

predict the year of our clients' deaths and the eventual size of their estates. Accordingly, a technique which we often recommend for married clients with estates in the \$675,000 to \$4,000,000 range is known as 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. Disclaimer Trust provisions give the surviving spouse the flexibility to determine what amount, if any, is to be placed into the Credit Shelter Trust. Depending on the size of your estate, your surviving spouse's exercise of a disclaimer could minimize or altogether eliminate the New Jersey Estate tax. Furthermore, Disclaimer Trust provisions give you the flexibility to "soak up" the appropriate amount of your Federal Estate Tax Exemption and to accommodate any new Federal Estate Tax laws that may be passed in the future.

Where a Disclaimer Trust is established, each spouse's Will states that everything

passes outright to the surviving spouse. However, the surviving spouse has the option to disclaim some portion of the deceased spouse's estate into a Disclaimer Trust. The Trust would be for the benefit of the surviving spouse. Once the disclaimer is made and the Trust is funded, it would function similar to a Credit Shelter Trust. The surviving spouse could be the beneficiary and the Trustee of the Trust.

The benefit of a Disclaimer Trust is that it allows the surviving spouse to consider the size of their estate in light of the estate tax exemption amounts then in effect and then to choose whether or not to disclaim some portion of the deceased spouse's estate into a Trust. In order for the disclaimer technique to be utilized, you MUST have a Disclaimer Trust written prior to the first spouse's death..

Generally, the following principles apply:

1. If you are married and your assets exceed \$675,000 but are less than \$4,000,000 and you have a Credit Shelter

Trust in your Will, then it should be modified. If you are married and your assets exceed \$675,000 but are less than \$4,000,000, you should consider a Disclaimer Trust. You should schedule an appointment to make this modification.

2. If you are married and your assets are less than \$2,000,000, then you do not need a Credit Shelter Trust. If you have a Credit Shelter Trust in your existing Wills, then you should schedule an appointment to modify your documents.

3. If you are married and your assets exceed \$4,000,000, then you may want to keep your existing Credit Shelter Trust. You may want to schedule an appointment to discuss your options as well as the benefits of irrevocable trusts and the effect of the New Jersey Estate Tax on your estate.

Based on the above, it MAY be appropriate for you to update your estate plan. If you would like to schedule an appointment to do so, please contact our office.



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.)

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YOUR FUTURE DESERVES

FORETHOUGHT

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Estate Tax Exemption Stays the Same in 2008

Many of us make New Years resolutions to get our affairs in order. In doing so, it is important for you to review your estate planning documents. The Federal Estate Tax is imposed on the value of all assets in excess of the "Federal Estate Tax Exemption" amount. Likewise, a New Jersey Estate Tax is imposed on the value of all assets in excess of the "New Jersey Estate Tax Exemption" amount. For Federal purposes, the tax rate is a flat rate of 45% and for New Jersey purposes, the estate tax rates range from 4% to 16%. For both Federal and New Jersey purposes, assets passing between spouses pass free of estate tax. For 2008, the Federal Estate Tax Exemption will remain at \$2,000,000. In prior years, the Federal Estate Tax Exemption has been as low as \$600,000. The New Jersey Estate Tax Exemption will also remain at \$675,000 for 2008.

Because of the increase in the Federal Estate Tax Exemption amount over recent years, it may be time for you to update your estate planning documents. If you are married with an estate in excess of \$1,000,000 and your estate planning documents were prepared prior to 2004, your Wills likely establish Credit Shelter Trusts. The goal of a Credit Shelter Trust is to utilize each spouse's estate tax exemption. If a Credit Shelter Trust is to

be established under the terms of your Will, a formula is used to dictate the value of assets that will pass to such Trust. Typically, the formula states that upon your death, the maximum amount allowable by law will pass into a Trust for the surviving spouse's benefit. The maximum amount would depend upon the exemption amount in the year of death and any prior taxable gifts. With the Federal Estate Tax Exemption amount now set at \$2,000,000, the amount passing into the Credit Shelter Trust may be a larger amount than anticipated. This could lead to an undesirable result.

In addition, the Federal Estate Tax Exemption amount is scheduled to fluctuate over the next several years. As of January 1, 2009, the Federal Estate Tax Exemption is scheduled to increase to \$3,500,000. Then, during the year 2010, the Federal Estate Tax is scheduled to be repealed altogether. However, the current legislation also provides for the estate tax to be reinstated as of January 1, 2011, at which time the Federal Estate Tax Exemption amount is to return to \$1,000,000. Given this fluctuating schedule and the repeal in 2010, Congress and the President are likely to revisit the issue sometime prior to 2010. They may decide

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A Message from Doug

Dear Friends:

As we move into 2008, 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 continue to be a firm dedicated to helping families in the areas of Estate Planning, Elder Law and Estate Administration.

