Your Family Estate Matters

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Lesson from *Long*: Hire an Experienced Estate Planning Lawyer

The District of Columbia Court of Appeals recently upheld the suspension of J. Sinclair Long for incompetent representation and conflict of interest.

Mr. Long, an attorney with some 20 years of experience in criminal law and government service but none in estate planning, was asked by friends to draft a will, which he did by modifying a "form will." His errors in representing his client, which included not inquiring about the existence of other relatives, gaining no knowledge of finances, and making no efforts to preclude the will from being contested, resulted in his representation being ruled incompetent.

Although it was determined Mr. Long was only trying to be helpful to his friends and not benefit personally from his actions, his story is another example of the importance of securing the services of a professional skilled in estate planning and not using a friend or a form.

Source: In re J. Sinclair Long (DC App. Ct., No. 04-BG-883, 7-20-06)

This publication is designed to keep our clients and friends informed of recent events or news items that might affect them or be of interest. This newsletter is for informational purposes only and is not intended to be a source of legal advice.

Please contact me should you need legal guidance about your specific situation.

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Selecting Your Estate Planning Professional

You've decided to develop an estate plan and now you're in the market for someone to draft your plan. How do you select the professional (or team of professionals) who's right for you?

Anyone can market himself as an "estate planner" – there are no particular credentials required – so it's even more important you carefully evaluate who you entrust to prepare your estate plan.

A lawyer is the bare minimum needed to prepare an estate plan. If you don't have a complex estate and earn a moderate income, a general practice attorney may suffice. However, if your estate is somewhat complex and you have a fair amount of assets to bequeath, you will probably want to enlist the services of an attorney whose focus is estate planning. In addition to an estate planning attorney, you may also require the services of an accountant, insurance agent, and/or financial planner.

Also in this Issue...

You should check the backgrounds of each member of your team – just because a "professional" has an endless list of letters after his name, doesn't mean he is knowledgeable (or reputable) – inquire about any designations unfamiliar to you. Regarding selecting a qualified attorney, "Even if an attorney is not credentialed by one of the national or state organizations, they should be members of the estate planning or probate section of the local bar and

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regularly attend those meetings," said Michael Wald, an estate planning attorney at Wald & Associates in Richardson, TX.

You should also feel comfortable with your professional(s). "Look for somebody who takes the time to listen to you and what your goals and objectives are before they start throwing out ideas and suggesting structures," recommends Michael Busch, certified financial planner and President of Vogel Financial Advisors, LLC.

***Source:* www.WFAA.com, 7-31-06**

Learning from the Brooke Astor Situation

Who ever thought an Astor could be in need? Court documents assert Brooke Astor, 104, is not receiving quality care, consequently, Mrs. Astor's grandson, Philip Marshall, has sued his father, Anthony Marshall, who has been responsible for Mrs. Astor.

One lesson to be learned from this sad and public matter is proper planning is a necessity. Even though you may be financially comfortable and even if you have prepared recommended documents such as a trust or will, cases such as Mrs. Astor's highlight the need for specific language detailing the wishes for your care. According to David H. Schwartz, President of First Capital Equities Ltd., of Great Neck, NY, "The real-life stuff is not done enough. There are not enough of these particulars being put in the documents."

Some of these "touchy/feely" issues may include whether a person wants to remain in their home until death, and if so, the plan associated with making that happen. What level of care does the individual want? Will they agree to go to a nursing facility under any circumstances?

Other experts indicate the need for a system of checks and balances. They advise having multiple individuals in charge of your care – the temptations for abuse are just too great when only one person is in control. In addition, an institution experienced with trust and estate matters should also be employed to oversee a client's care – they are objective and will be more likely to closely scrutinize the actions of other responsible parties.

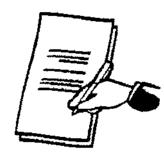
***Source:* www.InvestmentNews.com, 8-7-06**

Congress' Indecision on Estate Tax Is a Source of Frustration

"Whatever you do, do it, so we can plan," said Kip Coleman, Vice President of a family-owned business in the East. Mr. Coleman and his brothers have spent about $22,000 annually for a life insurance policy on their parents to offset estate taxes. Additionally, they have accrued attorney fees to the tune of about $5,000 per year for estate planning. Even so, Mr. Coleman considers the very real possibility of having to borrow $2 million to $3 million to cover estate taxes, depending on what configuration is in place at the time of his parents' death.

Mr. Coleman is not alone. According to a survey from the National Association of Manufacturers (NAM), small and medium-sized manufacturers spent an average of $94,000 this year on estate planning. This unprecedented amount is attributed to the uncertainty regarding estate taxes. Because of the fluctuating nature of the estate tax, businesses are planning for multiple scenarios, which is ultimately costing them more.

***Source:* www.Orlando.BizJournals.com, 8-14-06**



President Bush Signs Pension Protection Act of 2006

Described as "the most extensive revision of the nation's pension law in three decades," the Pension Protection Act of 2006 (PPA) represents a cohesive, bipartisan effort by Congress to enact legislation designed to strengthen a faltering pension system and encourage individuals to save for their own retirement.

Although the PPA has numerous provisions, one of the main goals of the legislation is to stabilize corporate pensions by requiring companies to fully fund their programs over seven years (to begin two years from now), clamping down on loopholes allowing under-funded plans to skip payments, and compelling higher premium payments to the pension corporation[1] by companies who under-fund their plans.

