SMART PLANNER

Useful Tips for a Better Tomorrow

Summer 2017

Will Your Kids be Responsible for Your Debt?

For most of us, debt is a way of life. We finance our cars and homes, we use our credit cards to pay for holiday gifts and vacations. We borrow money to send our kids to college. Even if we use credit wisely, we still may end up with a pile of debt at the end of our lives.

So who is responsible for paying it?

That depends on the situation.

- **If you die with no assets, and all of your credit accounts were solely owned, your creditors have nothing to collect from. Your debt dies with you.**
- **If, however, you and your spouse were co-owners of your credit card accounts, he or she would still be responsible for paying the bills after your death.**

Your debts have to be paid off before distribution of your estate to your heirs. Say at the time of your death you have $30,000 in solely owned credit card debt and $20,000 in your individual checking account. The credit card companies would get the $20,000 and your beneficiaries would get nothing. But at least they are not on the hook for the rest of the bill.

What if you owned a home at the time of your death? Here are a few scenarios of how things might play out:

- **If you owned a home jointly with your spouse**, it would automatically pass to him or her upon your death.
- **If you were the sole owner**, and your liquid assets weren't adequate to cover your debts, your executor would have to sell the home to satisfy creditors' claims on the estate.
- **If you were still making mortgage payments at the time of your death**, the bank or banks involved would have first dibs unless your heirs took over the loans, which is not always possible or desirable – especially if the value of the house is less than the mortgage.

What about student loans?

Federal student loans are canceled when the borrower dies. Some private lenders follow this course, but others can legitimately make a claim against the cosigner, usually a parent.

The key consideration regarding debt is ownership: is it jointly owned? Solely owned? Is there a cosigner?

Most of us would like to have enough money to last as long as we do, and maybe have something left for a legacy. Our best advice is to stay out of debt as much as possible, and be aware of the impact debt may have on your estate. A good estate plan factors in all the details and ensures your plans maximize the value of your estate, and minimize your heirs' liabilities. ■

GOOD TO KNOW

YIKES!

If you make any marks on your original Will, such as crossing out or adding something, it may be considered a revocation of the Will. **BE SAFE** – call us when you wish to make changes, we can update your Will properly for you.

Customer Quote:

"I could not have undertaken the responsibilities of executrix without CzepigaDalyPope. I couldn't be more grateful for their empathy and expertise in the difficult, sometimes heartbreaking process of dealing with my mom's estate."

CZEPIGA DALY POPE

Estate Planning | Elder Law | Disability Planning | Probate

It's Time. Plan Today for Your Tomorrow.

Beware of Signing a Nursing Home Agreement

By Carmine Perri

Imagine yourself in this situation: As a favor, you agree to help your spouse's parent get settled into a nursing home.

If you're like most people, you'd be emotionally stressed and feeling a bit guilty. Not exactly the best mindset for absorbing complex information nor for making legally-binding decisions.

But that's exactly what some nursing home admission coordinators encourage people to do when they ask them to sign an admissions agreement while they're at the nursing home for the first time.

This often ends up being a painful mistake. **If you don't completely understand all the content of the agreement before signing it, you could end-up being sued and held financially responsible** for expenses incurred for your loved one's care.

Here's a scenario I have heard from several clients on whose behalf I have advocated after they've been forced into **nursing home litigation**:

Soon after arriving at the nursing home my clients' loved ones get brought to their rooms.

Meanwhile, my clients were ushered into the admissions office where they sat across the desk from the admissions coordinator who has a stack of admissions documents.

This is unnerving for my clients because most often they did not expect to have to deal with any paperwork and especially did not expect to be asked to sign an admissions agreement.

The coordinator typically reviews part of the paperwork, including a section which states that signing as the Responsible Party only means that my clients would be emergency contacts. Several of my clients often have been explicitly told by the admissions coordinator not to worry about being held personally liable if a debt would ever be owed to the facility for the loved one's care.

Unfortunately, the section of the paperwork that reserves the nursing home's right to sue the Responsible Party often is neither discussed nor called-out.

After the nursing home resident for whom my client signed for as Responsible Party dies owing money, my clients are served with a lawsuit by the nursing facility for the outstanding debt which can run into the hundreds of thousands of dollars.

