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## Good News for Consumers Engaging in Home Improvements

By Michael Mattioni, Esquire



The Pennsylvania Legislature passed the Home Improvement Consumer Protection Act (the "Act") that went into effect on July 1, 2009 which subjects contractors to new legal requirements and provides consumer protections above and beyond those set forth in Pennsylvania's Unfair Trade Practices and Consumer Protection law. The Act is intended to encourage consumers to use registered

contractors to complete home improvements and prevent fraud by setting rules on the form and content of contracts.

The Act defines a contractor as one who is involved with the repair, replacement, remodeling, demolition, removal, renovation, installation, alteration, conversion, modernization, improvement, rehabilitation or sandblasting. It applies to contractors who are involved in construction, replacement, installation or improvement of driveways, swimming pools, pool houses, porches, garages, roofs, siding, insulation, solar energy systems, security systems, flooring, patios, fences, gazebos, sheds, cabanas, certain landscaping, painting, doors and windows and waterproofing. The contract with the consumer must be for more than \$500.

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## How Well Do Advance Medical Directives Work?

By Thomas Whelihan, Esquire

Once controversial, advance health care directives or "living wills" are now routinely recommended. Lawyers, doctors and hospitals urge people to put in writing their preferences regarding life-sustaining medical care. The federal government encourages the use of living wills through the Patient Self-Determination Act. The idea behind an advance medical directive is to ensure that the medical care provided at a time when a patient is no longer able to communicate her preferences is consistent with those preferences. But how well do advance medical directives work? How much do physicians read these documents? Is it really necessary to execute a living will?

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**Good News for Consumers Engaging in Home Improvements**

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The Act requires contractors to register with the Bureau of Consumer Protection in the Office of the Attorney General. By doing so, it allows consumers to check on registered contractors. Information in the contractor's application includes judgments filed against him, revocation or suspension of a license by a court and proof of insurance. Contractors must renew their registration every two years, so the information is relatively up to date. An exception to the Act allows certain home retailers such as Home Depot and Lowe's to avoid registering since they have a net worth of more than \$50 million.

The Act requires certain terms and conditions in every contract including approximate start and completion dates, work to be performed, names, addresses and phone numbers of contractor and any subcontractors, total sales price, date of the transaction, amount of any down payment, signatures of the owner and contractor and notice of the right of rescission within three business days of signing the contract.

The Act expands the Unfair Trade Practice and Consumer Protection Law by providing for additional prohibited acts that will give rise to a civil action by consumers. For example, a contractor must fully refund any amount paid by a customer within 10 days after it receives a written request for refund if 45 days have passed since the work was to begin, and no substantial portion of the work has been performed. In addition, any material deviation from the plans or specifications must be in writing and a contractor cannot accept a deposit for more than 1/3 of the contract price if a contract is more than \$1,000.

Even if a consumer entered into a contract prior to July 1, 2009, the contract must comply with the Act. If it does not comply, the contract should be revised or it is void. If the contract is void or unenforceable, it again opens the contractor up to liability under Pennsylvania's Unfair Trade Practice and Consumer Protection Law where a homeowner may recover attorney's fees and treble damages in certain cases where fraud can be shown.

The heavy burdens the Act places on contractors is an attempt to protect consumers from crooked contractors. Nonetheless, consumers must do their part by reviewing on contractors before hiring them and ensuring that their contracts comply with the Act requirements.

### ***How Well Do Advance Medical Directives Work?***

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Pennsylvania law gives a patient a qualified right to determine the type of health care he or she receives,<sup>1</sup> and prescribes methods by which competent adults may control their health care. A person may provide instructions written in advance by creating and executing a living will. The relevant statute provides an example of a living will containing very specific and detailed instructions to health care providers.<sup>2</sup> The law also enables patients to designate a “health care agent” or representative by signing a health care power of attorney. The health care agent is someone authorized by the patient to make health care decisions on behalf of the patient and to communicate the patient’s preferences regarding medical care in the event the patient is unable to make those decisions or to communicate her wishes. In enacting the living will and health care proxy legislation, the General Assembly recognized modern medical technology can prolong human life beyond natural limits and that the implementation of some procedures may cause loss of dignity.<sup>3</sup> The promotion of death with dignity is certainly a laudable goal and the legislation is well-intentioned. But recent research analyzing the prolificacy of advanced directives raises important questions regarding the utility or efficacy of living wills.

According to one study, the living will has failed. One reason cited for this failure is that most people do not have living wills. Of those who have a living will many fail to give it to their health care provider. Moreover, many living wills lack the accuracy and specificity to make them useful instruments for health care professionals confronted with ascertaining a patient’s wishes. The authors of the study suggest that the designation of a health care proxy by a patient is more likely to ensure the patient’s wishes are carried out. They recommend that individuals wanting to control future medical treatment should execute a medical power of attorney.<sup>4</sup> While a medical power of attorney has many advantages over a living will, designating a health care representative will not alone guarantee that a patient’s wishes will be effectively communicated and observed by health care professionals.

<sup>1</sup>20 Pa.C.S. §5423 (2009).

<sup>2</sup>20 Pa.C.S. §5471 (2009).

<sup>3</sup>20 Pa.C.S. §5423 (2009).

<sup>4</sup>Angela Fagerlin and Carl E. Schneider, *Enough: The Failure of the Living Will*, Hastings Center Report, page 30 (March-April 2004).

