

LEGAL UPDATE

A publication provided for the friends and clients of QRG

IMPORTANT NOTICE

Plan to attend our free seminar on living wills!

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VOLUME 6 NUMBER 2

550 E. PITTSBURGH STREET, GREENSBURG, PA 15601

SPRING 2005

PLANNING — FOR PEACE OF MIND

By David S. DeRose, Esq.

When we plan activities in our lives, it is only natural that we focus on events that are pleasant and enjoyable, such as birthdays, weddings, holiday dinners and parties. It is much harder to focus our attention and plan for potentially unpleasant events - death or incapacity.

Though it is not the most pleasant task, preparing a Last Will and Testament is one of the most important things you can do for your family. A will provides needed direction to your family at your death; without a will, the Commonwealth of Pennsylvania establishes how your estate is managed and distributed.

What do you accomplish by writing a will?

- you dictate who will receive your estate and in what shares or percentages
- you may mandate whether or not churches or other charitable organizations will benefit
- you appoint the individual (legally called an executor) who will administer your estate
- if you have minor children, you select who will serve as their guardian and who will be the trustee of their finances
- you can set up a trust and determine how your funds will be used for your children and how long the trust will remain in effect (without a will, your children may receive all your assets on their 18th birthday, which may not be what you wish to happen)

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SEEK AND YOU MAY FIND!

By Joyce Novotny-Prettiman, Esq.

You may have noticed that the Pennsylvania Department of Treasury has recently published lists of unclaimed property in your local newspaper. If you take a moment to review the list, you may be surprised to find your name or the name of a family member or friend. The Treasury Department takes possession of property which it considers to be abandoned or unclaimed if someone other than the owner holds the property for five years and has not had any contact with the owner. Unclaimed property includes inactive bank accounts, unclaimed securities, unused gift certificates, abandoned safe deposit boxes, jewelry, rare coins and stamps.

To check if your name is on the unclaimed property rolls, you can wait for the next list to be published in the newspaper, you may call the Treasury Department at 1-800-222-2046, or you can use the Internet to search the database maintained by the Treasury Department, which is found at: www.patreasury.org/unclaimed/search.html

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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.

GIRL SCOUTS HONOR QRG



Tereasa Rerko is shown accepting the 2005 Corporation of Distinction Award, with managing partner Vince Quatrini.

At its 14th Annual Dinner on March 3, 2005, the Girl Scout Council of Westmoreland, Inc. named QuatriniRaffertyGalloway as the 2005 Corporation of Distinction. Also honored was Elizabeth W. Cassell as the 2005 Woman of Distinction. The dinner was attended by the many supporters of Girl Scouting throughout the county. Receiving the award for QRG was attorney Tereasa Rerko, who has served the Council for more than 17 years, including terms as President and Chair of the Board of Directors. QRG remains dedicated to supporting the continuing efforts of the Council, which serves more than 3,000 girls.

QRG IN THE COMMUNITY

At QRG, we are committed to volunteering our time in the community. Here are some recent examples of the diverse ways in which QRG employees are involved:

In January, attorneys **Joyce Novotny-Prettiman** and **David DeRose** represented QRG at the Good Neighbor Breakfast at Christ the Divine Teacher School in Latrobe. Each year this breakfast is held during Catholic Schools Week to thank the members of the community who support the school in various ways throughout the year. One of the events that QRG supports is the annual auction, which will be held this year on April 29, 2005, at 6:00 p.m. at the Four Points Sheraton in Greensburg. The public is welcome.

WHAT'S THE VERDICT?



By Richard H. Galloway, Esq.

Two brothers, Bob and Dick, were having a tough year financially and decided to broaden their financial horizons by entering into a life of crime. Neither had any experience in that field, and frankly, neither was particularly bright. They hit upon the idea of burglarizing the local jewelry store. Their plan wasn't very complex. They would wait until dark, throw a brick through the window, grab as many jewels as they could and take off.

