



ESTATE PLANNING & ASSET PROTECTION

Laws & Life Keep Changing

Changes in the law and other developments have significantly affected estate planning. Almost everyone who created an estate plan prior to these changes will find their plan needs to be reviewed and updated. Also, as time goes by, family situations change, so the estate plan may be out-of-date in terms of who gets your assets when you die, or when and how they get the assets -- and who will be in charge of administering those decisions when you are gone. Following are three (3) of the developments that necessitate revisions to existing estate plans.

DIVORCE AND CREDITOR PROTECTION

With the recent proliferation of lawsuits, and the divorce rate at about 50%, parents and other donors are leaving inheritances for their children and other heirs in trusts to protect the assets from such problems. Make sure your estate plan has been reviewed recently and has adequate "spendthrift" and "trustee holdback powers" so that the following trust benefits will be preserved for your beneficiaries while still allowing your Trustee to provide for their needs:

- Lawsuit protection for beneficiaries.
- Protection from a divorcing spouse of a beneficiary.
- A reduction (or elimination of) estate and generation-skipping transfer taxes.
- Trustee management of inheritance "spendthrift" beneficiaries, or beneficiaries who are prone to drug, alcohol, or gambling addictions.
- Ability to maintain eligibility for valuable government benefits (such as Medicaid or Social Security Disability) for "special needs" beneficiaries.

DISTRIBUTION RULES FOR IRA'S AND OTHER RETIREMENT PLANS

New rules for distributions from IRA's, 401(k)'s, 403(b)'s and other "qualified" retirement plans make it easier for savers to take advantage of the "stretch IRA" concept. Under the new rules, your beneficiary can enjoy a deferred payout of retirement plan funds over his or her life expectancy. That enables the beneficiary to further defer

the income taxes that have already been deferred as you have been contributing to the plan or account. The new rules now permit a trust to be the beneficiary of a retirement plan without losing these most important income-deferral opportunities -- but only if the trust is a "qualified" trust. This means that the trust must comply with specific federal laws and regulations. If the trust is qualified, the trust beneficiaries are entitled to stretch withdrawals from the IRA's, 401(k)'s, 403(b)'s and other qualified plans nearly the same as if the trust was not the beneficiary. If a non-qualified trust is the beneficiary of such retirement plans, that triggers payment of income taxes after your death -- taxes that could have been deferred if the trust was qualified.

TAX RELIEF ACT OF 2001

In June of 2001, President Bush signed the Tax Relief Act of 2001. Among other things, the Act dramatically changed the federal estate tax, increasing the amount you are permitted to pass to your heirs at your death without paying any estate tax. Also, estate planning documents must now conform to changes in the gift-tax exclusion and generation-skipping transfer-tax exclusion, as well as anticipating the proposed elimination of the "step-up" in basis for capital gains assets. Another important provision of the Act is its "sunset" provision. Although the new law was very tax-friendly to Americans, it will all be automatically repealed in 2011 (and the old law will return) unless Congress votes to make the 2001 changes permanent. Given federal budget deficits and political pressures, that vote currently appears unlikely. Therefore, estate tax planning has to be done with one eye on pre-2001 and the other eye on 2011.

TAKE ACTION

These important changes can have a profound impact upon you and your loved ones. Reviewing your estate plan every two years or so always makes sense, but when there have been changes as dramatic as those we've seen in the past four years, it becomes even more critical to make sure your plan has kept pace with these changes. ■



50 West Broadway, Suite 950, Salt Lake City, Utah 84101

Phone: (801) 366-9966

Fax: (801) 363-4477

Email: firm@MyEstateMatters.com

Website: www.MyEstateMatters.com

National Academy of
Elder Law Attorneys





MEDICAID & NURSING HOME PLANNING

Potential Changes to Medicaid Laws May Warrant Taking Action Now

Nursing home and other long-term care costs can be financially catastrophic to people's savings and financial security. Such costs are not covered by Medicare or other health insurance policies. The average cost for such care is in excess of \$50,000 (+/-) annually. In just five years the bill could exceed \$250,000. These bills are generally paid for in one of three ways: 1) directly from your income and assets; 2) long-term care insurance; or 3) Medicaid and other public assistance programs.

If you need long-term care, you will have to spend all of your assets and savings (except for about \$2,000 and a few other minor exceptions) before Medicaid will assist you. This could be tragic because you have worked hard all your life to save and have financial security, for yourself and your family, and that security can completely vanish as your assets are consumed for your long-term care.

