SMART PLANNER

Useful Tips for a Better Tomorrow

Aug/Sept 2013

ETHICAL WILLS

Estate plans leave behind financial wealth and possessions, but the most valuable items you can pass on are those that cannot be measured. That's why you should consider writing an ethical will.

WHAT IS AN ETHICAL WILL?

An ethical will is a great way to reinforce, to those people dearest to you, your values, insights and beliefs. It is a profoundly meaningful piece of writing that captures a part of you, perhaps your very essence, that won't be found in any formal estate plan.

An ethical will is not a legal document; you don't need an elder law attorney to help you draft one. In fact it's about as official as an envelope you might use to scribble your grocery list. It's simply your opportunity to leave a spiritual legacy to your family. You could think of it as a love letter to those you hold close.

WHY IT'S A GOOD IDEA

Impart wisdom: You have lived a long time and learned a lot, so why not bestow your wisdom on those you leave behind? It is a great way to pass along your ideals and guiding principles, to reinforce to those dearest to you what's in your heart and what you would like for them to remember most about you.

Consider it the most important message you'll ever write. Imagine that your words can guide, encourage and inspire your loved ones. That it can heal and fill the empty places in their hearts, and the gaps in their histories.

Say the unsaid: It can clarify issues left unsaid in a basic will and testament – such as why your estate is divided in a certain way. It can be the thread that ties the loose ends together.

Foster intergenerational connections: The contents of an ethical will can affect future generations for years to come. As your loved one reads about your values and priorities, they'll better understand the family culture they are a part of.

A healthy exercise: Like journal-keeping, it's an act of self-discovery, requiring deep reflection. It clarifies your identity and focuses your life purpose. Perhaps you'll find that one of the best reasons to craft an ethical will is for your own sake!

WHEN SHOULD YOU WRITE ONE?

There is no specific time to write an ethical will but probably the most fitting time is at middle age and beyond, when you can gather your life experiences and convert them into wisdom to pass along. Keep in mind that it should be a work in progress, with changes made along the way.

(Continued on page 3)

FACEBOOK

"Like" us, and be in the know!

Want to find out about how you can protect your hard-earned money and properly plan for your future? Interested in knowing more about estate planning, what to do when a Will is contested, how to apply for Medicaid, how to plan for the future of your child with special needs?

Then visit our Facebook page and "Like" us. You'll get posts about everything from estate planning tips, ridiculous laws and informative videos to articles, upcoming events and news items, such as how the Health Care Act could affect you.

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BOOMER BULLETIN . . .

Oldest Boomers Retiring at a Faster Rate than Expected

Now turning 67, the first set of baby boomers are busting myths and aren't working until they drop, as predicted, according to a study by the MetLife Mature Market Institute. Fifty-two percent of boomers born in 1946 are fully retired. Of those, 38 percent said they're ready to retire, while 17 percent cited health reasons and 10 percent cited a job loss. The figures represent a big jump since 2007 and 2008, a significant leap from the 45 percent retired in 2011. "As the oldest Boomers dive into retirement, even though some have been forced to do so earlier than expected, they seem to be 'feelin' groovy,' as this group would have said during their formative years," said Sandra Timmermann, Director of the MetLife Mature Market Institute. "They are poised to remain active and engaged. As their nests empty, they seem to be largely feeling healthy and positive.

"On the negative side, a good half of this group may not have achieved their retirement savings goals and are not confident about paying for the next phase of their lives." Eighty-six percent of those in the study are receiving Social Security benefits, with 43 percent saying they began collecting earlier than they had planned. Long-term care is at the top of the list of retirement concerns, MetLife said. The national telephone survey was conducted between November 6 and December 23 among 1,003 respondents, including 447 people from the 2011 study. Those in the study were all born in 1946.

Elder Abuse is On the Rise

As many as 2 million elderly Americans have been victims of abuse — among the most under-reported crimes in the country. Elder abuse comes in different shapes and sizes from stealing money, to neglect or violent beatings. Recent studies find that only one in every 14 cases are reported. The numbers are on track to get worse.

Judge John Campbell presides over the D.C. Superior Court's probate division, which oversee cases for incapacitated adults or adults in need of guardianship. He is seeing more elder abuse cases come through his courtroom as the population ages.

