

# In Brief

## To Trust or Not to Trust?

*Susan E. Piette, Esquire*

In discussing estate planning with my clients, I am regularly asked about living trusts or more precisely, “revocable living trusts.” Although many people have heard of these terms, they readily admit they really don’t understand the marketing information that they have either received in the mail, heard on the radio or at an event where such trusts were discussed. I have had clients



come to see me with their three inch binder in hand, declaring the contents as their living trust, only to confess that they are not really sure why they had the living trust prepared or what is actually in the documents in the binder. Generally, they express that the trust was promoted as a way to avoid taxes on their estate after they died.

So, to trust or not to trust — why would someone want a revocable living trust? Before

answering that question, let’s define what a revocable living trust is.

A revocable living trust is a written agreement designating someone to be responsible for managing your property. It’s called a “living trust” because it’s established while you’re alive. It’s “revocable” because, as long as you’re mentally competent, you can change or dissolve the trust at any time at

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### **GOOD REASON or NOT SO GOOD REASON for a Living Trust?**

#### **AVOID INHERITANCE TAXES?**

**NOT A GOOD REASON** because revocable living trusts save no inheritance taxes at all compared to an estate plan with a will. Assets held in a revocable living trust are subject to the same inheritance tax as assets owned in one’s name which pass to one’s heirs or beneficiaries via a will.

#### **AVOID PROBATE?**

**NOT A GOOD REASON** because the costs of probate (general term for the court-supervised process by which a decedent’s will is proven valid or invalid) in Pennsylvania are moderate compared to other states and the cost of probating one’s will is almost always considerably less than the costs associated with a living trust (preparation, retitling assets, management of the trust). Additionally, living trusts many times also involve probate fees because it is frequently necessary to have a “pour-over” will for assets not in the trust, subjecting the estate to probate fees anyway.

#### **SAVE TIME IN ACCESSING ASSETS?**

**NOT A GOOD REASON** because gathering assets, liquidating assets, paying debt/expenses and making distributions vary from case to case, depending on the type of assets under both the administration of an estate or distribution of assets under a trust.

#### **KEEP PERSONAL AFFAIRS PRIVATE?**

**COULD BE A VALID REASON** if a person does not want the contents of their will or the inventory of their estate made a public record. Unlike wills that are filed with the county Register of Wills, trusts are not required to be filed publicly. However, a living trust could be part of a public record if a trustee or a beneficiary demands court approval of the accounts of the trust.

#### **SAVE LEGAL FEES?**

**NOT A GOOD REASON** because in almost all situations, you will pay more to have a revocable living trust established as the core of your estate plan than to have a traditional will prepared. The complexity and size of one’s estate will dictate the cost for both, but we have seen many living trust estate plans being marketed at a flat rate of several thousand dollars. Clients, holding their “Living Trust” binders, confirm these costs regularly.

## Firm Receives Award from Kelly Anne Dolan Memorial Fund

The law firm of Hamburg, Rubin, Mullin, Maxwell & Lupin received the Business Partnership Award from the Kelly Anne Dolan Memorial Fund at the Fund’s 36th Anniversary Celebration Awards and Recognition Dinner in October. Senior partners Steve Lupin and Ed Mullin accepted the award on behalf of the firm.

The Dolan Memorial Fund’s mission is to assist families with seriously ill, physically and cognitively challenged, or severely injured children nationwide through information and education. Financial assistance for needs not covered by insurance is provided to families whose children are living in or cared for in Pennsylvania, New Jersey or Delaware. The Fund has helped more than 21,000 families over the last 36 years.

The staff and lawyers of the firm, under Ed Mullin’s leadership, have been heavily involved in the Fund’s Adopt-a-Family program since 2001, and once again, “adopted” a family for the 2012 holiday season, providing them with gifts, gift cards, money and lots of warm wishes.

For additional information about the organization, go to <http://www.kadmf.org> or call 215-643-0763. ■



*Accepting award: Steve Lupin, Ed Mullin and presenter, Peggy Dolan*

## Steve Lupin Honored by Montgomery Bar Association as its Trial Lawyer of the Year

We are pleased to announce that Steven H. Lupin, Managing Partner of the Firm, was recently named Trial Lawyer of the Year by the Trial Lawyers Section of the Montgomery Bar Association. A reception was held in his honor at the Bar Association in October, 2012.



Steve Lupin being congratulated by his wife, Linda Lupin and his daughter, Elyse Lupin Chang.

## To Trust or Not to Trust? *continued from page one*

your own discretion for any reason. You, as “grantor” of the trust (the creator of the trust) retain the right to withdraw whatever you want from the trust at any time. Typically, a living trust becomes irrevocable (cannot be changed) when you die and the assets in the trust are distributed pursuant to the terms of trust instrument.