Developments in the laws surrounding Medicaid in the recent past have prompted us to design new provisions for estate plans. These provisions are sometimes called "Medicaid Triggers." They allow the trustee of your trust (and your power of attorney agent) to engage in certain planning strategies to allow you to qualify for Medicaid and other assistance programs without depleting all of your assets. The provisions include the ability to transfer ownership of assets from your trust and estate to your loved ones (or into "safe" entities for your loved ones). Without these "Medicaid Triggers," trusts generally prohibit trustees from making those types of transfers. "Medicaid Triggers" can also enable your Trustee to transfer assets to your spouse, convert assets to Medicaid-exempt property or purchase certain kinds of special annuities that keep the door open for Medicaid eligibility. If your trust is updated with these provisions and you become incapacitated, a great portion of your assets can be protected against the Medicaid "spend-down." If you aren't sure if your trust has these new provisions, or if you are concerned about long-term care costs, call our office for an appointment.

New Developments in the Laws. Congress has passed a budget resolution that mandates cuts in the federal Medicaid program of \$10 billion over the next five years. The resolution only indicates Congress' resolve, it is not law at this time. The resolution contains no specifics as to how the \$10 billion in cuts will be achieved. The Secretary for Health and Human Services, former Utah Governor Michael Leavitt, has appointed a commission to look into the matter. The commission is scheduled to make recommendations to Congress by mid-September. In addition to the HHS commission, the National Governor's Association ("NGA") has weighed in on this matter. For most states,

the cost for Medicaid exceeds 50% of the state's budget. On June 1, 2005, the NGA Executive Committee adopted "EC-16" Medicaid Reform Policy. Portions of EC-16 are likely to be given consideration by Congress is formulating any new Medicaid laws.

Important points of EC-16 are:

Reverse Mortgages. The NGA is recommending that Congress require homeowners to pay for their care through the use of reverse mortgages on their homes. A homeowner would not be approved for Medicaid until after a reverse mortgage had been put in place.

Transfer of Assets. Current law creates a period of ineligibility for Medicaid when non-exempt assets are transferred to a third party as part of a strategy to "impoverish" the Medicaid applicant. This period of ineligibility is generally calculated by the dividing the average monthly cost for a nursing home in the state by the amount transferred. For example, if \$100,000 is transferred and the average monthly cost for a nursing home is \$5,000, the person would be ineligible for Medicaid coverage for 20 months. EC-16 proposes to begin the period of ineligibility from the date the person applies for Medicaid as opposed to the date that the person makes the transfer. This will severely impact the ability to use transfers as part of a strategy to qualify for Medicaid coverage.

Family Contributions. The NGA is encouraging Congress to adopt policies that would encourage individuals and their families to self-finance long-term care rather than rely on Medicaid. This may mean that children may be required to contribute to the cost of custodial care of their parents.

Cost Sharing. The NGA is also looking to establish premiums, deductibles and co-payments for certain services provided through Medicaid.

Corporate Welfare. The Governors are concerned that those companies that provide health insurance for their retirees are at a competitive disadvantage to foreign corporations in countries offering universal health care as well to companies that choose not to offer health care assistance to their retirees. The NGA suggests that Congress come up with a plan to shift some of the cost from the good citizen corporations to some sort of a "reinsurance mechanism."

How does this affect you? Those who have implemented a Medicaid plan should review those plans with a qualified elder law attorney. Also, for those that can afford it, long-term care insurance, purchased alone or as part of a Medicaid asset protection plan, may make even more sense today than it did a year ago. ■



TAX PLANNING

Private Annuity Trusts

Do you know anyone who wants to sell a highly-appreciated asset (such as land, a building, or stock) but they are afraid they will have to pay capital gains tax on the amount the asset has appreciated? For example, if a person buys or inherits an asset with a value of \$25,000, and the person wants to sell the asset for \$125,000, the appreciation (or capital gain) is \$100,000 and the State and Federal income tax (if the asset was owned more than one year) is over \$22,000. If the asset has been depreciated, the “recapture” tax could be as much as \$46,000. The fear of paying these taxes prevents some people from selling. Some people know ways to avoid the tax or defer it by using installment sales, 1031 exchanges and Charitable Trusts. Depending on the circumstances, these solutions may not appeal to the seller. Our law firm is available to discuss the pro’s and con’s of those strategies. However, here is another strategy that many people are not aware of that provides benefits not otherwise available.

We call it a **Private Annuity Trust (PAT)**. To utilize a PAT, a person sells the appreciated asset to the PAT and the PAT sells the asset to the buyer. The proceeds of the sale are owned by the PAT and invested by the PAT Trustee who you (the owner) appoint. You are also a beneficiary of the PAT, and you can annuitize the investment and receive periodic annuity payments over your life expectancy or the joint life-expectancy of you and your spouse. As each annuity payment is received over, say 25 years, a portion is non-taxable “basis,” taxable capital gain, or taxable ordinary income (*i.e.*, the investment interest or dividends attributable to each annuity payment). This is a very

powerful way to defer the capital gains or depreciation recapture tax rather than paying it all in the year of the sale. While you could accomplish a similar tax deferral by selling to a buyer on a 25-year installment plan, you would run the risk of the buyer defaulting on the installment note. Also, the buyer would have the investment use of the bulk of the money... and you wouldn’t. With a PAT, all of the sale proceeds get collected by the PAT at the time of sale but you still get the benefit of a long tax deferral. Further, if you don’t want to start the annuity payments immediately, you can put it off until age 70 1/2 -- just like an IRA or 401(k) -- and thereby defer the income and the taxes until that time.

