SMART PLANNER

Useful Tips for a Better Tomorrow

Summer 2018

Why an 18-Year-Old Needs an Estate Plan

By Lara Schneider-Bomzer

Your child or grandchild is turning 18 – a milestone to celebrate! She may have just graduated high school and is getting ready to head off to college, or she may be moving into the workforce and getting a job.

Either way, it is the beginning of a new and more independent adult life.

With this rite of passage comes new challenges and responsibilities. And one of them, you may be surprised, should be to prepare estate planning documents.

While many of you may have a Power of Attorney, an Appointment of a Health Care Representative and a Last Will and Testament as part of your estate plan, how many of your children and/or grandchildren have one as well?

Believe it or not, these **legal documents are important to have whether you are 18 or 85.**

1. **If your child is in a car accident and unable to communicate with doctors**, the doctors are not legally bound to speak to you about medical decisions, including end of life decision making, without a signed Appointment of a Health Care Representative.
2. **If your child has a job and has bank accounts in her name**, a Power of Attorney would allow someone she chooses to step into her shoes should she need help with her banking or be unable to make financial decisions.
3. **As her assets grow**, a Last Will and Testament would allow her to designate who the beneficiaries of her estate would be. These documents can be updated over time to address changes in your child's life, such as marriage and children.

So while you should rejoice and celebrate in your child or grandchild's rite of passage upon turning 18, give a gift that probably won't be given by anyone else — remind or schedule her to meet with us to create an estate plan. ■

GOOD TO KNOW

Wouldn't it be great if you discovered you have money you didn't know about?

Financial accounts deemed to be abandoned typically are turned over to the state. Check for unclaimed accounts at www.missingmoney.com. And protect yourself by keeping your accounts active, such as cashing dividend checks, keeping contact info up to date and voting proxies.

The only person you are destined to become is the person you decide to be.

— Ralph Waldo Emerson

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It's Time. Plan Today for Your Tomorrow.

Do Not Apply for Medicaid Until You Read This

No one looks forward to applying for Medicaid. It's a complex and grueling process, the rules are always changing, and there are so many things that can go wrong.

Unfortunately, as is often the case, there are companies that are only too willing to take advantage of this situation. These companies claim to be able to process your Medicaid application at a low cost, but these non-attorneys may cause their customers great harm.

These companies sometimes put Medicaid applicants at risk for a number of serious issues including denial of eligibility, severe tax liability, loss of spousal assets and other situations that may threaten the applicant's life savings and other assets.

Often it is the nursing home that refers Medicaid applicants to these companies, so there is the very real possibility of a conflict of interest.

Protecting Medicaid applicants

The trend of non-attorneys participating in Medicaid planning has become so concerning that several states including Florida, New Jersey, Ohio and Tennessee, have taken steps to protect applicants from non-attorney providers. These states have determined that non-attorneys who provide any services beyond simple preparation of the Medicaid application will be guilty of the unlicensed practice of law.

Connecticut has not yet taken such measures, but we are hopeful that they will follow the example set by other states. In the meantime, it's important for consumers to educate themselves fully about their options and understand the inherent risks.

Are you really saving money?

Many people decide to give these companies a try because they believe they will save money, but—in the long run—that is hardly ever the case. While it might seem like you're saving money, only a qualified elder law attorney provides the expertise, advocacy, and representation that you need to ensure that your assets are protected and you are able to steer clear of any costly pitfalls.

