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Medicaid Home Care: Preserving Income With A Pooled Trust

Most of us hope to spend our last days at home. Certainly, we expect to remain at home for as long as possible. If we become ill or incapacitated, we may be able to remain at home with the services of an aide or home care attendant, but the cost for these services can range between \$170.00 and \$400.00 a day.

Medicaid affords home care benefits to those individuals who meet certain requirements. Among other things, an applicant must disclose income. Once an applicant is approved for Medicaid home care benefits, Medicaid will pay all or some of the home care costs. The Medicaid recipient is presented with a budget requiring that monthly income exceeding \$767.00, \$1,117.00 for husband and wife ("excess income"), must be paid to the agency providing home care services. Living on this budget in the New York metropolitan area is problematic, particularly if the Medicaid recipient owns a home or apartment.

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After We Say Goodbye

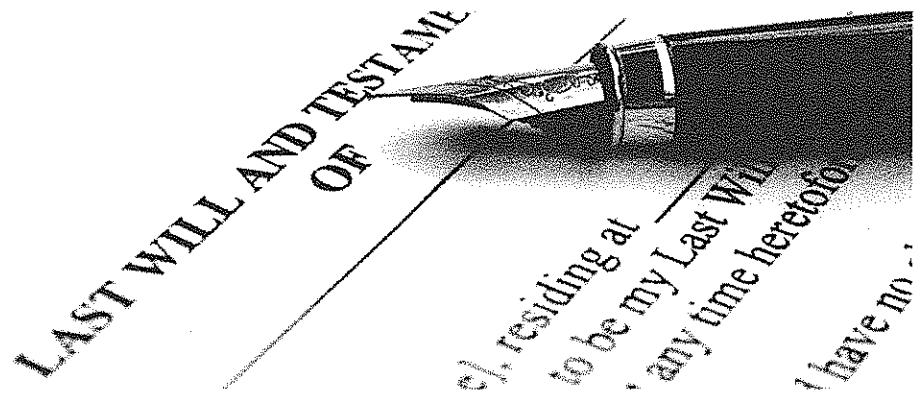
After the loss of a loved one, family members sometimes find it difficult to focus on what needs to be done to ensure the decedent's wishes are carried out. Although it may be very difficult, there are issues which must be promptly addressed.

The wishes of the decedent regarding the disposition of his or her remains is the first order of business. Arrangements should be made with a funeral parlor for burial or cremation. Typically, the funeral parlor will coordinate with the cemetery if a burial is contemplated. The clergyman who will officiate over the ceremony must

be contacted or selected. An obituary may be posted and notifications should be made to family members, friends, colleagues, neighbors, business associates and others who the decedent would have wanted to be in attendance.

The funeral parlor will order and obtain death certificates. It is important to ensure that accurate information is conveyed about the decedent as correcting the death certificate is a time-consuming endeavor. The number of death certificates that will be required varies depending upon a number of factors. An original must be filed in each state in which property is owned by the decedent. Banks and

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Estate Planning For Second Marriages

One who is considering a second (or third) marriage often has more complicated estate planning needs than a client who is single or one who

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The good news is that Medicaid allows disabled individuals to establish a Pooled Income Trust ("Trust"), managed by a nonprofit organization. This provides a mechanism for protecting the excess income. Once the Trust is established, instead of paying the excess income to the agency providing services, the Medicaid recipient may deposit it into an account set up for his or her benefit and use it to pay expenses, including rent, utilities, homeowners' insurance, real estate and school taxes, credit card bills, food, clothing and household items. The funds cannot be used to

pay income taxes or for prescription drugs, alcohol or tobacco. But the funds are also not considered available resources for Medicaid eligibility purposes. For these reasons, the ability to establish a Trust is often what enables Medicaid recipients to remain in their homes as they have the use of the excess income, monies which would otherwise be lost.

