

# In Brief

## LegalZoom.com and Do-It-Yourself Wills

*If it sounds too good to be true...*

*Jonathan Samel, Esquire*

LegalZoom is one of the best known and largest online non-lawyer legal document preparation companies. LegalZoom claims it has delivered over one million wills to consumers. Many other such online companies which prepare “do-it-yourself” legal documents have emerged over the past decade.

Preparing your own will without the assistance of an attorney can be costly. Wills and other legal documents are tested when they are needed. Mistakes in estate planning documents will not become evident until after you become incapacitated or die. The people who are left to deal with the mistakes are usually the people the documents were supposed to protect – your loved-ones. When “do-it-yourself” ends up costing more time and money in the end because of a critical error or lack of oversight, the regret can be profound.

One well publicized example of a do-it-yourself  
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**W**e are pleased to announce that the Pennsylvania Builders Association extended special thanks to **Ed Mullin** who served on a Task Force that won a huge legislative victory when the Pennsylvania Permit Extension Act (Act 46 of 2010) was signed into law by former Governor Ed Rendell.

Briefly, if a builder or developer received an approval, an agreement, or a permit (including a building permit or construction permit) that was valid on January 1, 2009, it will be automatically extended until July 2, 2013. The Task Force put many hours into lobbying to assure there would be sufficient votes for the bill’s passage.

The argument that persuaded members of the General Assembly was that the housing industry was in crisis and that the legislation was a solid, tangible way for the state government to help housing and the economy turn around.

## Pennsylvania's New Custody Law

*Douglas I Zeiders, Esquire*

Pennsylvania has a new custody statute which took effect on January 24, 2011. For the most part, the statute incorporates custody law that has been determined over the years by Pennsylvania courts.

Nonetheless, there are some aspects of the new statute worth noting.

For instance, the new statute sets forth 15 specific factors for the court to consider in determining custody, with a 16th factor being “any other relevant factor.” A few of the specific factors are:

- 1** Which party is more likely to encourage and permit frequent and continuing contact between the child and the other party;
- 2** The need for stability and continuity in the child’s life;
- 3** The well-reasoned preference of the child, based on the child’s maturity and judgment, and the level of conflict between the parties and the willingness and the ability of the parties to cooperate with one another.

The new statute also expands the list of crimes that a court is to consider in custody cases to include driving under the influence, and the court is to consider such crimes not only of the parties, but of any members of their household. There is also a provision for the court to handle a request for a temporary custody order or a modification of an existing custody order on an expeditious basis if the other party has been charged with such a crime.

Perhaps most significantly, the new statute lays out some very specific requirements in situations involving relocation. The statute defines relocation as “a change in residence of the child which significantly impairs the ability of a non relocating party to exercise custodial rights.” The statute specifically provides that no relocation shall occur unless both parties consent to the relocation or the court approves the proposed relocation. The relocating party is required to send a notice by certified mail within certain time parameters established by the statute, and that notice has to contain very specific,

detailed information regarding the relocation. If the non relocating party is opposed to the relocation, they have to file an objection with the court within 30 days after receipt of the relocation notice. If they do not do so, they will be deemed to have consented to the relocation. If an objection is filed, the court is to schedule a hearing on an expedited basis and before the relocation occurs. In determining relocation issues, there are nine specific factors the court is to consider along with what the statute identifies as “any other factor affecting the best interest of the child.” The party proposing the relocation has the burden of establishing that the relocation will serve the best interest of the child as shown under the specific factors set forth in the statute.

The new statute also allows, for the first time, the court to address custody even if the parties are both still residing in the home, so long as they are living “separate and apart” as defined under the Pennsylvania Divorce Code which, for the most part, means that one of the parties has filed for divorce. However, there are real, potential problems with the court trying to determine a custody arrangement when actual physical separation of the parties is not imminent and, therefore, there is no way of knowing what the parties separate living arrangements will be and their impact on the practical considerations that always come to play in a custody case.

