

SMART PLANNER

Useful Tips for a Better Tomorrow

April/May 2013



SINGLE? You still need an estate plan



Estate planning is just as important for single people as it is for couples and families.

Estate planning allows you to ensure that your property will go to the people you want, in the way you want, and when you want. **If you do not have an estate plan, the state will decide who gets your property and who will make**

decisions for you should you become incapacitated. A plan can also help you save on estate taxes and on court costs for your loved ones.

You need a Will. If you do not have a Will directing who will inherit your assets, your estate will be distributed according to state law. If you are single, most states provide that your estate will go to your children or to other living relatives if you don't have children. If you have absolutely no living relatives, then your estate will go to the state. You may not want to leave your entire estate to relatives — you may have close friends or charities that you feel should get something. Without a Will, you have no way of directing where your property goes.

(Continued on page 3)

Tired of Waiting for Your Veteran's Aid and Attendance Pension?

From the Law Offices of Sharon L. Pope, LLC

The average wait to receive the results of your application is one year. Across the nation, the extensive application delays are negatively affecting our veterans. And they are likely to get worse before they get better if proposed legislation that requires a 3-year look-back period for future applicants applying for the Aid and Attendance pension is passed.

We don't feel this delay is an appropriate way to honor our veterans. So we have reached out to Senator Larson of the 1st Congressional District and Congresswoman Esty of the 5th Congressional District, seeking congressional intervention and assistance for our clients. We have asked our Senators to make a Congressional Inquiry with the Veterans Administration, which we hope will expedite our clients' claims. If you're a veteran and need help with obtaining an Aid and Attendance pension, give us a call. We will continue to fight for our clients' rights and will do the same for you. ☀

We will be merging with Sharon Pope at the end of the year and are grateful for her contribution to our newsletter.



WATCH OUT!

Many Americans aren't aware of the consequences of not having a Will.

A legal services site found that in 2011, 57% of adult in the U.S. did not have one! Don't let the state dictate where your assets should go — call us today and we'll prepare your Will.

Are You on Track?

With the Employee Benefit Research Institute's free Ballpark E\$timate app, you can figure out if you're on track with your retirement savings and factor in projected Social Security benefits, inflation and earnings assumptions. The app is available for the iPhone and the iPad as well as online at www.choosetosave.org/ballpark.



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ESTATE PLANNING, PROBATE & ELDER LAW

It's Time. Plan Today for Your Tomorrow.

BOOMER BULLETIN . . .

Considering Long-Term Care Insurance?

10 Tips You Should Know

Since it's a good bet that you'll live longer than previous generations in your family, you have to ask yourself this question: **Will I be able to afford those extra years without demolishing my lifetime of saving when I need long-term care?**

This is an important question since the cost of long term care is a financial threat that can wipe you out in no time...especially in Connecticut. So what do you do?

Here are your choices: 1) Do nothing, and pray that just because 7 out of 10 people have a long-term care need it won't happen to you or your spouse, 2) start to transfer your assets so that you might be eligible for Medicaid in the future, or 3) consider long term care insurance, but be very smart about the policy you buy.

How can you evaluate a policy if you don't know much about it? Here are some tips to get you started:

1 DON'T WAIT TOO LONG

Although there is no perfect age, it's important to buy it when you are younger, healthier, and more likely to be approved for coverage.

2 CHOOSE YOUR BENEFIT PERIOD WISELY

This is the amount of time you will receive benefits once a claim begins. The average claim lasts 2.5 years.

Q & A

We invite you to submit your questions to us at plantoday@ctseniorlaw.com.

Q My wife is 62 and I'm 66. She plans to take her own Social Security benefit now, and I plan to delay claiming mine until age 70. When I file, will my wife get a spousal benefit that is 50% of my benefit at the time I file?

A No, her benefit will be based on your primary insurance amount, which is the amount you are entitled to if you filed at your full retirement age. You will get an extra 8% in delayed retirement credits for each year you delay until 70, but delayed credits don't boost the spousal benefit. However, if you die first, your wife's survivor benefit will be based on 100% of your benefit when you die (assuming she waits until her full retirement age to collect a survivor benefit).

If your wife claims her own benefit at age 62, she will get just 75% of her own primary insurance amount. When she claims her spousal benefit later, her total benefit will be somewhat less than 50% of yours because she is claiming her own benefit early. ✨



3 LEARN WHAT IS COVERED AND WHAT IS NOT

Make sure you find out what kind of care is included and in what type of facility. Does it cover adult day care, respite care for the primary caregiver and hospice services?

