Berwitz & DiTata LLP

A STEP AHEAD

FOURTH QUARTER 2015 • VOLUME 12 • ISSUE 4

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Keeping Up with Your Estate Plan: A Lesson Learned From Lamar Odom and Khloe Kardashian

Recently, Lamar Odom, the former NBA star who played for the Lakers and the Clippers, was found unconscious in a brothel in Nevada. In addition to being a professional athlete, Odom is famous for his 2009 marriage to reality television star Khloe Kardashian. Although the couple had separated and signed divorce papers in July of this year, the divorce has not been finalized due to a backlog in the Los Angeles courts. When he was admitted to a Las Vegas hospital, Odom was in critical condition and unable to communicate. It soon emerged that, since the divorce was not final, Khloe has legal authority to make medical

CONTINUED ON PAGE 4

What is Hospice Care?

Hospice is a specific type of "palliative care" which focuses on comfort driven care and pain relief, not curing. While palliative care may be available for patients at any stage of an illness, hospice care is for those with "a life-limiting illness," in other words, people who are unlikely to live for more than six months. Its goal is to give the patient control, dignity and comfort and ensure that the final months of life are as good as possible. It helps patients and their family members plan for the care that will be afforded during "end-of-life," and guides them through the health care system.

What does hospice include?

Pain and symptom relief, bereavement counseling for family members and loved ones, assistance in organizing financial affairs and help navigating the healthcare system.

Who provides hospice?

Hospice care is provided by doctors, who are specially trained in palliative medicine, together with a

CONTINUED ON PAGE 3

Understanding Your FDIC Coverage

The FDIC (Federal Deposit Insurance Corporation) is an independent agency of the United States government, created to protect depositors of FDIC insured banks and savings associations, against loss due to the failure of the insured bank. It covers all types of deposits, checking, savings, money market and time deposits like certificates of deposit ("CDs"), dollar-for-dollar up to the insurance limit including principal and accrued interest. The general limit insurance coverage for these accounts is $250,000 per depositor, per insured bank, for each account ownership category.

If, in one insured bank, a **single depositor** owns a checking account, a savings account and a CD in his or her name alone, the value of the accounts are added together and only $250,000 of the total sum

CONTINUED ON PAGE 2

IN THIS ISSUE:

Understanding Your FDIC Coverage

CONTINUED FROM PAGE 1

is insured. Therefore, if you have a total of $250,000 or less on deposit in all of your accounts at the same insured bank, your deposits are fully protected.

For **joint accounts**, accounts owned by two or more people, under FDIC rules each person's share is considered equal unless otherwise stated in the bank's records. To determine the amount of each joint account holder's insured limit, it is necessary to determine what other accounts the individuals own at that bank. Thus, if Harry and Wendy, husband and wife, together own a savings and a checking account at the same insured bank which total $500,000, they are fully insured. But if either Harry or Wendy own other accounts at that bank, there may not be sufficient insurance. For example, if Wendy's sister Pam also opens an account at that bank and names Wendy as a joint owner, Wendy will be deemed to own half of Pam's account. If Pam deposits $100,000 into that account, she will only be insured for $50,000 because the other $50,000 will be deemed to be owned by Wendy whose insurance limit is already exhausted. Using different Social Security numbers on multiple accounts owned by the same individuals does not increase the insurance coverage.

Payable on death ("POD") or in trust for ("ITF") accounts are accounts that specify named beneficiaries to receive the proceeds upon the owner's death. If an account is

properly titled using the commonly accepted terms above and the beneficiaries are named, the account is insured for up to $250,000 for each beneficiary, provided that the owner has no other accounts at the same insured bank.

FDIC rules regarding **revocable trusts** or "living trusts" are more complex. They take into consideration many issues such as: whether the trust was created by one or more individuals, the number of beneficiaries or successor beneficiaries (those who receive if a primary beneficiary dies), the number of beneficiaries alive at the time of the bank failure, whether the beneficiaries receive equal or unequal interests or, if a charity or not-for-profit organization is named, whether it qualifies under IRS regulations. As a general rule, such accounts are insured for up to $250,000 per owner for each "qualifying" beneficiary named in the trust agreement and, for this reason, owning accounts in a trust may significantly increase the available insurance.

