

## LEGAL UPDATE

*A publication provided for the friends and clients of QRG*

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## PROBATE — IS IT REALLY AN EXPENSIVE BURDEN?

*By David S. DeRose, Esq.*

Local newspapers carry weekly advertisements for seminars on how to save time and money by avoiding probate. In fact, probate in Pennsylvania is not as burdensome as it is portrayed.

Upon death, the initial legal inquiry concerns assets in the deceased person's name, such as real estate, stocks, bank accounts, vehicles and pensions. It is also necessary to identify what the deceased person owes, including mortgages, loans, charge accounts and medical expenses.

### WHAT IS THE PROBATE PROCESS?

Resources or debts in the deceased person's name become part of probate, the formal process of reporting to the court. Probate includes listing, valuing and distributing property under court supervision. Any debts or charges owed, including all taxes assessed, must be paid prior to distributing the estate to the beneficiaries.

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## DISABILITY BENEFITS FOR "WOUNDED WARRIORS"

The Social Security Administration (SSA) provides expedited processing of disability claims for military service members who became disabled while on active military service on or after October 1, 2001, regardless of when the disability occurs.

The SSA has created a "Wounded Warriors" website at [www.ssa.gov/wounded\\_warriors](http://www.ssa.gov/wounded_warriors).

The site includes explanations of the types of benefits available, how to apply, what can be done to speed the decision, and benefits for family members. It also includes links to an SSA publication, "Disability Benefits for Wounded Warriors" (also available in Spanish), and to various Veterans' Administration websites.

*This article was originally printed in "The Forum", the monthly newsletter of the National Organization of Social Security Claimants' Representatives (NOSSCR), and is reprinted here with the permission of NOSSCR. For more information about the organization, visit [www.nosscr.org](http://www.nosscr.org). All QRG attorneys who practice in the area of Social Security disability law are members of NOSSCR.*



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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.*

# PROBATE — IS IT REALLY AN EXPENSIVE BURDEN?

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When a family member contacts an attorney to "file the will" with the Court, the person named as the personal representative (or executor) is appointed by the Register of Wills to administer the estate. If the deceased person didn't have a will, a close family member will be appointed.

There is a cost for the Register of Wills' services: a typical estate having less than \$200,000 in value would be between \$500 and \$600. Another cost of probate is the requirement that the executor give notice of the filing of the estate in the newspaper. This fee is generally between \$100 and \$150.

The executor's job is to safeguard and value the assets owned by the deceased person at the time of death. If the deceased person owned real estate, an appraisal may be needed at an approximate cost of \$350. In certain circumstances, attorneys know of alternative procedures that can avoid the cost of appraisals or reduce other probate fees.



Once all of the assets are valued, an inheritance tax return is filed with the Pennsylvania Department of Revenue. The return lists the gross value on all of the probate assets and all of the estate expenses. This results in a computation of the net value of the estate. For example, if the estate property has a gross value of \$200,000 and the expenses and costs total \$40,000, the net value is \$160,000. The net value of the estate is taxed. On assets being transferred to a surviving spouse, there is no inheritance tax. Assets passing to the deceased person's children or grandchildren are taxed at the rate of 4.5%. If assets are passing to the deceased person's siblings, the tax rate is 12%. For all other types of beneficiaries, including friends, neighbors, nieces, nephews, and distant cousins, the tax rate is 15%. There is no tax on assets transferred to qualified charitable organizations.

## IS PROBATE TIME-CONSUMING?

If things move smoothly in assembling the financial information and determining the expenses of an estate, an inheritance tax return can be filed within five to nine months of the time of death. Pennsylvania requires that the return be filed and the inheritance tax paid within nine months unless an extension is granted.

Once the return has been approved and the tax has been paid, the estate can be finalized. The executor can distribute the deceased person's property to the beneficiaries by agreement of the parties or by court order. The estate can usually be completed within twelve months.

## WHAT ABOUT LEGAL FEES?

We hear frequently that avoiding probate avoids legal fees. Not so. If a family avoids probate through the use of living trusts or jointly owned assets, filing an inheritance tax return cannot be avoided. Issues concerning income tax also need to be addressed. These issues require the services of an attorney. While this is technically not probate, it is an estate administration process and one for which the attorney is compensated. Therefore, by avoiding probate, you may not have avoided attorney's fees or other costs.

