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Positive Strategies for Aging & Living with Disabilities
Summer 2017

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When Your Investments Are Held Hostage

You worked really hard to earn and save. You invested wisely and cautiously, diversifying your investments with a variety of brokerage firms and financial institutions. But there's one thing you probably didn't think about: **How easy is it to get my money back from the financial institution?** As it turns out, this is an important question to ask!

Sam and Nancy both worked and saved, and eventually retired. Over time, they ended up with investments in multiple accounts with a variety of financial institutions. Then, Nancy developed dementia and they retained our firm for long-term care planning. Little did we know the difficult journey we were about to embark upon together.

In order to manage control of Nancy's investments and to be proactive about her eventual loss of control, the couple filed Nancy's power of attorney with the various financial institutions. By doing so, Sam would be able to step in and manage the assets once Nancy lost capacity.

Problem #1: Financial institution X rejected her validly executed power of attorney for no stated reason and required her to complete its own power of attorney form. Fortunately, Nancy still had enough capacity to complete X's required form. Otherwise, the only option would be to go to court to get control of Nancy's money. The court process would cost thousands of dollars simply because the financial institution would not accept Nancy's valid power of attorney!

Problem #2: As Nancy's dementia worsened, Sam found another investment account at financial institution Z. Financial institution Z said they would accept Nancy's statutory power of attorney, but only if she 1) Completes a change of ownership form for the account; 2) Provides attorney certification of the power of attorney, and 3) Completes a new account form for each new agent.

Lots of hoops to jump through, even for someone with full capacity! Consider, too, that Sam is forced to deal with an unreasonably laborious process just when he is in the midst of watching his wife decline and all the stress and consequences that come with that.

Sometimes placing assets into a revocable trust seems like the simplest answer rather than messing around with a power of attorney. That way there should always be a trustee with capacity administering the trust who can order the cash out and transfer of funds from the trust's investment account, right? Not necessarily. Remember — retirement assets cannot be titled in your revocable trust. And even if you properly title nonretirement investments and accounts in your trust, a financial institution may not honor your trust's terms.

Problem #3: Sam and Nancy have a joint revocable trust, and their investment account is titled in the trust. After Nancy lost capacity, the trust provided that Sam could serve alone as trustee. When Sam wanted to cash out the account to pay for Nancy's memory care, the financial institution refused to accept Sam's authority as sole trustee.

Lessons Learned:

Every moment a financial institution can invest your money, they are making money. There is little incentive for them to make it easy for you to get your money back. To be fair, financial advisors also want to make sure they don't give your money to the wrong person and that you are not subject to financial exploitation. But when a person loses capacity, the financial institutions have all the control unless you have done your due diligence in advance.

1. Consider consolidating so that you have fewer accounts. Sam has more than enough to deal with, given his wife's dementia alone; trying to untangle so many accounts with so many institutions is stress he just does not need. Sam had his attorney to provide assistance, but that assistance costs money.

2. Act while you have capacity to file a power of attorney and make sure your financial institution(s) will accept it!

3. If the financial institution requires its own form, make sure to read the form and understand completely what the agent will have to do in order to be able to step in to act on your behalf.

4. If you have a trust, obtain written confirmation from your financial institution's legal department of the conditions required for a successor trustee to access the account.

5. Remember — it's your money! Move your accounts if you are not comfortable that your goals can be accomplished with the financial institution holding your investments.

Our lawyers continue to make presentations on elder law topics to the public through charitable organizations, support groups, veterans' groups, church groups, and other entities. If you know of a group that you think would benefit from one of our presentations, please call Tracie Fenske at (952) 929-0622.

Another Pooled Trust Victory

LRHP attorneys Jessica Lindstrom and Laurie Hanson recently notched another victory defending the ability of a person age 65 or older to establish a pooled special needs trust. The client, a Medical Assistance recipient, received an unexpected inheritance at age 77. Our office assisted the client with establishing the pooled trust subaccount and submitted a fair market analysis to the county demonstrating that no uncompensated transfer occurred. Nonetheless, the county imposed a period of ineligibility, asserting that placement of excess assets into the trust was an uncompensated transfer. On appeal before the Department of Human Services, the Human Services Judge agreed that the placement of assets into the pooled special needs trust by a person over age 65, when properly supported, is not an uncompensated transfer and benefits were reinstated.

Medical Assistance Numbers That Changed in July 2017

Below are the basic Medical Assistance figures that change annually in July.

- The remedial care expense deduction was reduced to $186.
- The minimum monthly income maintenance allowance for a community spouse increased to $2,031 with a possible increase of up to $3,022.50, depending on the community spouse's qualifying shelter costs.
- The basic shelter allowance increased to $609 per month.
- The monthly home maintenance allowance increased to $1,005.
- If an individual is receiving Elderly Waiver services and his or her gross monthly income (not including the spouse's income) does not exceed $2,205, the individual's monthly maintenance needs allowance (including room, board, and personal needs) will be $990. Otherwise it will be $97.
- The statewide average payment for skilled nursing facility care amount increased to $7,106 per month.