The holiday season is a time to reflect on the past year. It has been an exciting year for our firm. We moved into a beautiful (and larger) office in Voorhees, New Jersey. I hired Jamie Shuster Morgan, Esquire, as the firm's first Associate and Kathy Caruso to assist in our Estate Administration department. I am fortunate that the rest of my staff has remained in force since our firm started almost seven years ago. Nancy Kimsey continues to be in charge of our Estate Administration department. And, Valerie Krauss and Vicki McDyre continue to run the office and make sure that everything goes smoothly.

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 wish each of you a holiday season filled with hope, happiness and peace of mind.

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New Medicare Premium, Deductible, and Coinsurance Charges for 2008

The Centers for Medicare and Medicaid Services (CMS) has announced the new Medicare premiums, deductibles, and co-insurances. The standard Medicare Part B premium is increasing by 3.1 percent to \$96.40 a month, the smallest increase since 2001.

The increase is lower than previously expected in part due to the correction of an accounting error. Money for certain hospice benefits had been inadvertently drawn from the Part B trust fund rather than the fund that pays hospital costs. In addition, the lower premium assumes that physicians will take a 10 percent cut in their reimbursement rates. It is expected that Congress will act to offset some or all of that pay cut, meaning that future-year premiums will reflect the additional expense.

Here are all the new Medicare figures:

- Part B premium: \$96.40/month (was \$93.50)

- Part B deductible: \$135 (was \$131)
- Part A deductible: \$1,024 (was \$992)
- Co-payment for hospital stay days 61-90: \$256/day (was \$248)
- Co-payment for hospital stay days 91 and beyond: \$512/day (was \$496)
- Skilled nursing facility co-payment, days 21-100: \$128/day (was \$124)

As directed by the 2003 Medicare law, for the first time, higher income beneficiaries will pay higher Part B premiums. ***Following are the higher premium rates:***

- Individuals with annual incomes between \$82,000 and \$102,000 and married couples with annual incomes between \$164,000 and \$204,000 in 2008 will pay a monthly premium of \$122.20.
- Individuals with annual incomes between \$102,000 and \$153,000 and married couples with annual incomes between \$204,000 and \$306,000 in 2008 will pay a monthly premium of \$160.90.

- Individuals with annual incomes between \$153,000 and \$205,000 and married couples with annual incomes between \$306,000 and \$410,000 in 2008 will pay a monthly premium of \$199.70.
- Individuals with annual incomes of \$205,000 or more and married couples with annual incomes of \$410,000 or more in 2008 will pay a monthly premium of \$238.40.

Rates differ for beneficiaries who are married but file a separate tax return from their spouse:

- Those with incomes between \$82,000 and \$123,000 will pay a monthly premium of \$199.70.
- Those with incomes greater than \$123,000 will pay a monthly premium of \$238.40.

Amounts Spouses of Medicaid Recipients May Keep in 2008

The Centers for Medicare & Medicaid Services (CMS) have released the 2008 federal guidelines for how much money the spouses of institutionalized Medicaid recipients may keep. In 2008, the spouse of a Medicaid recipient living in a nursing home (the “community spouse”) may keep as much as \$104,400 without jeopardizing the Medicaid eligibility of the spouse who is receiving long-term care. Known as the “community spouse resource allowance,” this amount is the most that a state may allow a community spouse to retain without a hearing or a court order. While some states set a lower maximum, the least that a state may allow a community spouse to retain in 2008 will be \$20,880.

Meanwhile, the maximum “monthly maintenance needs allowance” for 2008 will be \$2,610. This is the most monthly income that a community spouse is

allowed to retain if her own income is not enough to live on and she must take some or all of the institutionalized spouse’s income. The minimum monthly maintenance needs allowance remains \$1,711.25 until July 1, 2008. In determining how much income a particular community spouse is allowed to retain, states must abide by this upper and lower range. Bear in mind that these figures apply only if the community spouse needs to take income from the institutionalized spouse. According to Medicaid law, the community spouse may keep all her own income, even if it exceeds the maximum monthly maintenance needs allowance.

The new figures reflect an increase in the Consumer Price Index (CPI) of 2.8 percent from September 2006 to September 2007. The 2008 figures take effect on January 1, 2008.

Welcome Jamie Morgan

We are pleased to welcome Jamie Shuster Morgan, Esquire, to our firm. Jamie joined our office in the fall and concentrates her practice in the areas of estate planning, estate administration and elder law. As a complement to her estates practice, Jamie has done a great deal of charitable giving work and work for tax exempt entities, as well as planning for special needs individuals and beneficiaries.

