

Impact

An Overview of Current Legal Events of Concern and Interest

Winter 2004

Living Wills and Durable Powers of Attorney for Health Care in Ohio

By: Marilyn J. Maag



Dealing with the concept of immortality is not easy for everyone, but even more troublesome for some people is the prospect of not having control over difficult medical decisions that must sometimes be made. For over ten years, Ohio has allowed its citizens to sign documents to provide “advance directives,” which in plain English means you can give written instructions about your future medical treatment.

Living Wills

The first approved advance directive is a “Living Will Declaration” (usually shortened to “Living Will”), in which the person signing can decline medical treatment or procedures that would artificially prolong the inevitable if he or she develops a terminal condition or falls into a permanently unconscious state (i.e., a permanent coma). Stated simply, a Living Will allows you to express in writing your legal right to refuse health care. Execution of a Living Will does not affect the responsibility of health care personnel to provide comfort and care. While they will not artificially prolong life, they will make reasonable efforts to diminish pain and discomfort.

Standard Living Wills, which are circulated widely by lawyers, doctors, and hospitals in Ohio, provide detailed and specific definitions of the terms “terminal condition” and “permanently unconscious state,” making it clear when the document is intended to apply. The standard Living Will Declaration was re-written in 2001 to make it easier to read and understand, especially to persons who sign the document without the guidance of a lawyer.

Persons who desire to be allowed to die naturally, but comfortably, if they become terminally ill or fall into a permanent coma, must make their wishes known to their families, as well as their doctors. Stating one’s wishes in writing eliminates questions and makes difficult decisions easier for those who must confront these issues.

Durable Powers of Attorney for Health Care

The second advance directive you should consider is a Durable Power of Attorney for Health Care. Such a Power of Attorney allows you to name a person (or contingent choices) to act as your agent and make health care decisions on your behalf if you become unable to do so yourself. If you also have a Living Will, the person designated as your agent in the Power of Attorney must also follow those directives. If your wishes about a particular health care decision are not addressed or are unclear, your agent has the authority to decide what is best for you.

The Durable Power of Attorney for Health Care contains a detailed checklist of the types of decisions you may want to allow your agent to make on your behalf. If you do not want your agent to have authority in a certain area, you may simply cross that item off the list. Two important points about the Durable Power of Attorney for Health Care are worth noting: First, an agent cannot, under any circumstances, order the withdrawal of treatment that is providing comfort or relieving pain. Second, an agent cannot approve the withdrawal of nourishment (a feeding tube) for someone in a permanent coma unless the person has authorized such withdrawal in the Durable Power of Attorney.

When the standard Durable Power of Attorney for Health Care document was revised in 2001, blank lines were added to allow the person signing it to write in specific desires regarding medical procedures. Thus, you may personalize the document, if you so choose. Some people sign advance directives after they have been diagnosed with a disease or a particular medical condition. The open space in the Durable Power of Attorney for Health Care allows for comments about forms of treatment (for that disease or condition) that are acceptable, or unacceptable, to the person signing the directive.

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Organ and Tissue Donation Form

A final advance directive document for consideration is an Organ and Tissue Donation Form. The purpose of this form is to express permission for the use of organs and tissues upon death, again providing guidance to relatives and health care providers. Persons interested in organ or tissue donation may obtain information from an attorney or from such organizations as the Life Center at (800) 981-5433.

If you make the decision to sign a Living Will Declaration, a Durable Power of Attorney for Health Care, and/or an Organ and Tissue Donation Form, you should take two additional important steps. One is to discuss openly and candidly with your family, or other persons closest to you, your wishes regarding your medical care, especially your medical care during the final stages of your life. The second step is to make sure your doctor has copies of the advance directives you have signed — so he or she can follow your instructions.

Marilyn J. Maag is a partner in the firm and practices exclusively in the areas of estate planning and probate law. The Ohio State Bar Association recently named Ms. Maag a certified specialist in estate planning, probate and trust. She was also elected a Fellow in the American College of Trust and Estate Counsel. For more information on this subject, please contact Ms. Maag at 621-2120.