On the individual savings plan front, the PPA made permanent the higher contribution limits, enacted in 2001, to 401(k)s and IRAs, and companies can now automatically enroll employees in 401(k) plans. Additionally, rights previously reserved for spouses, such as transferring retirement benefits and drawing on funds for medical or financial emergencies, are now available to other beneficiaries including domestic partners.

The new law also allows seniors (age 70 ½ or older) to donate up to $100,000, tax-free, from their IRAs to charities.

[1]The Pension Benefit Guaranty Corp. is

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the federal insurance program that covers terminated pension plans. The demise of more than 700 plans in the last five years has resulted in the corp's $10 billion surplus being eaten away to a $23 billion deficit.

Source: www.WashingtonPost.com, 8-18-06 & www.SmartMoney.com, 8-21-06

"Risk Score" for Developing Dementia

For the first time, researchers have developed a "risk score" for developing dementia. Results of research conducted by Dr. Miia Kivipelto, Associate Professor at the Aging Research Centre in Stockholm Sweden, and her team indicate there are three risk factors – high cholesterol, hypertension, and obesity – which seem to contribute to the development of dementia.

The study examined 1,409 middle-aged people in Finland during the period 1972 to 1987. Participants were then evaluated 20 years later for indications of dementia. Results showed having any one of the three risk factors doubled an individual's likelihood of developing dementia and having all three increased one's chances by a factor of six. Although the Swedish researchers said their results need to be verified in other populations with additional studies, their risk scores predicted cases of dementia with about a 70% accuracy rate.

Mental health experts agree, even if you manage your weight, blood pressure, and cholesterol (which happen to be the same risk factors as those for cardiovascular disease), you may not be able to prevent dementia entirely as other uncontrollable factors such as age and heredity may also play a role.

Source: www.News.Yahoo.com, 8-2-06

Home Builders Ready Homes for "Aging-in-Place"

The National Association of Home Builders (NAHB) Remodelors™ Council recently announced the 1,000th graduate of their Certified Aging-in-Place Specialist (CAPS) program. Those participating in the program included architects, designers, remodeling professionals, and health care workers – all working toward enabling individuals to "continue to live safely, independently, and comfortably in their homes regardless of age or ability level."

According to Remodelors Council Chairman, Vince Butler, "Advances in accessibility design are additional factors in the growth of CAPS, as nobody wants their house to look like a nursing home."

To find a professional who is skilled in aging-in-place renovations, visit www.nahb.org/caps.

Source: www.TheMatureMarket.com, 7-31-06

Considerations Related to Selecting a Guardian

One of the most difficult aspects of estate planning is selecting a suitable guardian for your child(ren) should something happen to prevent you and the children's other parent from taking care of them. Bear in mind, if you don't appoint a guardian in your estate plan, the court will appoint a guardian for your children – and the court's choice may not be your choice.

Although you might be overwhelmed with the task of selecting a guardian, it is helpful to consider the following:

- Your choice for guardian should be willing to serve, so make sure your potential guardian is receptive to the idea prior to appointing him.
- The guardian you appoint must be at least 18 years old and should be able to continue serving as guardian until your youngest child is 18.
- Ideally, you probably want your children to be able to remain together, so the person you appoint should be capable of addressing all aspects of care (physical, financial, and emotional) for all of your children.
- Evaluate whether your choice for guardian will instill in your children the values, morals, and religious instruction you would want for them.

Source: www.SheKnows.com, 8-7-06

Appreciated Home Values Necessitate Careful Planning

In the early '60s you and your spouse purchased a home for $100,000 that is now worth millions. Although you're excited your property has escalated in value, your fixed, retirement income is not enough to pay the ever-increasing property taxes and maintain the home. In addition, the increased value of the property may trigger estate taxes or capital gains taxes.

This is a common scenario as real estate values have dramatically increased over

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the last decade, and you may be wise to enlist the services of a professional estate planner and/or financial planner to assist you in sorting through options. Each situation requires a thorough examination of pertinent facts to know what approach will best meet your needs, but your advisor may recommend a reverse mortgage, home equity line of credit, private annuity funded by a family trust, 1031 exchange, charitable trust, or conservation trust to help you minimize taxes, maintain an income stream, and preserve your peace of mind as you enter retirement.

***Source:* *<u>www.Financial-Planning.com</u>*, 8-1-06**

CMS Expects Part D Premiums to Remain Stable for 2007

As a result of strong competitive bidding by health plans and choices made by beneficiaries, the national benchmark that determines Medicare's subsidy toward the cost of drug coverage will decline in 2007, the Centers for Medicare & Medicaid Services (CMS) announced recently. CMS also indicated the average cost of Medicare prescription drug plans will remain stable or decline in 2007, and they anticipate the actual average premium paid by beneficiaries will remain around $24 or less.

"Competition and smart choices have been the two most important factors in the success of the Medicare drug benefit, which is serving beneficiaries at a far lower cost than expected," said CMS Administrator, Mark McClellan, MD, PhD. "Bids are down because of strong competition and if beneficiaries once again choose less costly plans, we will actually see premiums go down on average in 2007. We want to make sure that we continue this stable, effective approach to providing low-cost coverage."

After the drug benefit bidding process for 2006, the average premium offered by plans was around $32, but because beneficiaries overwhelmingly chose Part D plans with lower-cost options, the actual average premium was $24 in the first year of the program.

***Source:* *<u>www.CMS.HHS.gov</u>*, 8-15-06**

We recommend a review of your estate plan every 3 to 5 years, or sooner if you've experienced an event that would affect your plan.

To schedule a review, please call our office at 908-709-1999.