

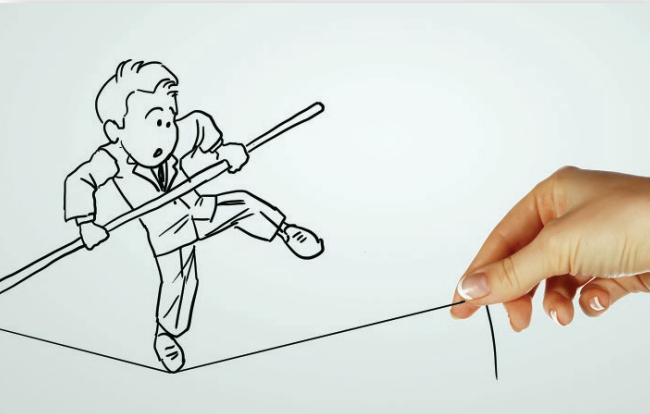
# SMART PLANNER

Useful Tips for a Better Tomorrow

June/July 2014



## Do-it-yourself Wills: **DON'T RISK IT!**



Thinking of creating your own Will or other estate planning documents? After all, there are lots of web sites with legal document templates available – they make it sound easy.

And of course there's the cost savings. Why pay an estate planning lawyer for something you can do on your own?

**The answer is simple:** There's a darn good chance that do-it-yourself (DIY) legal documents might end up costing you, and your loved ones, more than you think.

### **If it's not tailored to where you live...**

...then there's a chance that the document template language isn't relevant for the state you live in. Each jurisdiction has its own laws and regulations – and they change. Filing a document that isn't appropriate for your state could render your papers null and void.

Think about how that could impact your loved ones after you die.

### **The value of words**

If you've ever taken a look at a legal document, some of the words might read like another language; one that only makes sense to other lawyers and judges.

There's a reason for that.

What might be seen as confusing language on your end may actually be the proper and legal way to articulate your wishes.

### **Uh-oh: unintended results**

Attempting to write your own estate planning documents might lead you down paths that you never intended. Imagine accidentally denying your beneficiaries access to the assets you wanted them to have. If there is ambiguous or missing language, your Will can be invalid or it could lead to exorbitant legal costs. All your good intentions could go down the drain.

### **DIY provides little protection**

Let's say you've already taken the DIY approach to a legal document and found out later that what you wrote didn't hold up in court. Or that it played out differently than you planned.

## What the Experts Say



### **The benefits of aging**

There are more perks to turning 50 than just cheap movie tickets, said Lindsay Gellman in *The Wall Street Journal*, but surveys indicate that fewer than half of eligible seniors are taking advantage of them.

Unlike their youthful counterparts, investors who have hit the half-century mark can bolster their retirement savings by making pretax "catch-up contributions" of **up to \$23,000 annually to their 401(k) accounts**, \$5,500 more than investors under 50 are allowed. Seniors can also put **up to \$6,500 toward an IRA**, \$1,000 more per year than permitted for younger investors. And while 59 ½ is typically the age at which retirement distributions can be taken without incurring a 10% early withdrawal penalty, workers who retire, quit, or are laid off can tap an employer-based savings plan penalty-free beginning the year they turn 55.



**CZEPIGA DALY POPE**

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It's Time. Plan Today for Your Tomorrow.

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# Home Care vs. Home Health Care

**QUESTION:** My dad is coming home from a rehab facility after a fall, and his doctor recommends that he receive home care. I want someone who is properly trained, but I am confused about whether he should have home health care or simply home care. Which type would be the best choice?



**ANSWER:** You must first establish the type and extent of care that is needed. If his care is limited to assistance with activities of daily living (ADL) – such as dressing, bathing or eating and perhaps some light housekeeping or cooking – he most likely needs home care. If he needs medical attention or therapy, he requires home health care.

**Home Care** includes non-skilled services such as assisting individuals with their ADL and housekeeping needs. It is typically provided by lay persons such as home care aides or companions.

While Connecticut does regulate and license such care providers and agencies, no consumer protection laws are in place.