"People are living longer and with older age comes frailty, disease, and dementia," Campbell says. And those conditions make the elderly prime targets for abuse as often they don't understand what's happening. "It's extremely, extremely upsetting to see it. These are the people who raised us and took care of us. And now they are being abandoned and exploited," Campbell says.

If you or someone you know suspects financial or elder abuse, call us right away. If you belong to a group that would benefit from learning tips on how to avoid being exploited, we'd be happy to come speak.

Q & A

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

Q My daughter just got married and changed her name. Do I need to update my will and beneficiary designations to reflect this change?

A There's no rush to do so, since the name change won't interfere with your intentions. Ask us to change the name the next time you update your will and other estate planning documents. Since it's easy to change beneficiaries on retirement accounts and life insurance policies, submit new forms at your convenience. Time may be of the essence if your daughter holds your power of attorney or is your health care proxy. In such cases, you can avoid potential hassles by updating those documents.

WHAT'S UP WITH US

Judith Samson, our chief financial officer, completed a busy tax season donating her time and skills to Volunteer Income Tax Assistance (VITA) a government organization that provides tax assistance to low-income families, the elderly, and people with disabilities.

Carmine Perri, our trial attorney, was elected Vice President of CT NAELA. NAELA is an association of over 4,200 attorneys who are dedicated to improving the quality of legal services provided to seniors and people with special needs. He also was given an award by the Probate Assembly for his work on the Probate Court Rules Advisory Committee.

The Need for Medicaid Planning

From the Law Offices of Sharon L. Pope, LLC

One of the greatest fears of older Americans is that they may end up in a nursing home. This not only means a great loss of personal autonomy, but also a tremendous financial price. Depending on location and level of care, nursing homes cost between $40,000 and $180,000 a year.

Most people end up paying for nursing home care out of their savings until they run out. Then they can qualify for Medicaid to pick up the cost. The advantages of paying privately are that you are more likely to gain entrance to a better quality facility and doing so eliminates or postpones dealing with your state's welfare bureaucracy--an often demeaning and time-consuming process. The disadvantage is that it's expensive.

Careful planning, whether in advance or in response to an unanticipated need for care, can help protect your estate, whether for your spouse or for your children. This can be done by purchasing long-term care insurance or by making sure you receive the benefits to which you are entitled under the Medicare and Medicaid programs. Veterans may also seek benefits from the Veterans Administration.

Those who are not in immediate need of long-term care may have the luxury of distributing or protecting their assets in advance. This way, when they do need long-term care, they will quickly qualify for Medicaid benefits. Giving general rules for so-called "Medicaid planning" is difficult because every client's case is different. Some have more savings or income than others. Some are married, others are single. Some have family support, others do not. Some own their own homes, some rent. Still, a number of basic strategies and tools are typically used in Medicaid planning.

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

Ethical Will *(Continued from page 1)*

HOW TO GET STARTED

There's no right and wrong way to express what only you can express. It can be a couple pages or it can be a few sentences. It can be typed or handwritten. If you want to get fancy, it can be recorded in video or audio format. Often, the biggest challenge in writing an ethical will could be getting started. Staring at a white piece of paper can be intimidating, so here are some questions that may help you start the process.

- What are the values you wish to pass on?
- What family stories would you like to share?
- Do you want to ask for forgiveness or forgive others?
- What are the lessons that you've learned in life?
- What are your spiritual beliefs?
- What hopes and dreams do you have for your loved ones?
- What advice would you offer others about living their lives?
- Do you have regrets?
- What do you want to be remembered for?
- Is there anything in your life you would have done differently?

Address your ethical will broadly to "family and friends" or mention specific people – the choice is yours. Be sure to write it in your own voice and speak from the heart. You don't want it to sound like a straightforward, cold legal document (since it isn't one). Make it a sincere, descriptive, uniquely personal message to your loved ones.

Keep your ethical will with your other estate planning documents rather than buried in a drawer so that you know it will be read and cherished by your loved ones at the appropriate time.

Your ethical will may be one of the most cherished and meaningful gifts you can leave to your family. And it won't cost you a dime.