Fees for these services differ from firm to firm. Some attorneys charge a flat fee; others bill on an hourly basis with certain minimum charges. Regardless of the method, the fees must be fair and reasonable and must be approved by the Department of Revenue. If not approved, the fee will not be credited on the inheritance tax return.

In the example of the \$200,000 estate, the attorney's fees will often not exceed 3-5% of the estate's value. The fees depend upon the attorney's involvement in gathering information, paying bills, contacting heirs, and completing the estate. The attorney is charged with the responsibility of seeing the estate process to conclusion, including final distribution. It is easy to overlook the many responsibilities the attorney has to undertake: aiding the valuation process, preparing the asset inventory, the inheritance tax return, and the deceased person's final income tax returns, transferring real estate and vehicles, and communicating with all interested parties.

The public is often misled to think that the probate process typically stretches out for 2 or 3 years and costs upwards of half of the estate resources. This is not the case. While the alternatives to probate may in some cases reduce the costs or timeframe, they cannot completely eliminate them. In any instance, an attorney will need to be retained and there will be fees and costs involved.

## WHAT ABOUT AVOIDING PROBATE?

In an attempt to avoid probate, people sometimes shift ownership of assets before death, so that at the time of death, nothing remains in that person's name. Revocable living trusts transfer ownership of assets out of an individual's name and into a trust. At the time of death, the trust, not the individual, passes the asset to the beneficiaries. This transfer may avoid probate, but does not avoid inheritance taxes. More importantly, transferring assets to a living trust might create a problem if nursing home care and medical assistance are on the horizon.

Shifting ownership of assets should never be done lightly. Most people want to own their assets as long as possible. By keeping their homes, bank accounts, investment accounts, stocks or bonds in their own names, people retain control, which conveys a sense of security.

When we discuss estate planning needs with our clients, we review the probate process and the alternatives to that process to create an individual plan. That plan may blend the assets that are retained with those that are transferred into joint names or into a trust. We make it clear that all costs and fees cannot be eliminated by avoiding the probate process. Contrary to the advertisements, the schemes that they propose cost money in themselves. The client pays to create the living trust and the documents necessary to implement it. These living trust packages can cost from \$1,500 to \$3,000, and in some cases are not complete. Some do not recognize the importance of having all of the essential estate documents in place, including a Will, a Financial Power of Attorney and a Medical Power of Attorney.

Estate planning, in general, is not a "one size fits all" process. At QRG, we analyze your particular situation and design an estate plan to fit your needs. If avoiding probate makes sense in your situation, we will prepare all necessary documents and guide you through the steps necessary to accomplish this goal.



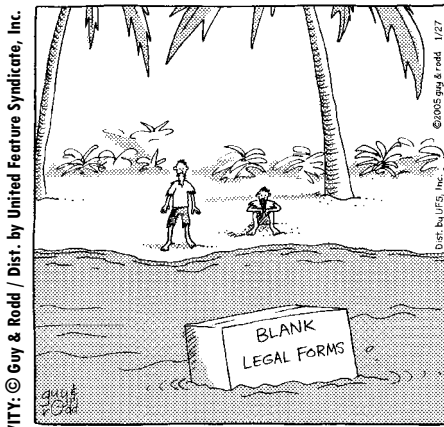
*Attorney David DeRose heads QRG's estate department and has over 30 years' experience in the areas of estate planning and administration, real estate, zoning and family law.*

# FORM WILLS - A BAD BARGAIN

By Dennis B. Rafferty, Esq.

Law schools routinely use actual cases in order to teach basic principles to their students. It is important to know what went wrong in the past to avoid making the same mistakes in the future. This is particularly true in the world of "form wills". Many clients come to our office with legal problems caused by the use of what, at first glance, appears to be a simple document.

Form wills are readily available in office supply stores, book stores and over the internet. They hold the promise of simplicity - no thought needed. Unfortunately, users often accept that promise and complete these forms oblivious to the problems created or the questions left unanswered. The cost of litigation generated by a badly drafted will is not easily forgiven by the heirs who suffer the consequences.



THE NEXT FEW YEARS  
WOULD BE VERY LITIGIOUS.

For example, not properly signing or dating a form will is a common mistake. People who use form wills often sign them, then later go back and make additions or changes. In one such case, a son died and the person who originally made and signed the will simply crossed out the name of that son and added another name. He did not re-sign and re-date the will. His failure to re-sign and re-date the will after making the change created a basis to challenge the validity of both the original will and the alteration.

