SMART PLANNER

Useful Tips for a Better Tomorrow

October 2012

May Someone with Dementia Sign a Will?

Millions of people are affected by dementia, and unfortunately many of them do not have all their estate planning affairs in order before the symptoms start. If you or a loved one has dementia, it may not be too late to sign a will or other documents, but certain criteria must be met to ensure that the signer is mentally competent.

In order for a will to be valid, the person signing must have "testamentary capacity," which means he or she must understand the implications of what is being signed. Simply because you have a form of mental illness or disease does not mean that you automatically lack the required mental capacity. As long as you have periods of lucidity, you may still be competent to sign a will.

Generally, you are considered mentally competent to sign a will if the following criteria are met:

- You understand the nature and extent of your property, which means you know what you own and how much it is worth.
- You remember and understand who your relatives and descendants are and are able to articulate who should inherit your property.
- You understand what a will is and how it disposes of property.
- You understand how all these things relate to each other and come together to form a plan.

Family members may contest the will if they are unhappy with the distributions and believe you lacked mental capacity to sign it. If a will is found to be invalid, a prior will may be reinstated or the estate may pass through the state's intestacy laws (as if no will existed). To prevent a will contest, we can help make it as clear as possible that the person signing the will is competent.

Critical Numbers…

Twenty percent of baby boomers have established a financial plan for their parents' elder care needs, and 42% have paid medical costs for parents and other relatives, according to a survey by US Trust. Six percent of boomers have bought long-term care insurance for their parents, while 30% are paying for long-term care for parents or relatives.

WATCH OUT!

Ex-spouse does not mean ex-beneficiary

If you are divorced, make sure you have changed all of your beneficiary designations. If your ex-spouse is still named as beneficiary, it could mean that, after your death, they will reap the benefits of your insurance policy, annuity contract, pension, profit-sharing plan or other contractual arrangements providing for payment to the spouse. Don't make this mistake – update your beneficiaries now.

IN THIS ISSUE

**We are pleased to include this article by Sharon Pope, our affiliate partner.*

CZEPIGA DALY LLC

ESTATE PLANNING, PROBATE & ELDER LAW

It's Time. Plan Today for Your Tomorrow.

BOOMER BULLETIN . . .

Managing Inherited Wealth

Preparing heirs may be the best way to ensure your legacy

An elderly Latin American woman bequeathed a hefty stock portfolio to a favorite nephew in the US. When she passed on, the nephew received the stocks – and a 35% tax bill. This was a result of poor estate planning. These stocks were only subject to US estate tax because they were for US-based companies. If the stocks had been issued by foreign companies – or owned differently – the nephew wouldn't have had to bear any US estate tax on the inheritance.

This little-known "anomaly" of US tax laws has unnecessarily diminished many inheritances. And it speaks to the complicated nature of succession planning – both in making sure the maximum amount of assets are passed on to the intended heirs, and in preparing those heirs to handle their sudden wealth in a responsible way.

Being a Beneficiary

Financial education is imperative. Parents hope that if they are 'hit by a bus' their kids will be financially safe – and that means having sufficient financial acumen to "audit" the responsible beneficiaries, and to lead financially sustainable satisfying lives.

Even when beneficiaries are prepared and financially savvy, it is wise to set up trusts so the inheritance does not come all at once. One way is to structure their trusts so the inheritance is handed out in thirds. This allows the recipient to make some mistakes with the first third – and perhaps a portion of the second – but hopefully by then, they have learned by their earlier mistakes and do not blow the entire inheritance.

Many believe that a trustee shouldn't be an institution, but an individual from the same economic background as the heir, who will be reasonable about releasing money, such as when an heir wants to send his or her own child to summer camp. You don't want a trustee who is so tight that you can't get any of the money.

Another key in preparing beneficiaries is to be open about the succession process. The worst thing you can do is keep secrets. If you are leaving your business to one of the kids, it shouldn't come as a shock to his or her siblings once you are gone. Talk to the kids and say, 'Your brother Jimmy has worked in the business for 15 years so I am giving it to him, but you will be treated fairly and get other assets equal to the value of the business.' You'd be amazed how often family members stop talking to one another because of surprises in the will.