At HRMM&L, we discuss with our clients their needs and objectives for their estate planning and then assist them by formulating a plan which is individualized for each client. For simple estate plans, we have a set fee schedule which includes the initial meeting, drafting of estate planning documents (generally including wills, durable powers of attorney and medical powers of attorney/advance healthcare directive), review of drafts with client (and modification if needed), execution of the documents and storage if desired in the firm’s vault to avoid damage or loss. The same services are provided for more complex estate plans on an hourly fee basis.

Clients will incur costs for both the administration of an estate with a traditional will and the administration of a living trust. These costs would include the expenses of legal advice and services for estate/trust administration, document interpretation, proper payment of taxes, creditors, distribution to beneficiaries, and other related issues.

If one elects a revocable living trust, you will not only need to incur the costs of the preparation

of trust documents but also all related documents to retitle all assets during one’s life into the trust. “Retitle” means to change the name on your assets. Real estate needs a new deed, checking accounts need new checks, stock certificates have to be mailed to the issuer with a request to issue new ones, CD’s need to be changed by the bank, etc. All new purchases need to be titled in the name of the trust. Often, people do not transfer all assets or some assets, such as tangible property, cannot be titled and therefore cannot be transferred into the living trust.

Revocable living trusts are appropriate for some people in some circumstances, but are often not needed or preferable for most people in Pennsylvania. Almost all people who have a trust should also have a will if they want to direct the inheritance of their assets that cannot be, or by error are not placed, in the living trust.

We all need the facts about asset protection and estate planning. We also want the peace of mind of knowing how our assets will be distributed upon our passing. **You are the only one who can make important decisions about your estate planning.** You need clear and knowledgeable information to make those decisions. If you have questions about estate/trust planning and administration, our attorneys in the Estates & Trust Department of HRMM&L will listen to you and assist, review and tailor your estate planning to meet your needs and objectives. ■

## Attorneys, Staff and Paralegals Donate a Saturday to Wills for Heroes

Estates lawyers, paralegals and staff of the law firm HRMM&L recently donated their time to provide free will drafting and counseling to the brave men and women from Plymouth Community Ambulance, as well as other local police, fire and EMS departments.

The local “Wills for Heroes” event was sponsored by the firm and spearheaded by Lisa Shearman, an Estates lawyer who serves as the National Affiliate Director of the “Wills for Heroes Foundation.” This program provides free wills and other estate planning documents for Pennsylvania’s emergency responders. In 2011, Ms. Shearman received the Verdina Showell Award presented by the Pennsylvania Bar Association to recognize her outstanding community service and commitment to the Wills for Heroes Program. ■



Pictured are from left to right: HRMM&L’s Michelle Healey (Legal Assistant); Christina Organtini (Legal Assistant), Eibhan O’Shea, Esquire, Lisa Shearman, Esquire, Joan Wean (Firm Administrator), Bernadette A. Kearney, Esquire and Susan Piette, Esquire

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Joan Wean, Editor

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Hamburg, Rubin, Mullin, Maxwell & Lupin’s IN BRIEF is intended to provide information on recent legal developments. The information contained in this newsletter is not offered as legal advice or legal opinion on specific facts.

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# Dealing with Retirement Plans in a Divorce

*Douglas I Zeiders, Esquire*

Under the Pennsylvania Divorce Code, all property acquired by either spouse during the marriage (with certain limited exceptions) is considered to be marital property and subject to being divided by the Court. This includes that portion of a retirement plan acquired by either spouse during the marriage. These days, it is quite common for the parties' retirement plans to be the most valuable marital assets.

How the Court will determine what part of a retirement plan was acquired during the marriage will depend on the type of plan. The most common types of retirement plans today, profit sharing plans and 401(k) plans, are contributed to on a regular basis and can be valued simply by reviewing statements regularly supplied to the employee. In determining the value of the marital portion of a retirement plan, such as a 401(k) plan or a profit sharing plan, the Court will take the value of the plan as of the date of separation, and then apply to that value the rate of return on the plan from the date of separation until the date of divorce. If the plan was started prior to the marriage, it will still be considered to be marital property to the extent it increased in value from the date of marriage to the date of separation.

Another type of retirement plan, which is far less common than it used to be, is a defined benefit plan. Under that type of plan, the employer simply promises the employee that he or she will receive a monthly benefit upon retirement based on a pre-determined formula. In determining the marital value of a defined benefit plan, the Court will, essentially, take the monthly benefit the employee could expect to receive at retirement if he or she stopped employment as of the date of separation, and then perform an actuarial calculation to determine the present value of that future benefit. In essence, what the Court does is determine what amount would have to be invested today to fund the marital portion of the anticipated benefit. If the retirement plan was started prior to the marriage, the Court, in performing its calculations to

determine the marital value, will exclude the value of the benefit accumulated prior to marriage.

How the Court actually distributes retirement plans in divorce depends largely on the size and composition of the total marital estate. If, for instance, one party has \$100,000 in a retirement plan and the parties also have \$100,000 in an investment account, the Court may well apply what is known as the immediate offset method, by which the party with the retirement plan keeps their retirement plan and the party without the retirement plan gets the investment account.

