

Winter 2009-2010

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Rob Hovey &
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Legal Questions?

If you have any questions regarding divorce, custody and support, civil claims, criminal defense, personal injury, estates, real estate, or any other legal issue call our toll free number today to schedule an appointment with an attorney or come in during our office evening hours for a consultation.

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Team Member

Our Attorneys:

- John J. Mooney, III
- Judith Koper Morris
- Katrina M. Luedtke
- George W. Swartz, II
- Amy E. W. Ehrhart
- Jason C. Imler
- Jeffrey R. Lawrence
- Tyann L. Miller,
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MOONEY LAW LETTERS

Considering a Living Trust Instead of a Will? You May Want to Think Again.

Many clients approach our office about drafting a "living trust" for them. A living trust is a funded revocable trust created for the benefit of the settlor (the person creating the trust). The settlor transfers ownership of his or her assets to a trustee, typically the settlor him or herself, and directs that the trustee use or hold the assets for the benefit of the settlor during the settlor's lifetime. The settlor retains the power to amend or revoke the trust arrangement at any time prior to his or her death. At the death of the settlor, an alternate trustee appointed by the settlor in the trust document either continues the trust until the time for disposition of assets arises as set forth in the trust document, or distributes the assets according to the directions set forth in the trust document.

Clients often mistakenly believe that a living trust solves a myriad of issues they dislike which are

related to estate administration when a Last Will and Testament is the individual's choice of method to dispose of assets at death. Clients believe that having a living trust will eliminate inheritance taxes, attorney fees, disclosure of the extent of their assets, and the possibility of court involvement and litigation among family members who are beneficiaries. In fact, clients often mistakenly equate all of the above-mentioned issues with the phrase "probate process." However, once you understand what it means to probate a Will and the laws with regard to the taxation of the disposition of assets, it is clear that a living trust does not solve any of these issues and is not necessarily the best option for everyone.

Many people cite "avoiding probate" as a primary reason to establish a living trust. They believe that probate is costly and lengthy, and that they will not have access

to the decedent's assets during the probate process. In some states, Florida and California most notably, the probate process is lengthy and costly, involving formal court procedures which delay the disposition of the assets and increase costs, particularly attorney fees. However, in Pennsylvania probate is simple and inexpensive. Probate is simply the process by which a Last Will and Testament is proved to be valid. The Will is presented to the Register of Wills for the county of residence for the decedent, a small fee is paid based on the value of the probate assets (assets held in the decedent's name), and Letters are issued stating that the executor is authorized to act on behalf of the estate. The entire process takes approximately five minutes. The timeframe for disposition of the decedent's assets is within control of the executor, not the Court.

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Office Hours and Information

Monday–Friday 8:00 a.m.–7:00 p.m.

Walk-in Evening Hours: Mon, Tues, Wed, Fri 5p.m.-7p.m. (Hanover Office)

Thurs 5p.m.-7p.m. (New Oxford Office)

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Will (Continued from Cover)

A living trust will make the need for "probate" unnecessary because there is no Will and generally there will be no assets in the decedent's name; all assets will be held in the name of the trust. However, in the event that the settlor fails to transfer all of his or her assets into the name of the trust, probate will still be necessary. This failure to transfer all assets is not an uncommon event. Furthermore, although the decedent's assets automatically transfer to the control of the alternate trustee in the case of a living trust, the alternate trustee must still take all the necessary steps to transfer the assets from the name of the trust to the beneficiaries. This process is the same as the process the executor of an estate follows in preparing for disposition of a decedent's assets when a Will is involved. Although you have avoided the five minutes at the courthouse, you will need to retain an attorney to assist the alternate trustee in the transfer of the assets.

You will also need the assistance of an attorney to understand and comply with the inheritance tax requirements. The assets that are held in the name of the trust will still be subject to inheritance tax. This is true because the living trust is revocable by the settlor until the settlor's death. Because the settlor can revoke the trust and re-title the assets to him or herself, the settlor has control over the assets. It is this ability to control by the settlor which makes the value of the assets taxable to the settlor's estate. Therefore, an inheritance tax return and the payment of tax is still required

even though you have a living trust instead of a Will. Furthermore, the inheritance tax return, with a listing of all your assets, debts and personal information on it, is filed with the Register of Wills, thus negating the "privacy" you thought you had by avoiding probate.

Having a living trust is also no guarantee that you will not have court involvement or disagreements among family members. Litigation can arise if family members who are the ultimate beneficiaries of a living trust disagree with the manner in which the successor trustee is managing or using assets. This is not uncommon in a situation where a spouse from a second marriage is the successor trustee and the children from the first marriage are the ultimate beneficiaries.