Fighting the lawsuit often involves lengthy litigation and a good deal of stress for the clients I represent —regardless of the outcome.

The bottom line? **Don't sign an admissions agreement without completely understanding it. Avoid signing documents while at the nursing facility; there is no requirement for you to sign them on the spot. Take it home and review it carefully.**

Remember, these documents are written to protect the interests of the nursing home.

If you're unclear about any liabilities you may incur by signing as a Responsible Party, call us right away at (860) 236-7673. ■

Best wishes Barbara!

Congratulations to attorney Barbara Reynolds who began her retirement in June. She leaves her long and impressive law career to jump start a new life in Fredericksburg, Virginia to be nearer to her husband who relocated there 3 years ago in anticipation of Barbara's eventual retirement. Their weekend commuting marriage can now go back to full time status! Barbara has passed the baton to Lynda Arnold, who manages the New Milford office. Lynda wants you to know that she and her New Milford staff look forward to serving you.

I have 529 college savings plans for each of my 3 grandchildren and would like to turn over ownership to their parents. Is that legal, and if so, will there be any tax consequences?

Most 529 plans permit ownership changes, but a few do not. Check with your plan or visit SavingforCollege.com for a helpful state-by-state list (search "ownership change"). If your 529 plans don't allow the change, cashing them out – so the money can be reinvested in a plan with a new owner – would be a taxable distribution. And that would be a major blunder. Instead, it is recommended that you make a tax-free transfer to a state plan that's change-friendly. Once that transfer is done, you could make the switch.

6 WAYS TO KEEP YOUR BRAIN SHARP

Use it or lose is the old adage, and it applies to your brain as well as your body. Consider the alternative – succumbing to Alzheimer's. This may sound draconian, but here are the harsh realities:

- Alzheimer's affected 5.1 million people age 65 and older in 2015.
- By 2025 that number will reach 7.1 million – a whopping 40 percent increase!
- By 2050, unless there's a cure, the number may triple compared to 2015 – to 16 million.

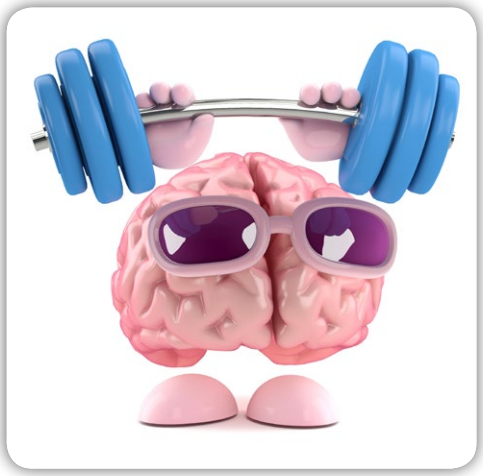
Happily, we may be able to do something about it.

A study cited in the *Wall Street Journal* article, "Our Amazingly Plastic Brains," says it's not a foregone conclusion that you'll get Alzheimer's, even if you have a genetic predisposition towards getting it. "Environmental factors interact with…genetic makeup to eventually allow **or deny** dementia a foothold," according to the article.

The environmental factors we can control are:

1. How well we take care of our overall health, and
2. How much and how often we keep our brains stimulated.

Just as our bodies benefit when we push them by exercising regularly, our brains respond positively when we break the routine and challenge them. "It turns out that our brains, like our bodies in general, are far more likely to waste away from underuse



than to wear down from overuse," according to article.

So what are some ways we can deny giving Alzheimer's or other forms of dementia a foothold? Here's a list of things you can do to keep your brain sharp as you age, compiled from Harvard, Everyday Health, Prevention and others:

❶ Keep your numbers under control
- Blood sugar
- Cholesterol levels
- Blood pressure

❷ Adopt good health habits
- Stay (or get) physically active
- Eat a nutritious diet – vegetables, fish, avoid saturated fats
- Maintain a healthy weight
- Don't smoke
- Don't drink excessively

❸ Learn new skills
- Painting
- Playing a musical instrument
- Learning a foreign language

❹ Play challenging games
- Crossword puzzles
- Math puzzles
- Mah Jong
- Sudoku

❺ Increase social interaction
- Book group
- Volunteering
- Part-time job
- Adopt a pet

❻ Manage stress
- Focus on one task at a time
- Meditation
- Yoga
- Exercise
- Take a nap
- Keep your thoughts happy
- Get regular sleep
- Set realistic expectations
- Take breaks during the day
- Express feelings and don't bottle them up
- Balance work and leisure time

Start small and build from there. We may not like getting older, but it beats the alternative, and wouldn't you prefer to be one of the folks who people refer to as "sharp as a tack?"

