

Pennsylvania Legislature Passes Trusts and Estates Legislation

On October 27, 2010, Governor Rendell signed into law an Act that has some much needed changes to Pennsylvania's Probate, Estates and Fiduciaries Code. The new law clarifies rights of inheritance when a divorce is pending, interprets credit shelter funding clauses dependent on the federal estate tax, and curtails some abuses prevalent in the use of powers of attorney.

Here are a few of the provisions:

Formula Clauses for Federal Estate Tax

As has been discussed in this column before, estate plans that contain "formula clauses" that divide the decedent's estate into two parts based on the amount of the exemption from the federal estate tax ran aground this year. There is no federal estate tax in 2010, so the question arises: how to interpret these formula clauses? I recommended to my clients that they amend their plans to answer this question because it very fundamentally determines "who gets what." If you did not do that, the legislature will now answer it for you, and here is their answer: a will, trust, or other instrument for a decedent who dies after December 31, 2009 and before January 1, 2011, that contains a formula clause will be "rebuttably presumed to be interpreted pursuant to the Federal Estate Tax and Generation-Skipping Transfer Tax laws applicable to estate of decedent dying on December 31, 2009." In other words, the formula will be interpreted under the federal estate tax as it existed in 2009. There is an exception: the rule of the new law does not apply (1) if the will, trust or other instrument was executed after December 31, 2009 or indicates that a different rule should apply, or (2) there is a federal estate tax or generation-skipping tax that applies to the decedent who dies in 2010 (which would take some fast action by Congress or else a very controversial and probably unconstitutional retroactive application of an estate tax or generation skipping tax).

Agent Under a Power of Attorney

With regard to the agent's power to engage in insurance transactions, the law is amended to provide that an agent or a named beneficiary of a life insurance policy "shall be liable, as equity and justice require, to the extent that a beneficiary designation made by the agent is inconsistent with the known or probable intent of the principal." In other words, the agent cannot name himself as beneficiary if that is not the principal's intent. This is aimed at situations such as when an agent under a power of attorney changes a beneficiary designation to him or herself.

A similar provision is made for an agent's change of beneficiaries on a retirement plan. Further, an agent cannot designate himself a beneficiary of a retirement plan unless the agent is the spouse, child, grandchild, parent, brother or sister of the principal.

Death while Divorce is Pending

Prior PA law provided that a spouse who for one year or more before death has willfully neglected or refused to support the spouse, or who for one year or more has deserted the spouse, shall have no right to claim a share of the deceased spouse's estate.

The Omnibus Amendment would add that a surviving spouse shall have no right or interest in the estate of the deceased spouse if the spouse died domiciled in Pennsylvania during the course of divorce proceedings, no decree of divorce has been entered, and grounds have been established.

Similarly, wills are modified not only by a divorce but also by a pending divorce where grounds have been established. The surviving spouse in a pending divorce is deemed to have predeceased when the will is interpreted.

A pending divorce where the grounds have been established will also void a beneficiary designation of a life insurance policy, annuity contract, pension or profit-sharing plan.

Uniform Trust Act

Various technical corrections and clarifications are made to the Uniform Trust Act. These changes will be most helpful to practitioners as they work with the new law which requires notice to trust beneficiaries and provides for ways to modify trusts by agreement.