

You are invited!

to attend the following free seminars held by Doug Fendrick

The course "ALL YOU NEED TO KNOW ABOUT WILLS & TRUSTS" will discuss recent changes to the estate tax laws and the importance of having properly drafted legal documents. The second course entitled "HOW TO PROTECT YOUR ASSETS FROM A NURSING HOME" will discuss the options available to protect your assets in the event you or your family member requires long term care. This course will also include a discussion on the New Medicaid Rules. We suggest that you bring your children or parents as well as friends and family who are interested in learning more.

The workshops will be held at the following locations:

February 6, 2006

ALL YOU NEED TO KNOW

ABOUT WILLS & TRUSTS

7-9 pm

Boscov's Moorestown Mall

February 13, 2006

HOW TO PROTECT YOUR ASSETS

FROM A NURSING HOME

7-9 pm

Boscov's Moorestown Mall

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in order to qualify for Medicaid. Furthermore, the new rules could punish seniors who have helped a grandchild pay for college or given generously to charities. Such transfers now will become suspect if the person later tries to qualify for Medicaid nursing-home care.

The above mentioned provisions, will be enacted only if the House of Representatives votes for them a second time. The House narrowly passed the legislation the first time. Many representatives may not have realized what they were voting for. People who are concerned about the impact of this legislation on them or their loved ones may want to make their concerns known to their Congressional Representatives. For contact information regarding your Congressman, go to www.visi.com/juan/congress/.

Don't forget to checkout Doug's monthly column in the Senior Scoop section of the COURIER POST newspaper. His column appears on the second Monday of each month.

Does your group need a guest speaker?

We are available to speak to your professional, civic, religious or special interest group on various topics (Estate Planning, Elder Law, IRA Planning, Special Needs Trusts, Disability Planning.)

Give our office a call at

(856) 489-8388

to arrange a date and time
or visit our website at
www.fendricklaw.com

YOUR FUTURE DESERVES

FORETHOUGHT

Published by The Law Offices of Douglas A. Fendrick

Winter 2006 / Volume 1

This newsletter is general in nature and designed to bring a variety of legal issues to your attention and is not intended as a substitute for legal advice. Please feel free to make copies of this newsletter for your friends and clients. If you know someone who would like to be added to our mailing list, please call or email us with their name, address and phone number.

To add a friend to our mailing list, please call (856) 489-8388 or visit our website at www.fendricklaw.com

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Stiffer Rules May Apply for Nursing Home Coverage

Every so often, Congress changes the rules of Medicaid eligibility for nursing home coverage. In recent years, the law has been relatively stable, with no changes in Federal law since OBRA 93. On December 19, 2005 the House of Representatives voted to approve legislation that limits the ability of people with homes and other assets to qualify for Medicaid. On December 21, 2005 the Senate also approved the legislation. However, Democrats succeeded in procedural maneuvering that forced a re-vote by the House, now expected to occur on or about February 1, 2006. If the legislation is passed, then it would toughen the rules for individuals who transfer assets in order to become eligible for Medicaid-paid nursing-home care.

If the deficit-reduction legislation is passed then some of the major changes would be as follows:

- All states would look for inappropriate asset transfers during the five (5) years before a Medicaid application, instead of the current three (3) years.
- Equity in homes of nursing home residents exceeding \$500,000 will be countable. States may, however, elect to raise this limit to \$750,000. Currently, a house

of any value is considered a non-countable asset if occupied by a spouse, a child under the age of twenty-one (21) years, or a blind or disabled child.

- Shift the start of the period of ineligibility for individuals who transfer assets within the five (5) year look back period. Under current law if an individual transfers assets within the look back period, then it results in a period of ineligibility. Currently, the period of ineligibility starts on the first day of the month that an asset was transferred. Under the new legislation, the period of ineligibility will not start to run until the Medicaid applicant enters a nursing home and would otherwise be eligible for Medicaid coverage. In other words, the period of ineligibility will not start to run until the Medicaid applicant is out funds.

The above-mentioned changes will make it much more difficult for the elderly to qualify for Medicaid. Presently, approximately 1.7 million people who reside in nursing homes are on Medicaid. The average annual cost of nursing home care in our area is \$80,000. Seniors who receive modest incomes may not be able to pay for nursing home care. Consequently, many people will have to deplete their life long savings to pay for

nursing home care. In addition, increasing the look back period to five (5) years will make the application process more difficult. Seniors who should qualify for Medicaid may be denied benefits for lack of documentation. Seniors will have to produce 5 years worth of financial records

continued on back page

A Message from Douglas A. Fendrick

Dear Friends:

As we move into 2006, I would like to take this time to thank you all for allowing the Law Offices of Douglas A. Fendrick, LLC to serve you and your families. We are a firm dedicated to serving the elder population and those families with children and adults with special needs.