The truth is that applying for Medicaid involves a lot more than mere paperwork. According to the order published by the Florida Supreme Court in 2015, the overall process of Medicaid planning includes:

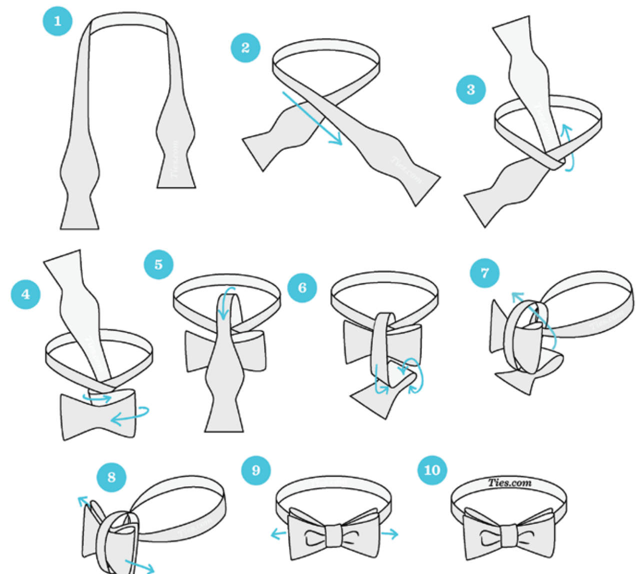
- Assessing all the facts related to your situation (including personal, financial, familial, and historical)
- Applying those facts to the current laws governing Medicaid
- Developing a plan to structure or spend assets in compliance with the law (or planning to reverse past actions to minimize legal consequences)
- Drafting legal documents associated with the plan
- Providing assistance in plan execution

Most importantly, elder law attorneys are authorized to provide legal advice *and* representation, and they must advocate in their client's best interests.

As you can see, working with a non-attorney rather than an elder law attorney is a choice that is, as the saying goes, penny wise and pound foolish. There is just too much at stake to gamble on the hope that everything will go smoothly.

How to Tie a Bow Tie

1. *Start with the bow tie lying face up. Adjust the bow tie so right side is shorter than the left. The end on the left will be referred to as A and the end on the right will be referred to as B.*
2. *Move A to the right side, across B.*
3. *Bring A under B and up through the neck loop.*
4. *At the joint, fold B towards the right and then towards the left to create a the bow shape.*
5. *Bring A straight down over the middle of the bow shape that was made with B.*
6. *Fold A back towards the chest and pinch the fold.*
7. *Push the pinched end (A) through the loop behind B.*
8. *Pull on the folded parts of the bow to tighten.*
9. *Adjust until balanced on both sides.*



The Last Thing Mom and Dad Would Have Wanted

By E. Jennifer Reale

"This is the last thing Mom and Dad would have wanted" – one of the most common sentences I hear when representing clients in contested probate litigation.

When a Will or a trust or even the actions of a trustee are challenged, there often is what we call an extensive discovery, which brings to light personal information that you'd rather not make public.

Depending on how a case develops, financial and medical records are frequently discussed in open court and submitted as part of court pleadings, which are public record. Although attorneys as well as self-represented parties must redact personal identifiable information such as your loved one's social security number and birthdate, private information is still revealed, including his or her physical and mental condition, assets and spending habits.

So what can you do?

One alternative is alternative dispute resolution (ADR). ADR provides a private and closed-door alternative to an open court trial. Available ADR options include mediation and arbitration.

1. **Mediation:** Mediation is, essentially, an assisted negotiation. The mediator is often a retired judge or attorney who has significant experience handling the type of cases you are mediating. Although there is no guarantee that mediation will resolve a dispute, mediations are often successful even if prior informal negotiations failed.
2. **Arbitration:** Arbitration is a mini-trial behind closed doors. The parties select the arbitrator who serves as the judge. After the parties present their evidence and arguments, the arbitrator makes a decision. Depending on what the parties agreed upon, the arbitrator's decision is either binding or non-binding.

If the arbitration is binding, a court may only set aside the arbitrator's decision in some extreme circumstances. If an arbitration is non-binding, any party who is unsatisfied with the arbitrator's decision may move forward with trial in the Probate or Superior Court. Despite this, just like mediation, non-binding arbitration can still be useful because it often provides a reality check to unreasonable parties.

This arbitration option provides some protection to all parties from the often harsh all-or-nothing results of trial.

So what's the catch?