Companionship and a sense of security are important parts of the care. Home care industry associations have established standards of care and self-regulation to offer some degree of confidence in the quality and safety of their members' care.

**Home Health Care** provides physician-ordered care and treatment of an ill or frail person by licensed health-care professionals such as registered nurses (RN) or licensed practical nurses (LPN). Health-care professionals can also include rehabilitation providers such as physical therapists, occupational therapists and speech therapists. Such services may also include wound care, physical therapy, administering of medications, catheterization or injections.

These professionals and care agencies are licensed and strictly regulated. They are also guided by their own professions' code of ethics.

Hiring a care giver, whether for home care or for home health care, can be direct or through an agency.

Finding a reliable caregiver is not an easy task. You want to do your homework and get a referral from someone experienced in this area. A geriatric care manager can assist you in selecting a home health care or home care agency. If you're not sure where to turn, give our geriatric care manager Joanne Foss a call at 860-236-7673.

## What's Up With Us

### ◆ Initiative Launched to Improve Respite Care Awareness and Availability

After years of working with the elderly and their families, Sharon Pope set a personal goal that matches her clients': to keep a loved one out of an institution and at home or in the community as long as possible.

One of the best ways to accomplish this is to take care of the caregiver. With this goal in mind, Sharon is spearheading a **respite care initiative with the hopes of making Connecticut a model state for respite care awareness and delivery**. Connecticut currently has 3 programs available (see our May 9th blog post) and Sharon is looking to expand and add to these programs so caregivers get a break.

- ◆ **Supporting the Groups who Serve**  
In keeping with our mission of advocating for Connecticut residents, we've recently become sponsors for the Community Foundation for Greater New Britain and the Brain Injury Alliance of CT.

## Don't Risk It

*(Continued from page 1)*

DIY services and templates do not offer legal advice, and they will not back you up or defend your intentions when it comes to complaints or concerns over legality. Taking the easy way out with DIY legal documents gives you a false sense of security for which you have no recourse if things go south.

### Don't take a chance

Hiring us to help you craft documents actually costs less than you think when you factor in the experience and understanding that we bring to the table. You'll have the peace of mind knowing that your documents were accurately drafted and filed. And you won't have to worry about problems down the road. Like leaving your family with big legal costs.

**It's Time. Plan Today for Your Tomorrow. Call us at (860) 236-7673.**

# Disinheriting a relative can be complicated

You may feel that you have given one child more during your life, so he or she should get less in your Will. Or you may want to cut out an heir altogether. Whatever the reason, disinheriting a close relative—especially a spouse or a child—can be complicated.

It may not be possible to completely disinherit a spouse. Even if you don't leave your spouse anything in your Will, Connecticut has a statute that keeps a spouse from losing everything.

Even if you don't completely disinherit your spouse, your spouse can choose between taking what the Will provides or taking what the Connecticut law says a spouse should receive in any case (the "statutory share"). One solution is to enter into an

agreement with your spouse in which you each waive the right to receive anything from the other's estate. This could be accomplished by either a pre- or post-nuptial agreement.

Disinheriting a child is a different story. You will need to check with an attorney in our office to find out what is required. Louisiana is the only state that does not allow an adult child to be disinherited. While

other states do not require that you leave anything to your adult children, there may be laws that protect minor children. For example, in Florida you are required to leave your house to either your spouse or a minor child, if they are living. In addition, there are often laws that protect children born after a Will was written. Connecticut law also allows you to fully disinherit a child of any age. To be safe, if you are leaving a child nothing, you should specifically mention the child in the Will. State the reason the child is getting nothing or a reduced amount. If you don't mention a child at all, the Probate Court may conclude that you did not intentionally exclude the child.

Disinheriting a close relative can cause fights among family members. Squabbles over Wills can drag on for years and prevent your heirs from receiving their inheritance. So if you are planning on disinheriting someone, give us a call — it is important to take as many precautions as possible.



## How to Leave Money to a Child with Special Needs



In almost all cases where a parent will leave funds at death to a child with special needs, it should be done in the form of a trust.

Trusts set up for the care of a child with special needs generally are called "supplemental" or "special" needs trusts.

