

# FEBRUARY 2015 NEWSLETTER

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## WHY A PRENUPTIAL AGREEMENT MAY BE THE SMARTEST WAY TO PROTECT YOUR INTERESTS BEFORE WALKING DOWN THE AISLE

### **FIRM ANNOUNCEMENTS:**

#### A. **2014 TOP ATTORNEYS**

Pozzuolo Rodden, PC is pleased to announce that both Philadelphia Life Magazine and Suburban Life Magazine included Joseph R. Pozzuolo and Judith P. Rodden on their 2014 Top Attorneys list. This list is based on readers who cast votes to help these magazines compile a definitive list of the 275 keenest legal minds in the Philadelphia area.

#### B. **DIGITAL ASSETS; ESTATE PLANNING FOR THE TWENTY-FIRST CENTURY**

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo and Kelly A. Barse, Esquire have written an Estate Planning article titled: "Digital Assets: Estate Planning for

the Twenty-First Century” was published in the January 2015 publication of Practical Tax Strategies Journal of Thomson Reuters. A copy of this article can be obtained by clicking here: [Digital Assets Estate Planning For The Twenty-First Century.pdf](#) or emailing Christine Wainwright @ [chrissy@pozzuolo.com](mailto:chrissy@pozzuolo.com)

C. **UPCOMING SEMINARS**

1. Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire will be presenting two CPE/CLE webinar seminars for Lawline on Friday, March 20, 2015. The topics will be:

11 am: Closely Held Business Law Symposium for the General Practitioner and CPA

1:30 pm: The Nuts, Bolts, and Ethics of a Multi-Discipline Estate Practice for the General Practitioner and CPA

Please contact Shaun Salmon, Esquire at: [shaun.salmon@furthered.com](mailto:shaun.salmon@furthered.com) or register on line at [www.lawline.com](http://www.lawline.com)

2. Joseph R. Pozzuolo, Esquire will be presenting a CPE/CLE webinar seminar for Clear Law Institute on Thursday, March 26, 2015 at 1:00 pm.

The topic will be: The Negotiation and Documentation of Commercial Loan Documents Including The Use of Convertible Loans With Put and Call Options

Please contact Michael Tobin at: [mtobin@clearlawinstitute.com](mailto:mtobin@clearlawinstitute.com) or register on line at [www.clearlawinstitute.com](http://www.clearlawinstitute.com)

3. Joseph R. Pozzuolo, Esquire will be presenting a CPE/CLE webinar seminar for Lawline on Friday, April 24, 2015 at 12:00 pm.

The topic will be: The Fundamentals of Estate Planning for the Traditional Middle Class Family.

Please contact Shaun Salmon, Esquire at: [shaun.salmon@furthered.com](mailto:shaun.salmon@furthered.com) or register on line at [www.lawline.com](http://www.lawline.com)

4. Joseph R. Pozzuolo, Esquire and Jeffrey S. Pozzuolo, Esquire will be presenting a CPE/CLE for Penn State Abington on Saturday, May 9, 2015 from 8:00 am to 12:00 pm.

The topic will be: The Fundamentals of Representing a Privately Held Business Including Obtaining Commercial Financing for the Suburban General Practitioners, Attorneys and CPAs, Including Ethics.

Please contact Theresa Bloom at: [tmb17@psu.edu](mailto:tmb17@psu.edu)

**Although all of these seminars are continuing education seminars**

**courses for lawyers, accountants and life underwriters, the general public is invited to attend or view.**

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**QUESTION OF THE MONTH:**

**DO MY ESTATE PLANNING DOCUMENTS NEED A CHECK-UP?**

Answer-See Page 7 of this Newsletter

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**WHY A PRENUPTIAL AGREEMENT MAY BE THE SMARTEST WAY TO PROTECT YOUR INTERESTS BEFORE WALKING DOWN THE AISLE**

Prenuptial agreements are often viewed as the antithesis of romance and as having the potential to destroy the relationship before the marriage has even happened. Many people might feel insulted that their potential spouse wants them to enter into a prenuptial agreement because they presume their fiancé is already planning the divorce. However, a properly drafted prenuptial agreement will protect both spouses, regardless of whether one or both spouses have significant assets or income at the start of the marriage. Even if a divorce never happens, drafting a prenuptial agreement is still important because it forces the spouses to put in writing their expectations for the marriage and their decisions for how money will be handled.

**DISCLOSURE OF FINANCIAL SITUATION**

In order for the prenuptial agreement to be upheld by any court during a divorce, both spouses must have full knowledge of what rights they are giving up. That means there must be a complete disclosure of both future spouses' financial situations. This includes income, bank and investment accounts, retirement accounts, real property, cars, artwork, and jewelry. It also includes the premarital debts of both spouses. This is especially important because the extent of a spouse's premarital debts will have an impact on how much that spouse can contribute to household expenses, such as a mortgage and other shared expenses. Furthermore, if one spouse has children from another marriage, the financial obligations associated with those children will also impact how that spouse can contribute toward household expenses.

