

## LEGAL UPDATE

A publication provided for the friends and clients of QRG

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FALL 2004

### SHOULD I TRANSFER MY FAMILY HOME TO MY CHILD?

By David S. DeRose, Esq.

There are various reasons that parents may desire to transfer the family home to their children: to avoid inheritance taxes, to possibly keep a nursing home from being able to eat away the value of the property or to avoid the probate process. While these are all legitimate concerns, the gift transfer of a family home is not a decision to be made lightly.

The family home is an individual's castle. For many, it is your biggest investment, it has a sentimental attachment and it is part of your everyday life security. By conveying the property to someone else, you are potentially altering that security blanket and your peace of mind. With that in mind, let us first examine the advantages to transferring real estate to a child.

First, when you make a gift transfer of any property, including your home, to a child or children, you effectively remove that property from your estate. Therefore, the property is not valued in your estate nor is it part of what is called your "probate estate". At your death, there is no transfer event. Since the inheritance tax rate in Pennsylvania for children is 4½% of the date-of-death value, this tax would be avoided as would any probate costs associated with the processing of the real estate. Please note, however, that you must live at least one year beyond the date of the transfer to receive favorable inheritance tax treatment.

Secondly, if you make this transfer now, the Department of Public Welfare may not be able to consider this resource for payment of nursing home care. Gifts made more than 36 months before an individual applies for Medicaid assistance for nursing home purposes are excluded from consideration of payment of that cost. It is also possible to exclude the home from consideration for Medicaid planning purposes even if the transfer is made within the 3-year limitation, but that is a subject for a different article.

In the two advantages that I have discussed above, both presuppose that a complete transfer has been made. A complete transfer means that you may not retain a life interest in the property or some type of joint ownership interest. Are there disadvantages to transferring real estate? Are there other concerns? The answer to both is "yes". Once you transfer your real estate, you give up control. If your child (or perhaps your child's spouse) decides that it might be time for you to move, you are no longer in control of where you reside. In the event that your child should become involved in a divorce or if your child should die prematurely, your right of occupancy may be jeopardized. These situations may create major difficulties with respect to your peaceably remaining in the property.

You must also realize that when you make a gift transaction, for income tax purposes, the child will assume your tax basis in the property. This can

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IDENTITY THEFT



ELECTION 2004

The LEGAL UPDATE is prepared by the staff of QRG for its friends and clients. The UPDATE sets forth general principles and should not be acted upon without specific advice.

# BEFORE WE TALK ABOUT YOUR DISABILITY . . .

*By Barbara J. Artuso, Esq.*

**D**id you know that when you apply for Social Security Disability/Supplemental Security Income benefits, your medical condition is not the first issue that must be addressed?

Instead, in order to receive disability benefits under one of these two programs administered by the federal government, financial eligibility must first be established. Even though it seems harsh, there are some individuals whose financial circumstances do not qualify them for either program, and they cannot receive disability benefits regardless of their medical condition.

Supplemental Security Income is a needs-based program. You must meet certain income and asset guidelines in order to be financially eligible to apply.

Eligibility for Social Security Disability benefits is related to work history. When you work, and pay F.I.C.A. taxes, you are given credit toward eligibility for Social Security Disability benefits. In 2004, you need \$900 (increased from \$890 in 2003) in gross income to receive credit for a quarter of employment. You can earn credit for up to four quarters of coverage each year, and the credits need not be earned in a particular quarter. You can work a few months in one year, make four times the amount necessary to earn one quarter of coverage, and earn all four quarters of coverage for that year within those few months.

When you apply for Social Security Disability benefits, your work record is examined to determine whether you have enough quarters of coverage to be financially eligible for Social Security Disability benefits. Generally speaking, you need to have worked 20 out of the last 40 quarters (5 out of the last 10 years) in order to be financially eligible to apply for Social Security Disability benefits.

However, there are different rules, requiring fewer quarters of coverage, for younger individuals. In addition, if it has been more than five years since you have worked, you may be eligible for Social Security Disability benefits if you can prove that you were disabled within the five-year period after you stopped working.

If you have questions about your financial eligibility for disability benefits under the complex rules and regulations of either of these two programs, please contact our Social Security department and we will review your individual circumstances with you in detail.

