

## Property Tax Rebate

This year, you may be eligible for a rebate on property taxes, *even if you don't own taxable real estate*—but you must act quickly to collect the rebate. And yes, what will surprise you the most is that you don't have to own real estate to receive a rebate. Renters *and* homeowners are eligible for the property tax relief. If you paid property taxes *or* paid rent in 2008 and you are age 65 or older, *or* you are a widow or widower age 50 or older, *or* you are age 18 or older and qualify as disabled, you may be eligible for a property tax rebate in 2009. With the advent of legalized gambling in Pennsylvania, a real estate property tax rebate program was established in 2006 to provide tax relief in the form of rebates to senior citizens, widows/widowers and some disabled persons. The funds for the rebates come from gambling and lottery revenues. The Department of Revenue recently disclosed that over 100,000 eligible taxpayers did not request their rebates in 2008. Are you one of them? If so, don't let it happen again this year.

Previously, only applicants with annual household incomes up to \$15,000 were eligible. But starting in 2008 homeowner applicants with incomes up to \$35,000 became eligible; the maximum income for renters is still \$15,000 annually. Because increased gambling revenues may trigger another expansion of the program, watch the news and check for changes this year—the household income could be increased once again.

All applicants may exclude half of their Social Security income in their efforts to meet the income guidelines. The maximum rebate for homeowners is \$650 and for renters is \$500. But the rebates are not automatic—eligible homeowners and renters must apply in writing for the

rebate to the Pennsylvania Department of Revenue by filing out a simple form. The deadline to apply for a rebate for 2008 property taxes is June 30, 2009—applications must be postmarked no later than that date to be considered. Don't wait---last year the deadline was extended to December 31<sup>st</sup>, but there is no guarantee that the deadline will be extended this year.

Eligible homeowners and renters can apply online at [www.revenue.state.pa.us](http://www.revenue.state.pa.us). To receive an application by mail, call 1-888-222-9190. Don't delay another day!

## Home Improvement Laws

Recently, Pennsylvania laws regulating home construction contractors changed dramatically with the passage of the Home Improvement Consumer Protection Act. The Act goes into effect on July 1, 2009. Any person or business involved in home improvement work must learn more about the Act.

The Act requires that any person or business who provides home improvement services and earns \$5,000 or more a year from those home improvement services must register with the Commonwealth of Pennsylvania and must provide proof of insurance. "Home improvement" is very broadly defined in the Act to include all repairs and demolition performed at private land and private residences. The Act does not apply to any new home construction. The Act includes some narrow exclusions for certified landscapers and emergency work.

By July 1, 2009, construction contractors must register with the Bureau of Consumer Protection section of the Office of the Attorney General. To register, go to [www.attorneygeneral.gov](http://www.attorneygeneral.gov). The registration process requires that the contractor disclose his or her name, home and business addresses, age, drivers license number, social security number and all prior business names under which the individual ever operated. Partnerships and corporations engaged in home improvements must also

register and must disclose the identity of major partners and shareholders. All individuals, partnerships and corporations must disclose criminal histories and previous license revocations. All home improvement construction contractors now must maintain \$50,000.00 in insurance.

The Act also provides that all home improvement construction contracts in Pennsylvania must include approximate start and finish dates, full contact information for the contractor, and a complete description of the work to be done with specifications and the identity of any subcontractors the contractor intends to use. Contracts must include the Bureau's toll free telephone number and must include a 3 day right of rescission.

Home improvement construction contracts that require arbitration of claims must set out the arbitration clause terms in 12 point bold face type, in capital letters, on a separate page. The arbitration clause must be separately signed by the contractor and home owner.

If certain terms are included in a home construction contract, the contract is completely "voidable" by the owner—the owner can, at any time, reject the contract as void. Clauses that will make construction contracts voidable by home owners include those waiving building codes, those awarding attorneys fees to contractors, those

waiving rights under the Act and those waiving jury trial.

The Act establishes the crime of “home improvement fraud.” Contractors who violate the Act, or make false promises, or misuse down payments can be charged criminally and if convicted, may be fined and imprisoned. Jurisdiction for criminal prosecution is with the local county District Attorney.

A contractor may be liable to a home owner for tripled damages and attorneys fees incurred by home owner if the contractor engages in any “prohibited acts.” The long list of “prohibited acts,” includes failing to refund down payments when properly requested by the home owner, or requiring excessive down payment, or securing false certificates of occupancy from local codes officers, or abandoning a job, or deviating from plans or specifications.

The Home Improvements Consumer Protection Act now joins the previously enacted Unfair Trade Practices Act and the Contractor and Subcontractor Payment Act to regulate the business of home construction and home improvement in Pennsylvania. Before entering into a home improvement contract, be sure you know your rights and responsibilities under these laws.

## Counseling for Injured Workers

The Pennsylvania Worker's Compensation Act requires that employers maintain insurance to compensate employees injured on the job. Workers compensation benefits include partial payment of lost wages and coverage for medical and health care costs. The Act includes licensed psychologists, licensed psychiatrists and licensed therapists as covered health care providers.

A Pennsylvania woman recently won attorneys fees when she challenged the denial of coverage for counseling she received. The woman was injured while working; she suffered cervical and shoulder injuries as well as lower back vertebrae and nerve damage. She settled with her employer's insurance company for a lump-sum wage payment; the settlement terms included continued coverage for her medical expenses related to the work injuries.

Depression, limited physical abilities and mental problems related to pain medication led the woman to seek counseling from a group of counselors her primary orthopedic doctor recommended. The employer's insurance company denied all payments for the counseling, claiming that there was not a reasonable connection to the woman's work injuries and that the counselors were not qualified health care providers

who did not submit adequate written reports.