4 THINK THROUGH YOUR DAILY BENEFIT

This is the amount a policy will pay per day. Checking the average cost for care in your area is the smartest way to help you decide your daily benefit.

5 PLAN FOR INFLATION

If you choose a carrier within the CT Partnership and you're under 65, your coverage will have a 5% compound inflation protection.

6 ASK ABOUT THE BENEFIT TRIGGERS

The more triggers a policy requires, the harder it is to collect benefits. Generally, benefits kick in when you need help with activities of daily living such as bathing, dressing, eating, etc.

7 CONSIDER THE WAITING PERIOD

This is the number of days you must pay for your care before the plan starts to provide you benefits. The most typical elimination period is 90 days.

8 REQUEST ASSET PROTECTION

You are fortunate to have access to the CT Partnership which endorses policies that offer asset protection should you ever need to apply for Medicaid.

9 BE A SMART SHOPPER

Go with a well-known company and research their financial strength and rate increase history.

10 KNOW THE RISKS

Talk to an elder law or estate planning attorney about how and whether it fits into your estate planning goals.

BOTTOM LINE: The cost of long-term care is a financial threat with devastating consequences for you, your family and your investment portfolio. Whether it's a long-term care insurance policy or another mechanism for protecting your hard-earned savings, it is imperative that you put some kind of plan in place. If you don't, you will be placing an insurmountable burden on your love ones and you will be risking, not only your entire nest egg, but your peace of mind. ✨

HELPFUL TIPS

Don't Fall!



Some simple and affordable ways to reduce your risk of falling:

- Install a skid-proof mat in your tub.
- Add night lights throughout your home.
- Install grab bars throughout the bathroom.
- Always wipe up spills immediately to avoid slipping.
- Don't stand on chairs to reach something.
- Move heavy dishes and pots to lower cabinets that are easier to reach.
- Remove loose area rugs, uneven floorboards or cords.
- Use timers to turn lights on at dusk.
- Have a lamp beside your bed.
- Remove your reading glasses when you go up and down the stairs.
- Never rush up and down the stairs!
- Put a bell on your pet's collar so you'll know when they're under foot.

Find the Right Nursing Home: Make sure your elderly parent gets the best care

You'd never choose a new house without visiting and inspecting it. Yet too often families do just that for a nursing home.

A typical scenario: A fall sends Mom to the hospital, and you've got a day or two to find a home prior to the discharge. Care in nursing homes can range from excellent to downright abusive, so it's worth following this plan to create a short list of the best options in your area ahead of time.

LOOK AT THE OFFICIAL STATS

You can use Medicare's nursing home ratings (medicare.gov/nhcompare) as a starting point for your search. Just don't take the star ratings as gospel. Instead, click on "health inspection" and "staffing" to drill down on the details. For example, are citations due to medication errors (beware), or failing to create a care plan (less harmful)? Check how much time each resident gets with nurses: the more hours, the better. Next, click on the "state survey agency" link to get the contact information for your state's ombudsman and licensing agency; they can tell you about consumer complaints. Finally, call to make sure a given facility has a unit dedicated to your parent's specific issue (such as dementia).

VISIT MORE THAN ONCE

No matter how stellar the ratings, a visit is critical. Do an official tour and ask how

personal preferences are accommodated (can mom decide when to shower?) and whether staff work with the same patients each day. Observe lifestyle details: If mom is bedridden, will she be helped to activities? Do nurses greet patients in the hall? Do they eat in a dining room or in bed?

DETERMINE WHO WILL PAY

In Connecticut, a nursing home costs on average about \$368/day (\$134,000/year.) Medicare, the senior insurance program, will only partly cover the tab for up to 100 days after a hospital stay. If dad has long-term care insurance, find out the daily rate it covers (which may be far less than the cost of your preferred homes), and don't count on using it from the get-go – most policies kick in only after an elimination period of 60 or 90 days.

Once dad's resources are running low, he can qualify for Medicaid, the government program for low-income individuals (rules vary by state: see Medicaid.gov), so make sure your preferred facilities accept Medicaid (not all do) and find out if he'll have to move when he switches payment. Finally, keep in mind that the best homes often have waiting lists, so if you know your parent will need care, get him on the list ASAP.