So what are you waiting for? Get out your chessboard, take up Yoga, or adopt a pet. Your brain will thank you. ■

WHAT'S UP WITH US

Look at how many of our attorneys have been recognized as Connecticut Super Lawyers, (some for multiple years).
Congratulations to Paul Czepiga (9 years), Brendan Daly (7 years), Carmine Perri (7 years), Sharon Pope and Barbara Reynolds (11 years).

Paul Czepiga

Brendan Daly

Carmine Perri

Sharon Pope

Barbara Reynolds

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

August 19….Estate Planning and Probate – Village Gate of Farmington

September 19…Planning for Long-Term Care – Masonicare, Newington

September 20…Estate Planning – Southbury Senior Center

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

CZEPIGA DALY POPE

Estate Planning | Elder Law | Disability Planning | Probate

Berlin ◆ New Milford ◆ Simsbury ◆ South Windsor

(860) 236-7673 | www.ctseniorlaw.com | Email: info@ctseniorlaw.com

Copyright © 2017 CzepigaDalyPope, LLC
Information contained in this newsletter should not be construed as legal advice, and readers should not act upon any legal information contained in this publication without professional counsel.

SMART PLANNER

Summer 2017

Special Insert For Legal, Financial and Healthcare Professionals

Limit Your Liability AND Reduce Your Estate Taxes: Get a QTIP Trust

By Paul T. Czepiga

Let's set the stage. You are a professional service provider and are concerned about professional liability exposure. Or you are engaged in a business that is high risk and you are worried about being sued.

So your lawyer said put all your assets in your spouse's name.

Well, that generally works. But the solution creates its own problem, which is shown by the following example of a married couple.

Joe and Jane have a combined net worth of $4 million. Joe places all assets in Jane's name, so the balance sheet is $4 million for Jane and $0 for Joe. This solves the liability problem for Joe because Jane is not liable for Joe's debts so, as long as she has all the assets and Joe has nothing, Joe is judgment-proof

So what and where is the problem? It is an estate tax problem.

By way of background, here in Connecticut each spouse has a $2 million exemption from estate taxes and it behooves a married couple to make sure that they can each use their exemption if it's needed to eliminate estate taxes. So let's take a look at a scenario.

If Jane dies first

If Jane dies first, she can leave $2 million in a special type of trust known as a QTIP trust that qualifies for a marital deduction as long as Joe gets all the income for his life—a deduction from her $4 million gross estate in arriving at her taxable estate, which would be $2 million.

The QTIP trust would be protected from Joe's creditors because he was only a beneficiary of the trust—he did not own the assets outright. For that remaining $2 million taxable estate, Jane can place that also in a trust for her husband that is protected from Connecticut tax by her $2 million exemption. No tax if Jane dies first because the QTIP is a deduction for her and the other $2 million is protected by her exemption.

Assuming a nuclear family, both trusts are likely drafted so that the remaining assets of both trusts will pass to the children at Joe's death. But the QTIP trust, because Jane received a deduction for it, means it must be included in Joe's estate, even if Joe was merely the beneficiary.

(continued on back)

Irrevocable Trust Belonging to Medicaid Applicant's Spouse Is Available Asset

A Michigan appeals court rules that assets placed in an irrevocable trust by a Medicaid recipient's spouse are countable assets because the principal in the trust can be paid to spouse. Hegadorn v. Department of Human Services Director (Mich. Ct. App., No. 329508, June 1, 2017); *Lollar v. Department of Human Services Director* (Mich. Ct. App., No. 329511, June 1, 2017); and *Ford v. Department of Health and Human Services* (Mich. Ct. App., No. 331242, June 1, 2017).

Three women entered nursing homes. Their husbands created irrevocable "sole benefit trusts." The trusts allowed the trustee to distribute principal to the husbands as necessary with the expectation that all the resources would be used up during the husbands' lifetimes. A few months later, the women applied for Medicaid. The state determined that the trusts were available assets and denied the applications.