HELPFUL TIPS

Guarding the Fate of Your Digital Assets

What happens, after you die, to the information you have stored online? If it is data stored on YouTube or in accounts such as Gmail or Picasa, you now can use Google's Inactive Account Manager to be sure it all goes where you want it to go.

The new feature allows you to give your consent to transfer data – such as stored emails and family photos – to your executor or other designee. For your loved ones to retrieve your data from Facebook, Yahoo and other online services, you should authorize your executor to work with those services to transfer your stored information.

Other services such as Legacy Locker and Planned Departure will encrypt and hold your various account passwords. But you'll still need an authorized executor to ensure your assets go to the right place.

Attend our Adult Ed classes.
CALL THE SPONSOR TOWN TODAY!

	My Neighbor has a Living Trust, Should I?	Strategies to Prevent You from Going Broke in a Nursing Home
Berlin	October 2	October 9
Farmington/West Hartford	October 8	October 24
MCC	October 15	November 5
Meriden	October 3	October 10
Newington	October 29	November 13
Plainville	November 7	November 11
Simsbury	October 22	October 30
Southington	September 18	September 26
Vernon	Oct 7 & Nov 6	Sept 25 & Oct 28
Wethersfield	October 15	October 21

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Special Insert

SMART PLANNER

For Legal, Financial and Healthcare Professionals

Aug/Sept 2013

Medicaid Figures Adjusted

Effective July 1, 2013 the following changes to the Medicaid regulations take effect:

1. The penalty period divisor changes from $11,183 per month to **$11,581** per month. Example: a gift of $50,000 results in a Medicaid disqualification period of 4.3 months. This figure changes each July 1st. Remember—penalty periods now begin not when the gift is made, but in the month that the maker of the gift is in a nursing home and has no other assets.
2. The minimum monthly needs allowance for the healthy spouse changes from $1,891.25 to **$1,938.75**. In other words, in a married couple situation, the Community Spouse is allowed a monthly income of $1,938.75, no questions asked. This is dependent, of course, on the ill and healthy spouses' own fixed incomes being sufficient to produce that amount. This figure changes each July 1st. There was no increase this year because there was no increase for social security benefits.
3. The Personal Needs Allowance remains at **$60.00/month**.

The following rules remain in place (these figures change each January 1st):

1. The minimum amount of assets protectable for the Community Spouse remains at **$23,184**. In other words, if the couple's combined assets are $25,000, the Community Spouse may minimally retain $23,184 without any requirement to justify a need for that amount.
2. The maximum amount of assets protectable, without a Fair Hearing, for the Community Spouse is **$115,920**. Additional assets may be protected above this amount if there is a demonstrated need.
3. The maximum monthly income available to the community spouse without exceptional circumstances remains at **$2,898.00**.

Grandchildren Liable for Grandmother's Nursing Home Stay after She Transferred Money to Them

A New York trial court rules that a nursing home resident's grandchildren are liable for fraudulent conveyance after the grandmother annuitized several annuities to them, rendering her insolvent and ineligible for Medicaid. *Chapin Home for the Aging v. Heather* (N.Y. Sup. Ct., No. 25327/2010, April 23, 2013).

In 2000, Lillian Heather purchased four annuities for each of her grandchildren as part of her estate plan. The annuities named the grandchildren as annuitants and beneficiaries, but Ms. Heather retained control of the accounts. Ms. Heather also appointed her grandchildren as her attorneys-in-fact under a power of attorney. In 2006, Ms. Heather entered a nursing home. One granddaughter, Kristin Goldman, signed the admission agreement as her designated representative. After entering the nursing home, Ms. Heather annuitized the annuities and the full value was transferred to the grandchildren. She applied for Medicaid benefits, but the state denied benefits because she had transferred assets for less than fair market value.

The nursing home sued the grandchildren for fraudulent conveyance, arguing that they had transferred Ms. Heather's assets for no consideration, rendering her insolvent. The nursing home also sued Ms. Goldman for breach of contract, arguing that Ms. Goldman had access to Ms. Heather's assets and should have used them to pay for her grandmother's care.

