

DOUG AND JAMIE'S RECENT APPEARANCES:

- **December 9, 2008**
Doug and Jamie spoke to lawyers on Advanced Estate Planning Concepts
- **January 17, 2009**
Jamie will speak to new lawyers on Estate Planning techniques
- **January 20, 2009**
Jamie will speak to lawyers and accountants on Estate Administration issues
- **January 21, 2009**
Doug and Jamie will speak to lawyers and accountants on Estate Planning techniques
- **January 26, 2009**
Doug will speak at Boscov's in the Moorestown Mall on Legal Ways to Protect Assets from a Nursing Home.
- **January 28, 2009**
Jamie will speak at Boscov's in the Moorestown Mall on Estate Planning
- **February 21, 2009**
Doug will speak to lawyers on Special Needs Planning and Family Protection Trusts.

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

CONGRATULATIONS to Doug on being named as a New Jersey 2008 Super Lawyer in the area of Elder Law. Doug was one of thirteen New Jersey attorneys selected.



Don't forget to tune in to Doug or Jamie's monthly radio appearance on the Feast Wealth Management Hour which airs every Sunday from 9 - 10 am on AM 950 ESPN Philadelphia.

YOUR FUTURE DESERVES

FORETHOUGHT

Published by The Law Offices of Douglas A. Fendrick

Winter 2009 / 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
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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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A Message from Doug

Dear Friends:

As we move into 2009, I would like to take this time to thank you 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, Special Needs Planning and Estate Administration.

The holiday season is a time to reflect on the past year. 2008 was an exciting year for our firm. It was our first full year in our beautiful office in Voorhees, New Jersey. It was also Jamie Shuster Morgan's first full year as an associate with the firm and Kathy Caruso's first full year in our Estate Administration Department. The

rest of our staff has been together since we first opened our doors, almost eight years ago. Nancy Kimsey continues to run our Estate Administration Department and Valerie Krauss and Vicki McDyre continue to run the office and make sure that everything goes smoothly.

Throughout the year, Jamie and I have been regular Estate Planning experts on the Feast Wealth Management hour, which airs on the radio each Sunday morning from 9-10am on 950am. We have also presented at numerous seminars to a variety of groups, some of which you might have attended. We have also done our part to educate professionals in our

field about issues pertaining to Estate Planning, Estate Administration and Elder Law by presenting at various National Business Institute, New Jersey Institute for Continuing Legal Education and the South Jersey School of Business seminars, among others.

I would again like to 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 Estate Planning, Elder Law, Special Needs Planning, and Estate Administration.

I wish each of you a New Year filled with hope, happiness and peace of mind.

Federal Estate Exemption Increases in 2009

Many of us make New Years' resolutions to get our affairs in order. In doing so, it is important 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. For 2009, the Federal Estate Tax Exemption has increased to \$3,500,000. In prior years, the Federal Estate Tax

Exemption was as low as \$675,000. Likewise, a New Jersey Estate Tax is imposed on the value of all assets in excess of the "New Jersey Estate Tax Exemption" amount. The New Jersey Estate Tax Exemption will remain at \$675,000 for 2009. For Federal purposes, the tax rate is a flat rate of 45% and for New Jersey purposes, the estate tax rates range from 4.8% to

16%. For both Federal and New Jersey purposes, assets passing between spouses pass free of estate tax.

Given these tax schemes, it may be appropriate to review your estate planning documents as we enter 2009.

Overfunding Credit Shelter Trusts

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. For example, if we prepared your estate planning documents prior to 2006 and you were married with an estate in excess of \$1,000,000, it is likely that we established Credit Shelter Trusts for you and your spouse.

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The goal of a Credit Shelter Trust is to utilize each spouse's estate tax exemption. If a Credit Shelter Trust is 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 in your Will 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 \\$3,500,000, the amount passing into the Credit Shelter Trust may be a larger amount than anticipated. This could lead to an undesirable result.](#)

Uncertain Future of Federal Estate Tax

In addition, the Federal Estate Tax Exemption amount is scheduled to fluctuate over the next several years. 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 President Obama are likely to revisit the issue sometime prior to 2010. They may decide 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.

[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 \$3,500,000, 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 longer an 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 \$3,500,000 (not the \$675,000 allowed for New Jersey estate tax purposes). If \$3,500,000 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.

Building-In Flexibility

An additional goal for many of our clients is to preserve flexibility for the surviving spouse. Obviously, we cannot 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 discuss modifying your documents.
2. If you are married and your assets exceed \$4,000,000, then we would decide on a case by case basis whether it makes sense 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 New Jersey estate tax on your estate. If you have a Credit Shelter Trust in your existing Wills, then you should schedule an appointment to discuss modifying your documents.