They had a couple of drinks to build up their courage, and at 1:00 a.m., drove down to Ajax Jewelry and snatched some diamonds according to the plan. They were pretty happy because they didn't see anybody on the street, and they were sure there were no witnesses.

Unfortunately, in their haste to get out of town, Bob drove a little faster than he should have, and the police stopped them. By that time, the alarm at Ajax Jewelry had alerted the police that a crime had been committed, making them instantly suspicious of the brothers. They asked for permission to look through the car, and Bob, the duller of the two brothers, reluctantly agreed. He was somewhat intimidated by the fact that the police had their guns drawn. In the trunk, the police found a paper bag containing \$80,000.00 worth of diamonds. The police took the brothers to the police station, locked them in separate cells and separately interrogated them. Bob gave a complete and truthful confession. Dick contended that he knew nothing about the jewelry, although he thought it might be a gift from his Uncle John to brother Bob. They were both arrested and charged with burglary and theft. However, the police did not inform the brothers of their Miranda rights. Do the boys go free?

Answer on Page 6

PLANNING — FOR PEACE OF MIND

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It is important to understand that a will only takes effect after death. A will is not filed in the courthouse or any other place until that time.

A will is only one of the tools you may need to plan for the future. How do you protect your family if you are severely injured in an accident, contract a debilitating disease, or become infirm because of age?

One answer may be a Durable Power of Attorney.

This document allows you to select a person or financial institution (known as an "agent") to take charge of your financial affairs when you are disabled. Your agent has a range of powers that may include the ability to sell real estate or investments, enter safe deposit boxes, file tax returns, modify insurance benefits and communicate with financial advisors and attorneys. Without such a power of attorney, a relative or friend may have to petition the court to become your legal guardian. This person may not necessarily be the one you would have chosen to handle your affairs. Petitioning the Court for a guardianship is neither quick nor inexpensive, and involves a court hearing where testimony is taken from your physician to determine your capacity to act for yourself. If the court determines you are not capable, the court will then name a guardian to administer your affairs.

Another necessary part of the planning process may be a Medical Power of Attorney.

A medical power of attorney appoints a trusted family member or friend (known as an "agent") to make medical decisions if you are unable to do so. Your agent will be able to consult with your physicians, decide with them on a course of treatment, select a hospital or surgeons you might need, decide on the appropriateness of nursing care and make other similar decisions. The document also authorizes your agent to gain access to your medical records and history (even though there are privacy laws that normally protect those items from being viewed by anyone other than the patient).

To complete your planning, a Living Will is suggested.

While a medical power of attorney appoints someone to make medical decisions for you, a living will guides them and your physicians in ruling in or out certain treatments or procedures if—and only if—you are in a state of permanent unconsciousness or you are in a terminal condition. You have the ability to suggest to the medical providers that such things as feeding tubes, mechanical respiration, cardiac resuscitation, kidney dialysis and other forms of treatment are not acceptable to you if used simply to prolong the process of dying. You can also indicate to the health care providers that you do wish to be made comfortable through the administration of pain medications and other means.

There is no substitute for good planning. You have the ability to create documents that provide needed direction to your family members, who will appreciate knowing that they are carrying out your wishes during a difficult time.

As always, the estate department at QRG is available to answer any questions you may have about these issues.

Attorney David DeRose heads QRG's estate department and has more than 28 years experience in the areas of estate planning and administration, real estate, zoning and family law. He has taught law courses at Penn State, Westmoreland County Community College and St. Vincent College, and has presented numerous seminars on legal topics for various groups throughout western Pennsylvania.



Beginning January 1, 2004, federal income taxpayers who itemize their deductions can elect to deduct state and local sales taxes instead of state and local income taxes on Schedule A of Form 1040. You cannot deduct both, but you can deduct the greater of the two.

In calculating sales taxes, a taxpayer has two options. You can use actual sales tax paid for all purchases made during the year, or you can use the optional state sales tax tables provided by the IRS (Publication 600). The amount you can deduct using the tables depends on your state of residence, amount of income and number of exemptions. In addition to the deduction provided by the table, you can add sales taxes paid for the purchase or lease of a car, motorcycle or any motor vehicle. You can also add to the amount in the table any sales tax paid for the purchase of a mobile or prefabricated home, home building materials, boat or aircraft.

