



Peacock Tales

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Pennsylvania ABLE Accounts: A Planning Tool for Individuals with Disabilities

By: Susan Mondik Key

In 2014, the federal government enacted the Achieving a Better Life Experience Act (ABLE), to allow individuals with disabilities to save money in a new type of tax-exempt savings account, for their long term health care, housing and transportation costs. ABLE accounts present an alternative to the creation of a Special Needs Trust, allowing an individual with a disability to open an account which will not be considered a resource when determining eligibility for Supplemental Security Income (SSI) and Medicaid (called Medical Assistance in Pennsylvania) in those states which adopt corollary legislation.

Fortunately for disabled individuals living in Pennsylvania, in 2016 the Pennsylvania Legislature enacted ABLE legislation, and the Pennsylvania Treasury Department is in the process of implementing ABLE.

ABLE accounts provide flexibility. Because ABLE accounts are not to be considered in determining an individual's eligibility for SSI or Medical Assistance, an ABLE account may be established and funded while the disabled individual retains eligibility for

those benefits. ABLE accounts may be established by the individual with the disability, by his or her parent or legal guardian, or by his or her agent under a power of attorney. A maximum of \$511,748.00 can be placed in the fund, to be



Susan Mondik Key

invested in the individual's choice of several mutual-fund type options. Funds in the account can be used for a wide-range of disability-related expenses, without jeopardizing the individual's eligibility for other programs on which he or she may depend. Unlike a special needs trust, the beneficiary of an ABLE account may manage the account and make the determinations as to what distributions are appropriate. As a convenience, PA ABLE will be designed to allow for electronic withdrawals, using

a debit card.

ABLE accounts also provide tax benefits. Earnings on the funds invested grow tax free; when used for qualified disability expenses, withdrawals from the account are exempt from federal and state taxes. In addition, Pennsylvania has provided an exemption from the state's inheritance tax.

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Change Happens . . . So Please Change Your Documents!

By: Richard J. Amrhein

We are always urging clients to update their wills and powers of attorneys. Of course clients do not always listen to us. Sometimes old documents are worse than no documents at all. Life's changes, such as divorce, can cause havoc with legal documents. Under Pennsylvania law, unless there is a clear contrary intent, a divorce has the effect for many purposes, but not all, of treating the ex-spouse as if he or she died before the other spouse. Here are a few examples.

Example One:

Father signed a will in 1973 leaving his personal property to his wife and then to his children and all the residue to "Old Bank" as Trustee. The will appointed his wife and the bank as co-executors. The father left the original will with the bank and never prepared a new one.

Mother and father divorced in 1999. In November of 2016 father wrote a handwritten codicil (amendment to the will) leaving money invested with his accountant to his two children. Father died shortly thereafter.

At father's death the only assets in his name alone were his personal property covered by the 1973 will, and an investment account with his accountant which was addressed by the codicil. To properly administer his estate the 1973 will and 2016 codicil had to be probated. To do so the bank had to renounce its right to serve as executor and a copy of the 1999 divorce decree had to be filed. It would have been better if father had torn up his 1973 will as the personal property would have passed to his children anyway.

Example Two:

Mother executed a will in 1997 naming her husband as primary beneficiary as well as her agent on a power of attorney. She placed the original will in a safe deposit box. The box was in joint names of mother and father. They divorced in 2003. Mother died and the children found a copy of the 1997 will and believed that the original was in the safe deposit box. The bank refused to open the safe deposit box

for a will search because father's name was still on it, even though he had divorced mother thirteen years earlier. Eventually the box was opened with prior notice to the Pennsylvania Department of Revenue and with the father's authorization, only to discover that the box was empty. The original will was presumed to have been revoked by the mother because she had control of the original and it could not be located at her death. Had mother torn up a copy of the will and closed the safe deposit box, her children could have been spared a lot of bother.