“Paid In Full” Checks: A Quick Primer

By: Stuart C. Brinn

Have you ever received a partial payment from a customer in the form of a check marked “Paid in Full”? If so, the obvious question is whether you can cash the check and still attempt to recover the balance due on the account. The safe answer is “no,” but there are exceptions. Over the years, Ohio’s approach to “Paid in Full” checks has evolved in an effort to comply with reasonable commercial business practices. The current law is generally as follows:

Partial Payment of an Undisputed Debt

If there is no dispute about the amount owed, a customer cannot mark his check “Paid in Full” in the hope of getting a quick discount on his account. Thus, you should not get any ideas about an easy way to pay off that credit card debt. The law in this area is designed to deal with situations in which there is a dispute about the amount due. There is a low threshold for determining whether there is a dispute, so the safest course of action when receiving a “Paid in Full” check is to assume that the customer at least feels that there is a dispute about the amount due.

Partial Payment of a Disputed Debt

Most cases in this area relate to situations in which the customer does dispute the amount owed and attempts to resolve the matter by tendering the amount he believes is owed, with a check marked “Payment in Full,” “Full Satisfaction,” or in some other similar manner. There was a time in Ohio, not very long ago, when a person receiving the check was permitted to cross out the “Paid in Full” language and deposit the check as a partial payment on the account. However, that law has been changed.

If a person or company tenders payment of a disputed or contested debt with a check marked “Full Satisfaction” (or similar conspicuous language), the claim will be discharged if the check is negotiated. The technical term for the acceptance of a check in payment of a disputed debt is “accord and satisfaction.” There is also an accord and satisfaction if you cash a check that is accompanied by a letter conspicuously stating that it is tendered in full satisfaction of the disputed claim. Thus, if you receive a check marked “Paid in Full” or “Full Settlement,” of a debt that is disputed by the sender, your acceptance of the check will constitute satisfaction of the entire debt. If you are unwilling to accept the amount offered by the sender, you must return the check, thereby making it clear that you want payment in full.

You should perform the following analysis before cashing a check for less than the amount you believe is due:

First, see whether the check or any accompanying letter conspicuously states that the payment is tendered as “Payment in Full,” or “Full Settlement,” or otherwise indicates that the sender is submitting payment to satisfy the debt. (If not, the payment may be accepted as partial payment toward the debt.)

Second, if there is “Paid in Full” language, you must determine whether there is a dispute regarding the amount due. Ohio requires minimal evidence of a dispute, so if the person sending the check can advance any reasonable basis for the existence of a dispute, it is likely that a court will conclude that there is a bona fide dispute. Again, if there is a dispute, acceptance of the check constitutes full resolution of the dispute, whether that is your intention or not.

Third, if there is not a bona fide dispute, you need to determine whether the debt is liquidated or unliquidated. A debt is liquidated only if the amount due and owing is a definite amount. If the amount due is certain, then cashing the check will not result in an accord and satisfaction. Remember, however, if there is a good faith dispute, the debt is unliquidated and cashing the check does cause an accord and satisfaction.

Finally, it is important to know that there are exceptions to the general rule. If the person sending the check was advised in writing that all communications concerning the debt should be directed to a specific person or office, and if the sender sends the check to someone else, you are allowed a period of 90 days to return the payment even if the check has been cashed. Doing so restores your right to attempt to recover the full amount of the debt. The purpose of this rule is to avoid penalizing large businesses that accept checks at remote locations in large numbers and may not visually inspect each check before it is deposited. If the check was deposited within the last 90 days, you may have an opportunity to repay the debtor and avoid an accord and satisfaction.

If you are in doubt about depositing a check, you probably need to return it to the sender and request that the check be issued without the “Paid in Full” or “Settled in Full” language.