## SHOULD I TRANSFER MY FAMILY HOME TO MY CHILD? \_\_\_\_\_

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become an important tax issue down the road. For example, if you purchased your home in 1970 for \$60,000, and today your home is worth \$150,000, then a transfer of the home by gift to your child results in your child assuming your tax basis in the property of \$60,000. If your child (who does not reside in the property with you) at some point in the future sells this property for \$150,000, your child would pay a capital gain tax on the difference between the sales price and the \$60,000 basis. Your child could therefore expend thousands of dollars in capital gain tax that potentially could have been avoided had you simply kept the property in your name. If you retain the property in your name at death and it then passes through your estate, your child would have the advantage of a basis in the property, which would be the property's date-of-death fair market value. If your child then sold the property shortly after your death, there may be no capital gain tax to pay. There would be, however, an inheritance tax, but the inheritance tax rate is much less than the capital gain rate.

Another concern would be for the potential real estate tax rebates that so many people are accustomed to receiving. These rebates are based on income and on the ownership of real estate. The transfer of the property may then disqualify you from receiving the same. In addition, once you transfer the property to your child, even though you will still reside in the property, a question sometimes arises as to who it is that is responsible for the payment of the insurance, real estate taxes, utility bills, etc., for the property. Is your living there "business as usual" or are you now to be treated as a tenant by your "landlord" child?

There are many other concerns not covered here. So, before leaping ahead with a gift of your home to your child, please evaluate these issues and contact us to help you with this critical decision.

## QRG PERSONAL NOTES ———

By Jacqueline M. Fajt

**Christopher DeRose**, son of **David DeRose**, held two roles in the Valley Players' August production of "Joseph and the Amazing Technicolor Dreamcoat" at the Ligonier Theatre. He held the role of Levi, one of Jacob's twelve sons, and a poll of the audience indicated that he "stole the show" in his other role as the Pharaoh. Chris is a sophomore at McDaniel College in Maryland where he is studying theatre and communications.

**Carolyn Kutz**, our workers' compensation Claims Specialist, semi-retired in September. She has cut back to two days a week - Tuesday and Thursday from 9:00 to 3:30. She is spending much of her newfound free time with her grandchildren, Madison, 9, and Connor, 7. She also has increased her volunteer hours at the Humane Society of Westmoreland County where she interviews prospective adopters and processes the adoption applications.

### THANKS JACKIE ~

Since we don't want to say goodbye, we bid a bitter-sweet farewell to client care representative, Jacqueline Fajt. Jackie had been with QRG for nearly 10 years when she accepted a position with UPS as Internal Communications Specialist at the end of August.

You may have noticed Jackie's name in our newsletter on many occasions. In fact, she's the main reason you're reading it now - she was an integral part of the firm's communications development and the driving force behind the restart of our newsletter.

Jackie started with QRG in 1994 as our receptionist. She was the helpful person behind that sweet pleasant voice many of you have heard over the years. During her tenure as receptionist, she also attended Seton Hill College and obtained her bachelor's degree, with highest honors, in corporate communications. In 2002, Jackie moved to the position of client care representative and assumed all of the communications and marketing responsibilities for the firm.

Jackie's new position at UPS gives her the opportunity to use all the education and skills she has worked so hard to obtain. While we were thrilled for Jackie and the opportunities her new position brings, we were sad to see her leave. No matter where she spends her days, she will always be a very important part of the QRG family!

Jackie, from all of us at QRG ~ best of luck and much success in all you do! (And when we just can't seem to get the newsletter done on time, we'll be calling you!)

## WHAT'S THE VERDICT?



It's summer and Danny, your son, just graduated from college and wants to have his friends over for swimming, dinner, and a few drinks. You agree, but on the condition that no one is going to be allowed to drive if they've had drinks at your home because you don't want to be responsible. Sure enough, on Saturday ten happy-go-lucky young guys gather at your house and begin to eat everything in sight. The pool gets a real work-out with cannon balls and belly flops and a lot of hooting and hollering. Throughout the afternoon, the bar you have set up next to the pool is getting a work-out, too. At some point after supper, you mention to your son that you are getting a little nervous about how much the boys are drinking and he once again promises that no one will be driving. At 11:30 p.m., on a dare, two of these young guys climb up on the roof of a shed and dive from there into the pool. Both have been tipsy or worse since before supper. The 20-year-old, Fred, hits his head on the bottom and suffers a catastrophic neck injury leaving him paralyzed. The 22-year-old, Neil, suffers a similar fate. Are you liable to Fred and Neil?

