

# *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 "Protecting Your Assets From a Nursing Home" will discuss the options available to protect your assets in the event you or a family member requires long term care. 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:*

September 19, 2007  
All You Need to Know  
About Wills & Trusts  
7-9 pm  
Boscov's Moorestown Mall

September 24, 2007  
How to Protect Your Assets  
From a Nursing Home  
7-9 pm  
Boscov's Moorestown Mall

Call our office to reserve your space at (856) 489-8388.

## 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](http://www.fendricklaw.com)

YOUR FUTURE DESERVES

## FORETHOUGHT

Published by The Law Offices of Douglas A. Fendrick

Fall 2007 / Volume 2

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](http://www.fendricklaw.com)

Published by the  
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Department of Treasury Regulation Circular 230 requires that we notify you that you cannot rely on this advice for protection against tax penalty. This memo was neither intended to be used for the purpose of avoiding any tax penalty nor relied on in support of any marketed transaction. You should seek advice from an independent tax advisor based upon your personal circumstances

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## What is Required of an Executor?

Being the Executor of an Estate is not a task to take lightly. An Executor is the person responsible for managing the administration of a deceased individual's Estate. Although the time and effort will vary with the size of the Estate, even if you are the Executor of a small Estate you will have important duties that must be performed correctly or you may be liable to the Estate or the beneficiaries.

The Executor is either named in the Will or if there is no Will, appointed by the Court. You do not have to accept the position of Executor even if you are named in the Will. The average Estate Administration takes one (1) year, though you will not need to work full time on it.

*Following are some of the duties you may have to perform as an Executor:*

### **Locate Documents.**

If there is a Will, you have to locate the original Will.

### **Hire an Attorney.**

You are not required to hire an attorney, but mistakes can cost you money. You may be personally liable if something goes wrong with the estate or the payment of taxes. An attorney can help you make sure all of the proper steps are taken and deadlines are met.

### **Apply for Probate.**

If there is a Will, then the original Last Will and Testament must be Probated at the local Surrogate's office. If there is no Will, you will receive Letters of Administration. This will officially begin your work as the Executor.

### **Notify Interested Parties.**

Notify the beneficiaries of the Will, if there is a Will, as well as any potential heirs (such as children, siblings, or parents who may or may not be named in a Will).

### **Manage the Deceased's Property.**

You will need to prepare a list of the

deceased's assets and liabilities, and you may need to collect any property in the hands of other people. One of the Executor's jobs is to protect the property from loss, so you will need to assure the property is kept safe. You will also need to hire an appraiser to find out how much any property is worth. In addition, if the estate includes a business, you may have to make sure the business continues to run.

### **Pay Valid Claims by Creditors.**

Once the creditors are determined, you will need to pay the deceased's debts from the Estate's funds. The Executor is not personally liable for the deceased's debts. The Estate usually pays any reasonable funeral expenses first. Other debts include probate and administration fees and taxes as well as any valid claims filed by creditors.

### **File Tax Returns.**

You need to make sure that tax forms are filed within the time frame set under the law. Taxes will include Federal and State Estate Taxes, Inheritance Taxes and Income Tax.

### **Distribute the Assets to the Beneficiaries.**

Once the creditors' claims are clear, the Executor is responsible for making sure the Beneficiaries get what they are entitled to under the Will or under the law if there is no Will. You may be required to sell property in order to fulfill legacies in a Will. In addition, you may have to set up any Trusts required by the Will.

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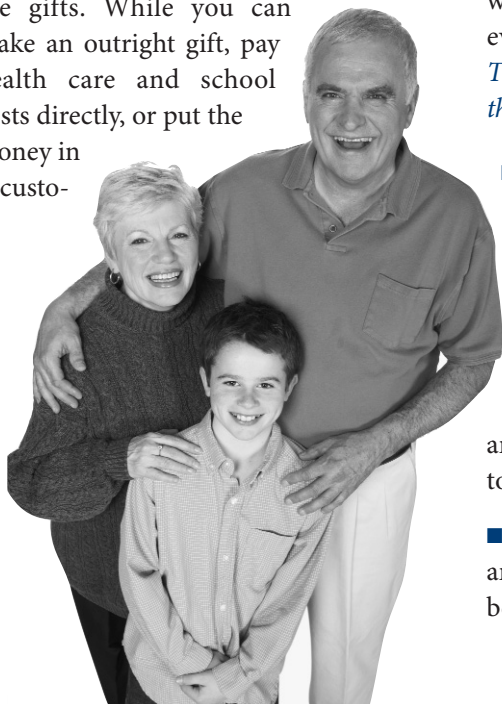
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Please visit our website at [www.fendricklaw.com](http://www.fendricklaw.com)

# Consider Putting Gifts to Grandchildren in a Trust

Gifts to your grandchildren isn't just a nice thing to do; it can reduce the size of your estate and the tax that will be due upon your death. Grandparents can give their grandchildren up to \$12,000 a year without having to report the gifts. While you can make an outright gift, pay health care and school costs directly, or put the money in a custo-



dial account, putting the money into a Trust has some major advantages.

With the help of our office, you can draft a Trust that reflects your express wishes about when the income and principal would be available to the grandchild, and even how the funds will be spent. *Transferring funds into such a Trust offers the following benefits:*

- You can reduce the size of your estate by transferring up to \$12,000 into each Trust you create for each grandchild. No Gift Taxes will be due in connection with the transfers.
- Although the Trust owns the assets, you can control them as Trustee and can decide what type of investments to make.
- Income earned by the Trust from amounts that you have deposited will not be taxed to you; the Trust pays the taxes.

■ Amounts deposited in Trust, and the income earned from those funds, will be used for the benefit of your grandchildren.

■ You can provide that the Trust terminate at any age you specify.

