



MATTIONI, LTD.

COUNSELORS AT LAW

Newsletter

October 1, 2008
Volume 1 Issue 4

Mattioni, Ltd., 399 Market Street, Suite 200, Philadelphia, PA 19106
www.mattioni.com firmmail@Mattioni.com (215)-629-1600

Proper Formalities May Save Landlord From Liability for Injuries Sustained on Leased Premises

By Dawn M. Tancredi, Esquire

As a general rule, a landlord is not liable for injuries sustained by third parties on his property. The rationale behind the rule is that a lease transaction is the equivalent of a sale of the land for the term of the lease. Liability is based on possession and control rather than ownership in and of itself, and when a property is leased, a landlord generally gives up possession and control of a property.

As is often the case when there is a rule, there are exceptions to the rule. One exception is known as the "reserved control" exception. The "reserved control" exception applies when a landlord reserves control over a defective portion of the leased premises which is necessary to the safe use of the property.

Please see *Proper Formalities May Save Landlord From Liability...* on page 2

INSIDE THIS ISSUE

- 1 Proper Formalities May Save Landlord From Liability for Injuries Sustained on Leased Premises
- 1 The Effect of Inconsistencies Between Wills and Joint Accounts
- 4 Pennsylvania's Mandatory Boating Education Laws
- 7 Firm News and Updates

When Does a Will Override a Joint Bank Account?

By Jennifer Iacono, Law Clerk and Michael Mattioni, Esquire

Joint accounts are a means of assuring that upon the death of one of the owners of the account, the balance automatically becomes the property of the surviving owner. This concept is known as the right of survivorship. The right of survivorship gives the surviving owner claim to the balance against all others, including the decedent's estate. However, the right of survivorship does not automatically attach to a joint account.

According to the Multiple-Party Accounts Act ("MPAA"), the balance of the account may not belong to the surviving owner if there is "clear and convincing evidence of a different intent at the time the account is created." In other words, the parties may specify at the time the joint account is created that there is to be no right of survivorship.

Please see *When does a Will Override.....* on page 3

Proper Formalities May Save Landlord From Liability ... from page 1

For example, a landlord may be held responsible for injuries in cases where a person suffered injuries in a common area such as a hallway or stairs in a building with multiple tenants. In these situations, the landlord retains control and could have discovered the defective condition and the risk involved if he had exercised reasonable care and inspection.



Another exception is the "public use" exception. A landlord who leases land for a purpose which involves the admission of the public is subject to liability for injuries if the landlord knows or could reasonably discover a risk of harm to persons entering the land, has reason to believe the lessee will admit persons onto the land in an unsafe condition or fails to exercise reasonable care to discover or remedy an unsafe condition.

In *Jones v. Levin*, the Superior Court found both exceptions are alive and that a landlord can be held liable for injuries sustained on the property if the landlord either maintains some control over the property or if the property is intended for use by the general public. The decision highlighted the importance of creating a legal contract such as a lease. Before a landlord can enjoy the protection of the general rule of non-liability, there must be a valid lease in effect.

In *Jones*, Constance Jones, an employee of a Sam Levin, Inc. store, slipped on ice in a parking lot behind the store and suffered injuries. She sued the owner of the property which was Sam Levin's estate. The estate's position was that the estate had a lease with the store and that the store was in possession and control of the premises. There was a material issue of fact about whether the estate or the store had possession and control of the premises. The evidence presented indicated that there was no lease because no rent was paid by the store to the property owner in return for occupation of the store for sales, therefore, the court determined that the estate had possession and control of the property. The court did not delve into the terms of the lease to determine which party exercised control and possession since there was no valid lease between the estate and the store owner.

This case points out the importance of compliance with formalities in the creation of a lease. In order for a landlord to avoid liability under the general rule that a landlord is not liable for injuries sustained by third parties on its property, it must establish the legal relationship of landlord and tenant. The *Jones* case also found that even if there was a valid lease, the landlord could still face liability for the injuries suffered because Jones was injured on land intended for public use, and an employee should be given the same protection as a member of the general public.