Insurance will cover **accounts for irrevocable trusts** as long as the records for the insured bank reveal the existence of the trust relationship and the identity and interest of each beneficiary. Additionally, the amount of each beneficiary's interest must not be contingent as defined by FDIC regulations. For this reason, it is important to provide a copy of the trust agreement to the bank when opening such an account. There is no per-beneficiary coverage for this type of trust if the owner retains the right to use the trust assets. Instead, the amount of the owner's retained interest is added to the owner's other accounts at the same insured bank, if any, and the total insured amount is $250,000. There is also no per-beneficiary coverage for contingent or non-ascertainable beneficiaries. All such interests would be added together and insured for up to $250,000.

Retirement accounts such as IRAs, Roth IRAs, SEP IRAs, Section 457 deferred compensation plans, self-directed 401(k) plans and self-directed Keogh plans also have limits on insurance: $250,000 per owner per insured bank. Naming multiple beneficiaries does *not* increase the insurance coverage for these types of accounts.

What happens when two insured banks merge? The FDIC affords a grace period of six months, during which the deposits from the assumed bank continue to be separately insured. This gives the depositor time to restructure or move accounts. CDs are insured until the earliest maturity date after the six month grace period expires.

Periodically review your coverage, especially after a change in your life. For example, if a couple has a $500,000 joint account which is fully insured and one of them dies, the survivor has six months to restructure the account. After that, the entire account is limited to the $250,000 applicable to the survivor's single-ownership account and the balance is at risk if the bank fails.

Beware, the FDIC does not insure **stocks, bond mutual funds, life insurance policies or annuities** even if they were purchased from an insured bank. It also does not insure US Treasury bills, bonds or notes but these are separately backed by the full faith and credit of the US government. Contents of safe deposit boxes also are not protected by FDIC insurance. If you have further questions concerning FDIC insurance or the best way to title your accounts, please call Berwitz & DiTata LLP.

What is Hospice Care?

CONTINUED FROM PAGE 1

team of care givers that may include nurses, social workers, chaplains, physical therapists, dietitians, volunteers and others. Typically, the hospice physician collaborates with the patient's primary physician to coordinate care.

When should one apply?

Hospice services are for patients with a wide range of life-limiting illnesses such as cancer, heart disease, congestive heart failure, lung disease, and neurological disorders such as Alzheimer's disease and dementia. Any person who likely has six months or less to live qualifies for hospice care. Unfortunately, too often people wait until death is imminent – weeks or even days away – before seeking hospice, missing out on months of helpful care for themselves and their loved ones. There are two primary requirements, that the patient have a life-limiting illness and that they no longer seek curative treatment for that illness.

Where is hospice available?

Hospice is available nationwide. It is usually provided at home but it can also be provided in hospitals, nursing homes and assisted living facilities.

Does insurance cover hospice care?

Many private insurance plans and health maintenance organizations (HMOs) offer hospice and palliative care benefits. Medicare offers the full scope of hospice benefits including medication for pain and symptom management, doctor visits, counseling, and other hospice services. It is important to understand that once hospice is requested, Medicare does not cover the cost of aggressive treatment intended to cure illness. Medicaid recipients are also covered for hospice and palliative care.

How does one access hospice?

Anyone can request hospice services at any time. The hospice staff will then contact the patient's primary care physician to determine if hospice is appropriate and work with the patient to provide care. Hospice does not require a specific diagnosis. If you or a loved one could benefit from hospice care, ask your doctor to refer you to a hospice and palliative doctor or hospice organization.

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CONTINUED FROM PAGE 1

decisions on Odom's behalf. This means that Khloe has the final say on decisions concerning pain management, artificial feeding and hydration and even end-of-life choices! To avoid this result, Odom should have updated his estate planning documents once he knew of his impending divorce.

While this is perhaps an extreme example, there is a lesson to be learned. In New York, if a marriage is legally terminated, for purposes of legal decision-making, your ex-spouse will be treated as though he or she predeceased you. But problems will arise if you have not named a successor! This can cause uncertainty and confusion at just the time when certainty is most important - in the event of your incapacity or death. Therefore, it is important to address inconsistencies or gaps that may be created in your estate plan following a divorce or any other change in life circumstance. If you are interested in updating your estate plan please contact us to arrange for a consultation.

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