On appeal, the woman won full coverage for the counseling services. The appeal court found that the depression, physical limitations and pain medication symptoms the woman related to her counselors were credible and were directly related to her work injuries. The court clarified that necessary counseling services can be provided by psychologists, psychiatrists or other “licensed” therapists, including licensed social workers. The court declined to issue a penalty fine against the insurance company but did award the woman her attorney’s fees.

The referral from the woman’s orthopedic doctor was critical to her entitlement to receive coverage for her counseling. Injured workers who are referred by their doctors to counseling can receive worker’s compensation benefits as long as the counselor is licensed. If you are an injured worker in need of counseling, be sure carefully to check the credentials of any counselor you consult.

## Driving Under the Influence

The combined effect of alcohol and drugs can cause unexpected symptoms. A Pennsylvania woman arrested and prosecuted for Driving Under the Influence (DUI) recently tried to avoid conviction by claiming that she became unexpectedly impaired when a pain “patch” she was wearing heightened the effects of her drinking alcohol. She admitted that she failed to read the pain patch label and claimed her doctor did not advise her to avoid alcohol while using the patch.

Pennsylvania has not yet formally recognized the the defense of “involuntary intoxication.” Several other states have identified certain circumstances where a person’s impairment may be excusable. They include where the intoxication was caused by force or duress or fraud and where the intoxication was an innocent mistake. An innocent mistake can occur when a person takes an alcoholic drink or narcotic pill under the mistaken belief that the drink is non-alcoholic or the pill is a simple aspirin. Excusable circumstances found by other states also include occasions where the person suffers an unexpected over-reaction to a legal intoxicant or has an unexpected impairment from a properly prescribed drug.

Pennsylvania courts have announced that if the defense of involuntary intoxication is to be adopted in Pennsylvania law, our legislature should address the

issues. The court have also observed that defendants will have the burden to prove the defense. In the case involving the woman who used the pain patch, the courts rejected the defense largely because she did not call expert witnesses and failed to prove that her reaction was unique, unusual or unexpected.

While taking prescription or over-the-counter drugs, be sure to avoid any substances, including alcohol or other medications, that could render you impaired. Unless your physical reaction to a combination of drugs and alcohol is documented as highly unusual, you cannot raise “involuntary intoxication” as a defense to DUI charges.

## Juvenile Court

Pennsylvania appellate judges have described the express purpose of the Pennsylvania Juvenile Act as that of “seeking treatment, reformation and rehabilitation, and not to punish. To this end, the juvenile court system was designed to provide a distinctive procedure and appropriate setting to deal with the problems of youth.” Juvenile proceedings are closed to the public to protect the privacy of juveniles. But all juveniles have an absolute right of appeal from a closed hearing adjudication of delinquency.

In a recent case, a school girl was charged with Criminal Mischief and Simple Assault because she rushed through the right side of a set of double glass doors as she left school to catch her bus at the end of the school day. The girl passed a special needs student seriously handicapped by scoliosis and spina bifida who was accompanied by a service dog. The rushing girl’s door struck the dog on its flank, knocking it over, and also struck the special needs student in the back. The special needs student fell on top of the dog. The dog suffered a torn ligament from the incident, and the special needs student required a course of over-the-counter pain relievers and chiropractic treatment.

Admonishing the prosecution for bringing criminal juvenile charges for the incident, the appeals court found that the girl charged with the crimes was a good

student, well liked by her teachers; she had received academic awards on several occasions and was planning to attend college. She had been employed, but stopped working at her mother's request to improve her grades. She had never before had contact with the police, was reportedly drug and alcohol free, did not smoke, and was not sexually active. The court further noted that the girl resided with her mother, did specific chores at home, and observed a curfew of 10:00 P.M. She was in need of, and received psychological services for anxiety, depression and insomnia only after the commencement of the criminal prosecution.

The Court dismissed the charge of Criminal Mischief because the crime requires proof of intentional or reckless conduct that causes more than \$500 in damages and no such damages were proved by the prosecution. The Court went on to dismiss the Simple Assault charge, finding that criminal liability requires "gross criminal negligence" and that the girl's rushing for her bus did not amount to gross criminal negligence. Acknowledging that the rushing girl acted impulsively and "was at least inconsiderate, at worst callous," the court held that none of these lapses rise to the level of criminality.

Increasingly, schools and law enforcement refer children to juvenile court. If your family becomes involved in juvenile proceedings, be sure to retain competent counsel to protect your children's rights. Not all careless conduct is criminal—and an

adjudication of delinquency can place heavy burdens on a young person. Children in juvenile proceedings should be represented by counsel and should understand their rights to appeal.

## Property Tax Rebates

See Department of Revenue website at [www.revenue.state.pa.us](http://www.revenue.state.pa.us) for forms, instruction book and online application information.

## Construction Contractors

See the Home Improvement Consumer Protection Act, 73 P.S. 517.1 et seq. See also the Contractor and Subcontractor Payment Act, 73 P.S. §514 et seq, and the Unfair Trade Practices and Consumer Protection Law, 73 P.S. §201-1 et seq.

See also *Stiavson v. Timberline Post and Beam*, 947 A.2d 1279 (Pa. Super. 2008).

## Counseling for Injured Workers

*DeLarosa v. WCAB*, 934 A.2d 165 (Pa. Cmwlth. 2007).

## Driving Under the Influence

*Commonwealth v. Smith*, 831 A.2d 636 (Pa. Super. 2003). See also *DuPont v.*

Stowitzky, WL4283356 (E.D. Pa. 2008).

Juvenile Court

In Re K.J.V., 939 426 (Pa. Super. 2007).