



## Pennsylvania Legal Update

Summer 2008

### Registration

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husband and wife did not receive notice from their insurance company promptly after their automobile insurance policy was terminated for nonpayment. Although the insurance company notified PennDOT immediately when it canceled the coverage, the couple proved that more than 30 days elapsed before the insurance company notified them of the cancellation. The day after receiving the cancellation notice, the couple bought coverage from a different insurance company. Because they got new coverage so quickly, the county trial judge dismissed the registration suspension, but PennDOT appealed the judge's decision and won.

On appeal, the superior court reinstated the registration suspension because the Pennsylvania Motor Vehicle Code clearly requires that whenever any driver permits his or her vehicle to be without insurance coverage, a three-month suspension of the vehicle registration is mandatory. The court noted that the couple could have filed an administrative appeal of the cancellation of their insurance to the Pennsylvania Insurance Commissioner, but they had not bothered to file one.

When drivers move, are divorced, experience financial problems, or encounter other personal problems, they sometimes allow their automobile insurance to lapse. Since even a brief lapse in coverage can lead to a suspension of your vehicle registration, you should make it a priority to carefully maintain your insurance coverage, paying all of your premium bills promptly. If your insurance lapses, you might be able to avoid the pen-

alties of registration and license suspension if you can prove that you did not drive the vehicle at all during the period of insurance cancellation.

If you feel that there are grounds to challenge the cancellation, you should file an appeal with the Insurance Commissioner. The law requires that automobile insurance cancellation notices include information about how to appeal. Appealing the cancellation will stop the process of license and registration suspension by PennDOT, as the Motor Vehicle Code specifically

provides that PennDOT cannot pursue the suspension until the insurance cancellation appeal is over.

If your insurance is canceled, do not drive the uninsured vehicle or permit anyone else to drive it during any period of insurance cancellation or you may lose your driver's license for three months. Of course, if you can prove that your lapse in insurance coverage was for fewer than 31 days and that you did not drive the car at all during the lapse, your registration and driving privileges should be unaffected.

### Protective Orders

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household and that their dispute arose from their business problems and was not related to any domestic violence.

The appeals court disagreed and upheld the Protection Order. The court noted that previous versions of the statute did limit Protection from Abuse proceedings to persons living in the same household. But the court reviewed a long series of amendments to the Act that progressively expanded it to apply to persons related by blood, by marriage, by intimate relationship, or by sharing children, without regard to whether they reside under the same roof.

Generally, the Protection from Abuse Act is a response to domestic violence, and the courts strive to limit Protection from Abuse proceedings to those that arise from personal relationships. When violence erupts between neighbors, strangers, or other persons who do not fall within the relationships

identified in the Protection from Abuse Act, the courts simply cannot issue protective orders.

Pennsylvania's Crimes Code does serve in some situations to bridge the gap between the Protection from Abuse Act and the former peace bond system. District justices and county judges hearing criminal cases can issue orders that a criminal defendant or anyone else involved in a criminal case is forbidden from further contact with another person and must maintain a specified geographic distance from the other person.

### Quotable

*"A lie can travel halfway around the world while the truth is putting on its shoes."*

Mark Twain

### Automobile Registration Suspension

Pennsylvania law clearly and strongly requires that all drivers maintain automobile insurance coverage at all times. The Motor Vehicle Code provides that when a driver fails to maintain insurance

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coverage on his or her car, the registration of the car must be suspended by the Department of Transportation (PennDOT) for three months. A suspension of registration renders the car essentially useless, since it is illegal to drive an unregistered car on public roads and highways.

Furthermore, if PennDOT proves that a vehicle owner operated a vehicle or permitted someone else to operate it when it was uninsured, the owner's driver's license must be suspended as well, also for three months. Registration and driving privileges can be re-

stored only after the suspended owner/driver produces proof of insurance and pays applicable restoration fees.

Insurance companies are obliged to report lapsed automobile insurance policies directly to PennDOT. Individuals or companies who pay for automobile insur-

ance on someone else's car are obliged to notify the car owner if the coverage lapses.

A Pennsylvania trial judge recently granted a couple's appeal from their vehicle registration suspension. The judge found that the

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### Protective Orders

Those of us who are over 30 years old may remember Pennsylvania's "peace bonds," orders issued by justices of the peace requiring that a troublesome person leave others in peace. Peace bonds were abolished many years ago and were later replaced in part with the Protection from Abuse Act.

The Protection from Abuse Act gives local district judges and the local county court judges the power to quell domestic violence by forbidding contact between "family or household members, sexual or intimate partners or persons who share biological parenthood." The Act further defines "family or household

members" as "spouses or persons who have been spouses, persons living as spouses or who lived as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood."

In a recent case, a sister who co-owned a family business with her brother secured a Protection Order in county court against him after he forced his way into her office and scuffled with her. The brother appealed, claiming that they were not members of the same

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## Where There's a Will . . .



A year after an 82-year-old Pennsylvania woman was admitted to nursing care, she changed her will.

Her previous will had divided her estate among her three daughters. The new will gave more than 90% of the estate to only one daughter.