Clarity is Key

For these reasons, the disposition of all valuables should be specified, lest the surprises create deep family scars. When you're gone, you don't want to have people fight over who gets the diamond rings. Keep those things in a letter outside the will.

In succession planning, it's important to think through all the possibilities. For example, wealthy families often move around from one country to another, which can have vast differences in laws and legal system. For example, unlike the US, some countries restrict how succession money can be spent. And since laws in some areas can change rapidly, succession plans should be reviewed at least once every three years.

Good succession planning also acknowledges that laws are not the only changes that can affect inheritances. With 50% of marriages ending in divorce, one should consider a plan that ensures a beneficiary's inheritance will not be co-mingled with their other marital assets.

Excerpt from a WSJ article written by Joe Mullich

What's Up With Us

Meet Attorney Amy Orlando

Amy Orlando

Amy has been counseling clients about their estate planning issues since 2005. Our clients and their families appreciate her calm, empathetic and down-to-earth manner, especially when they're feeling the burden of the complexities of estate planning and Medicaid. Amy enjoys sharing her expansive knowledge and helps others to understand the intricacies of elder law by speaking to groups in the community. She is also an advocate for the elderly and has represented many clients who have been financially exploited.

Veterans' and Surviving Spouse's Benefits: **Aid and Attendance Pension**

*By Sharon L. Pope**

Can a veteran or a surviving spouse get additional payments for long term care in an assisted living facility, in a nursing home, or at home with a home care program? Yes, if you fulfill the service, disability, and financial requirements you may be eligible for the Aid and Attendance pension program. If you qualify, you will get an additional monthly check.

Service Requirement

Veterans must have served 90 days or more of continuous service with at least 1 day in wartime and have been discharged under "Honorable" or "General under honorable" conditions. There are several forms which need to be prepared. Forms are available at the website: www.va.gov, however, the best practice would be to obtain experienced help from a Veteran's organization or attorney.

Disability Requirements

The benefit is available to any veteran and surviving spouse who requires the "aid and attendance" of another person in order to avoid the hazards of his or her daily life. A person in an assisted-living facility is presumed to be in need of aid and attendance.

Financial Requirements

ASSET OR NET WORTH LIMITS The VA considers financial assets. Generally an applicant's net worth should be under $80,000, married or single, not counting the home, vehicle, or term life insurance. Factors to take into consideration are the age (and life expectancy) of the applicant and the costs of care.

INCOME LIMITS If all of the above requirements are met, the next question is about countable income. What is the Veteran's income? The VA will calculate your countable monthly income and if it falls below their standards for 2012, the VA will send you the difference between your countable income and their income standard. In 2012, the income standard for a single Veteran is $1,704.00 per month; couples $2,019.00. The surviving spouse income standard in 2012 is $1,094.00. These figures change annually in January based on the increase for social security.

**We will be merging with Sharon Pope at the end of 2013 and are grateful for her contribution to our newsletter.*

Q & A

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

Q I want to give my children and grandkids gifts each year to reduce my estate, but don't want to pay taxes. How can I do this?

A An increased gift tax credit, historically low interest rates and slow-to-recover asset values make now one of the best times to gift assets to your loved ones.

Currently the annual gift tax exclusion is $13,000 per person. So, you can give that amount to each of your children without having to file a federal gift tax return. **If you're married you can give even more**. A husband and wife can gift $26,000 per child and, if they wish, to each grandchild. This gift is not tax deductible to you but is also not taxable for income tax purposes to the recipient.

For gifts above the $13,000, a gift tax return may be required but each person also has a $5 million dollar lifetime exemption before they must begin to pay tax.

If you want to help out a loved one and reduce your estate at the same time, we can work together to find a perfect strategy for you.

Note: In 2013, the gift tax annual exclusion will be adjusted for inflation and will increase to $14,000.

Wellness Corner

DOES YOUR CANE MAKE YOU FEEL OLDER?

For starters, you need to know that you probably look younger walking with a cane than without one. Without some assistive device, you may walk bent over, drag your feet or walk more slowly.

Remember that using a cane often addresses the concern about maintaining balance. The injuries that result from these falls (over 90% of hip fractures are caused by falling) often result in long-term impairment in functioning, nursing home admissions and even death, according to the Center for Disease Control.