SUMMARY

A few rules to keep in mind:

- Wills and power of attorneys may be valid indefinitely, for better or worse, regardless of life changes.
- While under Pennsylvania Law divorce may remove a spouse as a beneficiary under a will or life insurance policy, or as executor or an agent, who is going to know it unless the divorce decree is available?
- Please destroy old documents and copies of old documents.
- A divorce may not change all relationships such as the title on a safe deposit box. A divorce's effect on real estate could be a subject of a whole separate article.
- So when life changes happen, call us to see if your will, power of attorney or other documents require a change as well. •



Richard J. Amrhein

The Pennsylvania Treasury Department has created a website for the ABLE program, where interested individuals can receive general information and updates, and open an account when the program is operational: www.paable.gov. And, as always, more information can be obtained by contacting your Peacock Keller estate planning attorney. •

The Voice & Face of Peacock Keller

If you have phoned the Firm at any point over the last 16 years, you most likely heard “Peacock Keller, this is Marsha speaking.” Marsha Fazekas joined the firm as a receptionist in 2001 after working for a local law firm for a number of years. Marsha’s face was the first one clients saw when they visited the office and her voice was the first one they heard when they called the firm. Marsha went above and beyond the standard duties of a receptionist. She assisted attorneys with a multitude of daily tasks, opened all estate files for the Estates & Trust practice group and always lent a helping hand to the Marketing Department when needed. Marsha’s quiet personality concealed her underlying sharp sense of humor and infectious laugh. In January 2017, Marsha informed the Firm of her plan to retire. She and her husband, Don, were excited to devote their retirement to spending as much time as possible with their children

and grandson. When asked if she was looking forward to retirement, a large smile would creep across her face but there was a hint of sadness in her eyes knowing she would be leaving behind some very dear friends. Lucky for us, Marsha remains in Washington and keeps in touch. Thanks for everything Marsha!

With Marsha’s departure, the Firm began its search for a new receptionist. After a few weeks, we were lucky to invite MaryAnn Beam to join the Peacock Keller family. MaryAnn is the new voice and face of the firm. MaryAnn hit the ground running upon her arrival in March, and has not looked back. She is a great addition to the firm and we encourage everyone who calls or visits the firm to join us in welcoming her to Peacock Keller. •

Case Notes

A Connecticut appellate court ruled that a man was properly fired and denied unemployment compensation after he lied to his boss about attending jury duty on a day on which it had been cancelled.



The Pennsylvania Commonwealth Court held that Pennsylvania does not have common law forfeiture and therefore the state cannot seize derivative contraband absent statutory authority. For example: a driver who brandishes a handgun at a tailgater but later pleads guilty only to disorderly conduct is entitled to have his handgun returned to him.



IKEA agreed to pay \$50 million to three families whose children were killed when the company's dressers fell on them.



The U.S. Court of Appeals for the 11th Circuit ruled that a Florida law barring doctors from asking their patients whether the patients had guns in their homes violated the First Amendment.



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PKE In Action

In recognition of Patient Safety Month, Douglas R. Nolin and Eva H. Ahern presented to Monongahela Valley Hospital on the subject of consent as it relates to a patient’s care. The presentation “Who is Authorized to Give Consent?” covered topics such as competency, guardianships, powers of attorney, family involvement and living wills.



Susan Mondik Key presented a CLE, on behalf of the Pennsylvania Bar Institute, to local attorneys on “How to Handle Small and Insolvent Estates”.



For over a decade Peacock Keller has awarded a \$1,000 scholarship to one student, in each of several select area high schools, who has shown progressive academic improvement over four years of high school, has been involved in extra-curricular activities, has not received any other monetary awards, and who will be continuing his or her education or training.



Peacock Keller sponsored a hole at the 8th Annual Spring Charity Golf Event, presented by the Michael Late Benedum Chapter of the American Association of Professional Landmen.

All proceeds were donated to WVU Children’s Hospital and the Children’s Hospital of Pittsburgh.



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Peacock Tales is published quarterly for the information of our clients and friends. The Editorial Group is composed of Stephen P. Curry, editor, John A. Rodgers and Barbara A. Graham, co-editors, and Kate McCoy, Marketing Director.

Articles are carefully researched, but are not intended as legal advice or as a substitute for legal counsel. Inquiries concerning articles or requests for inclusion on our complimentary mailing list should be addressed to your Peacock Keller attorney or to the Editorial Group at:

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