SMART PLANNER

Useful Tips for a Better Tomorrow

June/July 2013

Gifting: Best ways to give money now

Estate planning isn't just about how you want your assets distributed after you die. It's about deciding how much you want to give away while you're still alive.

If you plan carefully — so you don't outlive your assets — giving allows you to reduce your taxable estate and provide advance help to your beneficiaries.

There are two easy ways to make gifts without incurring the gift tax:

- You may pay an unlimited amount in medical or educational expenses for another person, if you give the money directly to the institutions where the expenses were incurred.
- You may give up to $14,000 a year in cash or assets to as many people as you like.

Anytime you give more than $14,000 annually to any one person you must file a gift-tax return and the excess amount will be applied toward your unified lifetime gift and

(Continued on page 3)

5 Issues to Consider When Setting Up a Special Needs Trust

(Academy of Special Needs Planners)

While day-to-day obligations can certainly get in the way, at some point as a parent of a child with special needs you will need to create a special needs trust to shelter and manage whatever you may leave your child. This is the only safe way to make sure that the funds you leave are protected and well managed and that your child, who by then is probably an adult, can continue to qualify for vital public benefits. Here are some of the questions you will need to consider in guiding your attorney to create the trust:

Choice of Trustee

This can be the most difficult decision because the trustee will have ultimate power and responsibility over how the trust funds are invested and spent for the beneficiary. The trustee must know and understand the beneficiary's needs, make sure not to violate the rules of any public benefits program, budget for the long term, invest wisely, and keep accurate accounts. We often find that the best solution is to have both a family member and a professional trustee share the role as co-trustees.

(Continued on page 2)

GOOD TO KNOW

Gift Tax Audits

The IRS is stepping up its review of gift tax returns. The IRS is asking states for names of people who transferred real estate to relatives for little or no money, and then it's checking if they filed gift tax returns. If a gift tops the gift tax exclusion of $14,000 in 2013, Form 709 must be filed.

Expanded Hours

To accommodate your hectic schedule, we've extended our Berlin office hours each month to include, one Tuesday evening from 5 – 8 and one Saturday between 9 – noon. Now there's no excuse. Make an appointment and get your estate planning documents done today!

CZEPIGADALY LLC

ESTATE PLANNING, PROBATE & ELDER LAW

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BOOMER BULLETIN . . .

Aging Parents and the Money Talk

Why it's vital to broach financial and medical issues with Mom and Dad before a crisis hits.

Conversations we loathe: Telling a spouse that it's over. Explaining sex to our kids. Asking our elderly parents about their finances.

The truth is, you must initiate that last subject with your parents. By persuading them to plan ahead, you may be able to protect some of their money, avoid bitter clashes, and even probate court.

You never know what you might find when you start asking questions. You could find that your parents are relieved to have someone to help with their finances. You could uncover that they have lots of money in a checking account drawing no interest. Or, that they had been draining their savings at such a steady clip they had only months to go before they would run out.

At the very minimum, you should lobby for your parents to set up at least two things: a medical power of attorney, which allows another person to make health care decisions if the parent can no longer speak for himself, and a financial power of attorney, which allows another person to make financial or legal decisions.

Begin the conversation like this: "Mom, have you set up a medical power of attorney so that I can talk with the doctor about your case?"

Another opening line could be, "Dad, heaven forbid anything should happen to you, but if it did, I'd like to be able to talk to the doctor about you."

While it might seem calculating to plan the conversation in advance, it's preferable to the alternative. It's a lot better to have medical and financial conversations before there's a crisis, when the family is stressed and decisions need to be made about your parent's care.

Special Needs *(Continued from page 1)*

Revocable or Irrevocable?

In most instances, the special needs trust should be irrevocable, especially if other people, such as grandparents or aunts and uncles, might contribute to it. If only the parents will contribute and don't expect to do so except as part of their estate plan, then the special needs trust can be revocable, meaning you can change it at any time.

How specific should the trustee directions be?

