



YOUR FUTURE DESERVES

FORETHOUGHT

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Estate Tax Exemption Increases in 2004

We want to bring to your attention tax law changes that may affect your estate planning documents. As of January 1, 2004 the Federal Estate Tax Exemption, which is the amount that an individual can transfer free of estate tax upon death, has been increased to \$1,500,000.

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 or Trust document. 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. During the year 2006 the exemption becomes

\$2,000,000 and starting in the year 2009 the 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 During the year 2010, the federal estate tax is repealed.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 (1) 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.

Under the new tax act the exemption amount is increasing each year. If the first spouse to die (assume it is the husband) had the \$1,500,000 of the above-mentioned assets in his name then the entire amount of the couples' assets would be placed into trust. This would leave the wife with no assets in her individual name. The surviving wife may want more assets under her control.

Second, if the same scenario occurred during this year then a trust would not

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Generally, the following principals apply:

1. If you are married and your assets exceed \$675,000 but are less than \$3,000,000 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 \$3,000,000 then you should keep your Credit Shelter Trust. You may want to schedule an appointment to discuss the benefits of irrevocable trusts.
4. If you are single and your assets exceed \$675,000 then you may want to schedule an appointment to discuss the benefits of irrevocable trusts.

Based on recent tax law changes you may want to update your estate plan. If you would like to schedule an appointment please contact our office.

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even be necessary to achieve tax savings. If the couple's combined assets were \$1,500,000 then each spouse could have Wills leaving everything outright to the surviving spouse and still pay no estate tax. Potentially, a Credit Shelter Trust would be established even if there was no tax benefit.

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 we recommend for our married clients with estates ranging from \$675,000 to \$3,000,000 is a Disclaimer Trust. A Dis-

claimer Trust combines the simplicity of an outright distribution to a spouse with the tax benefits of a Credit Shelter Trust. Each spouse's Will states that the entire amount 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 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.

Furthermore, the State of New Jersey has kept its Estate Tax Exemption at \$675,000. 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. The tax payable to the State would be due after the first spouse's death. This certainly would be an undesirable result for most married couples. 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.

Options for Paying for Nursing Homes

It is estimated that forty-three percent of all Americans will spend some time in a nursing home. The average cost of a nursing home in New Jersey is approximately \$6,500 per month. The average stay in a nursing home is approximately three years.

There are five ways to pay for a nursing home: private pay, long-term care insurance, Medicare, Veterans benefits and Medicaid. Only about five percent of Americans have long-term care insurance. Many are uninsurable or cannot afford such insurance. At most, Medicare pays part of 100 days. Less than one percent of nursing home residents are receiving Veterans benefits. The major alternative to private pay is therefore, Medicaid.

In order to qualify for Medicaid an applicant must be a United States citizen or a resident alien and a resident of the state in which he or she applies. It must be medically necessary that the person be placed in a nursing home. States have different rules for determining an individual's income and assets. A Medicaid

recipient is usually allowed to retain a small amount of assets, usually in the neighborhood of \$2,000. If the person is married, the spouse not entering the nursing home is called the "community spouse". The community spouse is allowed to retain a portion of the couple's assets. In New Jersey, the community spouse is allowed to retain one-half of the countable assets with a ceiling of \$92,760 and a floor of \$18,552.

Certain assets are considered non-countable assets. This includes personal effects, wedding and engagement rings, medical equipment and certain types of burial funds. Under some circumstances a home may be a non-countable asset. In a situation where there is a married couple, the assets of both the husband and wife are combined.

If assets are transferred prior to applying for Medicaid there is a look back period. For transfers to an individual there is a thirty-six month look back period and a sixty month look back for transfers to a trust. If the transfers were made during the look back period, they are penalized.

The penalty is a period of ineligibility for Medicaid. The penalty is calculated by dividing the uncompensated value of the transferred assets by the state divisor, which is based on the average cost of a semi-private room in a nursing home in that state or region. The penalty can be longer than thirty-six or sixty months or it can be shorter. Transfers by either the institutionalized spouse or the community spouse are penalized. Certain transfers are exempt from Medicaid transfer penalties. These include transfers of a home, in certain circumstances, and transfers to certain disabled persons.

It is important for families to be aware of their options for protecting assets in case a loved one enters into a nursing home. As the Medicaid rules become increasingly complex, there are pitfalls for the unwary, but opportunities for the early planner. The sooner a family consults with a Certified Elder Law Attorney the more options are available. Our office can advise you how to protect your assets. If you or a loved one are interested in protecting your assets please call our office to schedule a consultation.