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## THE MEDICINE FOR LAWYERS SERIES

By Jacqueline M. Fajt

Did you know that all attorneys admitted to practice in Pennsylvania are required to continue their education in order to maintain the knowledge and skill necessary to fulfill their professional responsibilities? A minimum of 12 continuing legal education (CLE) credits must be earned annually. These courses are developed and taught by attorneys and other professionals.

Vince Quatrini helped to develop a series of lectures entitled "The Medicine for Lawyers Series". He recently teamed up with Attorney Edward Shay, Prof. Samuel Hodge of Temple University, and Dr. Michael Saulino to present *Mastering Medical Records*, an advanced follow-up to last year's *Analyzing Medical Records* seminar. A few of the topics covered included diagnostic tools, medical jargon and dangerous abbreviations, and resolving ethical dilemmas.

This seminar was held in Philadelphia in early August. Later that month the seminar was beamed live via satellite to 32 locations across Pennsylvania. Attorneys attending this seminar earned a total of four (4) CLE credits.

From time to time, we will be featuring articles from people and organizations in our community about subjects which we feel may enrich your life. Over the years, we have formed relationships with many community leaders, businesses and organizations. We thought we would share some of their wisdom, ideas, and experiences.

In this issue, we are pleased to have State Senator Allen Kukovich and State Representative Tom Tangretti as our guest authors.

**State Senator Allen Kukovich** has been a member of the Senate since 1997, and was a Member of the House from 1977 to 1996. He currently sits on the following committees: Community & Economic Development, Consumer Protection & Professional Licensure, Judiciary and Law & Justice. He is the Minority Chair of the Aging & Youth Committee.

**State Representative Tom Tangretti** has been a member of the House since 1989. He is assigned to the following committees: Appropriations, Commerce (Subcommittee Chairman on Economic Development), Insurance and Local Government.

## Children's Health Insurance and Adult Basic

By State Senator Allen Kukovich



On May 3, 1993, the first child was enrolled in the Children's Health Insurance Program (CHIP). CHIP has been one of my most gratifying accomplishments as a legislator. CHIP has helped hundreds of thousands of working families throughout Pennsylvania. Our CHIP program became the model for federal legislation that was signed into law in 1997. As a result, millions of American children have access to health care.

Last year someone sent me a newspaper article. Samantha Stovall, a portrait photographer from Boise, Idaho, signed up her young son, Tyler, for the Idaho CHIP program just three days before he suffered a serious asthma attack. Stovall and her husband earn too much for Medicaid, but cannot afford private insurance. Samantha heard radio commercials about CHIP and enrolled Tyler.

There are other examples closer to home. Jodi Gavin of Irwin, Pennsylvania, struggled to get health insurance for her sons after her husband died in an automobile accident. Ms. Gavin's youngest child, Philip, needed two corrective heart operations. He came through the surgeries with flying colors and was able to participate in normal activities such as little league baseball.

A few years ago the prestigious Journal of American Medical Association reported that since the inception of CHIP in Pennsylvania:

- the number of children with regular physician care increased from 88% to 99%;
- children with unmet health needs decreased from 25% to 3%;
- children with unmet dental needs decreased from 43% to 10%; and
- limitation on children's activities due to lack of health insurance decreased to "essentially no limitations."

CHIP is funded by money from every pack of cigarettes sold in Pennsylvania. We have now started a health insurance program for working adults who are not insured through their employment and who cannot afford private insurance. This program is called adultBasic. It is funded by money we receive as a result of the National Tobacco Settlement. There are currently more than 40,000 individuals enrolled in adultBasic, but there are more than 90,000 people on the statewide waiting list.

