SMART PLANNER

Useful Tips for a Better Tomorrow   Summer 2015

DIVORCE AND ESTATE PLANNING:
5 Steps You Should Take Now

When you got married you hoped for the best, but unfortunately, things didn't turn out the way you expected.

Whether your divorce in Connecticut is final or you're just beginning the process, it's a good idea to take a hard look at your estate planning documents. Make sure they reflect your current wishes.

For example, in better times, you may have named your spouse as your power of attorney, health care representative and the sole beneficiary of your assets. But do you still want your ex- or soon-to-be ex-spouse to have access to your financial accounts, make health care decisions on your behalf or inherit all your assets? It's highly unlikely.

You may not have a Will. But **did you know that when there's no Will, the State of Connecticut decides who inherits your assets?** If you die while your divorce is still pending, your spouse could inherit all of your assets.

Whether your divorce is amicable or acrimonious, here are some important estate planning steps to take, with the help of a Connecticut estate planning attorney:

If you don't already have a Will, this is your #1 priority! Creating a Will puts you in charge of what happens to your assets when you die.

1. **If you have a Will, take it to an estate planning attorney** to have it updated. Your ex-spouse is automatically removed from your Will when you divorce, but you shouldn't rely on this. You should rewrite it to reflect your changed family and any new arrangements you want to put into effect.
2. **Decide who you want to be your power of attorney,** assuming it will no longer be your spouse. Remember, this person has the same control over your finances as you do, so be sure it's someone you completely trust.
3. **Update your health care representative designation.** If you become incapacitated, you want to make sure that the right person is making decisions on your behalf.
4. **Update your beneficiary or beneficiaries.** Decide with fresh eyes how you would like your assets to be distributed when you die.

The court has wide discretion over how assets are divided in divorce matters, taking into consideration all the variables. But you don't have to wait until your divorce decree is signed to get your Will and other estate planning documents in order.

Making plans for your post-divorce life isn't easy, but taking charge will give you peace of mind during this major transition. Finish your divorce once and for all.

GOOD TO KNOW

Here are some surprising kitchen tips you may find helpful

Spaghetti as a candle lighter. When you don't have long matches for lighting multiple candles, grab a stick of dry spaghetti. It'll do the same job, allowing you to reach a candle set in a tall glass jar or to light a whole birthday cake without burning your fingers.

Coffee filters as screen wipes. Clean lint or fingerprints on your phone or tablet's sensitive touch screen using a paper coffee filter. It'll work on a flat-screen TV too.

Aluminum foil as a grease cleaner. Scrunch up a ball of foil and add a small amount of dish soap: You're now ready to tackle stubborn grime on glass pans or oven racks.

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It's Time. Plan Today for Your Tomorrow.

Family Caregivers – Yes, You Can Take a Vacation!

Everyone yearns for time to relax and refresh during the summer months – especially sun-starved New Englanders. But if you're a family caregiver, a 'carefree' vacation may be hard to come by.

If you leave town, who will take your place? If you bring your loved one with you, will your vacation venue be equipped for their special needs?

There's a lot to think about.
But with good planning, you can take a breather from caregiving and give yourself a well-deserved break. Here are some helpful suggestions:

Leaving Your Loved One in Someone Else's Care

In the State of Connecticut, there are three respite programs that will help you to take a break (visit our blog to read an article about these programs). These programs, offered by the Connecticut Alzheimer's Association, Connecticut Area Agencies on Aging and the National Family Caregiver Support Program offer daytime or overnight services like –

- Adult day care
- Adult foster care
- Home health aide
- Short-term nursing home placement
- Homemaker/companion
- Skilled nursing
- Self-directed care
- Cognitive training

Depending on the program, respite services are available for caregivers caring for older adults, adults with dementia or anyone with disabilities. Even grandparents or other relatives caring for children under the age of 18 can get help.

Traveling With a Loved One

If you're planning to take a vacation with your loved one, here are some tips to make your time away more enjoyable for all.

Call Ahead

If you will be flying to your destination, be sure to call ahead and let the airlines know about your accessibility needs. This also goes for your hotel accommodations. You want to know ahead of time that your room will be appropriate for your loved ones needs. If you plan to rent a car, be sure to reserve one that is large enough, as you may be bringing bulky items like a wheelchair or walker.