Money should not go outright to the child, both because he or she may not be able to manage it properly and because receiving the funds directly may cause the child to lose public benefits, such as Supplemental Security Income (SSI) and Medicaid. Often, these programs also serve as the entry point for receiving vital community support services.

*"You are never too old to set another goal or to dream a new dream."*

CS Lewis

## 3 Steps to Minimize Junk Mail and Sales Calls

Here are some actions you can take to alleviate some of the junk that comes your way. Taking these steps will also help to protect your personal information:

### 1 Remove your name from mail lists

- **By mail:** Print out the on-line form or send a note that includes your name, address, signature and a statement that you would like your name to be removed from mail lists, along with a check for \$1, to Mail Preference Service, PO Box 282, Carmel, NY 10512
- **Online:** Go to [www.dmchoice.org](http://www.dmchoice.org) to link with the Direct Marketing Association web site.

### 2 Put your name on the National Registry "Do Not Call" list

- **By phone:** Call 1-888-382-1222
- **Online:** Go to [www.donotcall.gov](http://www.donotcall.gov) to fill out the registration form

### 3 Remove your email address from commercial email lists

Although this will not stop all commercial emails, it will help reduce the number you receive. Go to [www.dmchoice.org/EMPS](http://www.dmchoice.org/EMPS) and fill out the registration form.





## Get some important estate planning tips! Attend one of our upcoming events:

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### Manchester Community College:

7/22 — My Neighbor has a Living Trust, Should I?

7/29 — Strategies to Help You from Going Broke in the Nursing Home

To register, call MCC at **(860) 512-3232**

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### Southbury Senior Center:

6/23 — Protect Yourself from Financial Exploitation

To sign up, call **(203) 262-0651**



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## DSS Trial: Are Medicaid Application Delays Breaking the Law?

**Paul Shafer, a Trumbull resident, had a seizure disorder and no job when he applied for Medicaid in July 2011. The program would have paid for the \$165-a-month anti-seizure medication Shafer relied on.**

By law, he should have heard back within 45 days. Instead, Shafer waited months without a decision on his application. He took half the prescribed dose of his medication to make it last longer. At one point he had a major seizure.

Attorneys with the New Haven Legal Assistance Association say thousands of people like Shafer face potentially severe consequences from delays in getting health care coverage, because DSS doesn't have enough workers to handle Medicaid applications in the time frame required by the federal government.

They filed a federal class action lawsuit on behalf of Shafer and other Medicaid applicants last year. It goes to trial Tuesday in U.S. District Court in Hartford.

DSS officials have acknowledged that the department has struggled as staffing levels eroded over the past decade while demand for social service programs skyrocketed.

But they have disputed the plaintiffs' allegations, saying the department's performance doesn't warrant penalties and that it can't be held responsible for delays caused by "unusual circumstances," including the failure of applicants or third parties to provide required information.

Since the lawsuit was filed in January 2012, DSS has made efforts to improve application processing, hiring more than 200 workers to handle eligibility and moving ahead with plans to modernize the way information and work processes are handled. The number of applications that were still pending past the federal deadline has dropped in recent months.

(Another thing that's changed: Shafer's Medicaid application was approved — the day after the lawsuit was filed in January 2012.)

Plaintiff attorneys, in court filings, said those changes aren't good enough, that improvements don't negate the fact that thousands of applications are still being delayed.

Federal law requires that most Medicaid applications be processed within 45 days of being submitted. The department has 90 days to process applications for people seeking coverage because they have a disability, although those represent a relatively small proportion of applications.

But DSS misses the mark on thousands of applications. Since

January 2011, the number of applications still pending at the end of the month that were beyond the federally required processing time frame ranged from 10,189 last May to 3,410 in February 2013. The department considers only a small portion of those delays "unexcused" — something the plaintiff attorneys dispute.

DSS acknowledged that the percentage of unexcused, delayed applications "is unacceptable," according to court records.

But the department has also cited another measure: 84 percent of the 22,895 applications filed during a recent month were handled within the required time frame.

Both sides have pointed to the dramatic increase in demand for Medicaid in recent years.