Think about how you define "old."

Feeling old is often defined by the number of years we have lived. What you can and cannot do often conveys youth or "old age." A cane is associated with not being able to walk without some support. For some, that may conjure memories of grandparents looking older in the 70's with gray hair, poor posture, unstable gait and living life on the periphery. In general, that image does not match the realities of 2012. And it certainly may not match your reality!

The challenge is to have a strong enough sense of self that overrides public perceptions and defy memories that don't apply to today's world. That's what aging is about in this decade – redefining what it means to get older.

…by attending one of our Adult Ed classes

"My Neighbor Has a Living Trust, Should I?"
Newington High School, November 7
Plainville High School, November 8

"Strategies to Prevent You from Going Broke in a Nursing Home"
Newington High School, November 14
Plainville High School, November 15
Rockville High School, November 19

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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Special Insert

SMART PLANNER

For Legal, Financial and Healthcare Professionals

October 2012

CzepigaDaly Wins Federal Court Annuity Case

Decision affects many who have been denied Medicaid coverage

Federal Court of Appeals Upholds District Court Determination that Connecticut's Treatment of Medicaid Compliant Annuities is Unconstitutional

A landmark decision was made this month that will affect seniors throughout the state of Connecticut who are applying for Medicaid. The Federal Court of Appeals ruled that in the case Lopes v. Starkowski, the Department of Social Services was in violation of federal law when they tried to force a wife to sell her annuity in order for her husband to become eligible for Medicaid.

Mr. Lopes has been confined to a nursing home since November, 2008. The Lopes had $166,000 more of countable assets than were permitted by Medicaid law. In order to qualify her husband for Medicaid, Mrs. Lopes purchased a non-assignable single premium immediate annuity for $166,000 in order to provide her with a fixed monthly income. That annuity purchase also reduced the Lopes family's countable assets to less than the $109,560 that the state of Connecticut allows in order to qualify for Medicaid.

The State of Connecticut contended that Mrs. Lopes should sell the annuity's income stream for a lump sum, even though the annuity was irrevocable and such a sale would have netted only about $98,000. Essentially the State said the income stream was a saleable asset that would place Mrs. Lopes over the financial Medicaid limit of $109,560.

In the suit we filed in federal district court, Mrs. Lopes contended that federal law exempts her annuity's fixed income in determining her husband's eligibility for Medicaid benefits. In other words, what had been $166,000 of countable assets was, through the purchase of an immediate payout annuity that complied with federal Medicaid rules, converted to exempt income for Mrs. Lopes' sole benefit.

The federal district court upheld Mrs. Lope's position and ruled in February 2010 that the purchase by Mrs. Lopes of an

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Although the court's decision in Lopes is a welcome development, this is not a panacea for everyone.

First, the decision is primarily helpful to married couples when one of the spouses is in a nursing home and there has been little or no advanced planning. Secondly, the non-institutionalized spouse (the one not in a nursing home) should be healthy and have a substantial life expectancy. Lastly, and of the most concern, the purchase of an annuity must meet strict standards prescribed by federal law; most attorneys and annuity companies are not familiar with all of these requirements.

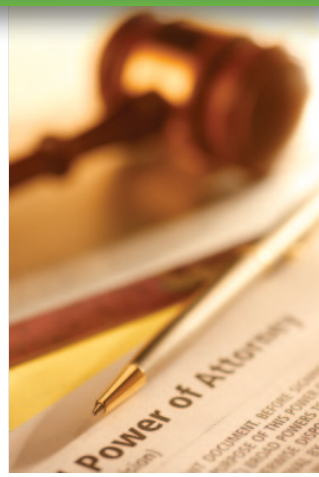
The attorneys at CzepigaDaly have been successful in using annuities and have now won two federal court decisions in using this strategy. Additionally, the Department of Social Services granted Medicaid benefits for one of our clients who purchased a $430,000 annuity. Call us, we know how to make this work for you!

Group Claims Filial Responsibility Laws Will Save on Medicaid Costs

A conservative policy group has released an issue brief proposing that states begin enforcing filial responsibility laws in order to reduce long-term care costs. Thirty states have filial responsibility laws that require adult children to care for their indigent parents. The National Center for Policy Analysis (NCPA) claims that if these statutes are enforced, adult children would have to reimburse the state programs that provided care for their indigent parents.

