

# NOVEMBER 2018 NEWSLETTER

**POZZUOLO RODDEN, P.C.**  
**COUNSELORS AT LAW**  
**THE BYE-BENSON HOUSE**  
**2033 WALNUT STREET, PHILADELPHIA, PA 19103**  
**215-977-8200**  
[www.pozzuolo.com](http://www.pozzuolo.com)



## HOW TRUSTS CAN PROTECT YOUR CHILD'S INHERITANCE IN THE EVENT OF DIVORCE

### FIRM ANNOUNCEMENTS

#### A. NEW ASSOCIATE

Pozzuolo Rodden, P.C. is pleased to announce that Christina Snyder has been hired as an associate attorney at the firm practicing primarily in the area of estate planning and estate administration. Ms. Snyder graduated from Temple University Beasley School of Law and is currently enrolled in the Graduate Tax Program at Temple University Beasley School of Law to earn a LL.M in Taxation. Ms. Snyder is also an honor graduate from the Fox School of Business of Temple University.

#### B. BLOGS

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

- a. Can An Attorney Prepare A Will Or Estate Plan Jointly For A Husband And Wife?;
- b. Ground For Contesting A Will; and,
- c. Estate Planning And Probate Dictionary.

**Please visit our website [www.pozzuolo.com](http://www.pozzuolo.com) for more information on these and other relevant business, tax, 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. High Income Child Support Cases Must Still Access The Reasonable Needs Of The Children;
- b. Shared Physical Child Custody Was In The Child's Best Interest; and,
- c. Untimely Petition To Open And Modify Marital Settlement Agreement Due To Fraud Is Denied.

**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

---

## HOW TRUSTS CAN PROTECT YOUR CHILD'S INHERITANCE

### IN THE EVENT OF DIVORCE

While it is unpleasant to think about, especially during the planning of a wedding which is focused on love, in today's society nearly fifty (50%) percent of first marriages end in divorce. Consequently, it is smart and in the best interest of all parties to be open and honest regarding the legal and financial consequences of divorce before entering into a marriage. Divorce proceedings can often turn into drawn out, lengthy, painful, nerve-racking and expensive legal battles. In many instances, some of the financial stress can be alleviated by the foresight of couples and their families by discussing and agreeing upon financial matters prior to marriage. Parents should consider the financial implications their child's divorce may have on any assets bequeathed to their child. During a divorce proceeding, a significant portion of your child's inheritance may be granted to his or her divorcing spouse if the assets are not properly protected from equitable distribution. As discussed in our [June 2018 Newsletter](#), prenuptial agreements are one such way to protect an anticipated inheritance. Another effective means of protecting your child's future inheritance in the event of divorce is to establish a trust.

### TRUSTS

Pennsylvania law provides that "marital property" is subject to equitable distribution during a divorce. Marital property is defined as all property acquired by either spouse during the marriage. The marital property is presumed to be owned jointly by both the husband and the wife. Equitable distribution allows the court to divide the marital property as it deems fair, based on a number of factors, which include, but are not limited to, the length of the marriage, the parties' incomes and ability to earn income, the standard of living during the marriage and whether either spouse will be

the custodial parent of any minor children of the marriage. Pennsylvania law also provides for certain specific exclusions to marital property. One such exclusion to equitable distribution is any property acquired by gift, bequest, devise or descent or property acquired in exchange for such property. This means that gifts or bequests given to a child, and kept solely in the name of the child, are excluded from the definition of marital property subject to equitable distribution in the event of divorce.

Unfortunately, these gifts or bequests can actually become marital property and thus become subject to equitable distribution. Pennsylvania courts have found that if these excluded funds become co-mingled or jointly held as or with marital funds, they lose their exempt status. That is to say if the child re-titles the property in the name of both him or her and the spouse, the property becomes marital property. For example, if a daughter receives a large inheritance from her parents and places it in her sole personal account, this inheritance would be property excluded from the definition of marital property. However, if the daughter then uses some or all of the same inheritance to purchase a primary or summer home jointly with her husband, the home would be considered marital property and subject to equitable distribution. Additionally, if there is any increase in value of the excluded property during the marriage then that increase in value is marital property and subject to equitable distribution. For example, if during her marriage a daughter inherits real property from her mother valued at \$250,000.00, that property is excluded from equitable distribution. At the same time, if that real property then increases in value during the course of the marriage and is valued at \$400,000.00 on the date of separation, the \$150,000.00 increase in value would be considered marital property and subject to equitable distribution.

One option to help protect against the co-mingling of funds and increase in value of property bequeathed and received during marriage from the equitable distribution marital property rules, is for parents to establish a trust for their children. The principal of a trust is viewed as a gift and is excluded marital property. Additionally, in creating a trust a parent can limit a child's access to the principal. The Pennsylvania Supreme Court in Solomon vs. Solomon, 531 Pa. 113, (1992) has ruled that if a child does not obtain ownership and control over the principal of the trust prior to the date of separation, any increase in value of the trust is not considered marital property and subject to equitable division. For example, a married daughter's father dies and she, at age 31, becomes the beneficiary of a trust with \$1,000,000.00 of principal assets. Under the terms of the trust, the trustee can distribute all of the net income from the trust to the daughter in quarterly or other convenient installments plus as much of the principal as the trustee think is desirable for her health, support, maintenance or education, In addition, the daughter can withdraw: (i) ten (10%) percent of the principal at the later of her father's death or age 35; and (ii) fifteen (15%) percent of the remaining principal every 5 years thereafter. The daughter then gets divorced at the age of 38. At the date of separation, none of the trust principal has been withdrawn and the value of the trust has increased in value by \$200,000.00. Since at the age of 38 the daughter only has the absolute right to withdraw ten (10%) of the principal of the trust, only ten (10%) percent of principal and appreciation of the trust, namely \$100,000.00 plus \$20,000.00, would be considered marital assets subject to equitable distribution in the event of a divorce, thereby preserving the \$900,000.00 of principal plus \$180,000.00 of appreciation, as excluded property from equitable distribution. Simply put, \$900,000.00 of the trust property plus \$180,000 of appreciation is considered non-marital property

and not subject to equitable distribution.

When couples and their families fail to take action to protect their assets in the event of divorce, they can lose valuable assets during equitable distribution. In order to prevent these potential future losses, it is imperative to take preemptive, precautionary steps, such as creating a trust or entering into a prenuptial agreement, to protect your children's inheritance. Failure to take these steps can result in a significant amount of your child's inheritance being given to their former spouse through equitable distribution in the event of divorce.

If you have any questions or concerns about how marriage and divorce can affect your assets or any gift or bequest to your children and what steps are available to protect those assets please contact us.

---

### 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_Articles.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).