And finally, attorney fees are not necessarily minimized by the use of a living trust. You must look at the cost to draft a living trust, which is an extremely lengthy and complex document, compared to those involved in drafting a Last Will and Testament, which is a relatively simple document. Additionally, there may be costs to administer the trust during the lifetime of the settlor, including the costs to ensure the trust is funded. And as we discussed above, there are still matters to resolve at the death of the settlor, including the filing of the inheritance tax returns and the termination of the trust and the distribution of the trust assets.

Although the living trust does not avoid any of the problems

people associate with probating a Will, it can be a useful estate planning document in certain circumstances. For example, in the case of persons who have significant wealth of their own prior to entering into a second marriage, as well as children from the first marriage, a living trust can ensure the children from the first marriage receive the assets of the parent, rather than the new spouse or the new spouse's children or other beneficiary. The living trust can provide for the second spouse to use the assets of the decedent spouse until the death of the second spouse, at which point the remaining trust assets would pass to the children of the first spouse to die.

Additionally, a living trust can be helpful in planning for the incapacity of the settlor. Upon the settlor becoming unable to handle his or her own affairs, the alternate trustee would pick up where the settlor left off and administer the settlor's assets for him or her. Of course, having a valid Power of Attorney will do the same.

As you can see, the decision of whether or not to create a living trust may not be as easy and straightforward as you have been told by literature you receive in the mail or by persons attempting to sell you a living trust document. Please contact Mooney & Associates if you wish to discuss whether or not a living trust is right for you, or to discuss your estate planning needs.

- Amy Ehrhart, Esquire

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If your call is in regard to:
Real Estate and Estate Planning,
 contact Lisa:
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Estate Administration and Probate, contact Janice:
 Ext. 204

Paralegal to Attorney Jason Imler, & Judy Morris, (Personal Injury, Worker's Comp, SSI/SSD) contact Judy F.:
 Ext. 110

Caren, paralegal to Attorney George Swartz:
 Ext. 111

Angie Mohan, paralegal to Attorney John Mooney, Jeff Lawrence, & Judy Morris
 Ext. 109 (Last names A-L)

Pam Rockwell, paralegal to Attorney John Mooney, Jeff Lawrence, & Judy Morris
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We are committed to alleviating the stress that often accompanies legal transactions. Our clients speak with the attorney handling their case and are always informed about progress and options. For client convenience, we maintain six office locations and extended hours. If our clients are unable

Fighting Evil Outside the Courtroom

This past October MOONEY & ASSOCIATES was featured in the annual Hanover Halloween Parade. Playing off of the motto "When Your Future is at Stake" the float depicted a ghoulish courtroom with none-other-than defense attorney Van Helsing played by Attorney Mooney. Lisa

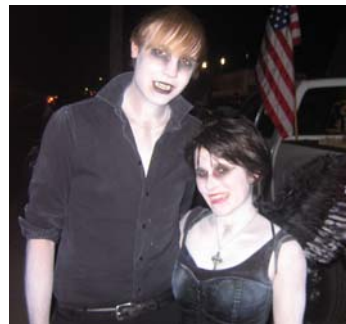
George Swartz was our defense counsel and Attorney Jeff Lawrence was our defendant. Other members of the Mooney team were vampires, vampire slayers, or other devilish creatures of the



Baublitz, our Real Estate Paralegal, starred as our witch being burned at the stake. Attorney



night. Judy Forry spear headed the organization efforts for our first ever Halloween parade appearance.



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Judith, paralegal to Jason C. Imler, Esq. & Judith K. Morris, Esq., joined the firm of Mooney & Associates in May of 2006. Her duties include case management of all motor vehicle, workers' compensation and social security cases from inception through settlement and/or trial. Case management includes assisting clients with claim set up, obtaining medical and wage records, dealing with police departments, insurance companies and hospitals, as well as preparation of final settlement

documents. Judith is dedicated to assisting our injured clients in obtaining fair compensation and to easing their anxiety and frustration when dealing with insurance companies.

Judith also serves as the firm Needles Coordinator and Office Manager assistant. Needles is a legal case management computer system which handles all aspects of firm operation from basic client information through firm management reports. This duty includes creation and implementation of documents and reports which make our large firm case load manageable and efficient to the significant benefit of our clients.

Judith has a degree in Paralegal Studies and previously worked for a prominent personal injury firm in York, Pennsylvania. Personal Injury has been her main focus since entering the legal field.

Judy planned and organized MOONEY & ASSOCIATES first ever Hanover Halloween Appearance as stated in our article on page 3. Judy enjoys crocheting, running, baking, playing the piano, and most of all, spending time with her family.

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