Another problem arises because form wills are often completed by hand rather than typed. The "fast food" attraction of the form may generate a hurried scribbling of information in the blanks. We have all done this - an insurance form, a medical history, an application. If people can't read these forms, they can come back to you for clarification. Unfortunately, this is not possible with a will.

Perhaps the most common problem resulting from the use of form wills is ambiguity. In one instance, a person left his property to his "children and grandchildren". But at the time of his death, one of his children was deceased. The three surviving children had three natural children, two adopted children and one step-child, and the deceased child had two natural children. Under such circumstances, how does the property get divided? It could be divided into four shares (one share for each living child and one share divided among the children of the deceased child). It could be divided into ten shares (one for each child and grandchild, excluding the stepchild). Other interpretations are also possible - and that means a court proceeding. Such mistakes are easy to make in a world with multiple marriages and combined families. A will carefully drawn by an attorney will eliminate disputes and heartache among family members.

The biggest shortcoming of form wills is the elimination of planning, which is the most important part of the process. For example, jointly owned assets or assets passing directly to a named beneficiary would not be controlled by a will. Another example deals with spouses, who are legally entitled to a share of the estate regardless of the terms of a will. Because such exceptions exist, it is unlikely that a form will can accomplish what was intended.

Finally, a form will does not always conform to the laws of each state. A form that means one thing in California may mean something entirely different in Pennsylvania.

At QRG, our attorneys can provide planning and proper execution of a will to prevent the problems, expense and heartache caused by the use of form wills.

*Attorney Dennis Rafferty is one of the founding members of the firm and has been practicing law for over 30 years. He currently concentrates his practice in multiple areas of litigation and school law.*







## WHAT'S THE VERDICT?

By Richard H. Galloway, Esq.

Harvey and Ann had a rocky marriage, and they looked for every opportunity to be out of each other's presence. Harvey had a successful boat business and had accumulated a lot of property. Ann thought of divorcing Harvey, but she'd gotten used to the good life, with vacations in the Virgin Islands, a sailing yacht and waterfront property on the eastern shore of Maryland. She worried that a divorce could get messy and she'd lose all those luxuries. Harvey had stopped buying her the expensive jewelry that he had lavished on her in the first few years of their marriage and no longer took her on his "business trips," of which she was so suspicious. She knew she was the beneficiary on his \$5 million life insurance policy, but she constantly worried that he would change that.

To complicate matters, Ann found herself attracted to Peter, who maintained their yacht in meticulous condition. She wished she could have all of her luxuries but enjoy them with a good-looking, young guy like Peter. Ann went to her lawyer, who informed her that since Harvey's mansion and yacht were willed to him by his father, they would probably stay with Harvey in any divorce proceedings and that since Harvey was self-employed in the boat business, it might be difficult to prove his earnings. Ann went home and worried that a divorce would mean financial disaster.

She remembered meeting a fellow named "Donny" at a bar, who bragged about being able to take care of anything. She called him and asked if someone could be made to "disappear". Donny said anything was possible; he needed \$50,000 up front and information about who had to disappear. Ann sold two of her favorite bracelets (diamond, of course) to get the \$50,000, gave it to Donny, and described her husband and his habit of sailing by himself on summer weekends.

One day Harvey sailed his gleaming yacht, SeaQuester, out of his Maryland marina and was never seen again. The yacht was found two days later drifting aimlessly 100 miles south of Annapolis. No one was inside and there were no signs of violence. Ann cried convincingly at Harvey's memorial service, then applied for his life insurance. Three weeks later, Harvey's body was found on a sandbar. An autopsy revealed that he had been knocked over the head with a heavy object, fracturing his skull. A forensic team scoured the yacht and found a heavy handle used to winch sails. It matched the indentations on Harvey's skull and revealed parts of four fingerprints, which the FBI matched up to Donny, who had a long criminal record. He was arrested, charged with murder, and, gentleman that he was, immediately pointed the finger at Ann.

Only the word of a convicted felon ties Ann to the crime. She feels certain she'll be acquitted and looks forward to receiving the insurance proceeds and continuing to enjoy the mansion, sailing yacht and summer home. Will Ann be the "merry widow" with her new boy-toy Peter, or will she simply be the richest woman in the penitentiary?