In order for you to qualify for these benefits, however, certain restrictions apply. These Trusts are complex legal documents and should not be set up without the help of an experienced attorney. As a final note on establishing such Trusts, you must be totally comfortable with this gift planning strategy and the amount of money available to you in your estate. In short, you should only make gifts if you feel the amount of funds remaining in your name and the amount of income they will produce will be adequate for your needs. If you are interested in setting up a Trust for your grandchildren, please do not hesitate to contact our office.

## Avoid Sibling Disputes Over Caregiving by Putting it in Writing

Caring for an elderly parent can be stressful for families. Siblings may disagree over how to provide care or where a parent will live, and if these squabbles escalate into a Guardianship battle, it can cost the family thousands of dollars. To avoid this, Lawyers have begun drafting "Sibling Agreements" (also called "Family Care Agreements").

If a parent becomes incapacitated and can no longer take care of him or herself, questions can come up between siblings over where a parent should live, who should manage the parent's money, or who will assume primary care giving duties. A Sibling Agreement can address these issues and provide consequences if the Agreement is not followed.

Sibling Agreements are not meant to replace a Trust or a Power of Attorney. Instead, the Agreement can compliment these valuable Estate Planning tools by providing guidance for the Trustee or the holder of the Power of Attorney.

*The following are some examples of topics an Agreement might cover:*

- Which sibling has primary care and how care giving duties will be divided among siblings.
- Whether a sibling will be reimbursed for caring for a parent.
- Where the parent should live – with a child, in assisted living, or in a nursing home?

- How to decide whether a parent should move into a nursing home.
- How the parent's money will be managed.
- Whether the siblings will contribute financially to the parent's care.

If the siblings cannot reach an agreement, a Geriatric Care Manager or Mediator can help draft the Agreement. Consequences for breaching a Sibling Agreement could be losing a Power of Attorney or a reduction in inheritance.

*If you or your family are interested in having this type of Agreement prepared, please contact our office.*

# Have You Had the Talk?

Are you concerned that your parents may not have their Estate Plan in place? Are you worried if something happens to one or both of your parents that you and your siblings may not be able to assist them? Do you have no idea of where your parents stand financially? If so, it is a better time than ever to have “the talk”. These subjects may be hard for children to discuss with their parents. Children do not want to seem greedy and parents do not want to show fear or loss of control. So, how can you approach your parents about these issues?

First, children should get their own Estate Planning in order, executing their own Will, Health Care Power of Attorney and General Durable Power of Attorney. This will allow you to learn about each Estate Planning instrument and you can

refer to your work with the Estate Planning or Elder Law Attorney you work with and what you found out.

Focus on balancing safety with independence and do not wait until situations occur to begin planning. A good tip is to ask first if your parents have executed a Health Care Proxy and General Durable Power of Attorney, instead of first questioning if they have done a Will. This will avoid an immediate impression of greediness on your part and provide a more delicate approach to mortality. Focus on the question: Who will make financial and medical decisions for them if they cannot for themselves?

If your parents already have a plan in place, see if they will let you know where they keep their documents. If you can,

ask to review their documents and get the name of their attorney. You may also want to ask where they keep other important documents and things – safety deposit box keys, birth certificates, deeds, insurance policies, tax returns, etc. If they do not have a plan, suggest making an appointment with an Elder Law Attorney.

Finally, assess your parent’s financial situation to determine if your parents have sufficient resources to meet their needs. Long-term Care Insurance may be a possibility if it is affordable and they qualify. If your parents will not discuss these issues with you, then encourage a trusted relative or a friend of your parents to encourage a family dialogue, or suggest they see an Elder Law Attorney to assist them with their Estate Planning and long term planning needs.

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## “Split-Level Families” Face Unique Estate Planning Challenges

With a proliferation of families in which there is a substantial age difference among the children – so called “Split-Level Families” – attorneys are increasingly dealing with a set of unique Estate Planning problems.

“Split-Level Families” usually occur when parents divorce and one of them remarries and starts a second family. Children past college age could have half sisters or brothers who are toddlers. In situations when you have a second marriage, the children from the first marriage are always at risk of losing their inheritance. In addition, substantially younger children will have a different set of needs, such as tuition and orthodontic work, than older children. Equal distribution of an Estate may not be appropriate.

To deal with such problems, many clients have established Trusts. Parents with “Split-Level Families” customize their Trusts to pay for the specific needs of their differ-

ently aged children. Usually assets will go into a Trust and the surviving spouse will receive income from it. When the spouse passes away, the remaining assets in the Trust will be divided among the children. Trusts also have the added benefit of limiting tax liabilities which further ensure that money will go to the intended children.

“Split-Level” parents must also think about the education and Guardianship of their younger children. One solution is for an older sibling to take on Guardianship responsibilities of a younger child. According to a U.S. census, of the 56.1 million children who live with siblings in 1996, 2.1 million lived with at least one step-sibling and 7.8 million lived with at least one half-sibling.

*If you or your spouse have a “Split-Level Family”, then please consider establishing a Trust. Please contact our office to arrange an appointment.*

### **Keep Accurate Records.**

It is very important to keep accurate records of everything you do. You will need to create a final accounting, which the beneficiaries should review before the distribution of an Estate can be finalized. The accounting should include any distributions and expenses as well as any income earned by the Estate since the deceased died.

### **Have Beneficiary sign Release and Refunding Bonds.**

Once the formal or informal accounting is submitted to the beneficiaries, they should be asked to sign a Release and Refunding Bond. This releases you as an Executor from any potential lawsuit brought by the beneficiary and also states that the beneficiary will refund the Estate if unknown creditors arise in the future.

*All of the above can be a lot of work. Our firm is happy to assist any Executor in handling the above-mentioned steps.*