The women appealed, arguing that the trusts were not countable assets because they were for the sole benefit of the husbands. After three trials, two trial courts ruled that the assets in the trust were not available, and the state appealed and the Michigan Court of Appeals decided the cases together.

The Michigan Court of Appeals reverses, holding that the trusts are available assets. The court rules that when states make an initial eligibility determination, "an institutionalized individual's assets includes not only those that he or she has, but also those that his or her spouse has." According to the court, because "there was a 'condition under which the principal could be paid to or on behalf of the person from an irrevocable trust,' the assets in the trusts were properly determined to be countable assets."

[elderlawanswers.com]

Limit Your Liability AND Reduce Your Estate Taxes: Get a QTIP Trust

(continued from front)

As an aside, estate taxes are like income taxes: if someone gets a deduction somewhere (Jane at her death for the QTIP trust), someone must have to pick something up on the other end (Joe will have the remains of the QTIP included in his estate at his death). But Joe has his own $2 million estate tax exemption, so, as long as the remains of the QTIP are less than $2 million, there is no estate tax due at his death. If the QTIP has grown since Jane's passing and has more than $2 million, only the excess over $2 million will be exposed to tax.

Not a bad result. The assets are protected from Joe's creditors and no estate tax is due when either Jane or Joe die.

So you ask again, where and what is the problem?

Answer: What if Joe dies first?

If Joe dies first, which is likely based on life expectancies, he has no need to worry about estate taxes due at his death because he has no estate. Joe gave all his assets to Jane so, when he dies, there is no estate tax.

But then Jane dies later on and she has all of the $4 million. With no spouse to pass the assets to at her death, there is no marital deduction and, consequently, her gross estate is the same as her taxable estate. With a $4 million gross estate and a $2 million estate tax exemption, $2,000,000 will be exposed to Connecticut estate tax resulting in a tax due at her death of about $146,200. Oops.

What we say, at this point, is that by trying to avoid any potential creditors of Joe, we have created an estate tax problem of $146,200 for Jane if her husband dies before her.

The solution is a QTIP

While she is still living, Jane places $2 million into a QTIP trust for Joe. There will not be any gift tax on the assets that are placed in the QTIP Trust. Joe is the sole income beneficiary of the QTIP trust for his lifetime (a requirement of any QTIP Trust) and, if he dies first, the assets then remaining in the QTIP trust will be included in his estate.

BUT, because Joe has a $2 million estate tax exemption of his own, the $2 million of QTIP assets included in his estate for estate tax purposes are protected from any estate tax up to the $2 million amount. And while the assets are in the QTIP they are protected from Joe's creditors.

Now it does not matter who dies 1st or 2nd because both spouses will be able to use their $2 million estate tax exemptions. But, you ask, when Joe dies, do the assets in the QTIP still go to the children? And is Jane left to survive on only her own $2 million, a situation that she might find unacceptable?

The answer is no. Jane can draft the QTIP to provide that if Joe dies first, the assets remain in further trust for HER benefit until she dies, and then the assets will pass to the children. Jane can draft the QTIP trust to provide her, after Joe's death, with income and principal. She will, in fact, have the full benefit of all $4 million.

Creditor protection and no estate tax – no matter what the order of deaths may be.

We can be Trustee for Your Clients with Special Needs

In choosing a trustee to administer your client's special needs trust (SNT), it is imperative he or she selects someone with a high level of expertise. Preserving and maximizing benefits, personal advocacy, investing funds and financial accountability are all part of ensuring a safe and secure quality of life for your client.

We want you to know that in addition to drafting SNTs, **our in-house trust department has a solid track record managing SNT assets**. We also serve as counsel to trustees, since the laws and public policies are always changing. Give us a call when your clients need help choosing a trustee.

CZEPIGA DALY POPE

Estate Planning | Elder Law | Disability Planning | Probate

BERLIN ◆ NEW MILFORD ◆ SIMSBURY ◆ SOUTH WINDSOR

(860) 236-7673

www.ctseniorlaw.com

Email: info@ctseniorlaw.com

Copyright © 2017 CzepigaDalyPope LLC
Information contained in this newsletter should not be construed as legal advice, and readers should not act upon any legal information contained in this publication without professional counsel.