

Life Planning Newsletter
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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 the effectiveness of your Estate Plan with actual California and Nevada Cases. We are particularly involved in Medicaid and Medi-Cal Estate planning. We create Special Needs Trusts and Estate Plans to ensure our clients meet the eligibility requirements, lower their share the cost expense, and reduce or eliminate the potential recovery by the State.

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.

This newsletter is provided to our clients free of charge via e-mail and on line at www.jabusse.com

INSTRUCTION CORNER

So now you are Trustee

Aunt Alma has just died and you are named the Successor Trustee of her revocable trust. What do you do?

The first thing you need to do is to read the Trust from cover to cover. I recommend you see an attorney. Some attorneys will manage the whole thing for a percent others work on hourly fees and assist only when needed. It is important you understand what your duties are and what the risks are if you foul up. California Probate code provides for up to triple damages for your errors so an hour or two with an attorney is a

good investment. Most trusts allow this cost to be reimbursed anyway.

Usually a Trustee has four tasks. (1) Marshal and manage the decedent's assets, (2) pay debts and administration expenses, (3) file necessary tax returns, and (4) distribute the assets under the terms of the trust. Often this is a smooth process but sometimes there are creditor and beneficiary issues that land the trust in court.

Marshalling and managing the assets is a task that must be done correctly. You need to work with the estate to discover all the assets. Those assets not in the trust may require probate. You may not distribute assets not in the trust. You may not mix trust accounts with your personal property. Even storing trust property in your own garage may be considered mixing assets and if those assets are damaged by fire or theft you may be personally responsible. You also have a duty of care with trust assets. That is to say you must manage those assets for the benefit of the beneficiaries. Be sure to keep money invested productively and safely and be sure to list all assets.

Debts and expenses are sometimes difficult to manage. Did the decedent really contract with cousin Bob to paint the house for \$5,000? Is there a written contract obligating the decedent to a debt? Did the decedent's partner take off with the credit card and charge up a storm during the last days of the decedent's life? Sometimes it is easy. The funeral home really did charge \$8,500 for a casket. The mortgage is really due, if the decedent received Medi-Cal payments the State must be notified, etc.

If you question anything I strongly suggest you obtain legal help in this area.

There are two tax returns you may need to file in addition to the decedent's last 1040. The first is a 1041. That form is for the tax on

income the trust generates from the date of the decedent's death. The second is a 706 or Estate tax which is the estate tax due on the decedent's entire estate. That makes three separate tax issues you must face. As Trustee, You must work with the Executor or Administrator of the Estate to coordinate all taxes. These taxes are complex and mistakes are costly. I strongly suggest that for estates with a total value over \$1,000,000 you obtain a tax attorney to assist. Be sure to understand and file if necessary, IRS Form 56 which informs the IRS you are operating as a fiduciary for the deceased.

Finally you get to distribute the funds. Don't rush it. Make sure you retain enough to pay the unexpected. Be sure to follow exactly the terms of the trust. You need to provide an accounting to each beneficiary. Be sure to include in that accounting the trust terms regarding any compensation you may receive. Usually a trustee is entitled to reasonable compensation. There is a lot of work. I suggest you do not be timid in this area and compensate yourself fairly. Professional trust managers take between two and five per-cent of the value of the trust. Three percent is often considered reasonable for the "average trust." Complex issues such as numerous individual stocks, difficult property management situations, etc may make five percent reasonable. Be sure to obtain receipts and releases from each beneficiary when you distribute the funds. An attorney can assist drafting a good receipt & release.

This discussion is only a cursory examination of the Trustee's duties. If you take nothing else with you please follow the recommendation that you see an attorney first before you start your journey as Successor Trustee.

PLANNING BASICS –Reverse Mortgages and Medi-Cal

Under Medi-Cal the value of a home is an exempt asset for purposes of Nursing Home qualification. However the Medicare Reform act of 2005 has limited the value of the home to \$500,000 in most states. California has indicated they will exclude \$750,000 in home value from your assets for purposes of Medi-Cal qualification. This will apply to those beneficiaries who become eligible after 1/1/2006. This means that a person with a \$1,000,000 home that was excluded, who is now receiving Medi-Cal benefits for nursing home care, and who applied to Medi-Cal after

1/1/2006, may be kicked off the system when the new regulations go into effect in 2008.

Keep in mind that a lump sum distribution from any mortgage is counted as an asset for Medi-Cal eligibility. However if you use that money to say, repair the roof or buy a new first car, or install new windows, etc. the money is spent down immediately so there is only the loss in equity, which may bring your home equity within the \$750,000 limit.

If you have a Line of Credit but do not use it, it is not counted against you. But if you do use it for income and don't spend it down, it is counted as a loan and is part of your assets.

Some recommend Annuities be purchased or that a reverse mortgage be used to purchase an annuity. Keep in mind that the periodic proceeds from these annuities is includable as income for the share the cost portion of your nursing home care. Also know that if the annuity was purchased after September 1, 2004 the annuity is subject to Estate recovery and the State becomes the primary beneficiary of that annuity for the entire amount of nursing home care costs of the decedent. Some use what is called a Reverse Annuity Mortgage (RAMS) where the bank purchases and annuity with funds from the reverse mortgage to fund periodic payments to the borrower. While this income is subject to share the cost, the annuity, being the property of the bank, is not subject to recovery, yet. If the borrower purchases the annuity it is treated as income in the month received and must be spent down before you are qualified to receive Medi-Cal. That could be a sticky wicket if you are already in the nursing home, use the money to pay juniors college and then are booted out because you no longer qualify.

A new California law effective January 1, 2007 MANDATES reverse mortgage applicants receive financial counseling from a Department of Housing and Urban Development approved counselor before applying for a reverse mortgage. The law also states that the lender may not require a borrower to purchase an annuity as a condition for obtaining a reverse mortgage loan. Be wary. Reverse mortgages are usually not beneficial to those who are in or may be in a nursing home and who depend on Medi-Cal for the costs.

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