If you participate in mediation or non-binding arbitration there is no guarantee that the ADR will resolve the matter. In addition, you cannot force the other side to agree to an ADR. Most attorneys, however, will recommend to their respective clients mediation or non-binding arbitration due to the lower cost and faster resolution. Similarly, judges will often encourage parties to participate in mediation.

I don't have an attorney, can I still participate in an alternative dispute resolution?

Yes. Just like in any court proceedings, there is no rule against a person being self-represented in an ADR. Keep in mind that the Rules of Professional Conduct allow attorneys to limit their representation of a client to an ADR proceeding. In other words, if cost is a concern, you may hire an attorney for the limited purpose of arranging and representing you in an ADR proceeding. If your intent is to only hire an attorney for this limited purpose, make sure you communicate this to the attorney at the beginning of your conversation.

If you are involved in contested probate litigation and would like to consider an alternative dispute resolution option, call us today and we'll assist of you. ■

Both my husband and I were receiving Social Security benefits when he died earlier this year. Do I need to apply for survivor benefits, or will I get them automatically?

It depends. If you were receiving a spousal benefit based on your husband's earnings record, you should automatically receive the higher survivor benefit once Social Security is notified of his death. But if you're receiving benefits on your own record, you'll need to file for survivor benefits.

Can my adult children inherit my Roth IRA and enjoy tax-free withdrawals?

Yes. That's one of the great things about Roths. Unlike traditional IRAs, from which withdrawals by heirs are fully taxable, as long as 5 years have passed since you opened your first Roth IRA, your heirs can withdraw 100% of the funds with no tax or penalty, regardless of their age. If less time has passed, all contributions and rollovers can be withdrawn tax- and penalty-free. But if your heirs dip into earnings (which come out last), that amount will be taxed.

7/13 ......What You Should Know About Estate Planning
– VNA Community Healthcare, Guilford

8/15 ......Special Needs Planning and ABLE accounts
– Walnut Hill Community Church, Bethel

8/15 ......What You Should Know About Estate Planning
– Middlewoods of Farmington

8/16 ......What You Should Know About Estate Planning
– Village at South Farms, Middletown

8/23 ......Planning for Long-Term Care – Village at South Farms, Middletown

8/30 ......Estate & Gift Taxes – Village at South Farms, Middletown

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Smart Planner

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Special Insert For Legal, Financial and Healthcare Professionals

Connecticut Governor Approves Estate Tax Changes

By Paul T. Czepiga

We wrote not too long ago about some Connecticut estate tax changes that occurred due to legislation passed in October 2017. That legislation tied the Connecticut gift and estate tax exemption to the federal exemption amount.

The federal exemption amount was, at the time that Connecticut tied it self to it, $5.49 million. Unexpectedly in December 2017, just two months after Connecticut's change, as part of President Trump's tax overhaul, the federal exemption amount suddenly increased to $11.18 million.

Connecticut did not know it was tying itself to what turned out to be a very generous exemption.

So as not to take too much of a tax hit, Connecticut passed legislation on May 31, 2018 changing its just-passed exemption amounts.

Here is the 'old' law that was passed in October 2017:

For a married couple the amount doubles to $22.4 million

As a result of legislation Connecticut passed in October 2017, the Connecticut estate tax exemption ***was*** set to increase to:

- $2.6 million in 2018
- $3.6 million in 2019

The federal exemption amount in 2020 and thereafter (currently $11.18 million but indexed for inflation)

The new exemption

As a result of legislation Connecticut passed on May 31, 2018, the Connecticut estate tax exemption has ***now*** changed to the following:

- $2.6 million in 2018
- $3.6 million in 2019
- $5.1 million in 2020
- $7.1 million in 2021
- $9.1 million in 2022

The federal exemption amount in 2023 and thereafter (currently $11.18 million but indexed for inflation)

Here is an overlooked fact:

The federal estate tax exemption in 2026 and beyond, according to the law that was passed in December 2017 by the Federal Congress, will revert to where it is was in 2017. It will drop from roughly $11 million to roughly $5.5 million. You get only a temporary reprieve.