I am currently working with the Administration, the insurance companies and colleagues in the General Assembly to get more people off the waiting list and into the program. CHIP and adultBasic are true success stories. These programs save employers millions of dollars in health insurance costs. It is less expensive to provide routine medical services for children and adults before they need to go to hospital emergency rooms. Access to affordable, high quality healthcare means fewer missed days at work or school. It has been my dream that one day every person in Pennsylvania would have health insurance. I believe that day is on the horizon.

# PA Prescription Programs for Seniors Now Better Than Ever



By State Representative Tom Tangretti

In November 2003, the Pennsylvania General Assembly passed landmark legislation that significantly expanded the state's lottery-funded prescription drug programs for senior citizens, PACE and PACENET. As a result, more than 100,000 additional Pennsylvania senior citizens are eligible to receive prescription coverage under the programs beginning January 1 of this year.

Legislators from both sides of the political aisle worked hard for several years to expand and improve the PACE program. When it began in 1984, PACE (the Pharmaceutical Assistance Contract for the Elderly) was the most comprehensive and generous state-sponsored prescription benefit program for seniors in the nation.

Unfortunately, as the years passed, efforts by the legislature to increase income-eligibility limits did not keep pace with inflation and the rising costs of prescription drugs. Many seniors over the years were dropped from the program because small increases in their Social Security benefits put them beyond the PACE income eligibility guidelines. Thousands of seniors never qualified for the program because their income was too high, even though they still could not afford their prescriptions and did not have other prescription coverage.

Pennsylvania attempted to address this problem in 1996 by creating PACENET, or the PACE Needs Enhancement Tier. This program was aimed at seniors whose incomes were too high to qualify for PACE but who still needed prescription assistance. Co-payments in PACENET were slightly higher than in PACE, and unlike PACE, an annual deductible had to be met before benefits began.

Unfortunately, only a very small percentage of seniors who qualified for PACENET bothered to enroll. One big problem was the annual \$500 up-front deductible; by the time many seniors reached it, it was already late in the year, and these seniors ended up receiving very few benefits.

The new PACE/PACENET law the General Assembly passed last year was meant to correct these problems by increasing eligibility guidelines for both programs to a level that captured as many seniors who needed prescription help as possible. It made the deductible in PACENET easier for seniors enrolled in the program to meet and, therefore, enabled seniors to access benefits sooner in the year, and it also made other improvements to the programs to ensure their solvency – and that of the state lottery that funds them – far into the future. Under the new law, single senior citizens 65 or older qualify for benefits under PACE if their household income is below \$14,500 per year. Married couples are eligible for PACE coverage if their household income is below \$17,700 per year. This represents a \$500 income-eligibility increase over the previous year.

PACENET income eligibility levels were increased even more. Single seniors 65 or older who earn too much to qualify for PACE can still receive PACENET benefits if their household income is less than \$23,500. Married couples can have a household income of as much as \$31,500 and qualify for PACENET benefits. The deductible for PACENET was also changed from \$500 a year to

\$40 a month, which is much easier for most seniors to meet and allows many seniors to access benefits beginning in January, not August or September.

What are those benefits? Seniors enrolled in PACE receive generic prescriptions for a \$6 co-payment and brand-name medications for a \$9 co-payment. There is no deductible in the PACE program.

Seniors enrolled in PACENET receive generic prescriptions for an \$8 co-payment and brand-name prescriptions for a \$15 co-payment. There is a \$40 per month per person deductible for PACENET, but unlike before, the new structure allows seniors whose prescriptions cost, say, \$100 a month, to start receiving benefits in January instead of having to wait until June or later.

To qualify for PACE or PACENET, you must be 65 or older, a resident of Pennsylvania for at least 90 days before you apply, and not have any other prescription coverage.

I mentioned earlier that the General Assembly made some other improvements to the PACE and PACENET programs, as well. They include:

- Creation of an Internet information clearinghouse, administered by the Department of Aging, that will provide free information to seniors about other public and private assistance programs that offer discounts on prescription medications.
- An increase in the death benefit waiver under PACE and PACENET from \$5,000 to \$10,000. This will keep seniors who receive a modest funeral and burial benefit from their insurance company upon the death of their spouse from being bumped from PACE or PACENET.
- Cost-containment measures, such as requiring drug companies to sell medications to PACE and PACENET at the same price as the drugs are sold to the federal Medicaid program, ensuring Pennsylvania receives the lowest price for the pharmaceuticals it purchases for PACE and PACENET. This and other measures in the new law will ensure that the lottery fund and PACE and PACENET are available to our seniors for many years to come.