Regardless of the method you choose, you must keep your receipts!

The sales tax deduction will benefit taxpayers who itemize but pay minimal state and local income taxes, such as retirees, residents of states with no state or local income taxes, or disabled persons. Generally speaking, if you did not itemize in 2003 and your tax situation did not change in 2004, the sales tax deduction will not benefit you. However, if you itemize, you should consider this new deduction.



Jim Horchak, an attorney at our office, is also a CPA. Jim is available to help with the preparation of your tax return or with any tax questions you may have during tax time or throughout the year.

QRG SEMINAR SERIES

QRG attorneys often are called upon to participate in seminars that educate colleagues and the public in law-related issues. From time to time, we will report some of them in our newsletter.

At QRG, we are aware of the terrible toll that chronic (long-term or permanent) pain can take on those who suffer from it. We are anxious to educate the public and medical community about the many ways chronic pain affects the lives of permanently injured persons. In February 2005, QRG attorney **Vince Quatrini** was invited by the continuing medical education department of Allegheny General Hospital to give a presentation on chronic pain. He addressed the fact that some physicians who perform independent medical evaluations (one-time evaluations performed for an insurance company by a doctor other than your own) miss important information about the effects of an injury or illness. Other physicians simply refuse to believe that our clients suffer from chronic pain, depression, anxiety, post-traumatic stress disorder, or other emotional complications from pain and/or the inability to work. Actual testimonials of some of our clients, along with their pictures, formed a powerful way to put a face on chronic pain. Mr. Quatrini shared with the group the dilemma that "to have great pain is to be certain, but to hear that another person has great pain is to have doubt." He pointed out that often the mission of our firm is to educate people who do not have chronic pain that chronic pain is real, and chronic pain is debilitating. He succeeded in that mission, because a number of physicians who attended the presentation called him to thank him for opening people's eyes about chronic pain.

If you belong to a group that would like someone from our office to speak about a law-related topic, please contact our office.

DO YOU KNOW THESE ESTATE PLANNING TERMS?

By David S. DeRose, Esq.

See if you can match the following estate planning terms with their definitions:

- | | |
|------------------------------------|-------------------------------------|
| 1. _____ ADVANCE DIRECTIVE | 7. _____ LIVING TRUST |
| 2. _____ AGENT | 8. _____ LIVING WILL |
| 3. _____ DO NOT RESUSCITATE (DNR) | 9. _____ MEDICAL POWER OF ATTORNEY |
| 4. _____ DURABLE POWER OF ATTORNEY | 10. _____ PERMANENT UNCONSCIOUSNESS |
| 5. _____ INCAPACITY | 11. _____ SURROGATE |
| 6. _____ LAST WILL AND TESTAMENT | 12. _____ TERMINAL CONDITION |

- A. Your written instructions for distributing your assets after your death, which only takes effect at that time. (It cannot be used to direct your medical care or the handling of your financial matters during your lifetime.)
- B. When you are unable to manage your affairs due to either physical or mental impairment.
- C. A document that designates a trust—an entity to which you are transferring ownership of your assets and resources during your lifetime. (Not to be confused with a living will, a totally different document.)
- D. Your doctor's written order that instructs healthcare providers that you as the patient, in consultation with your doctor, do not want to be given cardiopulmonary resuscitation (CPR).
- E. An irreversible or incurable medical condition that will result in death.
- F. A document in which you appoint a trusted individual to have authority to sign your name in your absence or in the event of your incapacity. This document typically refers to the performance of financial matters on your behalf and terminates at the time of your death. (Sometimes confused with a medical power of attorney, set up for medical decisions only.)
- G. The person you appoint to make important medical decisions in the event you become incapacitated (usually used in conjunction with a living will).
- H. A person you entrust to make important financial and/or medical decisions for you.
- I. A document in which you give someone you trust (referred to as an agent or surrogate) the authority to make medical decisions about your healthcare in the event you are not able to make those decisions yourself.
- J. A written expression of your treatment requests that will take effect only if you become terminally ill or are in a state of permanent unconsciousness, provided that your medical caregivers agree that you are incapable of making medical decisions.
- K. A state of total loss of consciousness or awareness that cannot be reversed.
- L. This document affords you the opportunity to instruct your health care providers about the kind of care you wish to receive, or not to receive, if you become incapacitated and unable to communicate your wishes.