The holiday season is a time to reflect on the past year. It has been an exciting time for our firm. We are currently celebrating our fifth anniversary. I would like to again thank you for the privilege of serving your legal needs. I know I speak for myself and my staff when I say that we are grateful to be able to practice in the areas of elder law, estate planning and special needs planning, and are deeply committed to serving you in the best way possible.

I hope you all had a wonderful holiday.

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Please visit our website at www.fendricklaw.com

Estate Tax Exemption Increases in 2006

I want to bring to your attention tax law changes that may affect your estate planning documents. As of January 1, 2006 the Federal Estate Tax Exemption, which is the amount that an individual can transfer free of estate tax upon death, is increased to \$2,000,000.

Because of the increase to the exemption amount, you may want to modify your estate planning documents. If you are married and had assets above \$1,000,000 we probably established Credit Shelter Trusts on your behalf. The goal of a Credit Shelter Trust is to utilize each spouse's estate tax exemption. If a Credit Shelter Trust was established, then a formula is specified in your Will. Typically, the formula states that upon your death the maximum amount allowable by law will pass into a Trust. The maximum amount would depend upon the exemption amount in the year of death. Potentially, the amount passing into the Trust will be a larger amount than anticipated. This could lead to an undesirable result.

Furthermore, the estate tax exemption will fluctuate in later years. The Federal Estate Tax Exemption will remain at \$2,000,000 through December 2008. Starting on January 1, 2009 the Federal Estate Tax Exemption will be \$3,500,000. During the year 2010, the Federal Estate Tax is repealed. However, the legislation also provides for the reenactment of the estate tax for individuals who die after December 31, 2010. Although this would mean that the repeal would be effective for only one year, it appears likely that Congress and the President will revisit the issue some time before 2010. They might decide to enact a permanent repeal, they might choose to freeze the laws that are in place on December 31, 2009; or they might choose some other course of action.

The above-mentioned changes may cause undesirable results to occur if your estate planning documents are not revis-

ited. If a married couple had a combined estate of less than \$2,000,000 then a trust may not be needed to avoid Federal Estate Tax. Each spouse could have Wills leaving everything outright to the surviving spouse and still pay no Federal Estate Tax. However, if the individual's Will states that the maximum amount allowable by law passes into a trust at the first spouse's death then a trust will automatically be established at the first spouse's death. Potentially, a Trust would be established even if there was no Federal Estate Tax savings.

Furthermore, the State of New Jersey has kept its Estate Tax Exemption at \$675,000. The State of New Jersey exempts all transfers between spouses. The New Jersey Estate Tax rates range from 4 to 16 percent. Therefore, if a New Jersey resident dies and places more than \$675,000 into a trust then it will trigger a New Jersey Estate Tax. A New Jersey Estate Tax may be triggered at the first spouse's death if his Will mentions that the maximum amount allowable by law will pass into a trust. The maximum amount allowable by law would be the Federal exemption of \$2,000,000, and not the \$675,000 allowed for New Jersey estate tax purposes. If \$2,000,000 passed into a trust at the first spouse's death, then a New Jersey Estate Tax would be triggered for the assets over and above \$675,000. The New Jersey Estate Tax would be payable after the first spouse's death. Typically, the goal of estate planning for married couples is to pay no taxes. However, if a tax would apply, it is preferable for it to arise at the second spouse's death and not at the first spouse's death.

The goal for most of our clients is to preserve flexibility for the surviving spouse. Obviously, we cannot predict the year of our clients' deaths and eventual size of their estates. A technique which I recommend for married clients with an estate in the \$675,000 to \$4,000,000 range is a Disclaimer Trust. A Disclaimer Trust combines the simplicity of an outright

distribution to a spouse with the tax benefits of a Credit Shelter Trust. A Disclaimer Trust would give the surviving spouse the option as to the amount placed into the trust. This could minimize or eliminate the New Jersey Estate tax.

If a Disclaimer Trust is written then each spouse's Will would state that the everything passes outright to the surviving spouse. However, the surviving spouse has the option to disclaim assets into a trust. The assets that are disclaimed would pass into a Trust for the benefit of the surviving spouse. Once the disclaimer is made, the Trust would work similar to a Credit Shelter Trust. The Disclaimer Trust can be set up in a Will or a separate trust document. The benefit of a Disclaimer Trust is that it allows the surviving spouse to choose whether or not to accept all of the assets or disclaim some into a Trust. In order for the disclaimer technique to be utilized, you **MUST** modify your current estate planning documents to include a Disclaimer Trust.

Generally, the following principles apply:

1. If you are married and your assets exceed \$675,000 but are less than \$4,000,000 then you should consider a Disclaimer Trust. If you already have a Credit Shelter Trust then it should be modified. You should schedule an appointment to make this modification.
2. If you are married and your assets are less than \$675,000 then you do not need a Credit Shelter Trust. If you have a Credit Shelter Trust then you should schedule an appointment to terminate the trust.
3. If you are married and your assets exceed \$4,000,000 then you should keep your Credit Shelter Trust. You may want to schedule an appointment to discuss the benefits of irrevocable trusts.