Mr. Brinn is a partner in the firm’s General Business/Corporate Department, regularly practicing in the areas of creditor rights and consumer finance, employment, commercial and personal litigation, formation of and counsel to business entities and commercial transactions. For more information, please feel free to contact Mr. Brinn at 621-2120.

News of the Firm

Attorneys on the Move



Thomas C. Rink

Thomas C. Rink was elected to his fourth term on the Village of Indian Hill Council and was subsequently elected by the Council Members to serve as Mayor for a two-year term through 2005.



Charles H. Melville

Charles H. Melville participated in the Manufacturers' Agents National Association ("MANA") Agent Law/Legal Symposium in Chicago. Attorneys from across the country discussed various commission-protection statutes and their legal interpretation.



Claudia Allen

Claudia Allen will be the guest speaker at the May 2004 meeting of the TriState Association for Corporate Renewal ("TACR"), addressing risks employers face in implementing and maintaining pension, profit sharing, and 401(k) plans. Claudia will also speak at a seminar on legal issues concerning business at the "C+RA YOUiversity," a lecture series sponsored by Cole + Russell Architects, Inc. (C+RA). Additionally, Claudia chaired the Cincinnati Bar Association's annual Southwestern Ohio Tax Institute for 2003. Strauss & Troy was well-represented at the Institute; **Jeremy A. Hayden** was the speaker on new tax law changes.



Jeremy A. Hayden

Marilyn J. Maag was elected a Fellow in the American College of Trust and Estate Counsel. To join this elite group, a lawyer must be nominated by another Fellow and elected by the membership based on professional reputation, ability in the trusts/estates area, and service to other lawyers (lecturing, writing, teaching, and bar activities). Marilyn was also certified by the Ohio State Bar Association as a specialist in estate planning, trust and probate law. Marilyn is the principal author of the 7th edition of *Anderson's Ohio Probate Practice and Procedure*, originally published in 1990, which she updates annually. Anderson Publishing will publish the book on the internet in 2004. Since 1997, Marilyn has served on the Board of Governors of the Ohio Bar Association Estate Planning, Probate and Trust Law Section. In that capacity, she actively participates in drafting legislation for the State of Ohio in the areas of estate planning, probate and trust law.



Marilyn J. Maag

Timothy B. Theissen has been selected to serve on the Board of Directors of Kids Helping Kids, a non-profit organization providing adolescent alcohol and drug treatment. During his three-year term, Tim will also serve on the Fundraising and Public Relations/Marketing Committees. Additionally, Tim will teach Domestic Relations Law at the University of Cincinnati during the Winter 2004 quarter.



Timothy B. Theissen

In December, Strauss & Troy sponsored the holiday party of the Cincinnati Real Estate Club. **Michael A. Ruh, Jr.**, Director of the Club, and **Jeremy A. Hayden**, General Counsel, represented Strauss & Troy at the event.



Michael A. Ruh, Jr.

When **Martin C. Butler** left his position as a Director of the Southbank Fund, **Jeremy Hayden** was appointed to the Board of Directors in his place. Jeremy will also serve as the Fund's legal counsel. The Fund provides mortgage loans for affordable housing and revitalization of the lower- and moderate-income neighborhoods of Newport, Bellevue, Dayton, Fort Thomas, Covington, and Ludlow.



Martin C. Butler

Charles J. Postow has become a volunteer basketball coach at Yavneh Day School.



Charles J. Postow

Strauss & Troy was a corporate sponsor of *The Midwesterns* Platform Tennis Tournament, which was held in Cincinnati in January. Approximately 200 players from across the country competed, including **James G. Heldman**, who played in the 45-and-over category as well as the Men's Open tournament. An exhibition match featuring current national champions and professional platform tennis players Luke and Murphy Jensen was held prior to the tournament. The event raised \$5,000 to benefit Inner City Youth Opportunities, an organization supported throughout the year by Strauss & Troy.



