

## ESTATE PLANNING ADVISOR

### Protecting Your Home from Staggering Long-Term Care Costs

Many of our clients want to keep their home or vacation home in the family. We put much of our life savings and effort into buying and maintaining a home. The cost of long-term care, however, looms as a threat to keeping the home in the family. Our clients frequently look to us for a solution to this problem.

Nursing homes cost over \$11,000 per month in Connecticut. Your home is an exempt asset for Medicaid purposes. Yet, if you receive Medicaid to pay for long-term care costs and you or your spouse are not living in your home, the State will require the home to be listed for sale. After you die, the State will lien your home for the cost of your care. The State can foreclose on its lien to recoup the cost of care.

One of the advance planning techniques we use to completely remove the home from the Medicaid equation involves transferring the home to a trust. A trust is an arrangement where a Trustee holds the property for the good of family members. It is an irrevocable transfer of your home for the benefit of your children. You retain no interest in the Trust as beneficiary. One or more of your children manage the property as Trustee. The Trust is not recorded on the land records of any town. You continue to live in your home and pay all of the expenses of the property including real estate taxes and insurance.

We include grantor trust provisions in the Trust so that when you die, the basis of your home is stepped up to its fair market value. When your children sell the home, they will pay little or no income taxes on the sale. If you have to sell the home to go to an assisted living facility or nursing home, the grantor trust provisions allow you to use your \$250,000 capital gain exclusion to shelter the gain in value from income taxation.

We include a special power of appointment in the Trust so that you retain the power to change the disposition of your home among your descendants. This provision can be important if one of your children

goes through a nasty divorce or an unforeseen bankruptcy, a child needs public benefits, or you have a falling out with a child.

Transferring your home to a properly drafted trust is preferable to conveying your home outright to your children for many reasons. It protects the home from your children's creditors. If you have many children, it centralizes management of your home in the child you choose to be Trustee. If a child predeceases you, his or her share of your home does not have to go through probate. You retain ultimate control over the inheritance of property through the special power of appointment. Because your children do not own your home, none of them can sue to partition the property by sale and your home will not render your grandchildren ineligible for college financial aid.

This technique does require advance planning. A transfer of your home to a trust within 5 years of applying for Medicaid will result in a penalty equal to the value of your home divided by the average cost of nursing home care. The average cost of care in Connecticut is currently \$11,581. If your home is worth \$231,620, the penalty would be 20 months.

### **Jack Reardon becomes President-Elect of the Connecticut Chapter of NAELA**

**The National Academy of Elder Law Attorneys (NAELA) seeks to improve the quality of legal services provided to seniors and people with special needs. The Academy sponsors continuing legal education programs on Elder Law for attorneys throughout the year, and provides publications and educational materials to its members on a wide range of Elder Law topics. Each state has a Chapter that focuses on the legal issues affecting seniors. On June 4, Jack became the President-elect of the Connecticut Chapter. Congratulations, Jack!**

### A Trust to Protect Your Home (cont'd)

Thus, you would be ineligible for Medicaid for 20 months. If you do not apply for Medicaid for 5 years (the current "look back period"), however, and thereafter you need to apply for Medicaid to pay for long-term care, you would not have to report the transfer on your Medicaid application.

What happens if you need Medicaid within the 5-year look back period? *Medicare* may pay up to the first 100 days of nursing home care. You can use other assets that you have to pay privately for long-term care. If one of your children is financially secure, you can borrow from that child to pay for your care. Ultimately, you may have to sell your home if you have no other way to pay for private care to get beyond 5-year period. But, wouldn't it be worth putting your home in trust in case you could avoid applying for Medicaid for the next 5 years?

These Medicaid rules mean you should not wait until you become frail and disabled to consider transferring your home to a trust for your children. Give yourself a chance to protect your home when you are well, you have financial assets to cover your foreseeable expenses and know you have a good chance of not needing Medicaid for the next 5 years. You and your family will be glad you did.

### ***Windsor* Significantly Improves the Legal Rights of Same Sex Couples**

On June 26, 2013, the US Supreme Court struck down the Defense of Marriage Act (DOMA) in the case of *United States v. Windsor*. The Court ruled that the federal definition of marriage as between one man and one woman is an unconstitutional violation of due process and equal protection principles. Edith Windsor and Thea Spyer wed in Ontario, Canada, in 2007. They lived in New York which recognizes the marriage of same sex couples. Thea died in 2009 and left her entire estate to Edith. As Executor of Thea's estate, Edith claimed that DOMA barred her from claiming the unlimited marital deduction on the estate tax return. Edith, as Executor, paid \$363,053 in estate taxes and sought a refund, which the IRS denied. Edith filed suit in federal district court. The district court and the Second Circuit US Court of Appeals ruled in her favor. The US Dept. of Justice elected to not defend DOMA, but the IRS would not give Edith a refund. Consequently, the Bipartisan Legal Advisory Group (BLAG) of the House of Representatives voted to intervene, which the Court allowed.

The 5 justices in the majority ruled that DOMA forced same-sex couples to live as married in New York but unmarried for federal law purposes. The majority found this differentiation demeaning to same sex couples and their children. It deprived families of practical federal rights, benefits and responsibilities under 1,000+ federal laws. The 4 justices in the minority argued that the Supreme Court should not override our elected officials in Congress and no language in the constitution guaranteed the right to enter into a same-sex marriage.

The Supreme Court did not overturn the laws of the 28 states that do not recognize same sex marriage. On September 16, 2013, in Revenue Ruling 2013-17, the IRS adopted a general rule recognizing a marriage of same-sex individuals in a state whose laws authorize same-sex marriage even if the married couple moves to a state that does not recognize the validity of same-sex marriages.

Because Connecticut recognizes same-sex marriage, same-sex married couples in Connecticut now have the same rights and responsibilities as all other married couples. They can use the same income, gift and estate tax planning techniques that all other married couples have enjoyed. They can apply for the same public benefits that all married couples can.

Legally married same-sex couples must file their 2013 federal income tax return using either the married filing jointly or married filing separately filing status. Same sex couples can apply for refunds through the IRS, but are not required to do so. They would use Form 1040X to amend their income tax returns and Form 843 to amend any estate or gift tax returns. A taxpayer can only amend returns for one or more prior tax years that are still open under the statute of limitations. As a result, refund claims can be filed for tax years 2010, 2011 and 2012.

*Joseph A. Cipparone, Esq., CFP®, wrote the articles in this edition. No taxpayer can avoid tax penalties based on the advice given in this newsletter. This information is for general purposes only and does not constitute legal advice. For specific questions related to your situation, you should consult a qualified attorney.*

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