

Life Planning Newsletter
The Law Offices of James A. Busse Jr.
Long Beach CA, Carson City NV.
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In this issue:

Instructional corner.... Out of State Real Property
Planning Basics..... Getting divorced? When to adjust your estate plan.
New Laws Congress passes punitive new Medicaid laws.

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 or for \$5.00 per copy \$20/year if mailed. The format is (1) Instruction on basic Estate Planning & Probate Law; (2) Basic Planning – application of a particular set of circumstances to the law, and (3) News regarding new or proposed regulations of interest.

INSTRUCTION CORNER
Out of State Real Property

Most everyone knows that Real Property not within a Trust, must go through Probate in the local court where the property is located. This means that if you own a vacation

home in Lake Tahoe, Nevada it must be probated in the Local District Court (Minden, NV) to transfer title to the heirs even if the owner was living in Los Angeles. If the property was not in trust, there must be two probates opened. One in Los Angeles for the family home and one in Minden for the vacation property. The probate in Minden would be termed an Ancillary Probate. It would be governed by the laws of Nevada.

The problems we have seen relate to people who created Trusts but did not understand that ALL real property must be transferred to the trust to avoid probate. The vast majority forget that TIME SHARES and some partial interests in any real property are REAL PROPERTY, subject to probate.

Thankfully, most states have simple probate procedures to transfer estates of low value (usually less than \$100,000) but it does require time and hiring an attorney in the state where the property is located. The same is true with foreign property but many times the procedures are far more complex and costly.

Since it is pretty easy to transfer this property to your trust, consider it at the same time you transfer your primary residence.

PLANNING BASICS
Getting a divorce?

Many of our clients are surprised to learn that your are still married until the Judge signs your Divorce Decree and it is ENTERED into the Record. This means if you die after separation but before your divorce is final and entered, and do not have a new Will or do not have a will or new trust at all, your spouse will

inherit all your community property (usually the whole house) and between 1/3 to ALL of your other property. Even if you bifurcate and remarry, your old spouse may have a substantial claim on your estate should you die without a will before your divorce is absolutely final.

Now that the state treats Registered Domestic Partners of the same sex as essentially married, this circumstance applies to them as well.

Our office recently resolved a case where our client thought they were divorced; having gone through the process in 1977-1979. But, the final papers were never filed and neither party remarried. When the other spouse died without a Will, our client inherited 1/2 of the estate, which consisted only of the decedent's separate property. If the decedent had a Will giving everything to someone else, our client would have received nothing. So you can see that the law does not care how long you have been separated. You are still married until you are legally and finally divorced.

This means the first thing you do before you walk out the door is update or create your Estate Planning documents.

NEW LAW

Congress passes onerous Medicaid provisions. California usually follows suit within a few years. From California Advocates for Nursing Home Reform: www.canhr.org

On February 1, 2006, the U.S. House of Representatives, by a narrow margin of 216-214, voted to pass the Deficit Reduction Act of 2005 (S. 1932), which includes numerous provisions aimed at denying Medicaid benefits to current and prospective nursing home residents. Some of the more onerous provisions:

Five Year Look Back: Increasing the look-back period for transfer of assets from three years to five years to see if anyone has given anything away in those five years before they apply for Medicaid. The result will be thousands of Medicaid applicants being denied eligibility for transfers made years before they even pondered the possibility of going into a nursing home. Your grandmother could have given her grandchild \$5,000 four years ago for graduation, but will be denied Medicaid four years later because of that gift.

Outright denial of Medicaid to anyone with more than \$500,000 equity in a home, unless there is a spouse or a dependent child living there. Given the housing values of

homes in California, thousands of prospective Medi-Cal applicants will be automatically denied benefits for nursing home care. The DRA is already expected to cost California \$1.7 billion in lost federal revenues.

Increasing Nursing Home Evictions: Under state and federal laws, a nursing home cannot evict a resident who qualifies for Medicaid. However, they can evict a resident for non-payment. Residents whose applications are delayed or denied will be easily evicted, even if they had already exhausted their life savings paying privately for their care.

Encouraging Elder Fiduciary Abuse : The bill encourages elder fiduciary abuse by forcing people to take out equity loans or reverse mortgages to pay for care. While there are a few reverse annuity mortgage organizations that are reputable, applicants must live in their homes in order to qualify. RAMS are not available for those who are going into nursing homes. Thus, seniors and the disabled will be faced with sleazy mortgage lenders who will offer money for unconscionable rates that the seniors will never be able to pay. They will have their homes foreclosed and that's just the start of the ramifications of this bill.

Proving "Hardship" : The sponsors purport to soften the blow to those denied benefits by including provisions that allow denied applicants to prove that a "hardship" would exist and allowing nursing homes to apply for exemptions. However, these are not "exemptions" - these are administrative law proceedings. It is doubtful that nursing homes are going to spend their funds representing poor people when it is easier and more cost-effective to simply evict them. In order to prove hardship, those denied Medicaid will have to be able to understand their rights, file for a hearing in a timely manner and have legal representation at fair hearings. This is not likely to happen for the majority of elder and disabled applicants, who have already spent their assets and can't afford legal representation.

To see how these new regulations may affect your Estate Plan, contact:

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