

NOVEMBER 2013 NEWSLETTER

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WHY A LIVING WILL IS A MANDATORY ESTATE PLANNING DOCUMENT

NEWS ALERT:

1. Before addressing this topic, Pozzuolo Rodden, P.C. are pleased to announce the following:

A) PHILADELPHIA MAGAZINE FIVE STAR WEALTH MANAGER, BUSINESS PLANNING

Pozzuolo Rodden, PC is pleased to announce that Joseph R. Pozzuolo was designated as a

2013 PHILADELPHIA FIVE STAR WEALTH MANAGER, BUSINESS PLANNING by Philadelphia Magazine. The award will appear in the November, 2013 edition of the magazine. Mr. Pozzuolo was selected after an independent survey was conducted by Philadelphia Magazine of 64,000 registered financial services professionals, high-net-worth households and subscribers of Philadelphia Magazine all of whom have an income of greater than \$190,000.

2. Upcoming Seminars: Free Online CLE/CPE LawLine Seminars

Pozzuolo Rodden, P.C. is pleased to announce the opportunity to attend a CLE/CPE seminar for free via webcast. Joseph R. Pozzuolo, Judith P. Rodden and Jeffrey S. Pozzuolo will be teaching two 1 hour seminars as part of a full day of seminars being held by Lawline in King of Prussia, Pennsylvania.

“Estate Planning For An Aging Graying Population”

Saturday, December 14, 2013

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

Pass code: <http://bit.1y/1hwURp1>

“The Combination Role of CPAs and Attorneys In Family Law Litigation”

Saturday, December 14, 2013

Presenter: Judith P. Rodden, Esquire
Pozzuolo Rodden, P.C., Philadelphia, PA

Pass code: <http://bit.1y/1hx2hbK>

Please contact Christine Wainwright @ 215-977-8200 or chrissy@pozzuolo.com if you have any questions about logging on.

3. 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, feel free to contact Chrissy at: chrissy@pozzuolo.com

QUESTION OF THE MONTH:

I HAVE PRIMARY CUSTODY OF MY EIGHT-YEAR-OLD SON, DO I NEED MY HUSBAND’S CONSENT TO TAKE A JOB AND RELOCATE WITH MY CHILD TO ANOTHER CITY?

Answer-See Page 7 of this Newsletter

WHY A LIVING WILL IS A MANDATORY ESTATE PLANNING DOCUMENT

You may be healthy enough today to make your own medical decisions, but what happens if a car accident leaves in a coma or you suffer a stroke that leaves you in a vegetative state? Who will make the decisions for you if you cannot? Will this person make the same medical decisions as yourself? How will your family and friends feel if this person makes a decision they do not agree with? Having an estate planning attorney draft a living will for yourself will help provide certainty to these questions and help ensure your wishes are followed out. Even if you only have a simple will for a few assets, a Living Will is an important document to have an estate planning attorney draft as it is a simple step to ensure you are treated properly and to relieve your loved ones of making tough decision and the added anxiety.

What is a Living Will?

A Living Will is a document drafted by your estate planning attorney that sets forth your medical preferences upon incompetency. A living will goes into effect when, for example, two doctors declare you as incompetent to manage your own medical affairs, unconscious and terminally ill, or brain dead. It sets out certain advanced directives and declares a healthcare surrogate to make decisions on your behalf. This is essential to your estate plan to ensure you receive only the

medical care you desire – no more and no less.

Advanced directives state your preferences for certain types of treatments. There is a misperception that living wills are only meant if you would like to “pull the plug” early. While many people will not desire to be kept alive on breathing and feeding tubes if unconscious and terminally ill, the advanced directives may provide instructions on whether or not to keep you alive as much as medically and financially possible. These advanced directives provide certainty of what your preferences would be when you cannot communicate them.

Your Living Will can also set forth a health care surrogate (and substitutes if the designated surrogate cannot serve) to make medical decisions on your behalf. This surrogate will make decisions that, as frequently the case, the advanced directives in the Living Will did not contemplate or decisions that were specifically vested in the surrogate to make depending on the circumstances. Thus, a Living Will is an important document that provides a level of certainty that your body will be cared properly if you become unconscious, brain dead, or mentally incompetent.