Article from *Money Magazine* by Amanda Gengler

Single Estate Plan (Continued from page 1)

You need a durable power of attorney. A power of attorney allows a person you appoint — your "attorney-in-fact" or "agent" — to act in your place for financial purposes when and if you ever become incapacitated. In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer.

You should have a health care proxy. Similar to a power of attorney, a health care proxy allows an individual to appoint someone else to act as their agent, but for medical, as opposed to financial, decisions. Unlike married individuals, unmarried partners or friends usually can't make decisions for each other without signed authorization.

If you are planning to give away a lot of your money, there are ways to do that efficiently through the annual gift tax exclusion and charitable remainder trusts. Other estate planning documents to consider are a revocable living trust and a living will.

Don't think that because you are single, you don't need an estate plan. Call us to find out what estate planning documents you need. ☀

It's Time. Plan Today
for Your Tomorrow.

Call us at (860) 594-7995



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	My Neighbor has a Living Trust, Should I?	Strategies to Prevent You from Going Broke in a Nursing Home
Rockville High School	April 8	April 22
Newington High School	April 11	April 25
Southington High School	April 24	May 1
Manchester Community	April 30	May 7
Simsbury High School	May 13	May 20

CzepigaDaly is a law firm dedicated to preserving your well-being as well as your assets. In addition to offering estate and tax planning, elder law, estate administration, probate and special needs trusts services, we also help you with healthcare-related decisions, advocacy services, housing matters, insurance and elder law litigation.

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Information contained in this newsletter should not be construed as legal advice, and readers should not act upon any legal information contained in this publication without professional counsel.

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For Legal, Financial and Healthcare Professionals

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Estate Planning Moves BEFORE Sequestration is Resolved

As part of the year-end negotiations to avoid the most immediate “Fiscal Cliff,” Congress has made “permanent” a very favorable estate and gift tax environment.

The applicable exemption amount continues at the unprecedented TRA of 2010 level of \$5 million adjusted for inflation — that is, \$5.25 million for 2013. This exemption continues to be applicable for lifetime gifts, estates, and generation skipping transfers. In addition, portability of the exemption between spouses has also been made permanent — resulting in the potential to simplify many estate plans. It would seem that the only negative was a 5% increase in the highest estate bracket, to 40%. However, despite the apparent certainty derived from the “permanence” of these estate tax laws, the future of some the most important estate planning techniques — those that can

be used to take full advantage of this favorable environment — remain quite uncertain.

Over the past few years, and as recently as the Obama Administration’s 2013 Revenue Proposals (the “Green Book”), significant changes have been suggested to eliminate or curtail the use of some extremely valuable estate planning techniques. Moving forward to “sequestration” (although the word doesn’t exactly roll off the tongue, I guess it is preferable to “Fiscal Cliff II” or “Son of Fiscal Cliff”), with the Administration’s desire for revenue from “tax loopholes” to offset spending cuts, it would not surprise me if some or all of the following techniques were greatly modified or eliminated.

■ GRANTOR TRUSTS

The potential elimination of the benefits of an Intentionally Defective Grantor Trust, including the benefit of the donor paying the tax on the grantor trust’s income.

■ SHORT TERM GRANTOR RETAINED ANNUITY TRUSTS (GRATS)

The imposition of a 10-year minimum term on grantor retained annuity trusts (GRATs), perhaps coupled with a required gift element.

■ USE OF DISCOUNTED ENTITIES AND DYNASTY TRUSTS

Decreased availability of valuation discounts and other proposals, such as the 90-year limitation on GST exempt dynasty trusts.

These strategies are extremely valuable techniques for leveraging the lifetime exemption and otherwise moving assets outside of one’s estate, and in many cases, retaining some degree of flexibility.

At this point in time, the eventual outcome of the post-sequestration world remains a guess. However, it would not be difficult to imagine that these estate planning vehicles will be labeled by some as “loopholes for the wealthy.” These potential changes are very real because the need for revenue and the sequestration is very real. Within this context, and with completely unknowable timetables, it is imperative that families that potentially could benefit from estate planning that goes beyond the current exemption amounts, speak with their advisors immediately.

Article from *Forbes*, by Rob Carfield ✨

Personal Representative Can’t Sue Estate Planning Attorney for Excess Tax Liability

Kansas’s highest court holds that the personal representative of an estate may not maintain a legal malpractice action against the decedent’s estate planning attorney if the planning resulted in increased tax liability. *Jeanes v. Bank of America* (Kan., No. 97,855, March 8, 2013). Maxine Anton hired attorney Sharon Kunard to draft trust documents for her. When Ms. Anton died, her estate owed more than \$21.8 million in estate and inheritance taxes.