According to court documents, DSS got an average of 24,500 applications per month from July 2011 to October 2012 — up 88 percent from 2002, when the average was closer to 13,000 per month.

But during that time, the number of DSS employees handling eligibility for all programs the department administers dropped about 30 percent, from 845 to 586. It fell still further after a wave of early retirements in October 2011.

Last year, DSS hired about 220 eligibility workers, bringing the total number to about 881, according to court records. That's higher than in July 2002. But so is the application volume and the number of people in Medicaid, plaintiff attorneys have noted.

While some people are pushing for DSS to hire more workers, DSS Commissioner Roderick L. Bremby has argued that the department's efforts to modernize its outdated technology and work processes will be more effective than hiring more people.

"We can't just throw people at this," Bremby said last January, shortly after the lawsuit was filed. "We need to throw technology and a changing culture and some strong leadership, and that's what we're focusing on. It's the entire system."

*(Continued on back)*

### DID YOU KNOW?

The US tax code is approximately 3.7 million words in length...that would be like reading 58 novels!  
(but way less enjoyable...)

## Draft Uniform Legislation Would Give Fiduciaries Access to Digital Accounts

Recognizing the growing need for a nationwide solution to determining who has access to a deceased or incapacitated person's digital accounts, the Uniform Law Commission has proposed draft legislation that would give fiduciaries the ability to access digital information.

Currently seven states have legislation dealing with digital assets (and 14 additional states are considering laws), but the laws vary considerably on who has access to the account, what accounts can be accessed, what can be done with the account, and whether the deceased individual must be a minor.

The Fiduciary Access to Digital Assets Act (FADA) addresses who has the authority to access, manage, distribute, copy, or delete digital assets and accounts like Facebook, Twitter, Gmail and iTunes. Under the law, four types of fiduciaries could take over a digital account: a personal representative, a conservator authorized by the court, an agent under a power of attorney, or a trustee. The law would allow the fiduciary to have the same authority as the account holder.

The commission will vote on the law in July (2014). Once it is published, states will have the option of adopting the uniform law.

### DSS Trial *(Continued from page 1)*

The trial is also expected to address how DSS handles people with a Medicaid "spend down." Those are people whose incomes are too high for Medicaid, but who spend the additional income on unreimbursed medical expenses. Once they incur those expenses, they can qualify for Medicaid to pay for their medical costs for the remainder of a six-month period. After that, they must "spend down" their income on medical expenses again before getting additional Medicaid coverage.

People with a Medicaid spend down must submit documentation of the expenses to DSS, and the lawsuit alleges that sometimes DSS workers are so busy they don't have time to review the bills until the six-month period is over. Part of the problem, it argues, is that DSS hasn't established a standard time frame for getting spend down bills processed.

DSS has said in court documents that it does have a standard — 30 days.

Last September, the department contracted with Xerox to handle the reviews of medical expenses. Only DSS employees can determine if a person is eligible for Medicaid and activate a person on the program, so if a Xerox worker makes a preliminary determination that the client's expenses were enough to satisfy the spend down, the information gets forwarded to a DSS worker. Under the contract, Xerox has five business days to process the expenses.

But DSS argued that the department shouldn't be held to a five-day standard because it can't be assumed that the Xerox program will be continued, since it "essentially requires unlimited resources to be employed to do the job."

The trial is expected to take two days. It's not the only ongoing lawsuit related to how DSS handles applications for assistance programs. In December, U.S. District Judge Vanessa L. Bryant granted a preliminary injunction against DSS over delays in handling applications for food stamps, saying there was evidence of an "ongoing, persistent systemic failure" to comply with federal law.

By Arielle Levin Becker, *The Connecticut Mirror*

### UPCOMING EVENTS

**June 16 — Connecticut Legal Conference**  
(formerly the CBA Annual Meeting)  
CT Convention Center, Hartford

We will be presenting at the largest annual gathering of legal professionals in the state. Sharon Pope and Claudia Englisby will present "Anatomy of a Special Needs Trust," and Brandon Angell, Kathi Michalak and Claudia Englisby will be panelists for "Paralegals: Essential Members of the Legal Team — a "How-to Guide" for Attorneys and Paralegals."



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