As discussed above, the new Pennsylvania custody statute, in large part, simply codifies existing Pennsylvania case law. Nonetheless, the statute contains certain refinements and adjustments that will no doubt lead to considerable discussion, in some cases controversy, and which will likely be subject to different interpretations and implementations by the courts. ■

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## LegalZoom.com and Do-It-Yourself Wills *continued from page 1*

document is the case of Charles Kuralt, the CBS News correspondent and anchor. Mr. Kuralt passed away in 1997. A few weeks before he died he wrote his own amendment to his will promising to leave his mistress of 29 years valuable real estate in Montana. After his death, his family and his mistress engaged in a six year court battle fighting over whether the document was valid. Without ruling on the validity of the document, the court awarded the mistress the property, but ruled that Mr. Kuralt's family had to pay all the estate taxes relating to the disposition of the property.

The difference between LegalZoom and an estate planning attorney is that LegalZoom's job is to deliver a product that a customer requests, and an attorney's job is to assess a client's circumstances, make recommendations based on those circumstances, and create a plan according to what the fully informed client decides upon.

Estate planning attorneys use the knowledge we have acquired during our years of practice to advise you on the best way to protect your family, and preserve and distribute your assets in the manner you choose.

Many of our clients find out at the first meeting that based on their particular situation, they need more than a will, and that their situation is not completely "simple." They realize that they are paying for a lawyer's advice, not so much for the paperwork that follows. This process can ultimately save you and your family significant money.

If a person calls me and tells me that he or she needs a will, I set up an appointment and send that person our estate planning questionnaire in advance to streamline the process and save fees for the client. At our meeting, I then go through the information about their family, assets and financial situation, and show them what things would look like if they died with their current plan (or lack of a plan) in place. We identify areas of concern, such as future incapacity, healthcare decision making, long term care planning, asset protection, and minimizing costs, time delay, and taxes. We discuss ways to address these areas of concern. Then the client chooses a plan that best fits their family's needs.

Laws that affect estate planning are constantly changing because of new case law, statutes and regulations. Estate planning lawyers keep up with these changes in order to best advise our clients. LegalZoom and other document preparation services are not lawyers and offer no assurance that they keep up with changing laws.

When clients ask me why they should not use LegalZoom to do their own wills, I refer them to LegalZoom's own disclaimer which appears on its website. Here is a portion of that disclaimer:

*"LegalZoom is not a law firm, and the employees of LegalZoom are not acting as your attorney. LegalZoom's legal document service is not a substitute for the advice of an attorney... LegalZoom cannot provide legal advice and can only provide self-help services at your specific direction. LegalZoom is not permitted to engage in the practice of law. LegalZoom is prohibited from providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms or strategies. This site is not intended to create an attorney-client relationship... Instead, you are representing yourself in any legal matter you undertake through LegalZoom's legal document service. ... Although LegalZoom takes every reasonable effort to ensure that the information on our website and documents are up-to-date and legally sufficient, the legal information on this site is not legal advice and is not guaranteed to be correct, complete or up-to-date. Because the law changes rapidly, is different from jurisdiction to jurisdiction, and is also subject to varying interpretations by different courts and certain government and administrative bodies, LegalZoom cannot guarantee that all the information on the site is completely current. The law is a personal matter, and no general information or legal tool like the kind LegalZoom provides can fit every circumstance..."*

We are interested in hearing your questions, comments or experiences relating to online legal documents preparation companies. ■

# Thinking About Making a Large



## NOW IS THE TIME!

*Diane K. Foxman, Esquire*

The Congress and the President gave taxpayers an early holiday present this past year. On December 17, 2010, President Obama signed into law the new Tax Relief Act that makes significant changes to the gift tax. These changes have a number of implications for estate planning.

Under the prior law, a taxpayer could make up to \$1 million in taxable gifts before having to pay any gift tax. In 2010, taxable gifts over \$1 million were taxed at 35% and the rate was scheduled to jump to 55% in 2011.

Under the new Tax Relief Act, the gift tax exemption is increased to \$5 million for 2011 and 2012. So taxpayers who used their entire \$1 million gift tax exemption prior to 2011 will be able to gift an additional \$4 million in 2011 and 2012 without incurring a gift tax - and starting in 2012 the gift tax exemption will be indexed for inflation.

Another part of the holiday gift to taxpayers was portability. In 2011 and 2012, your gift tax exemption will be portable. What does that mean? Portability allows a surviving spouse to use the amount of estate and gift tax exemption not used by his or her spouse who died first.

You can stretch your \$5 million exemption even further with proper estate planning. Congress did not change the rules for valuation discounts and other techniques that allow a high net worth individual to squeeze additional value out of his or her estate.