In order to establish a Trust, an application and other documents must be completed and signed. If the applicant is incapable of applying, his or her agent under a Power of Attorney may submit the application. However, the Power of Attorney must be broadly drafted so as to afford the agent the authority to establish such a Trust on behalf of the applicant. Unless the Power of Attorney is sufficiently broad, the nonprofit organizations which manage these Trusts

will refuse to establish an account for the applicant and the planning may fail. Absent an appropriate Power of Attorney, a guardianship proceeding, which is both costly and time-consuming, may enable the guardian to establish this type of Trust.

We recommend that, when determining whether to apply for Medicaid home care benefits, serious consideration be given to the use of a Pooled Income Trust to protect income. If this is a strategy that makes sense, it is important to also review the existing Power of Attorney. If you have questions concerning Medicaid home care benefits, the establishment of an account under a Pooled Income Trust, or if you wish to have a Power of Attorney reviewed or a new one created, please call our office and we will be happy to assist you.

Estate Planning For Second Marriages

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is or has been married only once. One or both of the parties may have children from an earlier marriage. They may have continuing relationships with family members of the first spouse - the grandparents, aunts, uncles and cousins of their children. They may own a home or other real property and be reluctant to relinquish control. They may want their children, rather than the new spouse, to be the beneficiary of retirement accounts. A premarital, or prenuptial agreement can be key to protecting your assets, but it is important to make sure the agreement is integrated with your estate plan.

The most pressing issues include: who to name on the power of attorney and as a health care agent, what right to give to a surviving spouse regarding the use and occupancy of a house, who should be the beneficiary of retirement accounts, and what responsibility may later exist to support an ill spouse if long-term care is required.

When designating an agent for the power of attorney and health care proxy, and even to serve as executor of the estate, it is wise to select an individual who is responsible and trustworthy, one who you feel confident will carry out your directives. Often these documents give broad powers, including the power to give away assets. For some, the agent is the new spouse. Others choose to defer the appointment of the new spouse until

the new marriage has some history. Even if one appoints the new spouse, it is wise to ensure that the power of attorney does not give the new spouse the authority to amend the prenuptial agreement!

Concerning the residence, one option is to allow a surviving spouse to continue to reside in the home for a period of years, or even for life. If this is the plan, it is essential that the documents, the prenuptial agreement and the estate plan, are consistent. Imagine the consequences if the prenuptial agreement affords the surviving spouse the right to remain in residence and the house has been transferred to a trust that leaves it to the children. Also, consideration should be given to how costs and expenses relative to the property will be paid. If real estate taxes, insurance,

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maintenance and the like are to be paid by the surviving spouse, does he or she have the wherewithal to carry these expenses? What will happen if the expenses fall into arrears? Should provision be made for the payment of some or all of the expenses from the estate? It is important to be as specific as possible about the responsibility for the expenses as ambiguities fuel discord among the family members. And, what happens if the surviving spouse wants to remarry? This must be considered and resolved.

Regarding retirement accounts, under ERISA, the spouse is entitled to receive these benefits unless he or she voluntarily waives them. The prenuptial agreement is frequently the vehicle in which the spouse waives the right to retirement accounts but it is important, after the marriage, to make sure that the appropriate forms are actually completed and filed.

Estate planning for couples who have been previously married is a minefield. It requires creativity, deliberate attention to detail and sensi-

tivity to the needs of the parties involved. Changes in the ownership of property, whether the property is sold, gifted or transferred to a trust, can create conflicts with prior agreements. It is imperative that any ownership change or modification to an estate plan be reviewed by an attorney familiar with these issues. Berwitz & DiTata LLP is available to ensure that your wishes are carried out and that there are no unintended, costly and time consuming consequences.

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other financial institutions, insurance companies, title companies and others will require an original death certificate. It is advisable to order more death certificates than you think will be necessary.

