

A Legal Update

Russell, McTernan, McTernan & Fruci, LLP
839 Washington Street, Norwood, MA 02062

The Law and Your Estate Plan

At the risk of overstating the obvious, the laws (and more importantly, changes in them) have a significant impact on your estate plan. For example, let's see how the recent federal Medicaid eligibility changes and the Massachusetts laws of inheritance affect your estate planning.

Federal Deficit Reduction Act of 2005

In February of 2006, President Bush signed the Deficit Reduction Act of 2005 (the "Act") which drastically changed the way people will plan in the event that they need long-term care. The act also has a significant impact on future eligibility for long-term care through MassHealth (Medicaid). Below are some of the major changes in MassHealth long-term care eligibility resulting from the Act:

1. The "lookback period" is extended from 3 to 5 years - First, understand that any transfer of an asset for less than fair market value (a gift) creates a disqualification period for MassHealth eligibility purposes. Prior to the Act, MassHealth required that you report outright gifts made three years before your application and gifts to trusts made five years before your application. Now, the lookback period is five years for both. This means any gift made within five years of filing a MassHealth application could be disqualifying. Some gifts may be exceptions, if they were made for reasons other than to obtain MassHealth eligibility.

2. The disqualification period does not start until you enter the nursing home - Prior to the Act, the disqualification period began on the first day of the month the gift was made. Now, the disqualification period does not begin until the date you enter the nursing home and continues until such time as you would have been eligible for benefits but for the gift. Of course any gift made more than five years before the application will not cause a problem.

3. Annuities - Annuities owned by a person applying for MassHealth long-term care benefits must name the state as the remainder beneficiary for the amount of medical assistance paid, or name the state in the second position after the community spouse or minor or disabled child. Previously, a qualifying annuity was a non-countable asset

that could be passed to your spouse or your children regardless of the receipt of MassHealth benefits. The Act has not changed the beneficial use of annuities to protect assets for a spouse who remains at home.

4. Excess Home Equity - The prior law allowed you, or your spouse, to keep your primary residence as a non-countable asset regardless of its value. The Act now limits the amount of home equity you can have, and be eligible for MassHealth, to \$750,000.

Current Planning

Assets can be protected, despite the changes described in the above summary. The longer lookback period encourages earlier planning, but if timely planning is completed then assets can be protected for the family. Transfers including trusts, life estates and annuities remain viable planning options.

Massachusetts General Laws, Chapter 190

Massachusetts General Laws, Chapter 190, Section 1 addresses inheritance of assets essentially as follows:

If a deceased leaves kindred and no children, and the estate is two hundred thousand or less, then the surviving spouse shall take it all. If there is more than two hundred thousand then the spouse will take two hundred thousand and half of the remainder.

More importantly, when a person dies without a Will, Section 3(5) states:

If he/she leaves no issue and no father or mother, to his/her brothers and sisters and to the issue of any deceased brother or sister by right of representation . . .

So what does this mean to you? Well, if you pass on without a Will, you have no children and your parents predeceased you, your spouse will share everything over \$200,000.00 with your brother Harry in Tacoma, Washington who you haven't talked to in 23 years!! If you are not married it would all go to Harry!!

Bottom line, you should have a Will and should review your estate plan with a professional every three to five years, or whenever there are significant changes within your family or your financial situation.