Answer: The United States Constitution (and the Pennsylvania Constitution, as well) guarantees that a person cannot be compelled to give self-incriminating information. The United States Supreme Court decided the Miranda case in 1966, holding that a person's confession cannot be admitted as evidence unless the suspect knowingly and voluntarily waives the right to remain silent after being informed of the right to remain silent, the right to a lawyer, etc.

A suspect must be in police custody and subjected to interrogation before the Miranda rights apply. Had the brothers been asked to come to the police station and informed they were free to leave at any time, they would not be "in custody". Also, if the brothers simply blurted out their guilt before being asked, there would be no need for the Miranda warnings because it was a voluntary statement and there was no interrogation. In the brothers' case, they were locked in cells (and thus in custody). They didn't volunteer the statements but gave them in response to interrogation.

The police had the duty to give them their Miranda rights advising them of the following:

- *their absolute right to remain silent*
- *that anything said could and would be used against them in court*
- *their right to talk to an attorney before and during questioning*
- *their right to have an attorney appointed without charge before any questioning*
- *their right to stop at any time*

Many people mistakenly believe that the Miranda rights are essential to a valid arrest. The Miranda rights only relate to whether a confession can be used at trial. In this instance, the police would not be able to use either brother's statement. However, the brothers could probably be convicted since they were found in possession of the recently stolen diamonds which circumstantially connects them to the burglary and theft. (The search of the car, with guns drawn, raises several other issues, but that is the subject for another "What's the Verdict?")

Bob and Dick now are cooling their heels in the state prison and have to be kept separated even when their sister Nancy visits, because they keep fighting over whose stupid idea it was in the first place.

Amanda Kennison, daughter of secretary **Robin Kennison**, will graduate from Connellsville High School this spring and has received a trustee scholarship to Allegheny College in Meadville. Amanda plans to major in political science.

Cassidy Chappell, daughter of legal assistant **Rhonda Chappell**, played in the Scottsdale Winter Blast, an indoor soccer tournament, in January 2005. Cassidy played goalie for the "Norwin White" team and helped her team go on to a second-place finish.

Adam Quatrini, son of attorney **Vince Quatrini**, will graduate from Greensburg Central Catholic High School this spring and will follow in the footsteps of his brother **Michael** to Dickinson College in Carlisle, Pennsylvania. Adam was a striker on GCC's soccer team, which won the WPIAL Class A title and earned Adam a personal slot on the WPIAL Class A All-Star team.

Shelby Rerko Grundy, daughter of attorney **Tereasa Rerko**, received an award for her poster entry in the Catholic Daughters of America National Education Contest at her school, St. John the Baptist Catholic School in Scottsdale. Shelby is in the 4th grade at St. John and also recently made the honor roll.

DO YOU KNOW THESE ESTATE TERMS?

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How many terms did you know?

- | | |
|------|-------|
| 1. L | 7. C |
| 2. H | 8. J |
| 3. D | 9. I |
| 4. F | 10. K |
| 5. B | 11. G |
| 6. A | 12. E |

Did you also know that...

... more than 60% of Americans do not have a will or trust document in place for their children?

... people living on the East or West Coasts are the least likely to have a will?

MAKING MEDICAL CHOICES – LESSONS FROM THE SCHIAVO CASE

By David S. DeRose, Esq.