Congress Waives Retirement Account Distribution Requirements for 2009

Congress has passed, and President Bush has signed, legislation that will temporarily suspend the penalty for seniors who fail to take the required minimum distribution from IRA and employer retirement accounts in 2009. But the penalty freeze, which is part of the WORKER, RETIREE AND EMPLOYER RECOVERY ACT OF 2008, does not affect required distributions for 2008, which are hitting seniors the hardest, and some contend that the suspension for 2009 will only benefit more affluent seniors.

Since the notion of qualified retirement accounts is to encourage taxpayers to save for retirement, there is normally a penalty imposed for failure to withdraw a minimum amount once the account owner reaches retirement age — age 70½. Taxpayers generally must begin taking annual distributions from their retire-

ment accounts by the April 1st after they reach age 70½. Failure to do so results in a whopping 50% excise tax on the amount that should have been withdrawn but was not. The percentage that must be withdrawn is based on life expectancy and increases each year. For someone who is 70½ years old, the required withdrawal would be 3.6% of the total account balance.

However, with the stock market plunge, about \$2 trillion dollars evaporated from workplace retirement plans between October 2007 and October 2008, according to the Center for Retirement Research at Boston College. To prevent seniors from being forced to sell stocks in a down market, Congress suspended the required minimum distribution rule for 2009.

If you turn 70½ before 2009, you would normally be required to take your 2009

distribution by December 31, 2009. If you will turn 70½ in 2009, you would normally be required to take your required distribution no later than April 1, 2010. In either case, under the Act, you will not need to take this distribution. The new law also waives 2009 distributions for beneficiaries of inherited IRAs and employer retirement accounts. However, taxpayers still must take their 2010 distributions no later than December 31, 2010.

Some have also pointed out that the people who will benefit most from a temporary freeze in the required minimum distribution rules are the more affluent taxpayers who don't need the money in their retirement accounts for daily living expenses. Those who are less well off and need the money to live on will make withdrawals whether or not they are required to do so — and may take a big loss in the process.

A Round Up of Key Elder Law Numbers for 2009

Below is a compilation of Medicaid, Medicare, Social Security and other figures for 2009 that are of interest to our elderly clients and their families.

Medicaid Spousal Impoverishment Figures for 2009

In 2009, the spouse of a Medicaid recipient living in a nursing home (called the “Community Spouse”) may keep as much as \$109,560 without jeopardizing the Medicaid eligibility of the spouse who is receiving long term care. Called the “Community Spouse Resource Allowance,” this 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 2009 will be \$21,912.

Meanwhile, the Maximum Monthly Maintenance Needs Allowance for 2009 will be \$2,739. This is the most in monthly income that a Community Spouse is allowed to have 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 of \$1,750 took effect July 1, 2008 and will not rise again until July 1, 2009.

Annual Gift Tax Exclusion Rises to \$13,000

The annual gift tax exclusion will increase from \$12,000 to \$13,000, for the calendar year 2009. The gift tax exclusion is the amount the IRS allows a taxpayer to gift to another individual without reporting the gift. If you would like to discuss how gifting can help reduce your estate tax exposure, please call the office to set up an appointment to discuss the same.

Medicare Premium Deductibles and Co-Payments for 2009

- Basic Part B Premium: \$96.40/month (unchanged)
- Part B Deductible: \$135 (unchanged)

- Part A Deductible: \$1,068 (was \$1,024)
- Co-Payment for Hospital Stay Days 61-90: \$267/day (was \$256)
- Co-Payment for Hospital Stay Days 91 and beyond: \$534/day (was \$512)
- Skilled Nursing Facility Co-Payment, Days 21-100: \$133.50/day (was \$128)

Social Security Benefit Changes for 2009

- Cost of Living Increase: 5.8%
- Estimated Average Monthly Social Security Benefit Payable in January 2009: \$1,153
- Maximum Taxable Earnings: \$106,800
- Maximum Social Security Benefit: \$2,323/month

Gift Certificate

10% Percent Discount on Estate or Elder Law Planning

Douglas A. Fendrick, Esquire • Jamie Shuster Morgan, Esquire

Please accept this Gift Certificate, good for a Ten Percent (10%) discount on all new estate planning and/or elder law matters with either Douglas A. Fendrick, Esquire, or Jamie Shuster Morgan, Esquire. *Please feel free to keep this savings for yourself or pass it along to friends and family.* Existing clients are encouraged to take advantage of this savings to update existing documents or address new considerations. New clients are encouraged to take advantage of this savings to discuss their estate planning and elder law needs. Discount applies to the total rate finally quoted for the services to be provided. Gift certificate need not be presented in order to receive the savings, but our office must be notified of your intent to take advantage of the discount.

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CONDITIONS: (1) Originally scheduled appointment may not be cancelled; if originally scheduled appointment is cancelled, the discount will not be available; (2) Only valid for services completed on or before April 15, 2009; and (3) Not valid for work already in progress.