

FEBRUARY 2019 NEWSLETTER

POZZUOLO RODDEN, P.C.
COUNSELORS AT LAW
THE BYE-BENSON HOUSE
2033 WALNUT STREET, PHILADELPHIA, PA 19103
215-977-8200
www.pozzuolo.com



HOT TOPICS IN ESTATE PLANNING- 2019

FIRM ANNOUNCEMENTS

A. UPCOMING SEMINAR

Joseph R. Pozzuolo, Esquire will be presenting a seminar to the graduating medical professionals at the Sidney Kimmel Thomas Jefferson University Medical School on Monday, April 11, 2019 at noon titled “Practical and Legal consideration of Planning Your Professional Future”.

B. AWARDS

Pozzuolo Rodden, P.C. is pleased to announce that Joseph R. Pozzuolo was awarded The America’s Most Honored Professional 2018-Top 1% by the American Registry. The American Registry was selected to be the official and authorized recognition partner for some of America’s most trusted professional organizations at identifying business excellence. These organizations rigorously gather up peer review ratings, client reviews, industry analysis to ultimately uncover the best of the best professionals in the business. For 2018 the American Registry proudly announced that Joseph R. Pozzuolo is one of America’s Most Honored.

C. 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 during the past month:

- a. Are Pet Trusts Subject To PA's 15% Inheritance Tax?;
- b. U.S. Supreme Court Upholds State Statute On Default Beneficiary Designations In The Case Of Divorce; and,
- c. Foreign Corporation Registering To Do Business In PA Means You Can Be Sued In PA.

Please visit our website www.pozzuolo.com for more information on these and other relevant business, tax, estates, business litigation and employment topics.

2. The following are a few of the family law blogs posted on our family law website www.pozzuolofamilylaw.com during the past month:

- a. Although Child Relocation Is In Minor Child's Best Interest, It Is Not Necessary To Move Immediately;
- b. Support And Alimony Contempt Actions; and,
- c. Father's Petition To Modify Custody Order To Allow A Change Of School District.

Please visit our website 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

HOT TOPICS IN ESTATE PLANNING- 2019

As we continue to understand, grasp, and comprehend The Tax Cuts and Jobs Act of 2017, which provides extraordinary estate planning opportunities, below are a myriad of estate planning rules and tips to protect your assets and your loved ones when you no longer can do so.

1. LIVING WILL AND PREGNANCY

A living will is a written statement that lets people state their wishes for end-of-life medical care, in case they become unable to communicate their decision. Pennsylvania law generally does not permit a physician or other health care provider to honor the living will of a pregnant woman who has directed that she not be kept alive. The terms of a living will may be honored, however, if the woman's physician determines that life sustaining treatment will do any of the following:

- a) Not maintain the woman in a manner that will allow for the continued development and birth of the unborn child;
- b) Physically harm the pregnant woman, or;
- c) Cause her pain, which could not be relieved by medication.

Statutes, similar to Pennsylvania's, are currently being challenged throughout the country as an unconstitutional discrimination against pregnant woman, preventing them from deciding on their own end-of-life medical care. We suggest you contact your local federal and state legislatures with your position on this critical and controversial issue.

2. HEALTHCARE DIRECTIVE

In Pennsylvania, an Advanced Directive is a set of written instructions naming a Health Care Agent and a Living Will. The Health Care Agent decides emergency, critical and advance health care decisions for an individual in the event he or she cannot communicate treatment options for himself/herself. The Health Care Agent cannot be: the individual's physician or other health care providers (unless they are a relative), or the owner, operator or employee of a health care facility where the individual is receiving care. Choosing such an individual is a very important decision. You should know the person very well. He or she should be mature and level-headed, can handle stressful situations, and be easy to talk with. It is best if he/she lives close to you. Be certain to pick someone you trust and who knows what is important to you and will carry out your wishes even if he or she needs to argue with the physician and other health care providers. If you pick your spouse and then you get divorced, your spouse is automatically revoked as the health care agent.

It is important to pick an alternative health care decision maker in the event the agent is not available to make decisions. The health care agent's authority will normally include the power to authorize admission to a medical, nursing, residential or similar facility, allow HIPPA release authority and/or to enter into agreements for the principal's care.

3. POWER OF ATTORNEY ROLE

A Power of Attorney provides you with the ability to choose who will make decisions for you rather than the court when you later become incapacitated and unable to make decisions. The Agent steps in your shoes to manage your affairs and to make decisions on your behalf. The three principal roles of a Power of Attorney are to:

- a) Make medical decisions on behalf of the Principal;
- b) Handle financial and legal matters on behalf of the Principal, and;
- c) Make decisions on the behalf of someone whom has lost his/her mental capacity.

In order to execute a Power of Attorney, the Principal must, at a minimum:

- a) Understand the authority he/she is giving to the Agent;
- b) Understand the scope of the assets that would be subject to the Agent's authority, and;
- c) Understand the plain language of the Notice to Principal.