IRS and States to Fight Over Income Tax Deductions for State and Local Taxes

States, including Connecticut, are looking for loopholes to soften the impact of a **new $10,000 cap on the state and local tax deduction** also known as SALT. And the IRS wants to put a stop to local governments using creative workarounds.

In the meantime, in response to the reform, Connecticut legislature passed a new law making several state and local changes. Two of its provisions are designed as workarounds to SALT:

> The first provision is a **new entity-level income tax on most pass-through businesses that is offset by a state personal or corporation income tax credit** for the entity's members. Because entity-level taxes remain deductible at the federal level, pass-through businesses will be able to claim this new state tax as a deductible expense against their federal taxes and pass along the benefit of the deduction to their members.
>
> The second provision is that **municipalities will be allowed to provide a property tax credit to eligible taxpayers who make voluntary payments to municipally-approved nonprofits** (i.e. community supporting organization) and is designed to allow taxpayers that make these payment to claim a federal contribution deduction for the donation to the nonprofit.

But the IRS, in Notice 2018-54, published May 23, 2018, stated it intends to propose regulations addressing the federal income tax treatment of transfers to funds controlled by state and local governments (or other state-specified transferees) that the transferor can treat in whole or in part as satisfying state and local tax obligations.

The proposed regulations will make clear that the requirements of the Internal Revenue Code, informed by substance-over-form principles, govern the federal income tax treatment of such transfers. The proposed regulations will assist taxpayers in understanding the relationship between the federal charitable contribution deduction and the new statutory limitation on the deduction for state and local tax payments.

The SALT wars have begun! Stayed tuned to see how it plays out.

Wife who did not probate husband's Will can proceed with legal malpractice claim against attorney who did not sign Will

Reversing a lower court, an Indiana appeals court rules that an attorney who failed to sign a client's Will as a witness was not entitled to summary judgment in a legal malpractice claim by the client's wife because the wife did not need to probate the Will in order to prove damages. *Davey v. Boston* (Ind. Ct. App., No. 89A01-1712-PL-2955, May 30, 2018).

Bruce and Elaine Davey hired attorney Richard Boston to draft mutual Wills, leaving their estates to each other. Mr. Boston was supposed to sign Mr. Davey's Will as an attesting witness, but he did not do so. After Mr. Davey died, Mrs. Davey could not find his original Will. Mr. Boston provided her with a photocopy, but when she saw it did not contain Mr. Boston's signature, she did not submit it for probate. Mr. Davey's estate was administered as intestate, and Mrs. Davey received only half of the estate.

Mrs. Davey sued Mr. Boston for legal malpractice. Mr. Boston argued that Mrs. Davey broke the causal chain linking his failure to sign the Will to her damages because she did not attempt to probate the Will as a lost Will. The trial court granted Mr. Boston summary judgment, and Mrs. Davey appealed.

The Indiana Court of Appeals reverses, holding that summary judgment was not appropriate because Mrs. Davey did nothing wrong by failing to probate the Will. According to the court, any "attempt to probate the Will would have been fruitless" because "while the original [W]ill was, indeed, lost, it was also void—and [Mrs. Davey] knew that it was void, because she knew that [Mr.] Boston had failed to sign it."

(elderlawanswers.com)

DID YOU KNOW?

We offer trustee services for your clients with special needs

In addition to drafting special needs trusts, we can serve as your client's trustee. Our trust department manages the assets in the trust to preserve and maximize benefits, advocates for your client and invests their trust funds. For more information, call (860) 236-7673.

UPCOMING EVENT: Annuities and Medicaid Planning

Purchasing Single Premium Immediate Annuities (SPIAs) is a good way for married couples to protect assets, but doing it wrong could mean huge penalties for your clients. **Join us on July 11th at the CTCPA in Rocky Hill** to hear Brendan Daly, the architect of the *Lopes v. DSS* case, discuss what you need to know about annuities as it relates to Medicaid planning in Connecticut. To register, go to www.ctseniorlaw.com/spia.

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