has to file an employment lawsuit against the employer. In Rodriguez, the Court ruled that a six (6) month limitation placed in an employment application was enforceable to bar a former employee's lawsuit against his employer, when the employee failed to file his claim within six (6) months of his action accruing.

The Court allowed the limitation provision to stand based on the parties' right to freely contract and the fact the provision was prominently displayed in the employment contract. The limitation provision was in the same font and size as the rest of the terms, was in all capital letters, and following a section of bold type cautioning the applicant to read the section carefully before signing because it would become part of the terms of their employment if the applicant was hired.

This decision is beneficial to employers because typically employees can have longer time limits to bring employment claims against their former employers. For example, under New Jersey's Law Against Discrimination an employee typically has two (2) years to file a discrimination claim, but an employer who adds an enforceable limitation provision can limit that employee's time to file a discrimination claim under New Jersey law to six (6) months.

Please feel free to contact this office and meet with one of our experienced attorneys to further discuss these issues and see if a limitation provision would be beneficial to your company.

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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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