SOUTH COUNTY SENIOR LAW & ESTATE PLANNING CENTER, LLC

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Inside this Issue

The articles in this newsletter are written by the attorneys of South County Senior Law & Estate Planning Center, LLC as an informational resource for our friends and clients. Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

Dennis Mertz achieves "AV-Preeminent" Rating

Dennis Mertz, founding principal of South County Senior Law & Estate Planning Center, LLC, was recently awarded an AV®Preeminent™ rating by the Martindale-Hubbell peer review ratings system.

Martindale-Hubbell, with a database of over one million lawyers and law firms in over 160 countries, began offering peer ratings more than 130 years ago. Two years ago, the company added client ratings – providing two key components of a comprehensive review of a lawyer. Martindale-Hubbell ratings are a powerful tool to help distinguish attorneys from their competition.

Martindale-Hubbell peer review ratings reflect a combination of general ethical standards and legal ability. Legal Ability ratings are based on performance in five key areas, and are rated on a scale of 1 to 5 (with 1 being the lowest and 5 being the highest).

The general ethical standards rating denotes adherence to professional standards of conduct and ethics, reliability, diligence and other criteria relevant to the discharge of the professional responsibilities of attorneys.

Martindale-Hubbell Peer Review Ratings are anonymous, and reviewers' identities are not published.

An AV® Preeminent™ certification mark is a significant rating accomplishment – 4.5 to 5.0 on the 5 point scale. This rating is a testament to the fact that Dennis' peers rank him at the highest level of professional excellence.

Preparing a Letter of Instruction

You think you have taken care of your heirs. Your estate plan is current. The life insurance policy is paid up. And your computer passwords can unlock all the details of your IRA, 401(k) and brokerage accounts. There's only one thing you forgot: You haven't told your spouse or children where to find anything.

Drawing up a letter of instruction now can spare your family a load of aggravation if you die or become suddenly incapacitated. At the very least, the letter should list the numbers of all of your investment accounts, insurance policies, loans, cemetery plot records, real estate holdings, military benefits, and even frequent-flier memberships. It should also provide the location of important documents and the names, addresses, telephone numbers, and e-mail addresses of key contacts, such as your lawyer, financial advisor and insurance agent.

Some attorneys and accountants provide a model letter of instruction to clients, a post-mortem road map for heirs. Some spouses don't even know where the wills are.

(Continued on page 4)

The choice of an attorney is an important decision and should not be based solely on advertising.

Protecting Assets for a Child with a Disability

Estate planning and lifetime planning for parents of a disabled child present special problems. The goals of the parents are to utilize their assets in such a way as to enrich their child's life while, at the same time, preserving the child's public benefits.

Estate Planning Options

Parents of a child with a disability have four options with respect to estate planning:

- Disinherit the child;
- Distribute the assets directly to the child;
- Distribute the assets to a sibling with the understanding that the siblings will use the assets for the benefit of the child with a disability;
- Distribute the assets to a trust for the benefit of the child with a disability.

Disinherit the child

The first estate planning option is to simply disinherit the child. If the parents' estate is relatively modest, and the child's needs are great, this may be the best approach, because any legacy from the parents would be inadequate to meet the significant needs of the child.

Distribute the assets directly to the child with a disability

The second option is to make the gift to the child with a disability. The problem with this option is that distributing the assets to the child with a disability will disqualify the child for any means-tested public benefits. This may render the child ineligible for SSI, Medicaid, food stamps, or federally assisted housing, as well as for supported employment and vocational rehabilitation services, group housing and the like. In addition, the child may be charged for program benefits previously received.

The disabled child, if under age 65 at the time of the inheritance, could petition the court to create a special needs trust and transfer the inheritance into such a trust. However, the trust would have to include pay-back provisions to the state for any Medicaid benefits provided the disabled child. Under this scenario, the state would have a claim against any trust assets remaining at the disabled child's death.

Distribution to a sibling or related party

The third option is to distribute the assets to a sibling or related person, with the understanding that the sibling will use the monies for the benefit of the child with a disability. Distribution to other children is a risky proposition. If assets are distributed to a sibling, the assets are held in the name of the sibling. The assets are then exposed to the creditors of the sibling. The assets may also be claimed in a divorce action and be subject to misappropriation or mismanagement. Also if the sibling spends more than $13,000 per year on the child with a disability, a taxable gift may result. Finally, any income earned by the assets will be taxed to the sibling.

Supplemental Needs Trust Created for the Benefit of a Child with a Disability

A trust that is created by a third party for the benefit of a disabled child and not using the disabled child's property is typically referred to as a Supplemental or Special Needs Trust. Third party special needs trusts are established with assets that are contributed by individuals other than the disabled child, for the benefit of the child. A properly drafted third party special needs trust will not disqualify the disabled child for SSI, Medicaid, food stamps, or other public benefits. Such a trust gives the trustee full authority over trust distributions to or for the benefit of the disabled child, providing that the trustee should not make distributions which would disqualify the disabled child for other public benefits.

A third party special needs trust designates the individual(s) or other beneficiaries to receive any assets remaining in the trust after the disabled child's death. The child's creditors, including Medicaid, have no claim against remaining trust assets after the disabled child's death.

Annuities are Not for Everyone

Suppose you're sitting with a financial adviser and he says, "I know of a fine annuity that's just right for you!" In most cases, although not quite all, here's what you ought to do: Jump up and run out the door. Don't stop running until the salesman stops chasing you. That may take a while since he's chasing a very fat commission.

Annuities are some of the sweetest deals in the investment business — for the people who sell them. Commissions often run 5 to 8 percent. That's why they're so often sold to people who would be better off with some other retirement plan. That's most of us.

