SMART PLANNER

Useful Tips for a Better Tomorrow

Spring 2017

How to Leave Money to an Irresponsible Child: Inheritance and Financial Responsibility

As parents, we all want what's best for our children, but we also realize that they don't always know what's best for them.

When considering how your financial assets will be distributed upon your death, **assessing your children's level of financial responsibility is a critical component of making effective choices** and creating a solution for a lasting legacy.

The truth is, developing good money management skills can take an entire lifetime.

There's so much to learn about not only the intricacies of complex financial affairs, but also about personal strengths and weaknesses when it comes to investing, spending, and saving.

Financial maturity is something that must be earned. This is why 77% of people who win a lottery or come into some other kind of cash windfall end up broke within a few years. They just don't know how to handle their newfound wealth.

For parents trying to figure out the best way to provide for their children, this question of financial responsibility is a big one. While a Will ostensibly ensures that your assets are distributed according to your wishes, a trust is a better option in many scenarios.

How does a trust work?

A trust allows you more control over how and when an inheritance is distributed to a child by placing a trustee, sometimes a trusted friend or relative, in charge of managing the assets. The trustee could also be the attorney who drafted the trust.

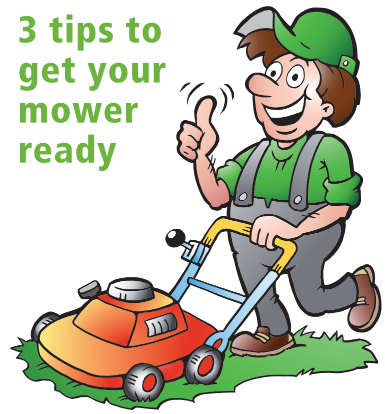
There are a variety of ways to structure a trust depending on your specific situation:

1. **ANNUITIES:** This is a trust that distributes the inheritance over time based on a payment schedule that you deem appropriate. Typically, payments are made in equal amounts each year.
2. **INCENTIVE TRUST:** This term (sometimes called "Pay for Performance") applies to any trust in which there are conditions the child must meet in order to "earn" distributions. Many parents tie distributions to the attainment of educational goals, but you can be as creative as you like. Some parents choose to connect distributions to more personal life goals or philanthropic service.
3. **AGE-BASED TRUST:** A more traditional route to take is to set distributions based on the child reaching certain ages. (Just remember, age does not automatically equal wisdom!)

(continued on page 2)

SPRING TUNE-UP:

3 tips to get your mower ready



1. Visit a shop pro If you did no Fall maintenance before putting your mower away, now's catch-up time. Remove the bolt holding the blade in place and bring the blade to an outdoor-gear dealer, who'll sharpen it. You probably want at least 2 other items while you're there: a new filter and new spark plug.

2. Change gas and oil Any old non-stabilized fuel left in the tank should be siphoned out. Drain last year's oil by tipping the mower toward its dipstick side. Refill to the line on the dipstick.

3. Reinstall blade, filter and spark plug Replace the filter when the mower is upright again. If you have a tractor mower, replace or clean the carburetor filter and fully recharge the batter. With any mower, refill the gas tank with fresh fuel and add stabilizer, which minimizes internal oxidation.

Nursing Home Resident Rights: Know Them, Stand Up for Them

By Carmine Perri

If you or your loved one is in a nursing home, you need to know your rights! Once you understand what they are, you can better stand up for them.

Just as you are protected in your own home by a set of laws, residents of nursing homes are protected by a Code of Federal Regulations. The "Code" ensures that residents' right are promoted and protected.

Unfortunately, there are times when this does not happen. And when this is the case, you need to make your voice heard.

But first, you must know your rights. Take a look below at some key resident rights that are often challenged. And let us know if you think they are being violated – we can help you.

◆ Access to records

When residents or their advocates request records pertaining to treatment, sometimes they are told to put their request in writing and that it will take days to get their records. In fact, **the nursing home is obligated by law to provide residents with access to all their records** within 24 hours.

◆ Filing complaints

Residents are supposed to be given a statement explaining that they or their advocates may file a complaint about their facility with the Connecticut Department of Health concerning abuse, neglect, misappropriation of resident property and non-compliance with advance directives. **Facilities must provide residents with the name, address and telephone number of the DSS Long-term Care Ombudsman where complaints can be filed.** Don't be shy – make your complaints known!

◆ Free from restraint or mistreatment

Residents have the right to be free from any physical or chemical restraints for purposes of discipline or convenience that are not required to treat the resident's physical symptoms. They also will be free from verbal, sexual, physical, and mental abuse, corporal punishment and involuntary seclusion. The facility must ensure that all violations are reported immediately and evidence must be shown that all alleged violations are thoroughly investigated and that corrective action is taken to prevent future abuses.