As of July, when Pennsylvania celebrated the 20<sup>th</sup> anniversary of the PACE program, more than 60,000 additional seniors had been added to PACE and PACENET because of the new law. Hundreds of those seniors were enrolled right in my constituent service office, and I know most legislators have had similar experiences. PACE and PACENET now serve more than 280,000 older Pennsylvanians, but we know that even more are eligible.

Seniors who want more information about PACE and PACENET (or help enrolling in the programs) should contact their state representative or state senator. PACE/PACENET information is also available at the local Area Agency on Aging, by calling (800) 225-7223, or by visiting the Department of Aging online at [www.aging.state.pa.us](http://www.aging.state.pa.us).

# FLEXIBLE INSURANCE COVERAGE

## COMBINATION FIRST-PARTY AUTO INSURANCE BENEFITS

By Joyce Novotny-Prettiman, Esq.

Imagine having insurance coverage that you can adjust to fit your needs. That is a nice idea but it usually is not an option. While it is rarely used, the Pennsylvania Motor Vehicle Financial Responsibility Law does provide for flexible coverage which is called a **combination benefit**.

First, let's talk about first-party benefits. These are the benefits that you purchase from your own insurance carrier so that you have coverage available to you if you or a family member are involved in an automobile accident ... regardless of who may be at fault. The law in Pennsylvania requires that everyone purchase \$5,000 of medical coverage. Beyond that requirement, Pennsylvanians may decide if they want to purchase wage loss coverage, accidental death benefits, funeral benefits and/or extraordinary medical benefits.

You have to understand what first-party benefits are and how they work before you can appreciate the combination benefit. The combination benefit allows you to purchase flexible first-party benefits. This means that you purchase, for example, \$10,000 of first-party insurance. If you are in an accident, you can decide if you want to use the \$10,000 of coverage for any combination of payment of medical or wage loss benefits.

There are certain limits with the combination benefit. For example, accidental death benefits cannot be more than \$25,000 and the limit on the funeral benefit is \$2,500. Otherwise, you decide how to use the insurance you have purchased. Therefore, if you have a lot of medical bills but no wage loss, you can devote the entire amount of the benefits to pay your medical bills.

With a combination benefit, you can only claim benefits for a period of up to three years after an accident. Traditional first-party benefits do not have this three-year limitation. The most practical advantage to purchasing a combination benefit is that you will have the ability to choose how you would like to use the benefits after you have an accident and you know which benefits you need. Ask your auto insurance agent about a combination benefit or contact our office for more information.

### MEET THE STAFF

#### Brenda L. Sherbondy, Legal Assistant

Chances are if the firm handles a personal injury case for you, you'll get to know Brenda.

She has 19 years of experience in the legal field starting as a legal secretary in 1985. The following year, Brenda enrolled in the Paralegal Certification Program at Saint Vincent College. In 1988, she received her certification as a paralegal.

Brenda has been with QRG since 1998. As the paralegal for the personal injury department, she assists Attorneys Dennis Rafferty, Dick Galloway, and Joyce Novotny-Prettiman. Brenda is involved with our personal injury cases from beginning to end. Her duties include working up new files, requesting all medical and insurance information, putting together demand packages, preparing pleadings, completing discovery and assisting with trial preparation.

She resides just south of Ligonier with her husband of 17 years, Dave, and their 14-year-old daughter, Kelsey. Brenda enjoys spending time with family and friends, exercising, reading, traveling and shopping!!



### WHAT'S THE VERDICT?

THE ANSWER:



In Pennsylvania, a bar or restaurant with a liquor license has a very high duty to not use its business to hurt people. The result is the Dram Shop Act, which states that a bar may not serve a visibly intoxicated person, and if they do serve such a person, they are liable for damage he does to himself or to other persons.

