



YOUR FUTURE DESERVES

FORETHOUGHT

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Options to Protect Your Residence

As individuals mature, and the requirement for long term care becomes a concern, many people become aware of the need to protect their assets. An individual's primary residence is usually one of the most important assets to protect in such an event. If the proper planning is not in place and a person enters a nursing home, the economic impact can be undesirable. The New Jersey Department of Medicaid can place a lien on the residence, and when the property is eventually sold, the New Jersey Department of Medicaid can receive the proceeds from the sale. If no lien exists, then the receipt of the proceeds from the sale of a home can make an individual ineligible for Medicaid. Neither of these results is desirable.

When this situation arises, many individuals seek the advice of an Elder Law Attorney. An Elder Law Attorney can advise the client of the different strategies that exist to best protect an individual's primary residence. One option is to transfer a home to a third party, for example a child or children. However, there are certain risks involved with this option. If a child becomes the owner of a parent's primary residence, he or she can sell the property

without the consent of the parent. Furthermore, if the child predeceases the parent, the property could pass to a son-in-law or daughter-in-law. In addition, the parent would lose the right to receive the New Jersey Homestead Rebate and the ability to qualify for the income tax exemption when the primary residence is sold. Consequently, this option is not usually desirable to the parent.

An option that I often suggest to my clients is to transfer the property into the names of their child or children, while reserving a life estate for them. A life estate deed provides that the parent can continue to live in the home for the duration of his or her lifetime. During the occupancy of the property, the parent would be responsible for the real estate taxes, maintenance and upkeep of the home. Therefore, the parent would still be entitled to the New Jersey Homestead Rebate and could deduct the real estate taxes associated with the property on their income tax return. Furthermore, the parent would have the security and peace of mind of knowing that their children could not sell the house without their approval.

If a life estate is in place, and if in the

future the parent had to enter a nursing home, then the entire value of the residence would not be at risk to the nursing home. The parent would possess only a "life interest" in the property. The life interest would be valued as of the date of sale. For example, the life interest of an 80 year old is approximately forty-four percent. Therefore, forty-four percent of the sale proceeds would be distributed to the parent and fifty-six percent would be distributed to the children. The amount distributed to the children would be protected from a nursing home.

While the parent is residing in the residence, he or she would still be entitled to the tax benefits associated with home ownership. Furthermore, no one could force the parent to sell the home.

The preparation of a life estate deed is considered a transfer for Medicaid purposes and is subject to a look back period of thirty-six months. The look back period starts from the date the deed is recorded, and not the date the property is sold. As such, when a life estate deed has been prepared and recorded early enough, then a significant portion of the sale proceeds of an individual's primary residence can be protected from a nursing home.

In summary, if you are interested in protecting your home, but do not want to give up control, then you should consider having a life estate deed prepared. Please contact our office to schedule a consultation to better understand the legal issues involved in protecting your home.

IN THIS ISSUE...

The Benefits of Life Insurance Trusts	page 2
NJ Passes Domestic Partnership Act	page 2
Steps to Be Taken When a Loved One Dies	page 3

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The Benefits of Life Insurance Trusts

At an individual's death it is possible that his or her estate could be subject to taxes in excess of fifty percent.

Unfortunately, the bad news does not end there. The IRS demands, in most cases, that the estate tax be paid within nine months of a person's date of death. Frequently, an estate does not have cash or other liquid assets readily available for payment of the Federal or State Estate Tax. Taxing authorities do not want to receive a partial interest in real estate or a family business. If payments cannot be made on a timely basis then late filing penalties and interest charges may occur. If your family would be faced with this dilemma then you should consider purchasing life insurance.

Most people consider life insurance to be a necessity when their children are young. Once children move out of a home parents often reduce their life insurance coverage. Individuals with estates in excess of \$675,000 fail to realize that life insurance can be a great vehicle for providing ready cash necessary to pay Federal and State Estate Taxes. Furthermore, life insurance gets favorable treatment under the Internal Revenue Code. If an individual does not own or control a policy on his or her life, and the proceeds are not payable to the individual's estate, the insurance proceeds will not be included in the estate. Therefore, the beneficiaries of the policy can receive the insurance proceeds tax-free.