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**How Well Do Advance Medical Directives Work?**

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In fact one commentator observed that health care representatives correctly conveyed the patient's preferences in only seven out of ten scenarios.<sup>5</sup>

So what can a person do to make sure that she receives the kinds of life-sustaining care she finds acceptable? There are difficulties inherent in planning for the complex realities of a critical illness or terminal condition but doing nothing is not an acceptable alternative. Without an advance medical care plan doctors and families are left struggling to make decisions. In fact, a recent article published by the American Bar Association's Commission on Law and Aging points out that decisions are more difficult and disputes more likely in the absence of an advance medical directive emphasizing the importance of making your wishes known.<sup>6</sup> The best way to ensure that your preferences for medical care are known and respected is to take advantage of Pennsylvania's living will law which addresses many of the concerns raised by those critical of living will legislation. Before a medical crisis becomes imminent think about the type of end-of-life medical care you would want and discuss your choices with your loved ones. Create a living will. Even those commentators who are critical of living wills would recommend them to patients whose preferences are specific, strong and clearly defined.<sup>7</sup> In addition, designate a health care proxy or representative in a medical power of attorney. This person should be a trusted friend or loved one who knows your preferences and is willing to communicate those preferences to your health care providers in the event you are unable. Finally, make sure you give your living will and medical power of attorney to your doctor.

<sup>5</sup>Maggie Mahar, *The Trouble With Living Wills*, available at <http://www.healthbeatblog.org> (January 5, 2009).

<sup>6</sup>American Bar Association, Commission on Law and Aging, *Myths and Facts About Health Care Advance Directives*, available at <http://www.abanet.org/aging>.

<sup>7</sup>Fagerlin and Schneider, *Enough: The Failure of the Living Will*, Hastings Center Report, at page 31.

## Pennsylvania's Uniform Environmental Covenants Act

By Peter J. Yoon, Esquire

In February 2008, the Pennsylvania Uniform Environmental Covenants Act ("UECA") went into effect requiring the use of Environmental Covenants. An Environmental Covenant is a device restricting activities and uses on properties and sites where some environmental contamination may remain in place. An Environmental Covenant is typically recorded with the deed, and it will include the use of engineering and institutional controls. Engineering controls are remedial actions directed exclusively toward containing or controlling the migration of regulated substances through the environment, and some examples of engineering controls are caps, liner systems and ground water recovery trenches. Institutional controls, on the other hand, are measures undertaken to limit or prohibit certain activities which may interfere with the integrity of a remedial action or result in exposure to regulated substances at a site. Some examples of institutional controls are fencing and restrictions on future uses of the property.

The UECA was based on an uniform law that was approved in 2003 by the National Conference of Commissioners on Uniform State Laws. Since that time, 22 states including D.C. and the Virgin Islands have adopted some version of the model UECA. The UECA established a process by which use limitations on real property and the institution of remedial actions imposed upon real property that are directed at containing or controlling the migration of regulated substances, arising under the Land Recycling Act ("Act 2") and other state or federal laws, will be registered, recorded, and enforced. The UECA requires that Environmental Covenants be registered with the Pennsylvania Department of Environmental Protection ("DEP") and that they be recorded in the land records office of the county in which the real property is located. The UECA also contains a 5-year conversion period where existing covenants, instruments and deed restrictions must be converted to an Environmental Covenant and re-recorded. Any previously established "activity and use limitation" used to demonstrate compliance with Act 2 and the PA Storage Tank and Spill Act must be converted to an Environmental Covenant by February 16, 2013. Owners and other interested parties should be aware of this requirement and should begin developing an inventory of existing covenants, instruments and deed restrictions that will need to be converted to Environmental Covenants.

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The effect of the UECA has certainly been challenging and troubling for everyone involved in Act 2 cleanups and site remediations, and so waiting until the deadline to start the conversion would not be prudent. Indeed, environmental attorneys, real estate attorneys, lenders, consultants, municipalities, developers and buyers and sellers of real estate have all experienced issues related to the interpretation and implementation of the UECA. One particular issue has been the annual compliance reporting requirement. The UECA does not require, reference, or authorize, the imposition of mandatory annual compliance reporting, but DEP has been imposing an on-going and never ending reporting requirement. DEP has been requiring that written documentation be submitted to DEP every year, or every third year, stating whether the activity and use limitations in an Environmental Covenant are being complied with. Buyers, sellers, and sometimes even third parties of a property transaction, have often been confused about who should be responsible for the on-going reporting requirement and who should bear the cost of compliance.

As a practical matter, the UECA does create specific, detailed requirements for the form, content, notice, registration, recording and extinguishment of environmental covenants, that has required close attention from legal and other professionals. DEP developed, and recently revised, the Model Environmental Covenant and the Frequently Asked Questions (FAQs) document to assist with the implementation of the UECA, and they are available on the DEP website, [www.dep.state.pa.us](http://www.dep.state.pa.us) (click on "DEP Programs (A-Z)", then "Land Recycling", and then "UECA"). The UECA directs Pennsylvania's Environmental Quality Board to promulgate regulations, and apparently, draft regulations are expected to be available for comment this fall. Mattioni, Ltd. will continue to keep you updated of further developments of the UECA as they develop more fully.



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