Answer on Page 7

## QRG IN THE LEGAL COMMUNITY

Attorneys **Vince Quatrini** and **Dick Galloway** were once again selected for inclusion in the 2008 Pennsylvania Super Lawyers. The selection process is based on a statewide nomination process, review of resumes and the evaluation of their peers.

**Super Lawyers**

In April, attorneys **Vince Quatrini** and **Barbara Artuso** both presented seminars for the Pennsylvania Bar Institute, the organization that provides attorneys with continuing education in the legal field. Vince was a course planner and presenter for the annual *Workers' Compensation Practice & Procedure* seminar, which updates attorneys on recent developments and important issues in the area of workers' compensation law. Barbara was a course planner and presenter for *Social Security Disability – The Basics*, a program presented every two years to lawyers who want to begin practicing in the area of Social Security disability law. The course features a mock hearing to help attorneys understand what happens at a Social Security disability hearing. Both programs were presented at three locations across Pennsylvania: Philadelphia, Harrisburg and Pittsburgh.

# QRG COMMUNITY PARTNERS

*There are many organizations in our community that provide important services but their work is not always well-publicized. This month we spotlight one of these organizations so that our readers may benefit from information about the programs it administers. **accessAbilities, Inc.** is dedicated to strengthening independent lives by providing individual and family directed services that develop strong foundations that lead to life-long self-sufficiency, create opportunities for people with disabilities to reach their full potential and build communities where all are respected and welcomed to participate. Jane Hurd, CEO of accessAbilities, Inc., provided the following article. Attorney Tereasa Rerko of QRG is a member of the accessAbilities Board of Directors.*

*By Jane Hurd*

## *access*Abilities, Inc. strengthening independent lives

For people with a disability and their families, finding the right resources can make all the difference in their quality of life. *accessAbilities, Inc.*, a non-profit organization (founded in 1954 as UCP of Western PA), has a strong tradition of providing extensive services for people with disabilities in Westmoreland, Armstrong and Indiana counties. Those services focus on independence, providing the fundamentals of early learning and assuring that the voices of people with disabilities are heard. Our knowledgeable staff helps children and adults with physical or cognitive disabilities and their families gain access to a wealth of services and information, which include:

### ADULT SERVICES

Independence means different things to different people. Our services are geared toward giving consumers with physical and/or cognitive disabilities the support they need to live in their homes and to give them choice, flexibility and control over their services, enabling them to participate as they choose in community life. Services for adults include:

- *Personal Care and Assistance:* in-home non-medical personal care and related support services (such as bathing, dressing, housekeeping and laundry) and health maintenance (such as wound and catheter care)
- *Independent Living/Community Integration Skills:* developing basic life skills to help manage everything from social interactions to household needs
- *Respite Care:* provides companionship to consumers to allow caregivers to perform tasks outside the home
- *Home Service Nurses Program:* provides information, resources, advice, emotional support and advocacy to adults with a disability that occurred before age 22. The program represents a long-standing collaboration with the Pennsylvania State Elks.
- *Home Modifications:* provides help to allow people to move more freely and have greater independence through a variety of home modifications
- *Assistive Technology:* provides a variety of devices for everyday activities, including those that assist with vision, audio cues, and electronic speech.
- *Home Support (Indiana County only):* helps individuals age 60 and over with tasks of daily living such as laundry and housekeeping

### CHILDREN AND YOUTH SERVICES

- *First Steps Early Intervention Program:* helps children through age three with special needs such as autism, epilepsy, cerebral palsy, Down syndrome, or spina bifida reach important learning milestones by offering physical, occupational, speech and hearing therapies, as well as cognitive development and family training
- *Kids Klub:* (Westmoreland and Armstrong Counties): a structured weekly play group that provides opportunities for education, socialization, and family support for children over 18 months of age
- *Home Service Nurses Program:* provides information, resources, advice, emotional support and educational advocacy to children and their families. The program is free and serves individuals before age 22.

At *accessAbilities*, the focus is on you, your choices, and your lifestyle. All services are customized to meet the needs of the individual consumer and their families with options ranging from birth through the golden years. If you would like to learn more, please call us at (724) 832-8272 or visit us online at [www.accessabilities.org](http://www.accessabilities.org).



## WHAT'S THE VERDICT?

*Continued from page 5*

ANSWER:

Neither.