Ms. Anton’s personal representative filed a legal malpractice claim against Ms. Kunard, arguing Ms. Kunard failed to protect Ms. Anton from tax liability. The trial court granted Ms. Kunard summary judgment, and the court of appeals affirmed. The personal representative appealed.

The Kansas Supreme Court affirms, holding the legal malpractice claim did not survive Ms. Anton’s death. According to the court, “the alleged injury — excessive taxes on the estate — only became ‘reasonably ascertainable’ after [Ms. Anton’s] death,” and “a lawsuit that does not accrue during a person’s lifetime, does not survive the person’s death.” ✨

Applicant's Husband Can't Sue State Over Spousal Refusal Policy Because Application is Pending

A U.S. district court holds that the husband of a Medicaid applicant does not have standing to pursue an injunction declaring that the state's policy of counting a community spouse's assets even though the Medicaid applicant had assigned her right to support to the state violates federal law because the state has not yet denied the application. *Estate of Larlham v. Dazzo* (U.S. Dist. Ct., E.D. Mich., No. 12-11377, Sept. 18, 2012).

Laura Larlham died while in a nursing home. Her husband, Richard, applied for retroactive Medicaid benefits on her behalf. The application included an assignment of Mrs. Larlham's right to support to the state. Mr. Larlham claimed the state would deny the Medicaid application if it considered his assets as the community spouse, but federal Medicaid law provides that an institutionalized spouse would not be ineligible for benefits due to a community spouse's assets if the institutionalized spouse assigned her right to support to the state. The state argued that state law does not allow the spouse to assign her rights.

NO RECOVERY EXEMPTION FOR ESTATE THAT FAILED TO DOCUMENT HARDSHIP

An estate is not entitled to an undue hardship exemption from Medicaid estate recovery because it did not provide documentation to prove that the hardship existed within 60 days of receiving notice of the claim. *Executive Office of Health and Human Servs. v. Heinmets* (Mass. Ct. App., No. 12-P-844, March 13, 2013).

Massachusetts nursing home resident Frances Heinmet received Medicaid (MassHealth) benefits up until she died. The state placed a lien on her home, and after Ms. Heinmet's death it filed a notice with the court that it was seeking reimbursement for Medicaid expenses. The attorney for the estate denied the validity of the claim, but didn't state any grounds for denial or provide any documents showing that the estate was entitled to an exception to recovery of the Medicaid expenses. State law requires the estate present documentation of an undue hardship within 60 days of the notice of the claim.

The state sued the executors of the estate. The estate argued it was entitled to an undue hardship exemption from estate recovery because Ms. Heinmet's son lived on the property. Under state law, estate recovery may be waived if, among other things, the sale of property is required to satisfy the claim, someone has been living on the property continually, the individual has an interest in the property, and the gross income of the family is equal to 133 percent of the poverty level. The trial court granted the state summary judgment, and the estate appealed.

While the application was pending, Mr. Larlham sued the state seeking declaratory and injunctive relief, claiming that the state would deny the application using policies that violate federal law. The state asked for summary judgment, arguing Mr. Larlham lacked standing.

The U.S. District Court for the Eastern District of Michigan grants the state summary judgment, holding that Mr. Larlham does not have standing. According to the court, because the state has not made a determination about Mrs. Larlham's Medicaid application, Mr. Larlham has not suffered any injury.

Editor's Note: *There is also a case in Connecticut similar to the Larlham case in which a community spouse is taking that position that if she refuses to pay for her spouse's care and also if her husband assigns to the State his right to be supported by his wife, then the Medicaid agency should pay for his care and, if the agency so desires, seek reimbursement from the wife. The Connecticut case has been pending for some time and, if successful, the outcome is the following: 1) the State pays for husband at the lower Medicaid rate; and 2) if the State seeks reimbursement from the wife, the wife reimburses the State at the lower Medicaid rather than the wife, had she not sought spousal refusal, having to pay privately at the higher private rate. ☀*

UPCOMING EVENT

Carmine Perri and Sharon Pope speak on April 24th at the **CT Trial Lawyers Association Annual Legal Support Staff** program. Sharon will instruct how to self-administer the Medicare Set-Aside arrangement, and Carmine will teach the do's and don'ts of the probate court steps required in wrongful death and serious PI cases. Register online at www.cttriallawyers.org or call (860) 522-4345.



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