The New York Supreme Court, Queens County, grants judgment for the nursing home in the amount of $287,893.95. According to the court, it was undisputed that the transfers were made without consideration. Moreover, the grandchildren did not present any evidence that the transfers did not make Ms. Heather insolvent. Nevertheless, the court rules that Ms. Goldman is not personally liable for breach of contract because the admission's agreement did not make the designated representative personally liable.

Long-Term Care Commission's Effectiveness Remains Uncertain; Medicaid Eligibility Debated

Mark Warshawsky, one of the 15 persons appointed to the Long-Term Care Commission, offered his vision of the issues the Commission should consider as part of a panel discussion titled "Long-term care; markets or mandates?" The presentation took place on May 31, 2013, at the American Enterprise Institute in Washington, D.C.

The other panelists were Howard Gleckman, Urban Institute; Dr. Joshua Weiner, RTI International; Matt Salo, Executive Director of the National Association of Medicaid Directors; and Stephen Moses, Center for Long-Term Care Reform. All the panelists thought that the provision of long-term care services and supports needs to be improved but disagreed on how to do so.

Mr. Warshawsky, a pension expert, is the director of retirement research at the consulting firm Towers Watson and was the Assistant Secretary for Economic Policy at the Treasury Department from 2004-2006. Sen. Mitch McConnell (R-Ky) appointed him to the Commission.

He reported that the Commission has not yet met even though its recommendations are due in September. He also wondered whether the Commission can be truly bipartisan, as nine members were appointed by Democrats and six by Republicans, and suggested any recommendation should be by consensus rather than by simple majority.

Mr. Warshawsky proposed the Commission should consider, among other issues, the impact of public benefits on private insurance. He cited studies suggesting Medicaid crowds out long-term care insurance, the many Internet cites offering Medicaid planning, and a study by economists at the Chicago Federal Reserve that the wealthy benefit from Medicaid as much as the poor. He also questioned why homes are excluded in determining Medicaid eligibility.

Finally, he suggested as possible solutions more managed care and a Medicaid carve-out for a life care annuity to allow persons to use their insurance death benefits as well as long-term care.

Howard Gleckman and Joshua Weiner argued that long-term care insurance will not play a major role in helping pay for long-term care services and supports. Mr. Gleckman pointed out that long-term care insurance policy sales have declined by two-thirds in the past 10 years, and group sales have disappeared. The benefits are growing smaller while premiums are rising. He observed that some policies are offering $50 a day benefits, similar to the amount the defunct CLASS program had intended to provide. Dr. Weiner thought Medicaid asset transfers do not significantly affect Medicaid costs. Moreover, tax incentives for long-term care insurance may not save Medicaid because the persons most likely to utilize them would not otherwise qualify for Medicaid.

Mr. Salo noted that while the elderly constitute a minority of Medicaid beneficiaries, most of the $420 billion in the program is spent on long-term care. Medicaid cannot continue to pay for services in the future. State government budgets, which contribute about half of the funding, cannot sustain the expenditure, so the private marketplace needs to pay a role. Managed care has enormous potential if done right and if integrated and coordinated with health care.

Lastly, Mr. Moses identified Medicaid asset planning as a significant problem. He said he has traveled the country talking with eligibility case workers who tell him how the rich can use financial advisors and Medicaid planners to qualify for benefits. Among other techniques used, he cited use of the "two Mercedes rule" where a person buys a Mercedes and gives it away without penalty, and then buys another Mercedes to keep because an automobile is an exempt asset. He expressed displeasure that income is rarely used as a barrier to eligibility, as medically needy states pay for care that exceeds income while other states use Miller trusts to shelter income. He also complained that Medicaid expansion to home and community-based services further crowds out private options to pay for long-term care.

Morris Klein, CELA, CAP

Tax Deductions…REALLY?

The Minnesota Society of CPAs recently surveyed its members about the most creative tax deductions proposed by their clients. Get a chuckle from some of the most memorable responses:

- A ballerina was surprised to discover that she couldn't deduct the cost of a tummy tuck.
- A piano player tried to claim manicures as a business expense.
- A farmer tried to claim food and veterinary expenses for his toy poodle as a farm-building "guard dog."
- One filer thought medical expenses related to a sex-change operation would be deductible.
- A woman took a chance on deducting gambling losses as a charity donation.
- Lots came up with reasons for deducting the cost of a swimming pool as a medical expense.

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