◆ Freedom to choose

Residents should be given the freedom to choose activities, schedules and health care consistent with his or her interests, assessments, and plans of care. They must be able to interact with members of the community, including family and friends, both inside and outside the facility. Some facilities limit visitations but this is contrary to the law. **Visitors should have open and free access to residents at all times.**

Long-term care facilities are, in fact, the home of their residents. They should be safe, clean and comfortable environments where residents can use their own belongings, count on clean linens, have private closet space, experience comfortable lighting, temperature and noise levels. This is not a lot to ask.

Regardless of whether the facility tells you or not, nursing home residents have many rights. But they don't mean a thing unless you or your loved one stands-up for them. Know your rights – you'll be in a better position to make your voice heard if and when your rights are violated. ■

I inherited an IRA from my father. Is it true that I must take required minimum distributions (RMD) even though I'm just 50 years old? I thought I didn't have to take distributions until age 70½.

For an IRA you fund yourself, you're right, RMDs start the year you reach age 70 ½. But the rules are different for IRAs inherited by anyone but the owner's spouse. You have 2 choices: Clean out the account by the end of the fifth calendar year following the year your father died. Or, by the end of the year following the year of his death, begin taking RMDs based on the life expectancy as set for your age in IRS Publication 590-B. If you start RMDs when you're 51, for example, your first RMD would be the balance in the account at the end of the previous year divided by 33.3.

Financial Responsibility *(continued from front)*

❹ INCOME-MATCHING TRUST: In this case, annual distributions are made in an amount matching the child's earned income or a percentage of that income.

What about assets that are not monetary?

Alternatively, you can provide for your children via non-monetary assets. For instance, you might leave a home in a trust, ensuring that your child always has the comfort and stability of having a place to live. (To ensure your child can't sell the house for cash, put the house in a trust that requires the money from any sale to be reinvested in another house.)

You can also earmark your child's inheritance to be used for the purpose of paying off either student loans or a mortgage. (Just be sure to double check for any early payment penalties.)

There is no one-size-fits-all solution when it comes to leaving money to your kids. At the end of the day, you need to carefully consider their needs in the context of their personality and level of maturity. Sometimes, you might have to apply a little tough love, but they will thank you for it in the long run. ■

3 Excuses for Skipping Life Insurance (And Why They Don't Hold Up)

We spend our lives doing everything we can to provide for our loved ones. We work hard to make sure they have the material, emotional, and financial resources they need to feel secure and cared for.

We do whatever we can to help them achieve their goals.

But, life can be unpredictable; and you can't plan for every potential eventuality. **Life insurance provides a means by which you can preserve your family members' well-being and ensure their ability to pursue their dreams.**

And yet, many people choose not to purchase life insurance. Go figure!

The most common reasons people give to support their decision to forego the protection of a life insurance policy are that:

1. It's too expensive
2. It's not their most pressing priority
3. They already have coverage through their employer

But each of these reasons is rife with common misconceptions.

Too expensive?

Though cost is a legitimate concern, many people find that the actual monthly fees are much lower than they had expected, especially if they consider "term" rather than "whole" life insurance.

While insurance providers tend to promote the lifetime benefits of whole policies, policies that provide coverage either for a limited number of years or up to a certain age are more cost effective and often a more sensible fit.

Not a priority?

And, while there are certainly many financial priorities vying for our attention at different stages in our lives, life insurance should be considered important even though it may not seem urgent.

Just imagine the potential financial hardships your family might face without the support of a life insurance policy. From final expenses to mortgage payments and debt relief, life insurance can make a huge difference in how easily your loved ones are able to manage certain aspects of their lives in the wake of a loss.

Is your employer policy sufficient?

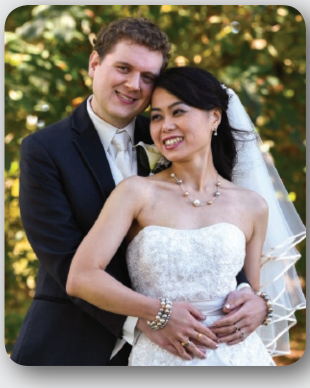
Finally, though many people do have some form of group life insurance through their employers, such benefits are typically not sufficient and are terminated when the insured leaves his or her job.

In most cases, employer-based life insurance provides coverage that is equal to only one or two times the individual's annual salary. This amount is woefully below the amount usually recommended by financial planners of at least ten times your annual salary. Even though employees typically have the option to purchase supplemental insurance to augment the modest policy offered by their employer, it's usually wiser to purchase a separate policy that is not tied to employment status.