Most married individuals have life insurance policies with the insured designated as owner and the surviving spouse listed as beneficiary. The proceeds from the policy will be included in either the decedent's estate, when he dies, or the spouse's estate. This could subject your estate to unnecessary tax liability.

A great way to remove the value of life insurance proceeds from your estate is

to place the policy in a trust. The trust becomes both the owner and the beneficiary of the policy. When the insured dies, the Trustee collects the insurance proceeds on behalf of the trust, and reinvests or distributes the monies in accordance with the terms of the trust. The trust can remain in effect after an individual's death. Often married couples provide for the surviving spouse to have access to income and principal during their lifetime, with principal distributed to the children upon the surviving spouse's death. If a trust is set up properly then assets inside the trust will be excluded from the surviving spouse's estate. Potentially this can avoid Federal and State Estate Tax from being due.

Although a life insurance trust presents a great way to save estate taxes, it does have drawbacks. One major disadvantage is that the trust is irrevocable. The terms of the trust cannot be altered or amended once executed. Second, the previous owner of the policy must relinquish control over the insurance. That means that the insured cannot be the trustee. It is typically recommended that a family member, bank or trust company be named trustee.

If you have existing life insurance and your estate exceeds \$675,000 then you should strongly consider establishing a life insurance trust. If you are interested, please contact our office to schedule a consultation.



New Jersey Passes Domestic Partnership Act

Recently, the State of New Jersey passed the Domestic Partnership Act (the "Act"). The Act has dramatically affected the New Jersey Inheritance Tax rules that apply for same sex couples and unmarried heterosexual couples sixty-two years of age or older. The inheritance tax is imposed on a beneficiary's right to receive a bequest from a decedent. The inheritance tax is calculated after determining the value of property that may be received by a particular beneficiary against the relationship of the beneficiary to the decedent. The applicable tax rate and exemption amount depends on the relationship of the beneficiary to the decedent.

Spouses, parents, children and grandchildren are considered Class A beneficiaries, and therefore, are exempt from inheritance tax. Same sex partners and unmarried heterosexual partners were considered Class D beneficiaries. Class D beneficiaries were subject to a tax of at least 15 percent. The inheritance tax applied to amounts inherited over \$499, and is due eight months after a person's death. The Act has established guidelines for same sex couples and unmarried heterosexual couples sixty-two years of age or older to be exempt from inheritance tax. This represents a major change.

Under the Act, different rules apply depending upon whether the situation involves a same sex couple or an unmarried heterosexual couple sixty-two years of age or older. Same sex couples will be entitled to certain rights and benefits that are currently available to married couples as long as they meet various requirements set forth in the Act. Some requirements that must be met are as follows:

- 1) Both persons have a common residence and are otherwise jointly

continued on back page

Steps To Be Taken When a Loved One Dies

The emotional trauma brought on by the death of a close family member is often accompanied by bewilderment about the financial and legal steps the survivors must take. The spouse who passed away may have handled all of the couple's finances. Or perhaps a child must begin taking care of probating an estate about which he or she knows little. This task may come on top of commitments to family and work that can't be set aside. Finally, the estate itself may be in disarray or scattered among many accounts.

In this article, I have set out the steps the surviving family member should take. These responsibilities ultimately fall on whoever was appointed Executor in the deceased family member's Will. Matters can be a bit more complicated in the absence of a Will, because it may not be clear who has the responsibility of carrying out these steps.

If you are listed as an Executor of an estate then you should meet with our office to review the steps necessary to administer the decedent's estate. Gather as much information as possible about the decedent's finances, taxes and debts and bring it with you to the initial appointment. The exact rules of estate administration differ from state to state. In New Jersey, they include the following steps:

A) Probating the Will at the Surrogate's office in order to be appointed Executor. In the absence of a Will, heirs must petition the Probate Court to be appointed "Administrator" of the estate. Probate is the process by which the decedent's property, known as the "estate" is passed to his or her heirs and legatees (people named in the Will).