Set a Realistic Pace

Having realistic expectations is key. For some planned activities, you may want to check with your physician ahead of time and get medical clearances. Building in rest breaks and downtime will help your loved one manage their energy level and enjoy the activities they can participate in. Cruise vacations and resorts are excellent options, offering a wide range of recreation options for all family members.

Do Your Research

You don't want to find out when you get to your vacation venue that the nearest medical facility, pharmacy or grocery store is 50 miles away. Be sure to do your research so you know what to expect.

Extra Prescriptions and Supplies

Be sure to bring backup medical or personal care supplies such as incontinence supplies or support stockings – things that may not be available at your destination. If you are flying, keep in mind that airlines may have regulations regarding medications. It's a good idea to keep them in their original container, and call ahead to find out if you need any special certifications to carry your loved ones medications on board. Your physician can let you know if any medications are prone to interactions with the sun or certain foods.

Traveling with a ready supply of snacks and water is an excellent idea for all travelers!

Caregiving Support

You may be the primary caregiver, but if possible, plan to have others pitch in so you can be off-duty during your vacation. Here are some options:

- Bring a travel aide with you
- Hire a caregiver when you get there
- Look into adult day care near your vacation venue
- Ask other family members to share responsibilities

Changes and unfamiliar situations can be stressful for your loved one. Maintaining normal routines as much as possible and bringing familiar objects will help orient your loved one to the new environment.

Life can be complicated for family caregivers even on the best of days. Planning a vacation may take some work, but the well-earned rest and refreshment you enjoy will be worth the extra effort.

Be Careful: Transferring Assets to Qualify for Medicaid in Connecticut May Backfire

If you want Medicaid in Connecticut to pay for your long-term care, one thing you should NOT to do is give away your assets – unless you think you won't need Medicaid within the next five years.

When you apply for Medicaid for long-term care in either a nursing home or in the community, you are required to provide financial records for the past five years. This is called the "look back" period.

Care and comfort only

The rule of thumb is, you can spend your money on your own care and comfort, but you can't give it away to qualify for Medicaid.

For instance, if you did any of these things, they are considered acceptable:

- paid off your debts
- made your downstairs bathroom into a full bathroom
- replaced your old clunker with a more reliable car
- prepaid for your funeral expenses

But, **if you transferred ownership of your home to your children within the past five years, that would disqualify you from being eligible for Medicaid for a certain period of time** called the "penalty period." And if you really need the help, that would be a time of great uncertainty.

Say your home at the time of the transfer was valued at $240,000 and you paid it off long ago. The state would divide $240,000 by the monthly cost of nursing home care – about $12,000 per month – and you would need to satisfy a penalty period of 20 months before you would be eligible for Medicaid.

That's the way it is whether you transferred the house yesterday, or one day shy of five years. Conversely, if the transfer occurred at least five years and one day ago, it is not counted as a transfer.

There are many legitimate, legal ways to transfer assets to your heirs and still be eligible for Medicaid if and when the time comes. The best thing you can do to provide for your own needs and still have a legacy is to plan ahead…which means it would be wise to start your planning now.

Medicaid planning is complicated, and the application process is long and tiring. If a nursing facility is in the near future for you or for a loved one, you should come to see us soon. We may be able to help you preserve your money so it doesn't all go to the nursing home. We may also be able to help you apply and become eligible for Medicaid.

WHAT'S UP WITH US

Taylor Domi, who has been an intern with us for the past year, has joined the firm's Litigation Department and will work as an Associate Attorney after taking the July Bar Exam. She recently graduated in the top of her class from Quinnipiac University School of Law.

Tracy Zagata, our Medicaid paralegal, gets our utmost admiration for completing the rainy Boston Marathon in less than 4 hours AND running 150 miles in a 72-hour timed race!

I am updating the beneficiaries of my traditional IRA. The bank where I hold my IRA says it's easier to name my estate as the beneficiary rather than listing my four children. Because my Will says my kids will divide my entire estate, they'll get the money anyway. Does this make sense?

No. It is a terrible idea. Under the IRS rules, your estate is not considered a "designated beneficiary" because it has no life expectancy. Your children will lose the opportunity to stretch distributions over their lifetimes based on their own life expectancies. And that means they forfeit the chance for the accounts to grow tax deferred over many years.