One last thing, for people who are worried about estate taxes, the value of the assets in the PAT can be excluded from your taxable estate and thereby protect the family from estate taxes.

If you, or someone you know, would be interested in the PAT tax plan, or any of the other strategies noted in this article (installment sales, 1031 exchanges, Charitable Trusts), be sure to give us a call at (801) 366-9966 and schedule a complimentary consultation to discuss how these plans could be implemented to legally avoid or defer capital gains tax. ■

This communication may not be used as a reliance opinion and is not intended or written to be used, and cannot be used, by you for the purpose of avoiding penalties that may be imposed on you by the Internal Revenue Service.

IMPORTANT NOTICE

IRA Gifts to Charity Temporarily Unlimited

As part of the tax relief provided by Congress, unlimited donations of IRAs or 401(k)’s to charities will be allowed for a short period of time. Prior to this change, charitable deductions were limited to 50% of AGI in the year of donation, which meant that a donor cashing in a large IRA or 401(k) and donating it to charity would likely have some taxable income in the year of donation (although there would be a charitable contribution carry forward to future years). During this window of opportunity, this will no longer be a problem.

CLIENT REMINDERS

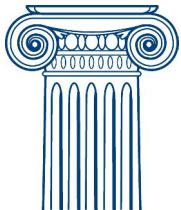


- ⌋ *Confirm* that you have documents evidencing that your assets are titled in the name of your Living Trust (or Family Limited Partnership, LLC, Corporation). Monthly statements from banks, investment firms and other financial institutions are good evidence. Also, document that your Trust is the “primary” beneficiary of life insurance and non-tax deferred annuities. (For IRAs, 401(k)’s and other tax-deferred retirement plans, *call us before naming death beneficiaries!*)
- ⌋ Please remember to call us if your address or phone number changes. To let us know if you would like to get updates and notices from us by email send an email to: firm@myestatematters.com
- ⌋ Let’s review your estate plan every year or two, or when your family or financial situation changes. Laws are continually changing. Call and schedule your review.
- ⌋ If you’ve refinanced your home loan, or added a second mortgage, the lender may have had you deed the home from your Living Trust back to your name. Call the County Recorder and ask how your home is titled. If it is in your Trust, you’re OK. If not, call us and we can help.
- ⌋ Call your insurance agent and make sure your Trust is named as an “insured party” on real-estate owned by your Trust.

Holmgren & Mitton L.C.

ATTORNEYS & COUNSELORS AT LAW

50 West Broadway, Suite 950
Salt Lake City, Utah 84101



www.MyEstateMatters.com

FIRM HAPPENINGS

In 1995, Attorney Randall J Holmgren (Randy) became a member of the *American Academy of Estate Planning Attorneys*, a select Member organization of Attorneys across the country who focus their practices in the area of Estate Planning. Attorney Matthew L. Mitton (Matt) joined the firm in 1997 and, collectively, they have presented over 600 estate-planning seminars throughout Utah for universities, colleges, businesses, churches, charitable organizations, financial institutions and the general public. Randy has written and published over 60 articles in the *Deseret Morning News*. Randy has also consulted with *Forbes* magazine on Estate Planning issues and Randy and Matt have been featured on the *Speaking on Business* radio program on KSL. The firm now has four attorneys and numerous legal assistants and paralegals.

We would like to thank all of our clients and associates who have made our business successful over the past ten years. We express our gratitude for your continuing support and confidence. We look forward to the next ten years and beyond in serving you and your loved ones!

Sincerely,



Holmgren
& Mitton L.C.

ATTORNEYS & COUNSELORS AT LAW

10th Anniversary

New Attorney

We are pleased to announce the addition of Attorney Deacon Haymond to our firm. Deacon graduated from the *University of Utah* in 2000 with a Bachelor's degree in Political Science and continued on to attend and graduate from the University's *S.J. Quinney College of Law*. Deacon served as a senior staff member for the *Journal of Law and Family Studies* and also spent a semester studying comparative legal procedure at the *London Law Consortium* in London, England. Deacon was a law clerk for our firm while attending school and joined the firm in 2004 as an Attorney after passing the Utah State Bar Exam. Deacon's main focus in the firm is in assisting with our Trust Administration and Probate practice. Deacon is a member of the Utah State Bar and Salt Lake County Bar Association. We are very happy to have Deacon as a part of our team. Those clients that have met with Deacon have benefited from his kind and caring nature as well as his expertise and attentive service.