As a parent, you are going to want to provide the trustee with as much guidance as possible to make sure that your child gets the best care and support and that your innate knowledge about her needs and wishes is not lost. But this information often is best imparted in a side document — a memorandum of intent — rather than in the trust itself. The trust needs to be discretionary and relatively unlimited so that the trustees can react to future realities, whether they have to do with your child's development or changes in laws and services available.

What about a trust protector or care committee?

Some special needs trusts include a so-called "trust protector" to oversee the work of the trustees or a "care committee" to advise the trustees. These additional parties can contribute significant benefits and help reduce your worries about how the trustees will act on behalf of your child. But these mechanisms should be used only on a case-by-case basis where the benefit outweighs the added cost and difficulty of involving additional people in the trust management.

How much money should go into the trust?

It's hard to get a definite answer on this question. In most cases, the answer is "as much as possible." This is because there's usually not enough to pay for a child's entire support. However, if you have other children you'll want to be "fair" to them as well. The availability of public benefits programs, of course, lowers the need for self-financing, but we can never be sure what will happen to existing programs in the future. A financial planner who focuses on special needs financial planning can help with these calculations. One solution many people choose is to divide their estate equally among all of their children, but to provide additional funds for the special needs trust through life insurance.

These are not easy questions. But with the assistance of an experienced special needs planner, you will find solutions. And don't fall into the trap of the perfect being the enemy of the good. It may be impossible to find the ideal solution for your child. But any plan is far better than no plan. Additionally, whatever plan you put in place now should be reviewed and updated as your child gets older and your circumstances change. Act now. Then take another look in a few years.

We are excited to be merging with The Law Offices of Sharon L. Pope in 2014, a firm with extensive expertise in special needs planning.

Gifting *(Continued from page 1)*

estate tax exclusion of $5.25 million.

If at any point your gifts exceed that exclusion, you will have to pay gift tax on the excess amount. In 2013, the top federal tax rate on gifts and estates is 40%, and for Connecticut it is 12%.

Keep in mind, too, that gifts you give that exceed the lifetime exclusion will reduce the amount of money you may leave to your heirs free of federal estate taxes. For example, if you give away $100,000 in taxable gifts, your estate-tax exemption will be reduced by $100,000.

If you want to invest in a 529 college savings plan for a beneficiary, contributions are treated as gifts. You may put in as much as $70,000 in one year ($140,000 with your spouse), but that contribution will be treated as if it were being made in $14,000 installments over five years.

That means you can't give any more money to that beneficiary tax-free during that five-year period. Should you die before the five years are up, part of the money you gave will be included in your taxable estate, specifically the $65,000 minus $13,000 for each year you were alive.

The tax consequence of making large gifts can get complicated. So if you have a large estate, consult with a financial planner to see how much giving you can do without triggering a big tax bill.

Charitable donations are another way to reduce your estate. By investing in charitable gift funds and community foundations, those donations can stretch beyond your death.

Charitable gift funds permit you to make a tax-deductible donation, grow your investment tax-free, and then direct a contribution — in your name — to nonprofits of your choosing whenever you like.

Community foundations are regionally based charities that take donations of as little as $5,000 in cash, stock or property. The foundations invest that money, pool the gains, and allocate grants, usually to local nonprofits. In most cases, you may either have the foundation give money to organizations you choose or ask the foundation to locate a worthy recipient for a cause you like.

You also can set up what's known as a charitable lead trust, from which a charity receives the income and your heirs the principal; or a charitable remainder trust, in which your heirs get the income and the charity gets the principal.

CNN Money

Note: *Connecticut is the only state that has a gift tax (effective 1991). And, the federal exemption is $5.25 million while the State of Connecticut is only $2 million.*

Wellness Corner

EXERCISE IS THE KEY TO HEALTHY AGING

No matter your age or your current physical condition, you can benefit from exercise. Reaping the rewards of exercise doesn't require strenuous workouts or trips to the gym. It's about adding more movement and activity to your life, even in small ways.

4 Myths About Exercise and Older Adults

Myth 1: There's no point to exercising. I'm going to get old anyway.