Leaving the IRA to your estate severely restricts the heirs' distribution choices. If you die before the date of your first required distribution, the IRA must be liquidated within 5 years – and your kids will owe tax when the assets are paid out. If you die after your required distribution date your beneficiaries will have to use your life expectancy to calculate their distributions, which will likely lead to a faster payout and bigger tax bills than if they were allowed to use their own life expectancies. Bottom line: **Name each child as a beneficiary and find a new IRA custodian.**

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

> ***"Some people are old at 18 and some people are young at 90.***
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> ***Time is a concept that humans created."***
>
> *– Yoko Ono*

July 15	**Paying for Long-Term Care** Manchester Community College
September 16	**Estate Planning: Don't Make These Mistakes!** Simsbury Adult Ed • Simsbury High School
September 21	**Estate Planning: Don't Make These Mistakes!** Bloomfield Adult Ed • Bloomfield High School
September 29	**Estate Planning: Don't Make These Mistakes!** Farmington Library
September 30	**Estate Planning: Don't Make These Mistakes!** Vernon Adult Ed • Vernon Middle School
September 30	**Paying for Long-Term Care** Wethersfield High School

To see our Adult Education schedule, go to www.ctseniorlaw.com.

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Smart Planner

Summer 2015

Special Insert For Legal, Financial and Healthcare Professionals

Warning Signs for the Financial Advisor of the Elderly: *Don't put your practice (or your client) in Jeopardy*

By Paul T. Czepiga

You have had a long time client who is now of advanced age, let's call her Jane. Jane has a trust account for her revocable trust; she is the sole trustee. She also has a personal account that has some Stanley Black and Decker stock she purchased over her many years of working there and that she has sentimental ties to.

Although you had been meeting annually with Jane to discuss her portfolio's investment performance and her investment objectives, she begged off on last year's meeting for health reasons.

When you last met with Jane, you noticed that she was becoming less focused and was overly deferential to any suggestion you make. Sound familiar?

When the children get involved

Her son Jim accompanied Jane to the last meeting you had with her 2 years ago. He is one of her 4 children. You have learned a bit about each child over your years of being Jane's financial advisor and she has oftentimes mentioned how she was disappointed in all the potential Jim had that just never materialized.

You also know that Jane has, on occasion, liquidated some of her holdings to finance some scheme of Jim's or to provide him with financial assistance. Although you don't know Jim well, he seems to be concerned about this mother, but he also seems to have investment ideas that are contrary to what you believe is appropriate for Jane.

(Continued on back)

SSA Clarifies its Position on Court-Established (d)(4)(A) Trusts

After a rash of criticism from advocates claiming that the Social Security Administration (SSA) was unfairly refusing to allow court-established (d)(4)(A) trusts to qualify as exempt resources for Supplemental Security Income (SSI) purposes, the SSA has issued an Administrative Message clarifying its policy regarding these trusts and ordering officials to approve the trusts if they meet the other (d)(4)(A) requirements and were not created prior to the order issued by the court.

Apparently based on the SSA's Trust Training Fact Guide, some SSA offices have recently been refusing to approve court-established (d)(4)(A) trusts because they were not created by a court "order." Since people with disabilities are unable to establish their own (d)(4)(A) trusts, if the SSA's position were uniformly applied it would mean that no court could ever establish a (d)(4)(A) trust unless it did so on its own initiative.

The SSA has now issued an Administrative Message, first published by Illinois attorney and Social Security expert Avram L. Sacks on the NAELA members listserv, explaining that the rejection of court-established (4)(d)(A) trusts is inappropriate when the trust was not finalized prior to the court's action. The message states that "[i]n the case of a special needs trust established through the actions of a court, the creation of the trust must be required by a court order for the exception in section 1917(d)(4)(A) of the Act to apply. That is the special needs trust exception can be met when courts approve petitions and establish trusts by court order, so long as the creation of the trust has not been completed before, the order is issued by the court. Court approval of an already created special needs trust is not sufficient for the trust to qualify for the exception. The court must specifically either establish the trust or order the establishment of the trust."