The same rule does not hold true for a social host, such as a homeowner who has friends over and serves them drinks even though they get to the point of being visibly intoxicated. However, there is an exception and that exception is when you serve a person who is a minor. In this case, Fred was 20 years old and not legal to drink alcoholic beverages. Fred has a valid claim against you for all of the damages that he has sustained including a lifetime of pain and suffering, huge medical bills and lost earning potential. Neil, however, does not have such a claim because even though you served him when he was visibly intoxicated, he is 22 years old and permitted to drink legally.

From a legal standpoint, never serve anyone under 21, even in your home. And to prevent a tragedy, never serve anyone who is visibly intoxicated.

# IDENTITY THEFT

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By David S. DeRose, Esq.

In this ever increasing and more complex information age in which we are all living, the potential for theft of your identity and the ease with which a criminal is able to use someone else's identity for his own gain are on the rise. For that reason, it is important to reveal as little personal identifying information as possible. It is a good idea to keep your personal information in a secure area and to shred documents and other identifying information, rather than to discard those documents in the garbage.

There are a number of things that you can do to protect yourself, although there is no complete fix to this problem yet available. Please consider these helpful tips:

- In utilizing a checking account, have your last name but not your first name printed on the check. Use your initials instead. If checks are stolen or misplaced, the person taking them will not know how you sign them. Also, do not print your social security number or your home telephone number on your checks. If you must include a telephone number, consider utilizing your work number instead of your home number.
- When paying bills by check, do not reference the entire credit card account number on the memo line—just use the last four digits of that number.
- We carry many important items in our wallets. It is important to keep a photocopy of all of those items, both front and back, in a safe place. By photocopying your credit cards, you have quick access to the account numbers and the telephone numbers needed in the event the cards are stolen. It is important, particularly with credit cards, that immediate contact is made with the companies, so that you limit your liability for fraudulent purchases by someone else.
- When you travel, keep an extra photocopy of your passport and driver's license with you in case the originals are lost or stolen.
- If your wallet and important information are stolen:
  - Immediately notify the police and file a report.
  - Contact the three national credit reporting agencies to place a fraud alert against your name and social security number.
- The three major credit card bureaus are:
  - Equifax at 1-800-685-1111
  - Experian at 1-888-397-3742
  - Transunion at 1-800-916-8800
- Periodically you should obtain a copy of your credit report from the three credit reporting bureaus. Although there is a fee for this service, it affords you an opportunity to make certain that there are no unauthorized transactions listed within these reports and that all information is accurate.

We trust the above has been a helpful summary. If you should desire more information about this topic, you can go to the Internet at [www.identitytheft.org](http://www.identitytheft.org) or to [www.privacyrights.org](http://www.privacyrights.org), or contact our office.

**REMEMBER: ELECTION DAY IS TUESDAY, NOVEMBER 2, 2004**

*It only takes a few minutes. Please exercise your right to vote.*

*Your vote counts!!*



**W**e would like to thank everyone who registered or helped to register individuals to vote. If for any reason you are a first-time voter in a precinct—even if it is not your first time voting—you must provide a form of identification. The Federal Help America Vote Act of 2002 (HAVA) and Pennsylvania Act 150 of 2002\* (amending the Pennsylvania Election Code) now requires voters who appear to vote in an election district for the first time to produce a copy of an acceptable form of identification.

### Approved forms of photo identification

(ID must be valid):

- PA driver's license or ID card issued by PennDOT
- ID issued by any other Commonwealth agency
- ID issued by the U.S. Government
- U.S. Passport
- U.S. Armed Forces ID
- Student ID
- Employee ID

### Approved forms of non-photo identification

(ID must include the name and address of the elector):

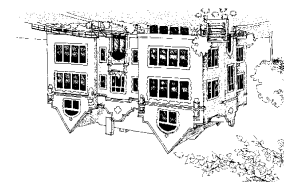
- Voter's identification card issued by the voter registration commission
- Non-photo ID issued by the Commonwealth
- Non-photo ID issued by the U.S. Government
- Firearm permit
- Current utility bill
- Current bank statement
- Current paycheck
- Government check

\*If you are not a resident of Pennsylvania, please check with your County Bureau of Elections for the requirements in your district.

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