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Changes Coming for Pennsylvania Fiduciaries in Their Ability to Access and Manage Digital Assets and Accounts

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Related Practice Area: Trusts & Estates

On January 1, 2015, Delaware became the first state to enact a comprehensive law granting fiduciaries the right to access decedents' digital assets. The Delaware law, known as the Fiduciary Access to Digital Assets and Digital Accounts Act, grants personal representatives, guardians, agents under a power of attorney, trustees, and trust advisors the power and authority to access, control, or copy digital assets, while respecting the privacy and intent of the account holder. The Act is designed to eliminate conflicts with federal privacy laws and state and federal computer fraud and abuse acts, which currently impede or prevent access by fiduciaries to digital assets and records needed to manage and collect assets. As the number and variety of digital assets owned by individuals in today's society continues to grow, the need for this type of law becomes critical.

In fact, at least 13 state legislatures, including Pennsylvania's, have introduced bills addressing digital assets just this year. On February 20, 2015, Pennsylvania Senate Bill 518, modeled after Delaware's Fiduciary Access to Digital Assets and Digital Accounts Act, was introduced. Although Senate Bill 518 still must work its way through the legislative process, it has the potential to vastly change the rights and responsibilities of Pennsylvania fiduciaries in handling and managing digital assets.

Barley Snyder is closely monitoring Senate Bill 518 and advising clients of their rights and responsibilities to access digital assets both now and potentially after the Bill is passed. Until the Bill is enacted in Pennsylvania, fiduciaries should take great care in their handling and management of digital assets in order to avoid violating any state or federal privacy or fraud acts.

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The IRS Attempts to Breathe New Life into the Rule against Perpetuities

By: Brian R. Ott
Related Practice Areas: Trusts & Estates and Tax

The Rule against Perpetuities is a common law concept which limits the lifespan of non-charitable trusts. It does so by rendering any interest in the trust invalid unless the interest vested within a time period defined as twenty-one years after the death of the last trust beneficiary living at the time the interest was created. Over the years, many states have simplified the application of the Rule by passing legislation establishing the maximum time period of a trust as a set number of years. In 2006, Pennsylvania joined several other states in taking one further step by repealing the Rule for trusts created in 2007 and later.

This legislation stimulated the use of dynasty trusts as an estate planning tool. It is now possible to create a trust benefitting generations of a family in perpetuity or for a time period that would otherwise have violated the Rule against Perpetuities, while facing wealth transfer tax implications only upon funding. If a recent United States Treasury proposal becomes legislation, however, this ability of dynasty trusts to permanently avoid wealth transfer tax after initial funding would be curtailed. In its fiscal year 2015 tax proposal, the Treasury Department has recommended the imposition of a ninety year time period on generation-skipping tax (GST) exemption. Thus, on the 90th anniversary of the creation of a trust, any GST exemption allocated to the trust would expire and the inclusion ratio for the trust would change to 1. Under this proposal, while a dynasty trust can still benefit succeeding generations of a family in perpetuity, it cannot do so completely free of future wealth transfer tax. For tax purposes at least, the Rule against Perpetuities would be reincarnated.

The Treasury proposal would exempt trusts in existence at the time of its enactment. Individuals considering the creation of a dynasty trust, therefore, have further incentive to create and fund such a trust before limitations are placed on one of the significant tax benefits.

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Pennsylvania Department of Revenue Recognizes Same-Sex Marriage for Inheritance and Realty Transfer Tax Purp

By: Alexander Puskar
Related Practice Areas: Trusts & Estates and Tax

On February 25, 2015 the Pennsylvania Department of Revenue issued Inheritance and Realty Tax Bulletin 2015-01, explaining the legal effect of last May's historic decision in *Whitewood v. Wolf*, which legally recognized same-sex marriage in Pennsylvania. The Bulletin establishes that as a result of the *Whitewood* decision, for estates in which the decedent was a party to a same-sex marriage recognized in Pennsylvania, the surviving same-sex spouse will be treated as a "husband" or "wife" for inheritance tax purposes. In addition, any natural, adopted, or step child of any individual or that individual's spouse will be considered a lineal heir for purposes of establishing tax rates.

The Bulletin further prescribes that for purposes of the realty transfer tax, same-sex couples who are legally recognized as married within Pennsylvania, shall qualify for the realty transfer tax exemptions set forth in 72 P.S. 8102-C.3(6). In addition, individuals who were not eligible for the exemption for transfers between husband and wife prior to the *Whitewood* decision, and who paid realty transfer tax, may request a refund of the tax from the Department of Revenue.

The Department of Revenue Bulletin confirms the significant estate planning effects the *Whitewood* decision has on same-sex couples. The *Whitewood* decision now permits legally married same-sex couples to enjoy all the inheritance and realty transfer tax benefits that traditional married couples enjoy. Therefore, married same-sex couples will need to review and possibly revise their estate plans to account for the new benefits. We at Barley Snyder can assist same-sex couples in determining whether their estate plans need to be revised based on the *Whitewood* decision.

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Barley Snyder Attorney, Paul Minnich, Prevails in Litigation Involving Maryland Will Interpretation

By: Paul W. Minnich
Related Practice Areas: Trusts & Estates and Litigation

Paul Minnich was recently involved in handling Orphans' Court litigation in Baltimore County, Maryland involving the interpretation of a Will provision. Paul represented a descendant of a deceased beneficiary of the Will in a dispute regarding the descendant's right to receive certain distributions from a trust which was created under the Will. The Estate's Personal Representative claimed that the gift to the deceased beneficiary had lapsed due to his death, and therefore the descendant was not entitled to the distribution. Paul argued that the gift to the deceased beneficiary was a vested gift and that it should be paid out to the deceased beneficiary's estate, which in turn would be paid out to the descendant. Following the submission of briefs to the Court on the issue, the descendant fully prevailed in its position and no appeal of the favorable ruling was taken.

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