The firm was recently retained by a brother and sister (both in their 80s) who had just entered a nursing home. The two had been working with their "personal banker" from a large local bank, and that banker had convinced our clients to invest over 90% of their liquid assets into fixed and variable rate annuities and single-premium life insurance policies (another product with high commissions), so they had no ready cash to pay their nursing home costs. Further, the annuities carried steep surrender charges.

The prime benefit of an annuity is the tax deferment. But, in the case of our clients, their banker had convinced them to liquid several hundred thousand dollars in HH bonds (which were paying a nice interest rate) to purchase the annuities, and the liquidation of the bonds caused our clients to pay huge income taxes.

Here's a primer on annuities – a very confusing product.

Annuities are tax-deferred retirement vehicles. You invest money after paying taxes on it. Then your investment grows tax-free until it's taken out. At that point, you can take the money in a lump sum and pay taxes on the gain (as ordinary income), or set up a monthly payout on the annuities, and pay taxes on the part of each monthly payment that represents the gain on your investments.

Some annuities offer a fixed rate of return for a certain number of years. Others promise a fixed rate for a shorter period, then the rate is adjusted by the company issuing the annuity. Some variable annuities offer a return that moves with the stock market, investing in stock or bond mutual funds. If the investments do well, you'll get more than the guaranteed minimum.

Annuities come with an insurance component. This often promises that your heirs will get a certain minimum amount if you die.

Those are the basics, but there are lots of other bells and whistles that vary by the annuity.

So, what's wrong with this? We've already mentioned a fat commission, which the customer ends up paying. Annuities also tend to have big fees, which lower the investment returns. You might pay double what you'd pay for mutual funds bought outside the annuity, as well as fees for insurance.

And, the tax deferment and insurance components aren't all they're cracked up to be.

If you invest in stock mutual funds outside of a retirement plan, much of your earnings come in capital gains, which are taxed at a low rate. Once you cash in an annuity, the gains are taxed at ordinary income rates.

This different tax treatment can make a huge difference. You have to hold an annuity for quite a few years before the tax deferment outweighs the value of the lower capital gains tax rate on stock mutual funds.

Also, most annuities come with steep surrender charges, often starting at 7% or so, and declining every year until they're gone completely, which is generally after six to ten years.

Here's what the AARP has to say about annuities: "Annuities are not for everyone. Your time horizon should be at least ten years. And you should have exhausted all other tax-deferred savings opportunities before you consider an annuity."

Coming back to our clients, considering they were both in their mid-eighties, it's unconscionable that their banker would have convinced them to invest virtually all of their savings into products they could not touch for eight years without surrender penalties, and that he would have told them to cash in HH bonds (and pay huge income taxes) to fund the annuity purchases.

I'm sure my clients' banker enjoyed his fat commission – we wonder how he sleeps at night.

SOURCE: St. Louis Post-Dispatch, April 24, 2011

SOUTH COUNTY SENIOR LAW & ESTATE PLANNING CENTER, LLC

5520 Telegraph Rd., Suite 104
5518 Telegraph Rd., Suite 101
St. Louis, MO 63129

Phone: 314-845-0541
Fax: 314-845-2580
Email: dmertz@STLseniorlaw.com
mkennedy@STLseniorlaw.com
chart@STLseniorlaw.com

Dennis B. Mertz

Mavis Kennedy, CELA (seated)*

Christine F. Hart

South County Senior Law & Estate Planning Center, LLC has been serving the needs of our senior clients for twenty years. The firm attorneys, Dennis B. Mertz, Mavis Kennedy, and Christine F. Hart are members of NAELA, Inc. (National Academy of Elder Law Attorneys), dedicated to meeting the legal needs of all persons of all ages, including seniors.

We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid planning and tax advice, Special Needs Trusts and trust administration, nursing home abuse, will contests and other contested estate matters, financial exploitation of the elderly, personal injury, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule an appointment to discuss any of your legal questions.

SHARE YOUR NEWSLETTER

We encourage you to share this newsletter with anyone who is interested in issues pertaining to seniors. The information in this newsletter may be disseminated without charge or permission, but with appropriate citation to *Senior Law Quarterly*.

Anyone wishing to be added to our newsletter mailing list should contact our office at (314) 845-0541 with your request.

*Mavis Kennedy is a Certified Elder Law Attorney by the National Elder Law Foundation, the only elder law certification program accredited by the American Bar Association. Certified Elder Law Attorneys offer the specialized knowledge, skills and experience to resolve legal issues that affect older people and the disabled.

(Neither the Supreme Court nor the Bar of Missouri reviews or approves certifying organizations or specialist designations).

Preparing a Letter of Instruction

(continued from Page 1)

The Letter may direct heirs to cancel credit cards and club memberships and to call current and past employers regarding company benefits. If you'd prefer that mourners donate to a specific charity rather than send flowers, include it in the letter.

Place all relevant documents in a binder that your spouse and children can find easily.

Detailed instructions can ensure that heirs don't miss out on their inheritance.

The exercise also serves as a reminder to update estate planning documents. For instance, you may have forgotten to change your beneficiary designation on pensions and IRAs. Some accounts have left survivor benefits to a previous spouse.

Also include funeral instructions and information you would like in your obituary. Note if you already paid for your funeral and whether you'd like to be buried or cremated. Record preferences for music and speakers.

The letter should be kept in an "important paper drawer" at home. Let your family know where it is. People need to be able to get to the letter of instruction quickly. Seal the letter, if you like, with instructions for it to be opened by one or more named persons in the event of incapacity or death.

Make sure to note the location of any items you may have hidden.

SOURCE: Kiplinger's Retirement Report of June, 2011