Specific Benefits of a Living Will

Have Your Wishes Followed

The point of estate planning is to document your wishes so they may be carried out when you physically and mentally cannot express them. A Living Will is as important as a will, if not more important in some case, as this documents your wishes while you are alive and how you should be treated. This makes sure you will not be kept in a painful vegetative state for 5 to 10 years because a relative cannot stomach pulling the plug or that the plug is not pulled too early if you want to be kept alive at the possibility of a future medical advancement that may save you. A Living Will is important to make sure your and only your wishes are followed for how you are treated.

Designate the Proper Surrogate to Make Decisions

In a Living Will it is important to set forth the health care surrogate as you would set forth an executor or trustee in your general estate plan. In the absence of a Living Will, the time it takes to determine who can make medical decisions on your behalf (a healthcare proxy) may substantially change the possible outcome of your condition, and the statutory choice of proxy may choose the wrong person. In absence of declaring a surrogate a person called a health care proxy is chosen based on state law. Choice of a proxy varies among states and each doctor/hospital may respond differently based on the state and factual situation. Examples of different decision schemes are:

- 1) A statutory pecking orders for selecting a proxy of a spouse, then adult children, then parents, adult siblings, adult grandchildren, a close friend,...;

- 2) A doctor may require a consensus of all family members;
- 3) A doctor picks an appropriate proxy after interviewing a statutory list of eligible people;
- 4) A doctor must do all in her power to keep you alive; and
- 5) A court order is required to declare a proxy (especially if loved ones disagree on care).

The process of choosing a proxy may take longer than the window from which a decision needs to be made. To determine the proxy, you first need to determine what state law applies, what the laws are of that state, and possibly go through a process to select the proxy through court. If you could be saved by an experimental elective surgery if completed within three hours of being admitted to the hospital, you may not have a proxy to make such an elective decision until long after this three hour window has expired.

Further, the statutory proxy may not be the ideal person. The proxy may not share the same preferences or may be the type of person to freeze up on such major decisions. The statutory proxy could be an estranged child or sibling that you have not talked with in years or who will make a decision to receive an inheritance from you sooner by pulling the plug. The easiest way to alleviate these concerns is to include a Living Will in your estate planning documents and set forth the health care surrogate.

Reduce Guilt/Anger of Surviving Parties

A Living Will is not only essential in your estate plan to ensure you are treated properly, but it is essential to reducing the burden on your loved ones by avoiding potential anger, fights, and guilt. Many families have major battles over what treatment is proper for their incapacitated loved one. This creates anger towards the proxy or surrogate that pulled the plug or kept you alive in a vegetative state for many years and depleted your estate. Some surrogates or proxies may be reluctant to pull the plug out of guilt or have guilt or regret for pulling the plug. Also, family members will be distraught if an estranged child is selected as a proxy under statutory law and pulls the plug early to receive an inheritance sooner.

A Living Will reduces this anger and guilt of loved ones. If you clearly state your medical preferences, this reduces much of the anger and guilt involved. Family members are less likely to be angry with a surrogate that is simply following your written directives as opposed to deciding to pull feeding and breathing tubes on their own. Further, the surrogate himself/herself will not have the guilt of whether he/she did the right thing. Additionally, by choosing a surrogate, this avoids drawn out family battles over who makes the decision and what treatment should be applied. These battles can permanently destroy family ties. Last, this avoids the wrong person from being selected and essentially “killing” you to receive an inheritance sooner or larger

inheritance or keeping you alive at your expense and discomfort for 5 to 10 years. A Living Will is not only an important estate planning tool for yourself, but it is also important to put your friends and relatives at ease.

Reduce Ambiguity and Anxiety about Medical Care Decisions

Following up with reducing guilt and anger, a Living Will in your estate plan will reduce general ambiguity and anxiety. You provide certainty that you will be cared for upon your own preferences. You can ensure the surrogate is willing to take responsibility for your medical decision and can weigh your options when fully competent. Your spouse or children will not have to worry about possibly family wars about what treatment to provide (or not provide). Again, a Living Will is both essential for yourself and your family to reduce overall ambiguity and anxiety.