Fact: Exercise and strength training helps you look and feel younger and stay active longer. Regular physical activity lowers your risk for a variety of conditions, including Alzheimer's and dementia, heart disease, diabetes, colon cancer, high blood pressure and obesity.

Myth 2: Exercise puts me at risk of falling down.

Fact: Regular exercise, by building strength and stamina, prevents loss of bone mass and improves balance, actually reducing your risk of falling.

Myth 3: It's too late. I'm already too old to start exercising

Fact: You're never too old to exercise! If you've never exercised before, or it's been a while, start with light walking and other gentle activities.

Myth 4: I'm disabled. I can't exercise sitting down.

Fact: Chair–bound people face special challenges but can lift light weights, stretch, and do chair aerobics to increase range of motion, improve muscle tone, and promote cardiovascular health.

Parlez francais The BBC has free 12-week language courses in French, Italian, and Spanish at bbc.co.uk/languages/steps. An end-of-the-course assessment shows how well you've done.

Get an ivy education Coursera.com offers classes from top universities online. Take Princeton's *A History of the World Since 1300* or the University of Pennsylvania's *Neuroethics*, among others.

Be the next Bill Gates CodeAcademy.com offers interactive lessons on everything from programming a web site to building games and apps.

Go Downward Dog Many municipalities offer free yoga classes; check with your town parks department. Also, athletic-wear store Lululemon hosts weekly sessions in its stores. (Of course, if you develop a liking for its clothes, you'll undo the savings!)

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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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SMART PLANNER

For Legal, Financial and Healthcare Professionals

June/July 2013

Annuity Benefitting Medicaid Applicant Need Not Name State as Remainder Beneficiary

A Georgia court of appeals holds that while annuities benefitting a Medicaid applicant's spouse must name the state as a remainder beneficiary to avoid a transfer penalty, annuities benefitting the Medicaid applicant do not. *Cook v. Bottesch* (Ga. Ct. App., Nos. A13A0006, A12A2268, A12A2269, A12A2506, March 26, 2013).

John Bottesch, Carol Shorey, Boyce Robertson, and Jerry Glover all resided in nursing homes and applied for Medicaid. The spouses of Mr. Bottesch, Ms. Shorey, and Mr. Robertson purchased annuities, while Mr. Glover purchased an annuity for himself. The applicants refused to name the state as a remainder beneficiary on the annuities, so the state imposed a transfer penalty.

A hearing officer determined that the applicants with spousal annuities were not eligible for Medicaid until they named the state as a remainder beneficiary. A trial court held that the state law that required the community spouse to name the state as a remainder beneficiary violated federal law because the annuities were not assets for the purposes of imposing a transfer penalty. After a hearing, the state determined Mr. Glover was subject to the penalty period as well, and the trial court affirmed. All of the applicants appealed.

The Georgia Court of Appeals reverses, holding that a plain reading of federal law "shows that annuities benefitting community spouses must name the state as a remainder beneficiary to avoid automatically being treated as the disposal of an asset for less than fair market value, but annuities benefitting applicant institutionalized spouses . . . need not do so." The court notes that its decision that Mr. Glover not be required to name the state as a remainder beneficiary in order to avoid a transfer penalty is "partly inconsistent" with federal regulations.

Supreme Court Declines to Review Two Rulings Spurning Nursing Home Arbitration Agreements

The U.S. Supreme Court has refused to hear appeals of two state court decisions that nursing home residents' descendants may bring wrongful death suits against the facilities despite the existence of signed arbitration agreements.

Both cases involve daughters who signed arbitration agreements on behalf of their mothers. After the mothers died, the daughters sued the nursing home for wrongful death, and the nursing home moved to compel arbitration. In *Ping v. Beverly Enterprises* (Ky., No. 2010–SC–000558–DG, Aug. 23, 2012), Donna Ping was her mother's attorney-in-fact under a general power of attorney when she signed the arbitration agreement. The Kentucky Supreme Court held that because the power of attorney did not authorize Ms. Ping to do more than make financial, property-related, and health care decisions, the arbitration agreement was beyond the scope of Ms. Ping's authority and therefore unenforceable against her mother's estate and wrongful death beneficiaries.