When Does a Will Override.... cont. from page 1

If there is no such statement or other clear and convincing evidence of a different intent, the law presumes that the parties, by entering into a joint account, intended for the survivor to have the balance of the joint account upon the death of the other owner.

Recent Pennsylvania Superior Court cases have addressed another means by which to prove a different intent existed. A previously executed will whose terms are inconsistent and/or conflicting with the right of survivorship may override the right of survivorship in the joint account.

According to the MPAA, a previously established right of survivorship cannot be changed by a will. Therefore, if a joint account with a right of survivorship was established prior to the execution of a will or codicil to a will that is inconsistent with the right of survivorship, the estate of the decedent owner would be distributed consistent with the right of survivorship rather than the will. The reasoning behind this rule is that the law presumes that the owner who placed assets in a joint account and later executed a will, did so knowing the assets of their estate is already diminished by creating the joint account.

The Superior Court, in two recent cases, addressed the effect an executed will has when the assets subject to the will are later placed in a joint account that did not specifically state a right of survivorship. Because the goal of the law of wills is to effectuate the testator's intent, the Superior Court relied on the notion of intent to determine the previously executed will's effect on the joint account.

In *In re Estate of Novosielski*, and *In re Estate of Piet*, the Superior Court stated that there are occasions when a will may override the survivorship provision of a joint account.

The Superior Court, in deciding whether the wills overrode the joint accounts, stressed the need for there to be "clear and convincing evidence of a 'different intent' at the time the account was created that would result in a disposition that would differ from the distribution that would occur if the [MPAA] *section 6304(a)* ownership presumption were to be applied." Therefore, it must be clearly shown that the decedent did not intend at the time the account was created for the other owner to receive the funds at the decedent's death.

Intent is decisive because, as the court explained, a will cannot be revoked by the creation of a joint account. Rather, an executed will can only be revoked by a new will or codicil being executed, another writing specifically revoking the will, or by the destruction of the actual document by the testator or by direction of the testator.



When Does a Will Override...cont. on page 4

When Does a Will Override... cont. from page 3

Therefore, according to the court, “[w]hen the execution of a valid will pre-dates the creation of a challenged MPAA joint account, we must consider whether the intentions expressed in the will can be read in a manner that is consistent with the decision to place assets in the MPAA joint account. If we cannot find such consistency the expression of intent in the will must control unless we determine that the creation of the joint account functions as a revocation of the validly executed will.”

In both cases, the court held that the will served as clear and convincing evidence of a “different intent” from having the other owner of the account obtain the assets. In fact, according to the court, an executed will whose terms are inconsistent with the joint account is the “clearest and most convincing evidence of a decedent’s intent that can be produced.”

Whether these cases will remain law is yet to be seen. For now it appears that a previously executed will, whose terms are inconsistent with the joint account having a right of survivorship, may override the potential distribution scheme of the joint account when the account does not specifically establish the right of survivorship. Therefore, those wishing to enter into joint accounts as estate planning vehicles are advised to make it clear whether or not the right of survivorship is to be attached to the account, and to assure their will is consistent with their choice so that their intent is properly effectuated.

A Primer on Pennsylvania’s Mandatory Boating Education Laws

By Patricia M. O’Neill, Esquire

Autumn is a busy time for boating activities in Pennsylvania. It is important that every person who intends to participate in watercraft operation, be familiar with the current rules and regulations for safe boating and personal watercraft operation, including compliance with Pennsylvania’s mandatory boating education requirement, and possess a Boating Safety Education Certificate where required by the Pennsylvania Fish and Boat Commission, to insure compliance with the law.