The two daughters who were virtually eliminated as heirs discovered the new will and sued to have it declared illegal. The court initially found the mother to be incompetent due to early Alzheimer's disease, but before the court could decide which will was valid, the mother passed away.

After taking testimony about the relationship of the mother and the daughter who was to receive 90% of the estate, the court found that the daughter had exerted an "overbearing influence" on the mother and on that basis declared the second will to be invalid. When a person of "weakened intellect" is pressured by a "strong predatory character" who has a close relationship to the weak person, the courts can set aside gifts or declare wills to be invalid.

A person who knows what he or she owns and who can identify his or her chosen heirs is competent to make a will. Some elderly people move in and out of competence—some days they can answer questions about their assets and heirs, and some days they cannot. If a person signs a will at a time of clear thinking, he or she is competent to make that will. But whether or not a person is competent at the time of signing is not the end of the inquiry when a will challenge is filed in court. Whenever a person of weak-

ened intellect is controlled or influenced by another person, if the controlling person receives a benefit under the will, the will can be set aside.

In the case involving the 82-year-old woman, the testimony of all three daughters showed that their mother was of weakened intellect before she signed the second will. Her handwriting changed, and

her letters to the daughters included incorrect punctuation and partial sentences. When her daughters took her on outings, she was unable to understand restaurant menus and would simply order what they chose even if she did not care for that type of food. She forgot how to play miniature golf and simply hit

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## No Unemployment Benefits for Teachers

Teachers are not entitled to collect unemployment benefits during school breaks or summer vacation if they have a "reasonable assurance of continued employment" in the next academic year. Recently, a Pennsylvania Head Start program successfully objected to the unemployment claims of several of its employees.

The employees taught low-income, prekindergarten children basic reading and counting skills. The program was held in local public school facilities and was funded through grants and federal funds. The school district did not provide financial support or direction for the program.

The employees argued that the Unemployment Act's ban on teachers' receiving benefits applies to teachers employed by "educational institutions." They claimed that Head Start programs are not "educational institutions."

The court disagreed. Noting that all the teachers and administrators of the program referred to the claimant employees as "teachers," the court found that the program ran an educational curriculum and met both state and federal regulatory definitions of educational institutions.

Teachers in public and private schools as well as those in nontraditional school settings should not expect to be eligible for unemployment benefits during school or program breaks. Any teacher who is concerned about continued employment after a break should ask the school or program for written assurances of continued employment. If the request is refused or ignored, the teacher may be able to collect unemployment benefits during the break.

## Marijuana-Smoking School Janitor Cannot Be Fired

Public school districts are government bodies. Because of this, their decisions are government actions and thus are limited by the constitutional rights of the persons affected. Public school employees enjoy broad constitutional protection in their district's hiring and firing decisions. In addition, most public school employees have union contracts that give them additional job protection.

Recently, a Pennsylvania school district was frustrated to find that it was not justified in firing a school janitor who was found to be using marijuana in her private time. It was undisputed in the case that the janitor never used marijuana at the school or carried any with her while working.

The janitor's drug use was discovered when the school district requested that she submit to blood testing as part of its standard school employment policy. She refused initially, and then called in sick several days in a row. She finally submitted to drug testing approximately 24 days after the initial request. She tested positive for marijuana use and was fired.

Under her union contract, she was entitled to a grievance procedure, which she pursued. In the grievance procedure, the district focused on its entitlement to fire employees for "just cause," but because "just cause" was not defined in the contract, the grievance arbitrator was entitled to decide exactly what the term meant. The arbitrator

decided that a school janitor's smoking marijuana at home did not affect the "core function" of the school district and thus did not constitute "just cause," and he reinstated the janitor to her job.

The district appealed the arbitrator's decision and lost. The court found that because the district did not define "just cause" in the union contract, it was up to the arbitrator to decide what the term meant. All school districts can fire employees for "incompetence, neglect of duty, violation of law or other improper conduct." But because the janitor's conduct did not meet any of those

standards, and because the union contract gave her the "limited job security" of the just-cause clause that effectively restricted the district from firing her at will, she was entitled to keep her job unless the arbitrator found that just cause existed for her firing.

School districts and unions can make their contracts as general or as specific as they choose. In light of this recent case, Pennsylvania school districts returning to the bargaining table in the upcoming years may feel the need to specify the meaning of "just-cause" clauses in their contracts.

## Will

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the ball in any direction. She was unable to manage her room key at the nursing home, misplacing it unless she wore it around her neck. In one of her letters, she proposed marriage to one of her daughters.

The attorney who prepared the second will and who was present at the signing testified that the mother was of sound mind when she met with him. But he admitted that he did not know her prior to preparing the second will and that he was unaware of her other unusual behaviors. He acknowledged that the daughter who received 90% of the

estate in the second will was present for the planning meeting and actually made the appointments for her mother to have the will prepared and signed.

The courts give great weight to wills and do not lightly set aside a properly executed will. But when potential heirs challenge a will, the court will listen to the testimony of witnesses who can describe the decedent and his or her relationships with the competing heirs. Where an heir is found to have exercised undue influence over a decedent of any age or circumstances, a will that benefits that heir can be rejected by the courts.

*Resolution of legal issues depends upon many factors, including variations of facts and interpretations of Pennsylvania law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*