Avoid Depleting Your Estate

A Living Will is also an important estate planning tool to avoid depleting your estate with end of life medical expenses. Remaining in a vegetative state for even 3 to 5 years will significantly reduce your asset pool that would pass to your family members. Further the funds may arrive too late for your daughter whom could have used inheritance to pay off her college loans, purchase a new home, pay for a surgery your grandchild needed, or cover her during her inability to find a job in a recession. Thus, a Living Will helps may ensure your assets are not depleted and reach your family members when needed rather too late.

Avoiding Costly and Embarrassing Legal Battles

In addition, a Living Will will save yourself and your family the cost of long drawn out legal battle over the decision maker and what the proper care is. In the absence of a Living Will, family members are more inclined to bring law suits to enjoin certain treatments or remove a statutorily determined decision maker. A Living Will provides clear evidence to settle disputes early or from even starting. This will reduce the financial cost of legal battles and family embarrassment as your family's "dirty laundry" will be aired in court if a drawn out proceeding is necessary.

Prepare for the Unexpected

Last, while you may currently be young, healthy, and have a strong family medical history, tragedy can happen at any moment. There are stories of healthy and strong 24 year olds being held in a vegetative state for many years after a severe car accident or botched up surgery because a parent would not pull the plug. In addition, your current health will allow you to make the decisions while you have full capacity and can truly weigh your options. If not for yourself, it is important to take the one simple step to add a Living Will to your estate plan to avoid the potential years of guilt, anger, anxiety, battles and embarrassment for your loved ones.

Conclusion

While a Living Will may be something easily overlooked in an estate plan, it is as important as a testamentary will to ensure your wishes are fulfilled when you cannot speak for yourself as to your medical care. More importantly, it makes it easier on your loved ones who are already grief stricken enough coping with your sudden incapacity and their loss of your presence. It is important to talk with your estate planning attorney today to draft a Living Will, if not for your sake, for the sake of your family and friends.

QUESTION OF THE MONTH:

I HAVE PRIMARY CUSTODY OF MY EIGHT-YEAR-OLD SON. DO I NEED MY HUSBAND'S CONSENT TO TAKE A JOB AND RELOCATE WITH MY CHILD TO ANOTHER CITY?

While you do not need your Husband's consent to change jobs you may need it in order to relocate to another city with your minor son. In Pennsylvania, if your move qualifies as a "relocation" as defined under the Child Custody Act then you would either need your Husband's consent or the Court's approval to relocate and move to a different city with your minor son.

To know if consent is necessary it must first be determined if your move counts as a relocation under the Child Custody Act ("Act"). The Act became effective in January 2011 and governs disputes relating to child custody in Pennsylvania. Under the Act, relocation is defined as a "change in residence of the child which significantly impairs the ability of a non-relocating party to exercise its custodial rights." For example, the Superior Court of Pennsylvania has found a move qualified as a relocation when a mother wished to move sixty-eight miles away, because while the father would have greater custodial time on weekends it interfered with his weekday custodial rights such as weeknight dinners, participating in the children's sporting activities and being able to attend doctor's visits and other weekday appointments.

If your move is considered a relocation, then the Act requires that either all parties with custodial rights consent to your move or that the Court approves your proposed relocation. Furthermore, under the Act, you would be required to give your Husband sixty (60) days notice of your intended move. After receiving such a notice, your Husband could either consent or object to any such relocation.

If your Husband objects to the relocation, then the Court will consider your proposed relocation to see if the relocation would be in your son's best interest. The Court can consider any factors it determines are in the child's best, including, but not limited, the following:

- Your son's relationship with your Husband;
- The impact of the move on your son's physical, educational and emotional

- development and if the move would benefit your son's quality of life;
- Whether the relationship between your son and Husband could be maintained;
 - Your son's preference;
 - Whether you and your Husband have a history of interfering with your son's relationship with each other;
 - The reasons you are requesting the relocation and why your Husband opposes it;
 - The benefit of proposed relocation to you; and,
 - If there is history of abuse and/or risk of harm to your son.

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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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