Finally, for the first time in a long time, the estate and gift tax exemptions are unified. That is, a taxpayer can pass a combined value of \$5 million during lifetime and at death. So for example, I could make taxable gifts of \$3 million during my lifetime

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and still have \$2 million of exemption left to cover assets passing at my death. Anything over that \$2 million exemption would be subject to tax.

*Unfortunately, these generous rules for gift and estate tax are temporary - much harsher rules are slated to return after 2012 if the Congress and President do not act to extend the new law. For this reason it is very important that you review your estate plan now and consider whether to take advantage of the "holiday present" that could disappear in 2013.*

For a more in-depth explanation of the new Tax Relief Act, don't miss our 2011 Client Tax Alert - found on our website at [www.hrmmml.com](http://www.hrmmml.com) and as a special insert to this edition of our firm newsletter.

For advice about how you can benefit from the new tax law, make an appointment to see us. We'll be happy to review your estate plan and answer your questions. ■

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Jon Samel, Mark Himsworth and Bernadette Kearney spoke before the Montgomery County Estate Planning Council in October 2010 on Asset Protection.

At Montgomery County Community College, Diane Foxman presented a lecture on "Legal and Tax Issues in Starting a Business." The offering is part of the seminar on Starting a Woman Owned Business offered at the college.

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*Hamburg, Rubin, Mullin, Maxwell & Lupin's IN BRIEF is intended to provide information on recent legal developments. The information contained in this newsletter is not offered as legal advice or legal opinion on specific facts.*

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## Landlords Now Have New Tax Reporting Requirements

Jonatban Samel, Esquire

Federal tax law has required that a person or entity engaged in a "trade or business" must file annual information returns (Form 1099) with the Internal Revenue Service reporting payments made to non-corporate entities that provide services to the business. Congress has now extended this reporting obligation to landlords who were previously not considered to be engaged in a trade or business for purposes of these rules.

Under the Small Business Jobs Act enacted in September 2010, landlords must now issue a Form 1099 to any independent contractor who provides services and is paid \$600 or greater in a calendar year, beginning with payments made after December 31, 2010. An independent contractor is defined as a non-corporate business entity, such as a sole proprietor or partnership and includes such payees as electricians, painters, plumbers, carpenters, yard services, repair people, accountants, attorneys and property managers.

The new reporting rules extend to owners of both commercial or residential rental properties. For example, an individual who owns a vacation property that is rented for part of the year to help defray his or her costs will be required to issue 1099 forms under these rules.

If you are a landlord, you should give each person or business who provides services to you a Form W-9 the first time you have a transaction with that person or business for the current year. This will allow you to obtain the name, address and taxpayer identification number of the service provider which you will need to file the Form 1099. You should get the completed form W-9 back before you pay service provider. If they do not get the completed form back, you are required to withhold 28% of their bill and send it in to the IRS. Form W-9 is available on the IRS website- [www.irs.gov](http://www.irs.gov).

The new law does provide a few exceptions to the new reporting rules. First, if the amount of rental income received is "not more than a minimal amount," the individual will not be required to issue the Form 1099. The new law leaves it up to the IRS to determine whether an amount is "not more than a minimal amount," but so far the IRS has not provided any guidance on this issue.

Another exception applies to situations in which an individual is renting out his or her principal residence on a temporary basis. The law does not define temporary basis, but does provide that active members of the military renting out their principal residences qualify under this exception.

Finally, if an individual can demonstrate that the Form 1099 reporting will cause hardship, such individual is exempt from the reporting. However, similar to the "minimal" rental income threshold, it is up to the IRS to determine what constitutes a "hardship" and such guidance has not yet been issued.

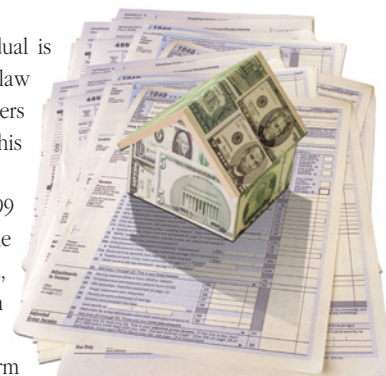
The applicable Form 1099 and its cover sheet transmittal Form 1096, can be ordered from the IRS (the toll free number is on their website) or purchased at an office supply store. The form must be sent to the recipient of the payments on or before January 31 of the following year. The 1096 and 1099 forms must be mailed to the IRS on or before February 28th.