James G. Heldman

Client Spotlight



The Doran family has been in the trucking business since the turn of the century. The first venture by our founder, John Doran, was hauling ice and coal throughout greater Cincinnati using a horse-drawn wagon. John's first truck was a 1917 Schacht; this made his hauling company one of the first companies to use motorized trucks in the Cincinnati area. During these early years, John was hauling anything that came off the boats and barges at the port of Cincinnati along the Ohio River. This included sugar, whiskey, cookies, crackers, wine, and large items like steel.

The company then passed on to the second generation with John's sons, Richard, Ray, Carl and Robert, who continued the business using the name Doran Transfer Hauling and Rigging. Doran Transfer continued to grow and added more trucks, including a 1923 Armleder. In 1941, Robert J. Doran, founded Ace Doran Hauling & Rigging. The company quickly became a premier owner-operator flatbed carrier. The last of the brothers, Robert ran the company until his death at the age of 83.

The Ace Doran Hauling & Rigging Company is now owned and run by the third generation of Dorans, the sons and daughters of Robert, with Daniel J. Doran as President. Presently, the company has over 100 offices and 300 owner-operators. Ace Doran currently moves steel, aluminum, machinery and anything else that can be transported on a flatbed or specialized trailer.

Ace Doran is a highly respected, family owned and operated transportation company. We serve the transportation community by offering our clients a company consisting totally of independent owner-operators, dedicated to providing uncompromising top quality performance, customer service and customer satisfaction. Ace Doran believes that the 100% owner-operator concept in trucking is a necessary link to the economy of this country; that contractors deserve a company that caters to their needs, cares about their welfare, and is dedicated to the well being of the owner-operators.

Ace Doran has developed a network of commission agencies and company terminals serving 48 states and Canada. To help the owner-operators with additional freight availability, Ace Doran holds intrastate certificates within Kentucky, Illinois, Indiana, Missouri, Ohio, South Carolina, and Wisconsin, as well as interstate and intrastate and intraprovincial certificates within Ontario and Quebec, Canada. All Terminal locations offer freight available to contractors on a first-in, first-out basis. Every contractor is assigned to a terminal location to assist in outbound dispatch, final settlement pay, maintenance, monthly inspection reports and ordering of annual permits.

While central dispatch is still located in Cincinnati, Ace Doran has terminals in Alabama, Arkansas, California, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia and Wisconsin.

Ace Doran is extremely proud of its Safety Program. The company decided to raise the bar and put into place company safety requirements that go far above and beyond federal requirements. Ace Doran has an everyday aggressive pursuit of workplace and highway safety, with the goal of putting only safe drivers and safe trucks on our highways. Ace Doran received the ATA Presidents' Trophy in 2001 for the best overall safety program and record of safety initiatives. This Trophy is only one of the many awards that have been presented to Ace Doran.

The Doran family is proud of its heritage and reputation. We look forward to continuing the family tradition in the trucking industry. Ace Doran participates in truck shows around the country and has a specially built truck to transport its Coal Wagon, the 1917 Schacht truck and the 1923 Armleder truck. Come join us; we would love to meet you and share our history with you!

For more information about Ace Doran Hauling and Rigging Company and the services it has to offer, you may visit its website at www.acedoran.com, or you can write directly to:

*Daniel J. Doran, President
Ace Doran Hauling & Rigging Company
1601 Blue Rock Street, Cincinnati, OH 45223
513-681-7900*

Good News for the 2004 Tax Filing Season

By: Jeremy A. Hayden



Most of us don't look forward to our annual tax filing obligations unless a refund is forthcoming. Thanks to the many changes implemented by the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "Act"), this filing season looks to be a little brighter than past years. The Act, which is estimated to provide from \$330 billion to \$800 billion in tax cuts over the next eight years, marks the third-largest tax cut in history and is the third major tax bill passed in the last three years.

Some of the most significant changes are summarized below to assist you in making sure you don't overlook them when filing your tax return this year. The first section outlines the changes made for individual taxpayers; the second section summarizes changes for businesses.

