

Life Planning Newsletter
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Shadow abt.1/2/1995 - 12/7/2008

Many of you have met Shadow. Shadow was with me for about 11 years. She picked me out one day when I visited the Yukon pound looking for a lost dog. She first saw me when there was another dog's litter climbing all over her. She seemed to have a lot of spunk and was still able to maintain her composure. I knew at once that a dog with her calming disposition would have to live with me. I couldn't adopt her fast enough. Shadow never let me down. Not during law school when things got frustrating, not during my personal life, and not during the time we spent practicing law. Shadow was the official greeter and mascot of the Law Office. Normally, it would not be acceptable to have a dog present when discussing legal matters. However, Shadow seemed to calm or amuse many of my clients, even those who did not like dogs. It was my impression that she made the office sessions a little less tense and encouraged many clients to communicate in an open and friendly professional environment, if there ever could be one.

She was part of my family and there are some who would say she was my only family. She was always there except when I was frustrated or upset. Yes it even happens to me. Shadow, who was always by my side, would hide when I became upset. After a few minutes she would return and give me a look that said "Ok you idiot, (Shadow and I were on a first name basis), time to calm down and pull yourself together." I must say it always worked.

It is tough to lose a loved one. In this business I am involved in personal loss every day. I too have lost family but no loss has affected me more than losing Shadow. She will be missed

Our law firm focuses on Estate and Life Planning for those who wish to preserve their assets for their family. By doing Probate work for our clients we have established Estate Planning methods that are court tested. Because the goal of every person is to have peace of mind their wishes will be carried out, our integrated approach constantly tests estate plans against court decisions.. Our law firm integrates low cost Probate with coordinated Estate Planning documents to significantly reduce the impact of the State claim for nursing home care.

MediCal, IRA's, 401(k)'s & Annuities

Definition: For the purposes of Medi-Cal eligibility an "annuity" is defined as a "contract to make periodic payments of a fixed or variable sum paid to an annuitant which are payable unconditionally." Annuities purchased prior to August 11, 1993 are treated differently than those purchased today.

IRAs and Work-Related Pensions

In the applicant's or beneficiary's name: The cash surrender value or balance, regardless of value is unavailable for qualification purposes if the applicant or beneficiary receives periodic payments of interest and principal. These do not need to meet the Medi-Cal requirements for annuities. **The payments will count toward the monthly share of cost.**

If the IRA is in the partners or spouses name the IRA is totally exempt from consideration but the income is considered for the minimum monthly spousal allowance:

Non work Annuities you purchase: Annuities purchased prior to 8/11/93: The cash surrender value or balance of the annuity is considered unavailable if the applicant/beneficiary is receiving periodic payments (of any amount) of interest and principal. Annuities purchased between August 11, 1993 and March 1, 1996 must provide total exhaustion over the annuitants expected life with no balloon payment on death and the remainder goes to repay the state up to the amount the state spent on the annuitant. This rule can be waived for hardship. Once the individual or spouse takes steps to receive periodic payments of interest and principal, the balance is considered unavailable.

Hardship: Annuities purchased between 8/11/93 & 3/1/96 that cannot be restructured to meet the new requirements will continue to be treated under the old rules. Written verification that the annuity cannot be restructured must be obtained from the company or agent who issued or sold the annuity.

Annuities purchased on or after March 1, 1996: Must

meet the new requirements, no annuity hardship provisions apply. Annuities structured to exceed the life expectancy of the annuitant will result in denial or termination of benefits due to transfer of assets.

Annuities purchased on or after September 1, 2004:

Annuities purchased on or after September 1, 2004 are subject to recovery regardless of whether the annuity is designed to pay a lump sum or periodic payments upon the death of the decedent.

Planning Tips

It is not a good idea to purchase an annuity for MediCal Planning unless you know what assets are exempt in the first place. For example IRA's do not have to be liquidated to purchase an annuity since the IRA is already exempt. For more information on the Medi-Cal eligibility criteria call the office.

Tips

Don't buy anything at the initial presentation. Tell the salesman you want time to think about the investment. Investigate and compare products before buying. Consider other options particularly if you are looking at Medi-Cal planning.

Always talk to an attorney who knows MediCal Estate Planning. It is highly specialized and complicated.

Know the surrender penalties and terms.

Know the agent's commission

Remember, you have 30-days to cancel the contract

Conservatorships for those turning 18.

Parents who have disabled children are often surprised to find out they have no legal authority over the child when the child turns 18. You may not make medical or financial decisions for the child unless you have proper legal authority. In order to maintain control over the child's health and assets, the parent needs to start conservatorship proceedings 4-6 months in advance of the child turning 18. The law allows the proceeding to start 6 months in advance.

Remember when a person turns 18 regardless of any other factor, legally they are an independent adult, the guardianship ends on the 18th birthday as does parental control. However parental responsibility does remain under the Family Code and responsibility without control is a bad place for a parent to be. If your incapacitated child is about to turn 18, you need to consider starting conservatorship proceedings within the 6 month period so there will be no lapse in parental control.

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