The message goes on to give four clarifying examples of situations where trusts may or may not fit these criteria. In the first example, an SSI beneficiary's sister petitions the court to create and order the funding of a trust to hold the beneficiary's inheritance. The sister provides a draft trust to the court. When the court issues an order approving the petition and ordering the creation of the trust, it will meet the requirements of SI 01120.203B.1.f. In the second example, a judge orders the creation of a trust to hold a settlement, and the trust document lists the settlement as the trust's original corpus. This trust also passes muster with the SSA. In the two negative examples, the SSA claims that when a court approves a trust that has already been created ahead of time, or when a court amends a defective trust with a nunc pro tunc order to make the amendment retroactive to the date the trust was originally created, the trusts will not qualify for the special needs trust exception.

(elderlawanswers.com)

Warning Signs for the Financial Advisor

(Continued from front)

One day you receive correspondence from an attorney you don't know. In the envelope are three documents, all dated the same day last week. They are:

1. A Durable Power of Attorney signed by Jane naming Jim as her agent.
2. An Affidavit signed by Jim stating that, under the terms of his mother's revocable trust, he becomes the trustee should his mother become incapable of serving as the trustee and the affidavit states that his mother is incapable and that he has assumed the role of trustee, replacing his mother.
3. Instructions, signed by Jim as agent for his mother under the POA, requesting that the Stanley stock be sold and that the proceeds be reinvested in two fairly new technology based companies.

The POA conveys broad powers, including the power to buy and sell stock, and is effective immediately (unlike a Springing Power of Attorney that is effective only when a person is incapacitated). Both documents are witnessed and notarized.

What do you do? You want to be helpful, of course, but should you rely on these documents? Any red flags?

LET'S EXAMINE THESE FACTS FURTHER.

1. **The Stanley stock.** Jane has sentimental ties to this stock and, although you have prudently suggested she diversify her holdings, she has been steadfast in holding on to this stock. What changed? And what do you do about the fact that the stock has a very low basis? It would be acceptable to liquidate a bit of the stock each year, but **is Jim, or Jane, aware of the large taxable long term capital gain that will be realized upon a sale of the stock?**
2. **The two technology companies.** Jane preferred to invest in companies she had some familiarity with and know how they operated. She preferred "brick and mortar" companies and utility stocks. Whenever you suggested anything like Apple, Facebook, Google, or Microsoft, she politely declined. What are you to make of these two new companies?
3. **You are puzzled as to why Jane was able to sign a POA naming Jim as her agent, but yet on the same day Jim signed a document stating his mother was incapacitated** to the point where she could not serve as trustee of her own trust. It seems that there is a discrepancy between what the two documents are indicating about Jane. IF Jane was OK to sign a POA, couldn't she just as well have signed a Resignation as trustee, thereby allowing her son Jim to automatically become the successor?
4. The attorney. You know lots of local, and good, attorneys, and you know personally Jane's attorney of many years, but who is this new attorney? **Why did Jane not use the same attorney she has been using for many, many years?**
5. Jim. Is he acting in his mother's best interest? Is he the "right" child to take over the investment responsibilities of his mother? **Are the other 3 children aware of what is going on?**

WHAT CAN YOU DO?

1. You can call Jane and, if need be, go out to her home and visit her. This will allow you to lay eyes on her and confirm for yourself what abilities she has/or does not have. But this visit may leave you still in a quandary because often times, in matters like these, we are dealing in shades of grey—everything is not either black or white.
2. What do your in-house rules or procedures dictate? Do you have in-house counsel? Must you honor a POA? Can you ask Jim to have his mother conserved?
3. You can call the "new" attorney, but the chances are the new attorney will not speak to you due to client confidentiality concerns, but you might gleam something useful from the conversation such as whether the new attorney was also the son's attorney.
4. You can call Jane's longtime attorney. This attorney can speak to you about when he last saw Jane, whether he knows the "new" attorney, what is his take on the new documents and the like. You can encourage him to call Jane directly to ask what is going on, similarly to you, yourself, calling Jane.
5. You can call the son and make inquiry of him about all of the issues raised above.
6. You can ask for medical confirmation about Jane's inability to serve as trustee, but, assuming you receive it, such a confirmation throws into question Jane's capacity to have signed a POA.

There is no roadmap in such situations. You just have to do your due diligence and make a decision about whether to honor some or all or none of the three documents. And all of this will take time, which probably is not a problem unless the overall market, and the Stanley stock and the two technology stocks, are on the move with Stanley going down and the technology stocks going up.

Oh, what a tangled web we weave. Just make sure you are not the fly that gets stuck in it and devoured.

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