Individual Taxpayers

Tax Rates for Middle and Upper Class Taxpayers Decreased. The tax rates for individuals, trusts, and estates previously in the 27%, 30%, and 35% brackets were reduced by 2% across the board to 25%, 28%, and 33%, respectively. Taxpayers in the top marginal tax bracket with a rate of 38.6% received an even greater percentage reduction to 35%. Unless future laws extend the rate reductions, however, they will expire on December 31, 2010.

While these rate reductions are good news for most taxpayers, some taxpayers will not realize the full savings from the rate reductions due to the Alternative Minimum Tax ("AMT"), for which the rates were not decreased. The tax rate reductions will actually cause some taxpayers to be subject to AMT, thereby eliminating most, if not all, of the benefits of the rate reductions.

10% Tax Bracket Expanded. For tax years 2003 and 2004 only, the 10% bracket was expanded to include more taxpayers. For unmarried individuals, the bracket amount was increased from \$6,000 to \$7,000; for married individuals filing jointly, it expanded from \$12,000 to \$14,000. The 10% bracket amounts will revert to the prior levels in 2005 (\$6,000 and \$12,000), before once again increasing to \$7,000 and \$12,000 for tax years 2008 through 2010. Unless extended by Congress, the 10% bracket amounts will again decrease to the \$6,000 and \$12,000 levels in 2011.

Marriage Penalty Relief. The term "marriage penalty" was coined to describe the situation under married taxpayers filing joint returns pay more in taxes than they would pay as single persons filing separate returns. The limited relief provided by the Act for tax years 2003 and 2004 only (unless extended) is two-fold. First, the income levels for the 15% tax bracket for married couples filing joint returns are increased from 167% of the income levels for single filers to 200% (twice the income of single persons). Second, married filers who do not itemize deductions will receive an increased standard deduction (from 174% to 200% of the deduction available to single filers). As indicated, these changes are only for the 2003 and 2004 tax years. The 15% tax bracket for married couples reverts to 180% in 2005, but increases to 187% in 2006,

193% in 2007, and 200% in 2008 through 2010. The standard deduction for married couples reverts to 174% in 2005, but increases to 184% in 2006, 187% in 2007, 190% in 2008, and 200% in 2009 through 2010. In 2011, both the standard deduction and 15% tax bracket for married couples will revert back to their levels prior to the Act.

Child Tax Credit ("CTC") Increased. For tax years 2003 and 2004 only, the child tax credit is increased from \$600 to \$1,000 per qualifying child. In 2005 through 2008, the CTC will decrease to \$700 per qualifying child. The credit will increase to \$800 in 2009, \$1,000 in 2010, and then decrease to \$500 in 2011.

AMT Exemption Amount Increased. For tax years 2003 and 2004 only, the AMT exemption amount is increased from \$49,000 to \$58,000 for married couples filing joint returns and \$35,750 to \$40,250 for single taxpayers. In 2005, the exemption amount decreases to \$45,000 for married filers and \$33,750 for single filers. It has been estimated that the number of taxpayers subject to AMT will increase to more than 17 million taxpayers by 2010, as compared to 1 million in 2000.

Long-Term Capital Gains Rates Reduced. For transactions completed after May 6, 2003, the maximum rates on long-term capital gains are reduced from 20% to 15%. Also, a new 5% rate will replace the 10% rate for individuals in the 10% and 15% income tax brackets. The rate drops to 0% for individuals in that tax bracket in 2008. All of the long-term capital gains rate reductions expire on December 31, 2008. The lower tax rates provide substantial opportunities for income and estate tax planning, including transfers from taxpayers in high-tax brackets to taxpayers in lower-tax brackets (i.e., transfers by parents to their children).