In *Carter v. SSC Odin Operating Co*. (Ill., No. 113204, Sept. 20, 2012), Sue Carter signed an arbitration agreement on behalf of her mother without a power of attorney. The Illinois Supreme Court ruled that because Ms. Carter signed as her mother's "legal representative," she had to arbitrate only if she was acting in her mother's stead in prosecuting the wrongful death claim, which the court ruled she was not.

The nursing home companies appealed, arguing the Federal Arbitration Act (FAA) preempts state laws like those in Illinois and Kentucky that treat wrongful death claims as an independent cause of action. Other states, such as Texas, treat wrongful death claims as "derivative," meaning that descendants would be constrained by arbitration agreements. The Supreme Court previously ruled that West Virginia nursing home residents' families may be forced to arbitrate their negligence claims against the nursing homes because the state public policy that prevents arbitration agreements from being enforced in negligence and personal injury cases is preempted by the FAA (*Marmet Health Care Center v. Brown,* U.S., Nos. 11–391 and 11–394, Feb. 21, 2012).

The U.S. Supreme Court refused to hear both cases without comment (*Beverly Enterprises v. Ping,* U.S., No. 12-652, April 22, 2013 and *SSC Odin Operating Co*., U.S., No. 12-1012, April 22, 2013).

Nursing Home Resident's Attorney Son Liable for His Mother's Unpaid Debt

A Connecticut trial court rules that an attorney who admitted his mother to a nursing home, signed the admissions agreement as a responsible party, and then transferred money to himself and did not provide information for her Medicaid application is liable to the nursing home for his mother's unpaid debt up to the amount of income that was in his control. *Athena Holdings, LLC v. Marcus* (Conn. Super. Ct., No. DBDCV106003581, April 23, 2013).

Attorney Jan Marcus admitted his mother to a nursing home and signed the admission agreement as the responsible party. The agreement stated that the responsible party did not personally guarantee payment, but it did require the responsible party to provide all information necessary to apply for Medicaid and to use the resident's funds to pay for care. Mr. Marcus did not turn over his mother's Social Security payments to the nursing home and he transferred his mother's funds to himself. He applied for Medicaid on behalf of his mother, but the application was denied because he did not provide enough information.

After Mr. Marcus's mother died, the nursing home sued him for breach of contract. It sought $47,444 in costs, arguing Mr. Marcus should be responsible for the full cost of his mother's care.

The Connecticut Superior Court enters judgment for the nursing home in the amount of $15,778. The court rules that while Mr. Marcus may be liable for his mother's income and assets that were in his control and that were not transferred to the nursing home, Mr. Marcus is not liable for the remaining balance of his mother's debt because the admissions agreement clearly states that the responsible party does not guarantee payment of debt.

DO YOU KNOW…

How Annuities can be used as Asset Protection Tools?

Brendan Daly spoke to a standing room only crowd at the recent Financial Planner's Association Conference at the Aqua Turf Club. He detailed how to use annuities as a new Medicaid planning strategy for married couples. There was lots of interest and many questions about how and when to use this new tool.

If you missed this informative presentation, you can still get access to the key things you need to know before recommending annuities to your senior clients. Visit our web site **www.ctseniorlaw.com** and download the following information from the **Medicare and Medicaid section** on the left side under **Elder Law***:*

- Rules of Medicaid eligibility
- How transfers affect Medicaid eligibility
- Annuities: a good way for married couples to protect assets.

WHAT'S NEW

Brendan Daly received the 2013 National Academy of Elder Law Attorneys' (NAELA) Outstanding Chapter Member Award for his outstanding initiative and leadership on behalf of the Connecticut Chapter.

Carmine Perri was elected Vice President of CT NAELA, 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.

CzepigaDaly was awarded New Business of the Year by the Berlin Economic Development Commission.

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