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**CLIENT BULLETIN**

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**LIVING WILLS**

In recent articles both in the newspaper and in Ohio legal magazines, it was reported that less than 40% of Americans have elected to sign a written Living Will. Interestingly, statistics show that while an overwhelming majority of Americans support an individual's right to decide whether they would want to be kept alive through medical treatment, relatively few individuals have taken the time to make those wishes known in writing.

The Ohio State Medical Association, along with the Ohio State Bar Association, has created a form Living Will which is available for review and signing. Manos, Martin, Pergram & Dietz keeps a current copy of this Ohio Living Will form available on its website. The form specifically discusses two defined end of life "medical conditions" and sets forth restrictions on medical treatment if one is ever diagnosed with such a medical condition.

From our perspective, the most important thing is to engage in a conversation with your family, closest relatives, friends - those who would expect to be around at the end of your life - and review with them what your wishes are with respect to medical treatment under specific circumstances. Clearly, if your wishes are that certain medical treatments not be utilized under defined medical conditions, then we strongly encourage you to execute a Living Will.

**LET YOUR HEIRS KNOW YOUR ON-LINE PASSWORDS**

It goes without saying that we are fast becoming a paperless society, moving towards a digital universe. As many as 49% of us who are on line conduct most of our banking over the internet. Furthermore, many of us have digital accounts, including MySpace and Facebook. In addition, materials may be stored in password protected accounts. Those areas are providing new ground for estate planning and estate administration and are expected to become more commonplace and complicated as our population ages.

Providing your heirs with on-line passwords will often give individuals access to information that they may not have known to even exist. Furthermore, assuming knowledge of the existence of the materials, providing on-line passwords will make the retrieval of that information much easier. Admittedly, depending upon the location of the information, particularly if it is stored on others' servers, ownership after death may become a legal issue; however, having access to passwords will make the entire process potentially simpler.

**CURRENT ISSUE IN "TAKINGS" LAW**

On December 2, 2009, the United States Supreme Court heard arguments in a case raising two new issues in "takings" law. Under the United States' (and Ohio) Constitution, the government cannot take private property for a public purpose without paying just compensation to the owner.

A dispute arose out of a state-funded beach restoration/protection program in Florida. Under Florida law "dry beach" area may be privately owned, but the shore below the "high-water" line is publicly owned. The state program "created" new dry beach area by adding sand to what had been the shoreline below the customary high-water mark. The state claimed that the newly created dry-beach area remained public property.

One issue the case raises is whether the shoreline property owner can claim the newly created dry beach or whether the government owns it. The answer to that question affects not only what use the shoreline property owner may make of the extended dry beach but also what use the public may make of the extended beach that adjoins the shoreline property owner's land.

A second interesting legal question in the case is whether the decision or ruling of a state court judge that defines property rights can constitute a taking of private property. Previous takings cases have involved a physical seizure of property by state or local officials.

Even though Ohio has no ocean-front property, the decision in the Florida case could affect programs to protect the shoreline along lakes, rivers or streams. A decision is expected by late spring or early summer next year.

### **FRIVOLOUS CONDUCT; SANCTIONS DECISION**

The November 30, 2009 Ohio State Bar Association Report published the decision in *L & N Partnership v. Lakeside Forest Association* in which Dennis Pergram obtained a ruling in favor of Lakeside Forest Association. After obtaining an order dismissing the plaintiff's case after the opening statement in the trial court, Lakeside Forest Association filed a motion to recover attorney's fees based on frivolous conduct by the opposing party. The Court of Appeals ruled that the opposing party had engaged in frivolous conduct by making claims not supported or recognized by Ohio law. The case now goes back to the trial court to determine whether to award attorney's fees to the firm's client, Lakeside Forest Association.

### **IDENTITY THEFT – RED FLAGS RULE DELAY – CLARIFICATION**

We notified you last month that the Federal Trade Commission had, again, postponed one part of the Identity Theft "Red Flags" Rule. There has been some confusion about the FTC action.

The Identity Theft "Red Flags" Rule became effective on January 1, 2008 and remains in effect. The Rule originally set November 1, 2008 as the mandatory compliance date to develop and implement a written Program to detect, prevent, and mitigate identity theft. The FTC's recent action only postponed the mandatory compliance date to June 1, 2010.

If you have adopted a Red Flags Program, you should continue to use it and follow it. If you need a Red Flags Program, you have more time to develop and implement one. We can help you determine whether you need a Red Flags Program and, if so, help you develop one.

### **THAYNE GRAY RECEIVES SPECIAL RECOGNITION FROM MAIN STREET DELAWARE**

In the October edition of the Main Street Delaware Newsletter, Thayne Gray received special recognition for his help in obtaining 501(c)(3) status for Main Street Delaware. The newsletter read, in part: "As we celebrate our new status, Main Street Delaware's directors also wish to thank everyone who helped us to achieve this milestone, including attorney and fellow board member Thayne Gray of Manos, Martin, Pergram and Dietz Co., LPA. Thayne contributed countless hours to this effort, and we appreciate his unwavering support of our organization and our historic downtown."

### **\*\*NOTICE\*\***

This bulletin provides general information and is not legal advice. Please contact us if you need legal advice.