Filial responsibility laws have traditionally not been enforced, possibly because federal law prohibits state Medicaid programs from looking at the finances of anyone other than the applicant and the applicant's spouse. NCPA, a group whose goal is to develop and promote private alternatives to government regulation and control, cites a 1983 report by the Health Care Financing Administration that says enforcing these statutes would have reduced Medicaid long-term care spending by $25 million, and argues that today the figure would be much higher.

Power of Attorney Not Liable for Breach of Nursing Home Resident's Contract



A Vermont trial court rules that the power of attorney for a nursing home resident whose Medicaid application was denied is not liable for breach of contract because she signed the agreement as a power of attorney and not as a responsible party. *Green Mountain Nursing Home v. Carlisle* (Vt. Sup. Ct., No. S1568-10 CnC, July 9, 2012).

Jason Carlisle and his wife, Amie, had power of attorney over Jason's father, John. Right before moving into a nursing home, John gifted the Carlisles $9,417.32. The nursing home agreement stated that the responsible party would ensure that John applied for Medicaid and paid his bills. Amie signed the agreement as a "Party Acting For Resident," not as a "Responsible Party." The Carlisles paid the nursing home for one month and applied for Medicaid on John's behalf, but the application was denied, leaving an unpaid bill.

The nursing home sued the Carlisles for the unpaid portion of John's bill, asserting breach of contract and fraudulent conveyance. Both parties asked for summary judgment.

The Vermont Superior Court grants summary judgment to the Carlisles on the breach of contract claim. The court holds that the plain language of the contract makes clear that the Carlisles were not the responsible party under the contract. According to court, "as an agent acting for a disclosed principal, Amie was not a party to the contract between [the nursing home] and John." The court denies summary judgment on the fraudulent conveyance claim, holding that whether the Carlisles committed fraud is a factual question.

Editor's Note: Because it is illegal for a nursing home to request a Guaranty as a condition of admission, the industry invented the role of the "Responsible Party"– essentially a "back door" guarantee if the Responsible Party fails to apply for and obtain Medicaid benefits for the nursing home resident. The court decisions, however, are all over the map on this issue. It is best NOT to sign a nursing home admission agreement as a Responsible Party and always advisable to have them consult with us before signing the contract even as a Power of Attorney.

CzepigaDaly Wins Lopes Case

(continued from front)

immediate payout annuity that prohibited the assignment or alienation of the income stream payable to her, did not violate Medicaid rules and that Mrs. Lopes could not be forced to sell the income stream for a discount on the secondary market. The judge ruled as unconstitutional Connecticut's policy of trying to force a healthy spouse (whose husband or wife is in a nursing home) to sell the income stream produced by the healthy spouse's annuity. The State of Connecticut appealed the district court opinion to the Second Circuit Federal Court of Appeals in New York.

On October 2nd, the federal Court of Appeals resoundingly sided with Mrs. Lopes. According to the Court of Appeals, the language of the annuity made the annuity and its income stream non-assignable. Mrs. Lopes had no legal right to sell the income stream. Furthermore, it was irrelevant that the annuity was purchased just prior to applying for Medicaid benefits.

The court was additionally influenced by the views, which it solicited on its own, of the U.S. Department of Health and Human Services, the author of the Medicaid program. HHS urged the Court of Appeals to accept Mrs. Lopes' position and that of the federal District Court. HHS took the position that Medicaid regulations do not require Mrs. Lopes to renegotiate or breach her annuity contract and that her retention of the annuity payments as her income was consistent with Medicaid's primary purposes to provide health care to the indigent and to protect community spouses from impoverishment.

This case is significant because when one spouse enters a nursing home, the other spouse often has more assets than what the state of Connecticut allows to qualify for Medicaid. Now the healthy spouse is free to purchase an annuity to provide monthly income and still obtain the benefits of Medicaid coverage for the ill spouse.

UPCOMING EVENT

November 27th: CTCPA, Paul Czepiga presenting a Medicaid Update at the Tax 360 Conference in Rocky Hill

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