The issuance of 1099's is not elective, it is an absolute requirement. The IRS can impose penalties on a trade or business (which now includes landlords) for failure to file a correct information return.

An additional large expansion of information reporting has been scheduled to occur commencing in 2012 (the 2012 rules). The purpose of the 2012 rules, which were included in the Patient Protection and Affordable Care Act (i.e. "Health Care Reform"), was to reduce the under-reporting of business revenue from online sales and the over-reporting of business expenditures, and the overall general failure to supply the required Form 1099 because of uncertainty over which vendors were included in the current requirements.

If the 2012 rules goes into effect, all businesses, including landlords, will be required to report any aggregate annual payment of \$600 or more to any person or entity from whom they acquire **goods or services, including payments to corporations.** Under the 2012 rules, it appears that landlords will have to issue 1099s for heat, lights, property taxes, insurance or purchases from corporate providers of supplies such as big box stores (Wal-Mart, Office Max, Home Depot, etc.).

On February 2, 2011, the U.S. Senate voted to repeal the 2012 rules. Although a similar bill has not been passed in the House of Representatives as of the date of this Article, many observers believe that Congress will repeal the 2012 rules. ■



**Steve Hann** recently presented or sat on a panel for the following seminars: Pennsylvania Municipal Authorities Association Administrative/Environmental Issues Seminar; Home Builders Association of Bucks/Montgomery Counties, Understanding and Complying with DEP's New Chapter 102 Regulations. In February, he also was a presenter for the Montgomery Bar Association Real Estate Committee addressing Municipal Authorities.

**Bernadette Kearney** and **Karen Albright** have been named Vice Chairs of the Real Estate Committee of the Montgomery Bar Association.

**Steve Lupin** was appointed to the Montgomery Child Advocacy Project (MCAP) Board. MCAP is an organization designed to provide free legal representation and social services to children of Montgomery County who are victims of abuse and neglect. In addition, Steve will serve on the Montgomery Bar Foundation and will serve as Chair of the Montgomery Bar Association's Managing Partner Committee.

A seminar, offered by the Montgomery County Zoning Officers' Association on January 25, 2011, featured **Joe McGrory** as a speaker. The

topic of the seminar was "Liability of Public Officials" and it was well attended by public officials in Montgomery and Bucks Counties.

**Ed Mullin** has been appointed for another two year term on the Pennsylvania Builders Association Industry Action Fund Committee and the Judiciary Task Force. The Industry Action Committee meets and decides whether to fund various lawsuits throughout the state to further the rights of builders.

In December, 2010, **Christen Pionzio** spoke at the Pennsylvania Convention Center on the topic of Presenting to a Zoning Hearing Board – Surveys are Tools, Know the Rules, Don't Look Like a Fool for the annual Real Estate Institute series through the Pennsylvania Bar Institute.

Our Gas Leasing and Development Team continues to be active offering presentations, articles and seminars to educate the community on Marcellus Shale issues. In addition, **Kermit Rader** was a guest speaker at Radio Station KC101 radio station on Sunday, January 29, 2011 where he shared information and answered questions on the air.

**Kermit Rader** will be speaking in Philadelphia at a seminar for Pennsylvania Bar Institute on March 10, 2011 to discuss "Environmental Issues Affecting Oil and Gas Development."

**Bill Roark** has been named Treasurer of the Young Lawyers Section of the Montgomery Bar Association and has also taken the position of Assistant Editor of the Montgomery County Law Reporter.

**Bill Roeger** has been chosen to speak at a Pennsylvania Association of Justice event on March 18, 2011 to discuss "What's it Worth?" addressing case values and techniques in the Philadelphia suburbs in personal injury cases.

**Carl Weiner** recently was a speaker at a Pennsylvania Bar Institute seminar in Harrisburg and Philadelphia on the topic of "Condominiums and Homeowners Associations from A to Z."

We are pleased to let you know that **Doug Zeiders** has become a board member of the Variety Club Camp, a summer camp operated by the Variety Club in Worcester. The Variety Club is an organization dedicated to providing support services to developmentally challenged children and their families.

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