Wills: *One Size Does Not Fit All*

Every adult needs a Will. A Will is a legal document which provides for the distribution of assets after death and names a person to settle the estate. Without a Will, individuals surrender their right to define how they want their estate settled and instead, allow their estates to be settled by rules established by the State of New Jersey. An even worse scenario occurs when a person has a poorly drafted Will that does not effectively carry out his or her wishes.

A Will is not a simple or generic document, but one which must be carefully developed to address an individual's needs and wishes. All individuals have different personal and financial backgrounds, which must be carefully examined in order for a Will to effectively carry out a person's wishes.

A Will cannot be properly prepared without understanding the financial background of the individual and the value of the individual's estate. For example, an individual with an estate

exceeding \$675,000 in value may be liable for New Jersey estate tax. Thus the individual needs to establish an estate planning trust to protect the value of his or her assets. Using a variety of estate planning techniques, this tax may be substantially reduced or eliminated.

An individual's background must also be reviewed in deciding whether a trust should be established. For example, a married individual — with children from a prior marriage — needs to specifically designate one's wishes for his or her children. Unfortunately, many Wills leave an entire estate outright to a second or third spouse, with the verbal understanding that the spouse will provide for his or her stepchildren which may not always happen. Instead, Trust language is needed in the Will to provide for a spouse and to ensure that an individual's estate is also distributed amongst one's children upon death. Furthermore, Trust language can also preclude assets



from being distributed to a daughter or son-in law.

Another factor to be considered with regard to an individual's background is how to handle assets being left to minor children or grandchildren. Many Wills

continued on back page

KEY NUMBERS FOR 2004

MEDICAID	<ul style="list-style-type: none"> • Minimum community spouse resource allowance (CSRA).....\$18,552 • Maximum CSRA.....\$92,760 • Maximum monthly maintenance needs allowance (MMNA).....\$2,319 • Minimum MMNA\$1,515 <i>(unchanged until new poverty thresholds for 2004 are published)</i> • Income cap.....\$1,692 												
MEDICARE	<ul style="list-style-type: none"> • Part B premium\$66.60/month • Part A deductible\$876 • Co-payment for days 61-90\$219/day • Co-payment for days 91 and beyond.....\$438/day • Skilled nursing facility co-payment, days 21-100\$109.50/day 												
SUPPLEMENTAL SECURITY INCOME	<ul style="list-style-type: none"> • Individual maximum\$564/month • Couples.....\$846/month <p><i>For other Social Security changes, go to http://www.ssa.gov/pressoffice/colafacts-alt.htm</i></p>												
LONG-TERM CARE PREMIUM DEDUCTIBILITY LIMITS	<table style="width: 100%; border-collapse: collapse;"> <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;">\$260</td> </tr> <tr> <td>More than 40, but not more than 50</td> <td style="text-align: right;">\$490</td> </tr> <tr> <td>More than 50, but not more than 60</td> <td style="text-align: right;">\$980</td> </tr> <tr> <td>More than 60, but not more than 70</td> <td style="text-align: right;">\$2,600</td> </tr> <tr> <td>More than 70.....</td> <td style="text-align: right;">\$3,250</td> </tr> </tbody> </table>	Attained age before the close of the taxable year	Maximum deduction	40 or less.....	\$260	More than 40, but not more than 50	\$490	More than 50, but not more than 60	\$980	More than 60, but not more than 70	\$2,600	More than 70.....	\$3,250
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More than 70.....	\$3,250												

You are invited!

Doug Fendrick will be speaking at a free seminar offered through Boscov's community campus program. 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:

January 28, 2004

**ALL YOU NEED TO KNOW
ABOUT WILLS & TRUSTS**

7-9 pm

Boscov's Moorestown Mall

February 4, 2004

**ALL YOU NEED TO KNOW
ABOUT WILLS & TRUSTS**

7-9 pm

Boscov's Echelon Mall

January 29, 2004

**HOW TO PROTECT YOUR ASSETS
FROM A NURSING HOME**

7-9 pm

Boscov's Moorestown Mall

February 5, 2004

**HOW TO PROTECT YOUR ASSETS
FROM A NURSING HOME**

7-9 pm

Boscov's Echelon Mall

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

WILLS *continued from page 3*

address the issue of minors. However, they generically allow these individuals the ability to access money once they reach the age of eighteen or twenty-one — which may be considered somewhat young to make mature financial decisions. If an individual is leaving assets to a minor, then a trust should be established in the Will. An effective Trust needs language that specifies that the funds be retained by the Trustee until the minor child or grandchild reaches an age sufficient to appreciate it or properly handle the responsibility. Additionally, the trust should specify that monies can be spent for purposes such as health and education prior to attaining the designated age.

These examples illustrate the variety of decisions that are needed to prepare an effective Will. If you are interested in updating your Will please call our office to schedule a consultation.

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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.

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