



*May 2010*

# PGCBA NEWSJOURNAL

*Newsletter of the Prince George's County Bar Association, Inc.*

There are a number of ways for one to plan their estates so that there will be no need for probate. For example, many people, especially spouses, hold their property in joint names with a right of survivorship. Any such property is not subject to probate. Or, one might designate a beneficiary or provide for payment or transfer on death. In such event, the property will pass directly to the beneficiary without probate. Another way to avoid probate would be to transfer your property into a revocable or living trust that you control while alive and direct in the trust document how your assets are to be distributed upon your death. This article addresses an important privacy issue related to revocable trusts.

In some states, probate is a an expensive process and is to be avoided for that reason alone. I suspect that a survey of people who have chosen to use a trust for the distribution of their estate would show that their primary reason for doing so was to avoid probate. Whether one should plan to avoid probate in Maryland for reasons of expense is beyond the scope of this article. However, in such a survey, I expect that the second most popular reason people chose to handle the distribution of their estates through a trust was for reasons of privacy. That is because the probate process is a public

one. It starts with the filing of a Petition for Probate and a Will, if there is one. Probate files are available at the Register of Wills office to be reviewed by anyone. Many of the details of the family and the decedent's assets are available through an Inventory and periodic accountings.

Most revocable trust documents include provisions similar to the ones found in *Johnson v. Johnson*, 184 Md. App. 643 (2009). The Johnson trust provided: "The Trustee shall not be required at any time to file any account in any court, nor shall the Trustee be required to have any account judicially settled." It also stated that the Trustors' express intent was to create a private trust; and finally it provided: "Trustors direct that only the information concerning the benefits held for or distributable to any particular beneficiary be revealed to such beneficiary and that no person shall be entitled to information concerning benefits held for or distributable to any other person." This kind of provision would seem to provide the kind of privacy one would expect. Typically, these trusts provide for income and a measured amount of principal to be distributed to the surviving spouse for life with the ability to distribute additional principal if appropriately necessary and then upon the death of the surviving spouse to distribute the remainder, if any, to children,

grandchildren, or others.

When the Johnsons established their trust, it provided that the husband and wife would be co-Trustees. When Mr. Johnson died, his wife Catherine became sole Trustee and the Trust was divided into 2 parts. For the first part, Catherine was entitled to all the income and potentially all of the principal. For the first part she also had a power of appointment to control distribution of the remainder upon her death through her Will. As to the second part, she had the same rights to principal and income but her power of appointment was limited to distribution under her Will to one or more children or other descendants. If she didn't exercise that limited power, distribution would be to her husband's son, James, if he were alive. Under the first part, James' interest is contingent upon Catherine not using all the principal or exercising the power of appointment. Under the second part, James' interest is vested

## STEPHEN J. DUNN

ATTORNEY AT LAW

**FEDERAL WORKERS' COMPENSATION (OWCP)  
U.S. MERIT SYSTEM PROTECTION BOARD (MSPB)  
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)  
OFFICE OF PERSONNEL MANAGEMENT (OPM)  
DISABILITY RETIREMENT**

7400 York Road, Suite 405  
Towson, MD 21204-7531  
Phone (410) 321-8368  
Fax (410) 321-1599

208 East Market Street  
York, PA 17401-1249  
Phone (717) 845-7301  
[www.sdunnlaw.com](http://www.sdunnlaw.com)

Are you looking  
for a newspaper that  
will publish your  
Legal Notices  
accurately and timely?

**WE ARE THE PREMIER LEGAL  
ADVERTISING NEWSPAPER SERVING  
PRINCE GEORGE'S COUNTY FOR  
OVER 154 YEARS**

*Our professional staff is committed to  
serving all of your legal advertising needs  
with accuracy, dedication and excellent  
customer service at the highest quality level.*

## The Enquirer-Gazette

UPPER MARLBORO, MARYLAND  
Newspaper of Record since 1851  
301-627-2833 • 301-627-2834  
14801 Pratt Street, Upper Marlboro



but subject to divestment if he doesn't survive or all the principal is used for Catherine. Simply put, there might not be anything left to distribute to James when Catherine dies.

Catherine is still alive. Even so, James requested an accounting more than once without any response. He then filed suit. Catherine claimed what most attorneys would have argued - the court's ordering an accounting would contravene the specific terms of the Trust and would be contrary to Maryland case law which indicates that a Settlor's intent is controlling. The Court of Special Appeals, I believe, surprised many by finding that a trustor cannot, by including limitations in the Trust instrument, circumscribe the trustee's duty to account to beneficiaries. So, despite all desires for privacy and Catherine's argument that it really isn't any of James business, the Court determined that "James is entitled to request an accounting and Catherine is required to provide it."

So, according to the Court of Special Appeals, privacy is out the window as to beneficiaries even if they might never get a dollar. Note, however, that a Petition for Writ of Certiorari was

granted and the case was argued before the Court of Appeals on January 8, 2010 #63 September Term 2009.

In *Johnson*, the Court did not directly address a beneficiary's right to obtain a copy of the Trust document or other documents relevant to an accounting. However, it is difficult to imagine a situation wherein a person would be entitled to an accounting but not have a similar right to obtain copies of other relevant documents.

While it is true that the *Johnson* decision only affects privacy as it relates to a very limited group of people - the beneficiaries -, I find it rare that a client mentions privacy as a motivating factor except when they are concerned about it is related to beneficiaries.

For those of you who provide estate planning advice to clients who are considering the use of a Trust, it would be wise to review *Johnson* and keep an eye out for the decision from the Court of Appeals.

When *Your* Clients Become

**DISABLED**

They Need the **BEST** Representation!

Our practice focuses solely on recovering disability benefits for our clients. We have handled thousands of disability cases and have the skill and knowledge to assist you concerning your disability benefit matters.

- Social Security Disability
- Short/Long Term Disability (Private and ERISA)
- State and Federal Disability
- Long-Term Care
- Life Insurance Claims

*"Mr. Elkind is ranked as one of the top 25 attorneys in the country that practice in the ERISA field."*

Quoted from Smith v. Continental Casualty Co., 289 F.Supp.2D 706 (D. Md. 2003)

**Elkind & Shea**

**The Disability Benefits Law Firm**

801 Roeder Road, Suite 550 • Silver Spring, MD 20910

For a **FREE** case consultation, call us at

**301-495-6665**

or visit us on-line at

[www.disabilitybenefitslawfirm.com](http://www.disabilitybenefitslawfirm.com)

**We Built Our Reputation  
On Construction Law.**

**Exclusively.**



**HUDDLES JONES  
SORTEBERG & DACHILLE**

A PROFESSIONAL CORPORATION

**410.720.0072**

Baltimore/Washington Area



Kenneth K. Sorteberg, Esq.

*AAA Construction Arbitrator*

*AAA Construction Mediator*

[sorteberg@constructionlaw.com](mailto:sorteberg@constructionlaw.com)

**[www.constructionlaw.com](http://www.constructionlaw.com)**

**METROPOLITAN  
PROCESS SERVICES  
(301) 929-6819**

- \* 24 Hour Cell (301) 252-0706
- \* Unlimited Attempts
- \* Rush Services within 48 hours
- \* Court Filings Available
- \* Scheduled Pickups
- \* Skip Tracing

**KARL STEPHENS**

8719 Geren Road

Silver Spring, MD 20901

Serving MD, DC & VA