4. POWER OF ATTORNEY – HOT POWERS

Under the Pennsylvania's new Power of Attorney law, in order for an Agent to exercise any of the following eight powers, the Power of Attorney document must contain "SPECIFIC" language authorizing the Agent to:

- Create, amend, revoke or terminate an inter-vivos trust other than as expressly permitted under certain subsections of the new law (relating to form of power of attorney).
- Make a gift.
- Create or change rights of survivorship.
- Create or change a beneficiary designation.
- Delegate authority granted under the power of attorney.
- Waive the Principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan.
- Exercise fiduciary powers that the principal has authority to delegate.
- Disclaim property, including a power of appointment.

Each one of these hot powers gives an Agent tremendous power to radically change the disposition of a Principal's assets during his/her lifetime or to fundamentally change the dynamic of the Principal/Agent relationship by allowing an Agent to delegate authority to a person not chosen by the Principal. The fact that a Principal can grant any one of these eight given "hot powers" does not mean that the Principal should. Each of the "hot powers" must be individually discussed with your attorney

5. POWER OF ATTORNEY – AGENT'S DUTIES

Under Pennsylvania's new Power of Attorney law, the Principal cannot waive the following three mandatory duties of an Agent:

- a) Act in accordance with the Principal's reasonable expectations to the extent actually known by the Agent and, otherwise, in the Principal's best interest;
- b) Act in good faith, and;
- c) Act only within the scope of authority granted in the Power of Attorney.

In Pennsylvania, the following duties of an Agent are waivable by a Principal:

- a) Act loyally for the Principal's benefit.
- b) Keep the Agent's funds separate from the Principal's funds unless:

- i. The funds were not kept separate as of the date of the execution of the Power of Attorney, or;
 - ii. The Principal commingles the funds after the date of the execution of the Power of Attorney and the Agent is the Principal's spouse.
- c) Act so as not to create a conflict of interest that impairs the Agent's ability to act impartially in the Principal's best interest.
- d) Act with the care, competence and diligence ordinarily exercised by Agents in similar circumstances.
- e) Keep a record of all receipts, disbursements and transactions made on behalf of the Principal.
- f) Cooperate with a person who has authority to make health care decisions for the Principal to carry out the Principal's reasonable expectations to the extent actually known by the Agent and, otherwise, act in the Principal's best interest.
- g) Attempt to preserve the Principal's estate plan, to the extent actually known by the Agent, if preserving the plan is consistent with the Principal's best interest based on all relevant factors, including:
 - i. The value and nature of the Principal's property.
 - ii. The Principal's foreseeable obligations and need for maintenance.
 - iii. Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes.
 - iv. Eligibility for a benefit, program or assistance under a statute or regulation.

6. JOINTS ACCOUNTS AFTER DEATH

Most joint accounts come with "rights of survivorship." If one of the account holders dies, the survivor can take over full ownership of the account simply by presenting the deceased owner's original death certificate to the financial institution where the account is held. Joint accounts typically do not contribute to the decedent's probate estate, which means that the terms of the account supersede the decedent's will. One of the drawbacks of joint accounts is if the original owner only adds one child to the account but has other children he/she wants to inherit an equal share of the account, he/she has effectively disinherited all of the other children. This firm has seen many family squabbles over the joint form of ownership of savings/money market accounts and frowns upon joint accounts with one child when a Power of Attorney will accomplish the decedent's intent during his/her lifetime.

7. POWER OF ATTORNEY – REQUEST FOR INFORMATION

A person or institution who has accepted a Power of Attorney, whether or not the person or institution has a certification or an opinion of counsel or an affidavit and has acted upon it by

allowing the Agent to exercise authority granted under the Power of Attorney, shall not be precluded from requesting at later times a certification or an opinion of counsel or an affidavit with regard to any further exercise of authority by the agent under the power of attorney.

8. SAFEGUARDS

Absent authorization in the Power of Attorney document to obtain information, the remainder beneficiaries of the Principal's estate and/or children of the Principal are left in the dark and lack standing to demand an Account from an Agent when the Principal is alive.

To avoid creating a scenario where the designated Agent abuses his or her privilege, consider placing limits on that right in terms of timing. For example, the Principal's designated relative or trusted friend may have the right every six months or even annually to receive copies of records documenting the Agent's conduct. In addition to authorizing a designated person to review receipts or receive some sort of informal accounting, the POA should contain a provision that allows the Principal's designated third party to file a Petition to Compel the Agent to File an Account.

We hope this information is helpful. If you would like more details about these areas or any other aspect of wills, estate planning or elder law, please do not hesitate to contact us.

PUBLICATIONS

All of the following professional publications and past newsletters written by attorneys of this office are available by clicking here: <https://pozzuolo.com/e-newsletter-publications>

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.