**WHAT ASSETS YOU WILL SHARE AND WHAT YOU'LL KEEP SEPARATE**

If you are going into the marriage with assets that you have acquired during your lifetime, you and your future spouse should discuss how those assets will be handled during your marriage. For instance, if one spouse already owns a house in his/her name alone but then the other spouse contributes to the mortgage payments during the marriage how would that asset be divided upon divorce? Having this discussion while the relationship is strong and both spouses are thinking rationally can help avoid additional headaches if things go sour. One common approach is to have all assets owned before the marriage kept separate and all the assets acquired during marriage to be considered marital property. Alternatively, you can opt to continue treating all of the assets held in one name alone as separate property and whatever is placed in joint names will be marital property. It all depends on each of your financial situations and expectations for how property will be handled during the marriage. It is much better to have this conversation before the marriage so neither spouse feels that they have been treated unfairly or blindsided during a divorce.

#### **WHO WILL BE FINANCIALLY RESPONSIBLE FOR WHAT.**

For those getting married for the first time, it is prudent to have a discussion regarding how each spouse plans to contribute to household expenses. For instance, if a young couple plans on having children, this can alter the financial dynamic of the relationship even if both spouses are employed and contribute financially at the outset of the marriage. If the couple decides that one spouse will stay home with the children that spouse will no longer be able to contribute financially to household expenses. Moreover, because he or she will be out of the workforce for some time, he or she will not be able to save for his or her own retirement during the years he or she is home with the children and will potentially have a decreased earning potential when he or she does go back to work.

Discussing how this change in financial earning power will be handled will make sure that both spouses understand each other's expectations regarding the division of both financial and household responsibilities. Once the spouses come to an agreement about how these situations should be handled, it can be incorporated into a prenuptial agreement.

#### **HOW TO HANDLE CURRENT AND FUTURE DEBT**

A common misconception is that if neither spouse has significant assets when they get married then a prenuptial agreement is not necessary. However, regardless of how much money either spouse has at the beginning of the marriage, it is likely that both spouses will incur debts over the course of the marriage. Before getting married many couples will not have already combined their finances and therefore probably are not intimately acquainted with each other's spending habits. One spouse might end up being quite surprised when learning of the other spouse's six figure college and professional school debt or how the other spouse spends his/her money or upon learning that the spouse frequently maintains a high unpaid balance on their credit card or has extravagant spending habits. In order to avoid receiving this shock down the road, spouses should discuss their spending habits and what debts will be considered marital debts and what will not be considered marital debts.

For instance, the future spouses might agree that debts which they jointly incur will be their equal responsibility in the event of a divorce but that if one spouse opens a new credit account the debts incurred on that account will be the sole responsibility of that spouse. This might seem like a very common sense approach, but without this agreement in place a judge presiding over the divorce might allocate a larger share of the debt incurred during the marriage to the spouse with the higher income regardless of who incurred the debt and what the debt was for. This way it is clear to both spouses how debts will be treated both during the marriage and after its dissolution.

### **PRESERVING A POTENTIAL INHERITANCE**

In general, inheritances are not considered marital property while they remain solely in the name of the spouse who inherited the property. This changes once you re-title the property in the name of both spouses; it becomes marital property and subject to equitable distribution at the time of a divorce. This is where having a prenuptial agreement can be very useful. For instance, if one spouse inherited a large sum of money and wanted to use part of that money as a down payment on a house or summer home to be held in joint names, that inherited sum would normally become marital property. In a properly drafted prenuptial agreement, the spouses can agree that the spouse who contributed the inherited money for the down payment will receive a credit off the top if the house is sold during a divorce so that he or she can recover the

inheritance.

### **PROTECTING THE FINANCIAL WELL BEING OF CHILDREN FROM A PRIOR MARRIAGE**

If you have children from a previous relationship, you will likely want to protect their interests and leave them an inheritance at your death. However, your spouse has certain rights granted to them under the law regarding what portion of your estate he or she is entitled to and this could potentially cut into what your children will inherit. Particularly, if this marriage is happening later in life when both you and your future spouse have accumulated assets, you may want to have your future spouse waive some or all of his or her rights to a specific portion of your estate. For instance, instead of your future spouse having the absolute right to a third of your estate you can agree to leave him or her a life estate in the home you share in addition to some money in trust for his or her wellbeing. This way you can ensure that your property will eventually pass to your children from the other marriage and your future spouse will also be adequately provided for after your passing.