Determining which policy type and benefit amount are best for you depends on many variables including age, health, and financial responsibilities. For instance, a young couple just starting a family has financial considerations that are very different from an empty nester whose children are already independent and have established their own households. Likewise, a person without any dependents will have different insurance needs than someone whose children are preparing for college.

Professionals can help you navigate the various life insurance policy types and features to sort out which option is most appropriate for your situation. Then you can rest easier knowing that your family will be well cared for no matter what happens.

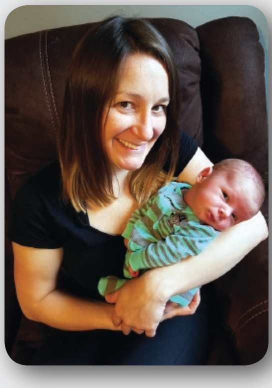
WHAT'S UP WITH US



Peter and Mandy

The pool of eligible bachelor attorneys just got smaller! Our very own Peter Smith got hitched this spring to his lovely wife Mandy. Join us in congratulating the newlyweds!

Our office administrator, Liz Brodeur, and her husband Adam recently welcomed their second son into the world. Nathan James is happy, healthy, and hard at work keeping mom and dad exhausted as he learns that ever-so-important skill of sleeping through the night.



Liz and Nathan

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

May 10 ..... **Planning when Faced with a Dementia Diagnosis** — Chatterly's, Torrington

May 10 ..... **Estate Planning** — Lockwood Lodge at Masonicare, Newtown

May 16 ..... **Planning for Long-Term Care** — Monroe Senior Center

May 24 ..... **Legal & Financial Planning for a Loved One with Dementia** — Arden Courts, Avon

June 21 ..... **Planning for Long-Term Care** — Farmington Bank, South Windsor

June 21 ..... **Veteran's Benefits** — Farmington Senior Center

June 27 ..... **Planning for Long Term Care** — Wethersfield Senior Center

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Special Insert For Legal, Financial and Healthcare Professionals

Estate Taxes: What Does The Future Hold?

By Paul T. Czepiga

Well, well, well, what do you know. Congress once again might tinker with the estate tax.

This is something they are wont to do with new administrations and when certain legislators want to make a statement.

Given the recently failed "repeal and replace" of the Affordable Care Act and what appears to be President Trump's next focus—income tax reform—it is hard to tell whether estate tax concerns will get sufficient attention for any legislative changes. Or whether sufficient votes could be mustered for any changes to the estate tax.

Remember, that in addition to the federal estate tax, there is also a federal generation skipping transfer tax and a federal gift tax. Connected to the estate tax is the concept of 'basis step up'—meaning that inherited assets receive a step up in tax basis to fair market value at date of death. This means that unrealized appreciation up to the date of death escapes income tax upon sale of the asset.

Some estate tax revision proposals link a reduction or elimination of estate tax to a reduction or elimination of step up. This translates to: sure, my estate tax may be reduced/eliminated, but my heirs will have to pay more capital gains tax when they sell the inherited asset because their step up in basis was reduced/eliminated.

But here is what is in the hopper. The following summary is from the National Law Review.

H.R. 451: Known as the "Permanently Repeal the Estate Tax Act of 2017," this bill is the shortest. It states simply that for "decedents dying after December 31, 2016, Chapter 11 of the Internal Revenue Code of 1986 is repealed." This operates to repeal the estate tax, but to leave the gift tax and generation-skipping transfer tax in place.

H.R. 198: Called the "Death Tax Repeal Act of 2017," this bill goes much further and repeals Subtitle B of the Internal Revenue Code, which includes estate, gift and generation-skipping transfer tax. The bill also states that it would be effective upon enactment, rather than retroactive.

H.R. 631 and **S.B. 205:** Both of these bills have multiple co-sponsors and each of them is known as (you guessed it) the "Death Tax Repeal Act of 2017." These bills are somewhat longer and repeal the estate and generation-skipping transfer taxes, but retain the gift tax at a top rate of 35 percent. They also maintain the taxation of existing QDOTs for 10 years. Finally, each of these bills is effective upon enactment.

Regardless of whether any estate tax changes are made, it is always a good idea to review your estate plan with a Connecticut estate planning attorney every 3-5 years to accommodate any changes in your family or financial situation, or any change in the lives of your beneficiaries – for example: death, divorce, substance abuse…even lottery winnings!