Shortly before this newsletter went to print, the Florida case involving Terri Schiavo was in the news every day, tugging at our heartstrings and showing the complications which can arise from the absence of a living will. In this newsletter, we coincidentally included an article on planning which emphasizes the importance of a medical power of attorney and living will. We also provided a quiz that hopefully clarifies some of the terminology that many of us have now heard repeatedly because of the Schiavo case.

If we learn anything from the Schiavo matter, it is the importance of committing to writing our thoughts about our own medical treatment if we are rendered terminally ill or in a state of permanent unconsciousness. A living will gives the medical community and the court system written direction as to your wishes for medical treatment, and appoints a family member or trusted friend as an agent who will carry out your wishes and make decisions for you if you are unable to do so.

We believe this issue is three-pronged, involving legal, medical and religious points of view. All three of these disciplines were explored loud and clear in the Schiavo matter. With respect to the religious issue, there are choices you will make for yourself that are in keeping with your own beliefs. You should seek spiritual guidance from your priest, minister, rabbi or other religious leader to aid you in making these choices. For the medical point of view, physicians and nursing staff confer to determine, within a reasonable degree of medical certainty, whether you have totally and irreversibly lost consciousness or are in a persistent vegetative state, all of which suggests an irreversible medical condition. From the legal point of view, you can declare your right to die rather than continue life-sustaining treatments which will only prolong artificially the process of dying.

We feel so strongly about the implications of the Schiavo case and all of the concerns and fears that it has raised that we are inviting all of our clients and friends to a seminar that we are conducting on this topic on Monday, May 2, 2005, at the Mountain View Inn in Greensburg, Pennsylvania.

If you are interested in attending this seminar, please contact our office and make your reservation no later than April 28, 2005. There is no cost for attending the seminar – only a reservation is required to guarantee a seat.

SEMINAR - LIVING WILLS

Monday, May 2, 2005, at 7:00 p.m.

Mountain View Inn, Greensburg, Pennsylvania
Refreshments will be served

R.S.V.P.

Please call us at 724-837-0080
Monday through Friday between 8:30 a.m. and 5:15 p.m.
by April 28, 2005

MEET THE STAFF

VINCENT J. QUATRINI, JR., ESQ. & RHONDA F. CHAPPELL, LEGAL ASSISTANT

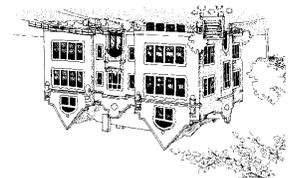
Vince is a founding partner of QRG and serves as managing partner. He concentrates his practice in workers' compensation, exclusively representing injured workers. Vince is one of a statewide team of attorneys who co-author the publication *Pennsylvania Workers' Compensation Practice & Procedure*. This teaching group lectures to over 1,000 workers' compensation attorneys in Pennsylvania and has twice won the prestigious Award of Outstanding Achievement in continuing legal education. Vince launched another series, "Medicine for Lawyers," partnering with physicians to teach medicine to Pennsylvania attorneys. Along with many other community service activities, Vince is one of the founders of the Community Foundation of Westmoreland County, a charitable trust designed to provide all individuals of any economic status the opportunity to be a philanthropist and to positively impact the community. Vince grew up in Latrobe and presently lives in Unity Township with his wife, Patty, and their two sons, Michael, a law student at Duquesne University, and Adam, a senior at Greensburg Central Catholic, who will attend Dickinson College this fall.

Rhonda joined the firm in February 2000 and is Vince's legal assistant. She previously worked with law firms in Johnstown and Pittsburgh. Rhonda is the coordinator of the annual Jack Kenney Memorial Scholarship Fund Golf Outing sponsored by the Community Foundation of Westmoreland County. The purpose of the fund is to provide higher education opportunities for students at Greensburg Salem High School. Rhonda enjoys reading, playing volleyball and the beach. She has one daughter, Cassidy, 9, and is an assistant coach for Cassidy's softball team.

Visit us at
www.qrglaw.com

ATTORNEYS AT LAW
550 E. Pittsburgh Street
Greensburg, PA 15601
(724) 837-0080

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