### **ELIMINATE BATTLES OVER ASSETS AND ALIMONY IN THE EVENT OF A DIVORCE**

Another issue that arises during divorce that can be planned for in a prenuptial agreement is the payment of alimony after the marriage ends. You can agree that no alimony will be paid at all or set time limits on how long the marriage must last before there will be any alimony payments. Alternatively, you can also set limits on how long alimony will be paid. These are issues that courts routinely decide but coming to an agreement on these terms while the relationship is still healthy may lead to less resentment later on when the alimony has to be paid and you will have more certainty in how long these payments will be made instead of being subject to the whims of the court. However, it should be noted that topics such as child support cannot be bargained for in a prenuptial agreement; the right to child support belongs to the child and cannot be used as bargaining power between the parents. Instead, you can outline your expectations regarding the payment of college tuition as that is a topic that is frequently provided for in property settlement agreements during divorces.

All the issues discussed above will help make a divorce less financially stressful because both spouses have already agreed to how property will be divided and there will be less to fight over. Although asking for a prenuptial agreement does not seem like the most romantic gesture before tying the knot, an attorney for both you and your spouse can help you determine what issues are important to you and help outline how you will handle financial and household decisions during your marriage.

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

#### **Do My Estate Planning Documents Need a Check-Up?**

Just as with your life plan, business plan and your health, an estate plan is not something that can be addressed once, placed in a time capsule and ignored until your death. It is something that needs to be addressed periodically as important choices that were once desired may not now be so desirable due to changing circumstances. If there was a change in circumstances in any of the following life events, it is important to have an estate plan “check-up” to re-evaluate your plan to ensure that the right individuals or institutions are administering your estate and the welfare and security of your family members are taken care of after your death:

- **Change in health, life, or relationship with a fiduciary:** A fiduciary is the person or institution who you appointed to administer your affairs either in the event of your disability or incapacity or after your death. You may have originally chosen a spouse, child, sibling, friend or institution. This person may now be terminally ill with months to live, may have passed away, may now be in a different station of life and unable to manage your affairs, your once great relationship with him could have withered away or the institution has merged three different times since your choice was made. It is important to re-evaluate your choice of fiduciary to ensure you can trust this person and that they are still alive and/or competent to manage your affairs.
- **Change in health, life or relationship with a beneficiary:** Additionally, your beneficiaries may have a change in circumstances. Whereas your children may have been 10 and 15 years old when you wrote your current Will, these same children may be now

married with children. One may be financially well off not needing the support you originally provided while the other may need such support if he chose a less lucrative but respected career such as teaching, serving in the armed forces, law enforcement or works for a non-for-profit entity. Additionally, the youngest child may acquired a drug addiction through his teen years where you may want to place restrictions on his inheritance to ensure your money does not feed, aid or foster such addiction. Further, both of your children may be financially secure where you may now want to provide a scholarship or fellowship at your alma matter. Thus, it is important to re-evaluate and be secure that your assets are being distributed to the right beneficiaries after your death.

- **Change in your life:** Your life may have changed. Things you once thought were important are not anymore. You may now spend most of your time in Florida, California or Arizona, away from your original home. You are living a new life. You may have wanted 100% of your assets for the support of your children and your children are now grown and financially secured. Therefore, you want to focus on giving back to the community through gifts or a charitable foundation. In other words, if a number of years have passed, you may have merely readjusted your priorities.
- **New people in your life:** You may have new people in your life that were not there before. You may now have a new significant other, new stepchildren, new grandchildren or a new niece or nephew you are extremely close to. It is important to consider whether or not you desire to include new beneficiaries within your estate plan.
- **Change in wealth:** A change in your life could be a great financial fortune or misfortune. An estate plan for \$300,000 is going to look completely different than an estate plan for \$30 million. At \$300,000, your assets would be used to support your spouse or children. At \$30 million, your spouse and children can be taken care of but you may desire establishing a charitable foundation and would certainly need federal estate tax planning. Also, previously, 80% of your \$30 million may have been tied up in a closely held family business causing liquidity issues whereas now the business has been sold and it is invested in more liquid investment accounts. Any change in wealth and form of wealth will greatly affect your plan.
- **Change in estate plan rules:** If it has been a couple of years since you have addressed your estate plan, the federal estate tax rules changed substantially between 2009 and

2013. Further, there are constant IRS revenue rulings and tax court rulings that could affect your plan. It is important to re-examine your plan in relation to such rule changes.

- **Amnesia:** If you simply forgot the specific details of your plan such as whether your son John gets \$35,000 or \$375,000, your children get 25% or 95% of your estate in trust or outright at death or forgot at what age your children can withdraw principal from his/her trust or whether your wife and first son, or wife and daughter or what trust company will administer your estate or trust, it is time to refresh and re-evaluate. You do not want to die thinking you left your loved ones one thing, but in reality you left another.

Life is not static but constantly changing as good and bad events happen, you meet new people, people grow older, and the regulatory/tax environment is constantly changing. Estate plans are made given the situation at hand during drafting, but as things change, they need to be revisited periodically to ensure they are still current to meet your goals now and meet the needs of both yourself and your future heirs.

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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).