There is no boating “license” in Pennsylvania, however, operators of certain watercraft must obtain and possess a Boating Safety Education Certificate to operate a vessel in the Commonwealth. A Boating Education Certificate is required for any person born on or after January 1, 1982, to operate boats powered by motors greater than 25 horsepower. A Boating Safety Education Certificate is also required for any person, regardless of age, to operate a personal watercraft (“PWC”) in Pennsylvania. According to the Pennsylvania Boating Handbook, a PWC is defined as

*A Primer on Pennsylvania’s Mandatory Boating Education Laws cont.
on page 5*

A Primer on Pennsylvania's Mandatory Boating Education Laws cont. from page 4

"vessels less than 16 feet in length that use an inboard engine powering a water jet pump as their primary source of propulsion, designed to be operated by a person sitting, kneeling, or standing on other than the conventional manner of boat operation." PWCs are boats and are governed by the same laws and regulations as other boaters.

There are age restrictions for the operation of watercraft in Pennsylvania. Specifically, persons 11 years of age or younger may not operate a PWC and persons between 12 and 15 years of age may not operate a PWC with any passengers on board that are 15 years of age or younger and may not rent a PWC. There are no age restrictions for the operation of a motor boat with a motor between 0-25 horsepower. However, persons 11 years of age or younger may not operate a motorboat powered by a motor greater than 25 horsepower.

Boating Education Certificates are issued by the Pennsylvania Fish and Boat Commission. Once the approved Certificate is issued by the Commission, it does not need renewal. This Certificate does not get revoked for operational violations. Although an individual may lose their boating privileges for violations of the Pennsylvania Fish and Boat Code, that individual's certificate remains valid. The Certificate can only be obtained by completing a boating course that has been approved by the Pennsylvania Fish and Boat Commission. Both classroom and distance learning courses are available from the Commission, United States Coast Guard Auxiliary, United States Power Squadrons and other organizations.

The Pennsylvania Fish and Boat Commission recognizes boating safety education certificates issued by other states and provinces. Therefore, a non-resident may operate a PWC in Pennsylvania if they have a certificate issued by another state or province or other organizations approved by the Pennsylvania Fish and Boat Commission's Executive Director and the National Association of State Boating Law Administrators (NASBLA).

The rules for each waterway and region may vary by county, and operators are advised to review the local rules and regulations prior to engaging in any boating, fishing or PWC activity. The rules and regulations regarding operation of watercraft in Pennsylvania are set forth in the Pennsylvania Fish and Boat Code. Information regarding special regulation areas by County, the current and proposed regulations and legislation, and information on the Boating Safety Education Certificate, as well as other watercraft operation information,

A Primer on Pennsylvania's Mandatory Boating Education Laws cont. on page 6

A Primer on Pennsylvania's Mandatory Boating Education Laws cont. from page 5

is available through the Pennsylvania Fish and Boat Commission or by accessing the Commission's web site at <http://www.fish.state.pa.us>. The "*PA Boating Handbook*" may also be requested from: Publications, PA Fish and Boat Commission, P.O. Box 67000, Harrisburg, PA 17106-7000. This handbook is also available online.

The foregoing articles provide general information regarding issues in the law. Anyone with any questions regarding the topics covered in these articles is urged to consult an attorney.

Firm News and Updates

Dante Mattioni, our founder and long time President retired from the active practice of law on October 2, 2008. Michael Mattioni was named President and Chief Executive Officer, and George Zacharkow was named Vice-President of the Firm on July 2, 2008.

Regina Parker was named appointed as a member of the Women in the Profession Committee and the Minority Bar Committee of the Pennsylvania Bar Association.



MATTIONI, LTD.

COUNSELORS AT LAW

Philadelphia Office

399 Market Street
Suite 200
Philadelphia, PA 19106

Phone:
(215)-629-1600

Fax:
(215)-923-2227

E-mail:
firmmail@Mattioni.com

New Jersey Office

1316 Kings Highway
Swedesboro, NJ 08085

Phone:
(856)-241-9779

Fax:
(856)-241-9989

Montgomery County Office

509 Swede Street
Norristown, PA 19401

Phone:
(484)-322-0886

Fax:
(484)-322-0887