Ann went to trial with the best defense team she could assemble, but the jury was convinced of her guilt when they learned of the sudden disappearance of her two favorite diamond bracelets at precisely the same time that Donny contended she had given him \$50,000. A nosy neighbor told of seeing Ann smooching with Peter several months before Harvey disappeared and described fight after fight that she had overheard between Ann and Harvey in the months leading up to his death. So, Ann now stands convicted, but at least she has a ton of money, and even in jail, that ought to be worth something, right?

Wrong! Most states, including Pennsylvania, have a Slayers' Act, which provides that if a person murders or causes the murder of another person from whom they would ordinarily inherit, the law requires that all matters relating to property, insurance, etc. be treated as if the murderer had died before the victim. The purpose of this law is to prevent someone from profiting from their own wrongdoing.

The five million dollar mansion, the yacht and everything else went to Harvey's brother and sister, Myles and Mae.

Ann is now making thirteen cents an hour in the prison laundry just outside of Wilkes-Barre, and will be for the next twenty-five years. Donny received a reduced sentence of ten years because of his cooperation, but now nobody in the jail wants anything to do with him. Two weeks after the jury convicted Ann, Peter married Louella, a woman more his age.

*Moral of the story:* Don't be greedy.

*Second moral:* Even a bad divorce is better than prison laundry work.



## QRG PERSONAL NOTES

Preslee Claire Horchak was born January 21, 2008 to Attorney **Jim Horchak** and wife, Beth. Preslee weighed 7 pounds, 6 ounces, and was 18 inches long. She joins brother Max and sister Quinn. Congratulations to the Horchak family!



In March, legal secretary **Robin Kennison** retired from QRG after 28 years of service. During her time at QRG, Robin was a secretary for Attorneys Vince Quatrini and Ron Fonner and assisted the entire workers' compensation practice area. Robin also worked for Attorney Morrison Lewis during those years. Best wishes to Robin in all her future endeavors!

Rick Galloway, son of Attorney **Dick Galloway**, recently received his registration as a professional geologist. He is employed by the Delaware Department of Natural Resources.

The softball team Evolution 12U recently took second place in the tournament championship game in Akron, Ohio. This finish qualifies the team to play in the World Series of Softball, scheduled for July 2008 in Columbus, Ohio. Cassidy Chappell, daughter of paralegal **Rhonda Chappell**, plays shortstop and pitches for the team.

Brittany McMaster, daughter of paralegal **Margo Russell**, has been selected to be on the junior varsity softball team for Kiski Area High School. Brittany will pitch and play shortstop, and will also play for the senior varsity team as needed.

Paralegal **Kellie Taylor** led her team in the MS Walk held April 20th at Lynch Field in Greensburg. Kellie's Team raised over \$3,000, exceeding last year's total.

Scouting News: Patrick Grundy, son of attorney **Tereasa Rerko**, received his Bear badge from Cub Scouts and participated in this year's Pinewood Derby. Additional Derby participants included Logan Gallo-way, grandson of Attorney **Dick Galloway**, Zachary Taylor, son of paralegal **Kellie Taylor**, Alec Fonner, son of Attorney **Ron Fonner**, and Luke Sowinski, nephew of Attorney **Joyce Novotny-Prettiman**.

## CONGRATULATIONS, BARBARA!



All of us at QRG extend our warmest congratulations to Attorney Barbara Artuso, who has recently accepted a position as an Administrative Law Judge with the Social Security Administration.

Barbara will be relocating from her current home in Latrobe to the Office of Disability Adjudication and Review in Metairie, Louisiana, a suburb of New Orleans. As an Administrative Law Judge, she will hear and decide Social Security disability cases. These are the same type of cases she has been presenting on behalf of our clients for most of her 19 years with the firm.

In addition to her work at QRG, Barbara has been extremely active in the Westmoreland Bar Association, the Ned J. Nakles American Inn of Court, and as a regular lecturer for the Pennsylvania Bar Institute.

Though she will miss her family and many friends in western Pennsylvania, Barbara is looking forward to the opportunity to have a positive impact on the Social Security disability decision making process.

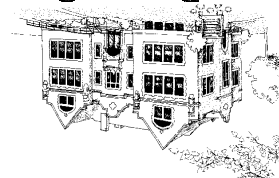
QRG's Newsletter Committee will especially miss Barbara's valuable contributions to this quarterly newsletter!

We wish the future Judge Artuso great success in her new venture, and we'll all be down to visit at Mardi Gras!

Visit us at  
[www.qrglaw.com](http://www.qrglaw.com)

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