If the immediate offset method is not possible, or is not deemed equitable by the Court under the particular circumstances, the retirement plans can be divided in kind by way of a document known as a Qualified Domestic Relations Order, which is an Order signed by the Court and approved by the administrators of the retirement plan which provides for the transfer of retirement funds in connection with a divorce without tax ramifications.

In the end, precisely how a Court deals with retirement plans in a divorce depends upon the particular circumstances of each case.

Nonetheless, the above is a good, general description of how the Court deals with retirement plans in a divorce. ■



## Why Do I Need to Know the Zoning of My Property?

*Bernadette A. Kearney, Esquire*

When you purchased your home, you were probably told the zoning of your property or saw it listed in the agreement of sale. But what does that mean for you as the homeowner? Zoning is the regulation of land use in a municipality. All of the land in a township or borough is zoned to permit certain types of uses such as residential, agricultural, commercial and industrial in designated areas. The zoning map of the township or borough is usually available on the municipality's website.

Once you have ascertained the zoning classification of your property, you can determine what uses are permitted in that district and what the dimensional criteria are for your property by reviewing your municipality's zoning ordinance. The zoning ordinance is also usually available through your municipality's website.

If you have determined that a single family home is permitted but not the triplex existing on your property, what does that mean? The triplex may be a legal nonconforming use, meaning that the zoning ordinance permitted the use when it was built but since that time the zoning ordinance has changed and the use is no longer permitted. This is something you need to determine before purchasing a property, since, if the use is not a legal nonconforming use, you may run into a host of problems after you have purchased. An attorney review of your agreement of sale prior to signing will address these issues.

What if you want to add an in-law suite to your home? Is the use permitted by right or is zoning relief required? Is your property large enough? Can you meet the front, side and rear yard setbacks? If relief from the requirements of the zoning ordinance is required, you will need to file a zoning application and appear before the municipality's zoning hearing board for a hearing on your case. You will need to provide sworn testimony and evidence to prove your case for relief. If you are facing zoning challenges, please contact us and one of our zoning attorneys can assist you with the preparation of your zoning application and presenting your case before the zoning hearing board. ■

**Ed Mullin**

- Was a speaker at the Pennsylvania Bar Institute Real Estate Institute sessions on December 5. He addressed the "Year in Review" and also talked about Court Stipulated Settlements.
- Daughter Liz graduated last month from Georgetown and finished in the 98th percentile for the law school admission test. She will be going to law school – location to be determined.

**Steve Lupin**

- Is the current President of the Montgomery Bar Foundation.
- Is the Chair of the Task Force Committee on the Judicial System for the Montgomery Bar Association.
- Became a grandfather, again, in 2012 with the birth of twin grandsons, Max and Henry, who joined their older brother, Ari.
- Steve's daughter, Elyse, married Phil Chang in May 2012.

**Carl Weiner**

- Was elected Chair of the Pennsylvania Legislative Action Committee for the Pennsylvania/Delaware Valley Chapter of the Community Association Institute for 2013. CAI's Legislative Action Committees are the largest community association advocacy organizations in the United

States. The Committees are pro-active in introducing and advocating for legislation that is beneficial to community associations and are equally active in opposing legislation that may have an adverse impact on the interests of community associations.

- Presented on Enforcement of Covenants, Conditions and Restrictions at Pennsylvania Bar Institute's seminar entitled "Condominium & Homeowner Associations – Lessons on Liabilities, Liens and Litigations." The seminars were presented in Skytop, PA, Mechanicsburg and Philadelphia.

**Mark Himsworth**

- Has been elected as a member of the Board of Directors for the Montgomery Bar Association, beginning in January 2013.

**Christen Pionzio**

- And Bernadette Kearney will be participating in the Pennsylvania Bar Institute seminar "Presenting to a Zoning Hearing Board in the Burbs." The seminar is scheduled for February in Philadelphia and Mechanicsburg.

**Ethan O'Shea**

- Gave two presentations to the Delaware Valley Family Business Center regarding employment issues.
- Was appointed Vice President of the Plymouth Community Ambulance Association.

**John Iannozi**

- Is teaching a civic education class at the Kulp School in Hatfield Township with the Honorable Judge Andrea Duffy.

**Bill Roark**

- Completed his 4th half marathon of the year on November 11 in the Outerbanks of North Carolina, having previously competed in the ODDyssey, Rock-n-Roll, and Hand's on House Half marathons earlier in the year. All in all, he ran over 500 miles in 2012.

**Andrew Grau**

- Married Megan Iannozi (yes – the sister of one of our attorneys, John Iannozi) on September 15 in a beautiful ceremony at Whitmarsh Country Club.

**Matt Erlanger**

- Completed the Philadelphia Marathon in 3 hours, 16 minutes.
- And his wife, Julia, welcomed their first child, Isaac Leonard Erlanger, on October 19, 2012.

**Jim Lee**

- Married Kristine Ong Lee, and they enjoyed a vacation in St. Lucia to celebrate their wedding.

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