Jamie received her B.A. from Pennsylvania State University (1998), her J.D. from Rutgers University in Camden (2001) and then her LL.M. in Taxation from New York University (2003). Jamie has worked for the New Jersey Disciplinary Review Board and clerked for the Honorable James J. Ciancia in the New Jersey Superior Court, Appellate Division. Prior to joining us, Jamie was in the Tax and Estates Department of Fox Rothschild LLP’s Philadelphia office.

Jamie lives in Philadelphia with her husband, Darin, and son, Nate.

to enact a permanent repeal (although this is unlikely); they may decide to freeze the laws that are in place on December 31, 2009 (i.e., a Federal Estate Tax exemption of \$3,500,000); or, they may choose some other course of action.

In any event, the increased Federal Estate Tax exemption amounts and the uncertain future of such exemption may cause undesirable results if your estate planning documents are not revisited. For example, if a married couple has a combined estate of less than \$2,000,000, then a trust may not be needed to avoid the Federal Estate Tax. Each spouse could have a Will that leaves everything outright to the surviving spouse and still pay no Federal Estate Tax on the death of either spouse. If, instead,

each such spouse has a Will that provides that the maximum amount allowable by law is to pass into a Credit Shelter Trust at the first spouse's death, then a trust will automatically be established upon the death of the first spouse even if there is no estate tax reason to do so.

As stated above, the State of New Jersey has kept its Estate Tax Exemption amount at \$675,000. If a New Jersey resident dies and places more than \$675,000 into a trust, then a New Jersey Estate Tax would be payable upon the death of the first spouse. This would be the result if the Will of the first spouse to die established a Credit Shelter Trust based on the formula discussed above. In such case, the maximum amount allowable by law would be

the Federal Estate Tax Exemption of \$2,000,000 (not the \$675,000 allowed for New Jersey estate tax purposes). If \$2,000,000 passed to a Credit Shelter Trust at the first spouse's death, then a New Jersey Estate Tax would be triggered for the assets over and above \$675,000. This New Jersey Estate Tax would be due at the first spouse's death. Of course, the goal of estate planning is to minimize or, where possible, eliminate taxes. However, if a tax is to apply, it is preferable for it to arise at the second spouse's death and not at the first spouse's death.

An additional goal for many of our clients is to preserve flexibility for the surviving spouse. Obviously, we cannot

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When You Can Contest a Will

You had a loving relationship with your mother and she always said she would leave everything to you and your siblings, but after she died, you discover she had recently written a new will, leaving everything to her housekeeper. Is there anything you can do? If you believe a loved one's will is not valid, you may be able to contest it. But proving a will is invalid is difficult and this process should only be undertaken where you are sure there is something wrong.

Only certain people can contest a will. For example, you can't contest your friend's will just because you believe she shouldn't have left her estate to her niece. You must be an interested party in order to contest a will. An interested party is someone who would have inherited from a loved one as a beneficiary under a will or in the event there was no will. In addition, you cannot contest a will solely because you think the distribution is unfair. A will can be contested only in certain circumstances; there must be evidence that something is wrong with the will. The following are the situations in which a will may be contested:

■ **Mental incapacity.** You may contest a will if you believe your loved one did not have the mental capacity to write the will. The best way to prove this is with a statement from a doctor who examined your loved one around the time he or she wrote the will. You may also use medical records and other witnesses who were around your loved one at the time the will was executed.

■ **Undue Influence.** If you believe another person exerted undue influence over your loved one and induced him or her to change the distribution under his or her will, you may contest the will. Generally, the person contesting the will must prove undue influence. However, if the person who allegedly influenced your loved one had a fiduciary relationship with him or her, that person may have to prove that there was no undue influence. People who might have a fiduciary relationship include a child, a spouse, or someone with a power of attorney.

■ **Fraud.** Arguing your loved one was fraudulently induced into signing his or her will is another way to contest a will.

Fraud occurred if your loved one signed a will without realizing it was a will or if someone gave your loved one misinformation that caused him or her to change the distribution in the will.

■ **Not Executed Properly.** Finally, a will may be invalid if it was not executed properly. Each state has laws dictating what makes a will valid. Usually, the signing of the will must be witnessed by independent witnesses. If the document was not witnessed properly, it may be invalid.

If you want to contest a will, you should contact our office immediately because you will need to file a claim with the court. If you are an interested party, you should receive notice from the court that the will is being probated.

If you are successful in invalidating a will, the court may reinstate your loved one's prior will. If there is no earlier will, the estate may pass under the state's intestate succession laws. Another alternative is for the court to invalidate just the portion of the will that is invalid, leaving the rest intact.