Medicaid Applicant's Purchase of Life Insurance Policy is Transfer for Less Than Market Value

An Illinois appeals court rules that a Medicaid applicant's purchase of a life insurance policy was a transfer for less than fair market value because the applicant did not receive any benefit from the policy. *Moore v. State of Illinois* (Ill. App. Ct., 4th Dist., No. 4-16-0414, April 11, 2017).

Nursing home resident Elda Buckley applied for Medicaid. On the same day, she purchased a whole life insurance policy for $15,000 that named Christine Moore as the beneficiary. The state approved Ms. Buckley's Medicaid application, but it determined that the purchase of the life insurance policy was a transfer for less than fair market value and imposed a penalty period.

Ms. Buckley appealed, arguing that she purchased the life insurance policy for fair market value, so the transfer should not be subject to a penalty period. The state and the trial court affirmed the penalty period. Ms. Buckley appealed.

The Illinois Court of Appeal, 4th District, affirms, holding that the purchase of the life insurance policy was a transfer for less than fair market value because Ms. Buckley did not receive the benefit of the policy. According to the court, the "apparent purpose of [Ms.] Buckley's purchase of the insurance policy, of which she would receive none of the proceeds, was to shelter assets from Medicaid while ensuring [Ms.] Moore received the benefits of her assets." *[elderlawanswers.com]*

2nd Circuit Affirms Continuation of Medicaid Benefits in Decanting Case

A federal appeals court affirms a lower court's ruling that a beneficiary's interest in two predecessor trusts were not available resources for purposes of the Connecticut Medicaid plan. *Simonsen v. Bremby* (2d Cir., No. 16-204-cv, Feb. 15, 2017).

Dawn Simonsen, a quadriplegic on a ventilator, was the beneficiary of two predecessor trusts that the trustee decanted into two supplemental needs trusts. The Connecticut Department of Social Services (DSS) determined that the two decanted trusts were accessible resources for purposes of determining Ms. Simonsen's eligibility for Medicaid, denied her Medicaid benefits and penalized her for decanting the trusts into clearly inaccessible supplemental needs trusts. Ms. Simonsen appealed DSS's decision to the federal district court.

The district court looked to the Social Security Administration's Program Operations Manual System (POMS) to determine that the original trusts were not countable resources. The court *preliminarily enjoined DSS* from imposing a penalty and from denying Ms. Simonsen Medicaid benefits. The DSS, through Commissioner Bremby, appealed the district court's ruling.

On appeal to the circuit court, DSS argued that the predecessor trusts were "support trusts," recognizable under Connecticut law as an available resource for the beneficiary. The DSS relied on language in those trusts that directed the trustee to liberally use the funds for the benefit of Ms. Simonsen's "health, maintenance in reasonable comfort, education and best interests". Ms. Simonsen argued that the existence of a spendthrift clause in the original trusts exempted them as countable resources under the SSI program.

The U.S. Court of Appeals for the Second Circuit affirms the district court's ruling. The court finds that the language in the predecessor trusts granted Ms. Simonsen no authority to control the trust principal, either on her own or by ordering actions by the trustee. Guided by the POMS, the court concludes that "even if the Predecessor Trusts do constitute 'support trusts,' as DSS argues, Simonsen remains 'legally restricted from using' the trust funds except as disbursed to her in the discretion of the trustee." That language is sufficient grounds to uphold the lower court's decision. The order granting preliminary injunctive relief is affirmed.

[elderlawanswers.com]

CzepigaDalyPope worked with attorney Rene Reixach in representing the plaintiff in this matter.

Surprising Tax Breaks…

Is cat food deductible?

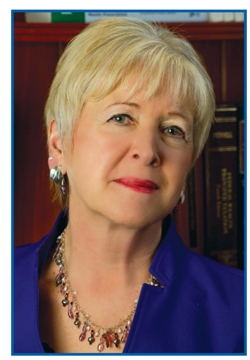
Yes, under certain conditions the cost cat food might be considered a legitimate deductible expense. A junkyard owner bought cat food to attract local stray cats in order to drive away mice and rats. He claimed it as a business expense and it was approved by the IRS. The average house cat will likely not qualify because the cat would need to perform some task associated with the upkeep of a business.

Can lawn care expenses be claimed as a deduction?

Yes, they might, but your house will have to be your workplace and the state of your lawn would have to have some relevance to the performance of your business. A sole proprietor successfully deducted lawn care expenses as business expenses because he met his clients in his home office.

UPCOMING EVENTS

At its May 16th annual meeting, the Hartford County Bar Association will present Sharon Pope its President's Award for Excellence.



This honor is for her exemplifying the highest traditions of the legal profession, her significant services to the community, and excellence and civility in her practice.

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