Other steps that should be taken include: redirecting the decedent's mail; notifying credit card companies and canceling all outstanding credit cards; notifying the decedent's employer; canceling subscriptions to magazines, newspapers and other publications; canceling contracts with cell phone, internet, cable and telephone providers; canceling the decedent's library card; terminating social security and pension payments; arranging for continuing insurance on the home and other property of the decedent; securing the decedent's car and, perhaps, returning the license plates and canceling the automobile insurance.

The timely distribution of the decedent's property is important. First,

ascertain whether the decedent had a Last Will and Testament and/or a Trust and, if so, determine where those documents are located. Please note that, under no circumstances should the staples or other fasteners be removed from the Will. Doing so will delay the probate of the Will and, in some instances, it could invalidate the Will. The Will should contain a provision nominating an Executor. This is the person whom the decedent designated to be responsible for carrying out his or her wishes. If the decedent had a Trust, it should contain a provision appointing a Trustee and/or successor Trustee. The Trustee is responsible to manage the assets owned by the Trust and to carry out the Trust's directions regarding the disposition of those assets. Typically the nominated Executor and Trustee seek the services of an attorney to assist them in their efforts.

The nominated Executor or Trustee can expedite the process by bringing important documents to the first meeting with the attorney. They include: death certificates; the fu-

neral bill with evidence of payment; statements of all financial accounts in which the decedent had an interest; beneficiary designations for the decedent's retirement accounts; the original Will and/or Trust; the names and current addresses of the decedent's relatives; the date of death for any relatives that may have predeceased the decedent; and the amount of any outstanding debts of the decedent. There are additional documents which may be necessary if a proceeding must be commenced in the Surrogate's Court to probate a Will, appoint an Administrator in the absence of a Will or for the administration of a Trust, but the attorney will identify them and advise the Executor or Trustee of their importance.

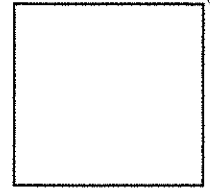
Naturally, once the basic steps have been accomplished and the rudimentary documents accumulated, each matter has its own unique character and requirements. We, at Berwitz & DiTata LLP, are available to help the Executor and/or Trustee navigate the administration of an estate or trust with sensitivity and empathy.

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Taking The Car Keys Away

Seniors, as a group, are relatively safe drivers. Generally, we have fewer accidents as we age. This is attributable to self-imposed limitations that include driving fewer miles, at slower speeds, and avoiding driving at night, during rush hour or on high speed roadways. However, drivers over 75 have a higher risk of being involved in accidents and their rate of fatality is significant, on par with teenage drivers (a sobering thought).

Telling a parent that he or she needs to stop driving is a conversation that most adult children want to avoid. It's difficult to know what to say or, more importantly, how to say it. After all, the implications are significant, particularly in a suburban

or rural setting - loss of independence, inability to attend social functions, increased dependency on others, and the fear of becoming a burden. While seniors may subconsciously agree when family members express concern about their driving, and women are, generally, more receptive than men, most report responding with either indignation or depression when asked to relinquish this activity.

If you are thinking that it may be time to have this discussion with a loved one, here are some tips. Be prepared to have more than one conversation. Try to avoid the ultimatum. Private and candid discussion will generally yield better results. Observe the senior at the wheel. A conversation has far more meaning when the senior's driving is experienced first hand. Begin by talking about safety.

Use mishaps, self-regulation, or health changes as a lead in. For example, praise a senior for choosing to limit driving to day time, or discuss how new medication may cause drowsiness or a decrease in reaction time. Discuss your concerns with a doctor. A recommendation to stop driving that comes from the doctor usually carries more weight. Be prepared to offer other transportation options. If there is resistance, suggest that the senior's driving skills be tested. Be supportive. Remember, this is more than just the loss of their car, but a clear blow to their freedom and independence. The transition can be difficult.

What if these steps fail to get the desired response? If a high-risk driver refuses to stop driving, the family may have no choice but to sell or disable the car or remove the keys.

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