Dividend Tax Rates Reduced. Qualified dividends will be taxed at the same new rates as applicable to long-term capital gains (0%, 5%, and 15%). The reduced rates apply to dividends received in tax years 2003 through 2008. Dividends are eligible for the new lower rates (rather than ordinary income tax rates) only if the underlying stock or security is held for more than 60 days during a specified 120-day period. Because of the lower rate on dividends, there may be more incentive to hold equity positions in the stock market rather than rental property or certificates of deposit, since rental and interest income continue to be taxed at the higher ordinary income tax rates. The reduced rate on dividends may also make it worthwhile for taxpayers to reconsider their choice of entity (i.e., S corporation v. LLC) for their small business enterprises.

Business Taxpayers

First-Year Bonus Depreciation Increased. The Act increases from 30% to 50% the bonus depreciation deduction for business property acquired and placed in service after May 5, 2003, and before January 1, 2005. Bonus depreciation applies only to new property with a depreciable life of less than 20 years. Taxpayers who have acquired or constructed new buildings after May 5, 2003, have an increased incentive to engage a cost classification expert. While buildings do not qualify for bonus depreciation, a cost classification expert can potentially save these taxpayers thousands of dollars by identifying components of the building that will qualify for bonus depreciation.

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Section 179 Expense Amount Increased. The Act increases from \$25,000 to \$100,000 the maximum annual amount business taxpayers may deduct for property placed in service during tax years 2003 through and including 2005. Further, the phase-out amount is increased from \$200,000 to \$400,000, meaning that the Section 179 deduction is limited only if taxpayers place more than \$400,000 of property in service during the tax year. One of the most popular uses for this deduction has been for the purchase of SUVs by business owners. Taxpayers can write-off as much as \$100,000 towards the purchase of certain SUVs that are used for the business. There are some limitations on SUVs that qualify for this deduction, so you should contact a competent tax attorney before making such a purchase to ensure that it will qualify for this deduction.

Conclusion

While the above changes present many tax-planning and tax-savings opportunities, it is important to understand that many of the changes are complex and that making decisions based solely on the impact of the new tax law changes can have unintended consequences. Thus, it is important for such decisions to be fully researched and analyzed in conjunction with the taxpayer's complete financial profile. Further, all of the Act's tax law changes are scheduled to "sunset" or expire — some of them as early as 2005. While Congress may choose to continue the changes, there is no guarantee that it will do so, particularly with the national deficit growing at a record pace. In light of the complex issues presented, it is advisable to consult with a competent tax attorney before taking any action based on the new tax law changes.

Jeremy Hayden is an associate in Strauss & Troy's Tax Department. His practice includes providing tax and business planning advice, as well as representing taxpayers in matters before the IRS and state and local taxing authorities.

MAD Team Update

For this year's Holiday Project, the MAD Team provided the girls at Holly Hill Children's Home with a Christmas Party and gave each of them Christmas gifts, including a new coat, gloves, an outfit, and three "wish list" items. The girls were also visited by Santa, played by our own Charles Ashdown, who gave each girl a filled stocking, "goody bags" made by MAD Team member Fran Tuttle, and \$10 in cash. Additionally, each of 36 foster children affiliated with Holly Hill Children's home received a filled stocking. Girl Scout Troop 6429 gave each girl a decoupage box filled with personal care items. Team member Mark Earley of Earley Bird Music provided the entertainment. The girls were thrilled with the party and all the gifts they received.

Sponsorships

As a part of our long tradition of giving back to the community in which we work and live, Strauss & Troy is pleased to have sponsored a variety of deserving causes over the past few months. We are proud to have supported the following programs and events as our continuing commitment to the Greater Cincinnati community:

- Covington Rotary Club — Joe Pentecost Memorial Golf Outing
- Crohns & Colitis Foundation of America — 3rd Annual Halloween of Hope
- Drug-Free America
- Golf Manor Synagogue
- Kentucky Bar Association
- Inner City Youth Opportunities — The Midwesterners
- National Conference of Bankruptcy Clerks
- Northern Kentucky Legal Aid Society
- National Underground Railroad Freedom Center
- St. Mary's SMART Campaign

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