Minnesota’s Estate Tax Exemption Increases to $2.1 Million … Maybe?

Minnesota’s estate tax exemption — the amount of property that a person can pass on at death without being subject to tax — increased from $1.8 million to $2.1 million at the end of the 2017 legislative session. The increase applies to individuals dying in 2017, and provides for increases of $300,000 per year until 2020, at which point the exemption will reach $3 million. Although Governor Dayton signed the legislation into law, he simultaneously exercised a line-item veto eliminating funding for the Republican-controlled legislature in an attempt to encourage further negotiation on various tax cuts and other policy issues.

As this newsletter goes to print, litigation is already underway, and Governor Dayton appears to have lost the first round. On July 19th, Ramsey County District Court Judge John Guthmann found that Dayton’s line-item veto of House and Senate funding amounted to “effectively eliminating a co-equal branch of government” violating the state Constitution. Governor Dayton has indicated he will appeal to the Minnesota Supreme Court. So while the law currently provides for the increased exemption amount, there is some level of uncertainty. If you believe the new tax law may impact your planning, please contact your attorney.

LRHP Attorneys in the News and 2017 Super Lawyers

The attorneys at Long, Reher, Hanson & Price appeared on air and in print on a variety of issues that impact our clients. Cathryn Reher appeared on KARE 11 TV’s “Sandwich Generation” in a segment on elder law. Laurie Hanson provided expertise for an article by RBC Wealth Management on special needs planning. Mary Frances Price was quoted in an article in *The Mighty* on how Medicaid impacts people with disabilities when they’re considering marriage. And Laura Zdychnec was quoted in a *Star Tribune* article on the financial costs of caregiving.

2017 Super Lawyers

Laurie Hanson was also featured in the August 2017 *Super Lawyers* magazine, in an article titled “House of Hanson.” Finally, we are proud to announce that Laura Zdychnec, Laurie Hanson, and Cathryn Reher were selected as 2017 Super Lawyers. The Super Lawyers list builds upon a history in which our attorneys are consistently recognized. Super Lawyer selections are made using a rigorous multiphase process that includes a statewide survey of lawyers, an independent research evaluation of candidates, and peer reviews by practice area. Only the top 5 percent of attorneys in Minnesota are included in the annual Super Lawyers list, and we are honored to receive this recognition from our peers.

To view or read any of the stories mentioned, check out our website at mnelderlaw.com.

New Transfer-On-Death Designation for Motor Vehicles

Effective August 1st, Minnesotans can attach a transfer-on-death (TOD) designation to any motor vehicle title. The new law represents the latest tool to transfer property outside of a probate. TODs for boats and watercraft became available in 2016, and TOD deeds for real estate in 2008. Caution: the new law provides that a TOD designation for your car is invalid if the state has a claim against your estate to recover Medical Assistance benefits. You can find the form required to establish a TOD designation for your motor vehicle here: https://dps.mn.gov/divisions/dvs/forms-documents/Documents/MV_TransferOnDeath.pdf.

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REVIEW OF YOUR SITUATION

If you have questions or concerns about any of the information presented in this newsletter or would like to consult with us about how the changes might affect your own circumstances, please call our office to set up an appointment with Cathryn Reher, Laurie Hanson, Laura Zdychnec or Mary Frances Price. We will be happy to meet with you to answer any questions you may have and to help you re-evaluate your particular circumstances.

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New Law for Section 8 Public Housing

The Housing Opportunity Through Modernization Act (HOTMA) was adopted by the United States Housing and Urban Development (HUD) Office on April 18, 2017. The new law imposes an asset limit for both new applicants and current tenants. An applicant or tenant with $100,000 or more in net assets will be ineligible for the public housing benefit. Minnesota Public Housing anticipates implementing the new asset limit by the end of 2017. If you currently live in public housing, it is important that you discuss the new asset limit with the owner or manager of the specific property you reside in. Each property owner has the option of imposing the new asset limit and can also establish exceptions to it. Please contact your attorney if you believe your housing will be impacted by this change.

Get Ready! Medicare Open Enrollment is October 15 – December 7!

Medicare's open enrollment period is October 15th to December 7th every year. Beginning in October, information will be available to compare your Medicare plan to other health plans. Medicare recipients will receive important materials from their health and drug plans about changes in cost, coverage, and providers and pharmacies in their network. It's critical to review these materials carefully — if your health or drug plan is changing, make sure it will still meet your needs for 2018. You can get more information by calling 1-800-MEDICARE or compare plans at medicare.gov.