B) Secure the tangible property. This means anything you can touch, such as silverware, dishes, furniture or art work. You will need to determine accurate values for each piece of property, which may require appraisals, and then distribute the property as the

decedent directed. If property is passed around to family members before you have the opportunity to take an inventory, this will become a difficult, if not impossible, task.

C) Marshalling, or collecting, the assets. This means that you have to find out everything the decedent owned. You need to compile a list. It is generally best to consolidate all of the estate funds to the fullest extent possible. Bills and bequests should be paid from a single checking account, either one you establish, or one set up by our firm, so that you can keep track of all expenditures.

D) Paying bills and taxes. In New Jersey, if an estate exceeds \$675,000 in value, a New Jersey estate tax return is usually required and if the estate exceeds \$1,500,000, a Federal estate tax return must be filed. The returns must be filed within nine months from the date of death. If you miss this deadline and the estate is taxable, severe penalties and interest may apply. If you do not have all of the information available in time, you can file for an extension and pay the best estimate of the tax due. New Jersey also has an inheritance tax which is due eight months after the decedent's death.

E) Filing tax returns. You must also file a final income tax return for the decedent. In addition, if the estate holds any assets and earns interest or dividends, an income tax return for the estate

must be filed. If the estate does earn income during the administration process, it will have to obtain its own tax identification number in order to keep track of such earnings.

F) Distributing property to the heirs and legatees. Generally, Executors do not pay out all of the estate assets until the period runs out for creditors to make claims. But once the Executor understands the estate and the likely claims, he or she can distribute most of the assets, retaining a reserve for unanticipated claims and the cost of closing out the estate.

G) Filing an informal accounting. The Executor usually files an informal accounting with the beneficiaries of the estate which lists any income earned by the estate and all expenses and estate distributions. If the beneficiaries approve this accounting, then they execute Release and Refunding Bonds. By executing the Release and Refunding Bonds, the beneficiaries agree to release the Executor from his or her handling of the estate and agree to refund the Executor for any unforeseen expenses of the estate.

You can make the estate administration process easier for your heirs by keeping good records of your assets and liabilities. This will shorten the process and reduce your legal expenses. Furthermore, you should instruct your family members to contact our office for assistance.



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 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 9, 2004

ALL YOU NEED TO KNOW
ABOUT WILLS & TRUSTS
7-9 pm

Boscov's Moorestown Mall

September 14, 2004

HOW TO PROTECT YOUR ASSETS
FROM A NURSING HOME
7-9 pm

Boscov's Moorestown Mall

October 14, 2004

ALL YOU NEED TO KNOW
ABOUT WILLS & TRUSTS
2-4 pm

The Mansion, Voorhees, NJ

October 14, 2004

ALL YOU NEED TO KNOW
ABOUT WILLS & TRUSTS
7-9 pm

The Mansion, Voorhees, NJ

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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
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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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DOMESTIC PARTNERSHIP

cont'd from page 3

responsible for each other's common welfare. This is demonstrated by maintaining joint bank accounts, joint ownership of real estate or motor vehicles, and the designation of each other as the beneficiary of one's Will and/or life insurance policy;

2) Both persons agree to be jointly responsible for each other's basic living expenses during the domestic partnership;

3) Neither person is married or a member of another domestic partnership;

4) Both persons file jointly an Affidavit of Domestic Partnership; and

5) Both persons have chosen to share each other's lives in a committed relationship of mutual caring.

The same rules will apply for an unmarried heterosexual couple provided that each person is sixty-two years of age or older. The Act provides protection for unmarried heterosexual couples who chose not to marry because they were afraid of jeopardizing pension benefits, social security payments or exposing their assets to nursing home claims.

The Affidavit of Domestic Partnership should be filed in the appropriate County Surrogate's Office. In the event a couple wants to terminate their Domestic Partnership they must file in Superior Court and follow procedures similar to those used when filing for divorce. If a heterosexual couple later marries, then their Domestic Partnership status will automatically be terminated.

Domestic Partners will also receive protection through the Act in situations involving visitation rights for a hospitalized domestic partner; the right to make medical or legal decisions for an incapacitated partner; and an additional exemption from New Jersey Income Tax. If you are interested in learning more about the Act please contact our office to schedule a consultation.