Based on the above, a number of you may have to update your estate plan. If you would like to schedule an appointment please contact our office.

Have You Reviewed Your Beneficiary Designations?

The start of a new year always brings out certain resolutions. An important resolution for many individuals is to establish an estate plan. Properly drawn estate planning documents can protect finances, both during life and after death. Establishing an estate plan can also save your family from paying Federal and New Jersey estate taxes. Regardless of age or financial status, everyone should have a Will, Living Will, and General Durable Power of Attorney.

Furthermore, the beginning of the year is a great time to review your beneficiary designations. Often clients are surprised to learn that beneficiary designations can supersede the provisions of their Will. Many individuals spend a substantial amount of time and money to establish their estate plans. Those same individuals may spend only a few minutes designating the beneficiaries of their IRA's and life insurance policies. Sometimes the beneficiaries listed on a particular account are not consistent with the provisions spelled out in a Will. The result can be that your IRA's and life insurance policies pass in an undesirable manner.

Careful attention should be given as to whom you have listed as beneficiary on

your retirement accounts. The IRS rules for determining when income tax has to be paid on an account holder's death vary depending upon who is listed as the designated beneficiary.

There is not a standard beneficiary designation that applies to everyone. Instead, the proper beneficiary depends on the account holder's goals and objectives.

Often married couples designate their spouse as a beneficiary. If a spouse is a beneficiary then this provides the most flexibility. A spouse can "roll over" IRA proceeds into their own account or leave the IRA in the deceased account holder's name as a beneficiary designated account. If a "roll over" is elected then distributions do not have to be made from the IRA until the spouse reaches their required distribution date (generally April 1 of the calendar year after reaching the age of 70 1/2). Consequently, income tax does not have to be paid until distributions are made.

If a deceased account holder has children from a prior marriage they may not want their IRA passing directly to their spouse because they fear that the surviving spouse will exclude the children from the

first marriage from receiving a portion of the account. Furthermore, if a trust was established by the deceased account holder they may prefer the funds be placed in the trust. If a trust is the beneficiary for retirement proceeds then different rules apply for determining minimum distributions. As long as the trust meets certain IRS requirements distributions can be taken over the lifetime of the oldest beneficiary of the trust. This will enable IRA proceeds to be placed into the trust without triggering immediate income tax on the entire account value.

If a child or grandchild is a beneficiary of an IRA then distributions can be made over the life expectancy of the child or grandchild. Usually this will provide the longest period of time to "stretch out" distributions from an IRA.

In summary, careful consideration should be given to whom you have designated on your accounts. Furthermore, contingent beneficiaries should be designated in case your initial beneficiary is not living. Both your primary and secondary beneficiaries should be reviewed periodically to verify that they are consistent with your Will.

KEY NUMBERS FOR 2006

GIFTING	<ul style="list-style-type: none"> • Annual Gift Tax Exclusion will increase from \$11,000 to \$12,000 												
INCOME TAX	<ul style="list-style-type: none"> • Personal and Dependency Exemption is \$3,300 • Standard Deduction for Married Couples is \$10,300 • Standard Deduction for Heads of Household is \$7,550 • Standard Deduction for Singles is \$5,150 												
MEDICAID	<ul style="list-style-type: none"> • Minimum community spouse resource allowance (CSRA): \$19,908 • Maximum CSRA: \$99,540 • Maximum monthly maintenance needs allowance (MMNA): \$2,488.50 • Minimum MMNA: \$1,603.75 unchanged until new poverty thresholds for 2006 are published on July 1, 2006) • Income cap: \$1,809 												
LONG-TERM CARE PREMIUM DEDUCTIBILITY LIMITS	<table border="0"> <thead> <tr> <th style="text-align: left;">Attained age before the close of the taxable year</th> <th style="text-align: right;">Maximum deduction</th> </tr> </thead> <tbody> <tr> <td>40 or less</td> <td style="text-align: right;">\$280</td> </tr> <tr> <td>More than 40 but no more than 50</td> <td style="text-align: right;">\$530</td> </tr> <tr> <td>More than 50 but no more than 60</td> <td style="text-align: right;">\$1,060</td> </tr> <tr> <td>More than 60 but not more than 70</td> <td style="text-align: right;">\$2,830</td> </tr> <tr> <td>More than 70</td> <td style="text-align: right;">\$3,530</td> </tr> </tbody> </table>	Attained age before the close of the taxable year	Maximum deduction	40 or less	\$280	More than 40 but no more than 50	\$530	More than 50 but no more than 60	\$1,060	More than 60 but not more than 70	\$2,830	More than 70	\$3,530
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