

Elderlaw & Estate Planning Update



Glad Holiday Tidings



Gift Giving Made ~~Easy~~ Complicated

Leave it to the government to make something as simple as giving gifts seem scary.

At least two government agencies monitor gifts, each of them for different reasons and with different rules.

The Medicaid Divestment Rules: No gift too big—no gift too small

For people who think they might need to apply for Medicaid benefits in the next five year period, be aware that the Medicaid rules might penalize you for making simple gifts.



Continued Inside

A Publication of
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Gift Giving...

When you apply for some types of Medicaid benefits, you will be required to report all of the gifts you've made in the five years prior to applying. Depending on several factors, including who the gift was given to and whether, at the time you made the gift, you should have known that you might be needing assistance with your care, you may face a Medicaid penalty period. A Medicaid penalty period will mean a period of time, after you have otherwise met the eligibility requirements for Medicaid benefits, that Medicaid will not pay for some of your care costs. The length of the penalty period is based on the total value of the gifts made during the five year period. These so-called Medicaid "divestment" rules are very complicated and can be unreasonably harsh. For instance, the divestment rules make no exception for holidays presents, or even donations to religious organizations.

The IRS "Gift Tax" Rules

The other government agency that watches what we give away is... you guessed it, the Internal Revenue Service.

People frequently misunderstand the IRS gifting rules, and many people worry about them who don't have to.

The rule many people hear, but get confused about, is the rule that says you can give away up to \$12,000 to any individual in a single year, without any tax consequences (the so-called "annual exclusion amount", which is going up to \$13,000 in 2009). Two things to remember about this rule:

First, it has nothing to do with the Medicaid rules. Just because you give away less than the annual exclusion amount doesn't mean that you aren't going to get penalized if you apply for Medicaid benefits.

Second, for people who have estates of less than a million dollars, this rule is really only a reporting requirement. Until someone gives away more than a million dollars in their lifetime, they won't have to pay any gift tax. So, for instance, if during my working life I have accumulated an

estate that is now worth \$500,000 and I give \$400,000 to a child (or anyone else for that matter), I will have to report this gift to the IRS, but I will not owe any gift tax on the money, and the person who I gave it to will not owe any gift tax either. Now, two big qualifications on that statement: (1) depending on the type of property transferred, there may be other tax consequences as a result of the gift, and (2) just

because you can give something away, doesn't mean you should (see free advice below).

Just Because You Can, Doesn't Mean You Should

Now here's some free advice:

Too many older folks are quick to want to give their assets to their children, mistakenly believing that they are somehow protecting their estates. In many cases, just the

opposite is true. In most situations, senior citizens should be careful to preserve what they have worked for so that those funds are available to pay for their care needs as those needs arise. Seniors should have estate plans that direct where they want their property to go when they pass away, but until that time, as we like to say, "assets are options." That means the more you have saved, the more choices you will have when and if you need help with your care.



Tripp Chairs Elder Law Lawyers (and named "Boss of the Year")

Attorney Amy R. Tripp earned two impressive honors during the month of October 2008: being elected as the Chair of the Elder Law and Disability Rights Section of the State Bar, and being selected as "Boss of the Year" by NALS of Jackson County (the association of legal professionals).

As Chair of the Elder Law and Disability Rights Section of the State Bar, Attorney Tripp will head up one of the largest sections of the Michigan State Bar. Attorney Tripp's election as Chair follows years of involvement with the



Attorney Tripp

Section as a Council member and officer. "Amy's election to chair the Elder Law Section is no great surprise" said her partner Attorney Douglas G. Chalgian, "Amy is recognized as one of the top elder law and disability planning attorneys in the state. I am sure the Section will benefit immensely from her commitment to this practice area, as well as her leadership."

Attorney Tripp's selection as "Boss of the Year" was announced by NALS of Jackson County on October 16, 2008. It's hard to say which recognition is more rewarding" said Attorney Tripp. "Being recognized by the broader legal community means a great deal, but knowing that the people who work at Chalgian and Tripp Law Offices feel good about me and how we run the office is also very meaningful. I believe that no law office, or any other business for that matter, is really going to be able to provide the best service if the people who work there don't feel respected."

New Attorney Joins C&T

We would like to welcome Rick Mills to the Chalgian and Tripp team. Rick is our newest attorney and a Jackson native. He received his law degree, Magna Cum Laude,



Attorney Mills

from University of Detroit Mercy and his undergrad from Aquinas College. He and his wife, Mary, are the proud parents of a brand new baby boy and are very excited to be back in Jackson.

Rick has published several works and received many honors, including: Hon. Frank Murphy Honor Society-University of Detroit Mercy School of Law and the Jerome P. Cavanaugh Memorial Scholarship—Aquinas

College. He is a member of the Jackson County Bar Association and the Jackson Area Estate Planning Council.

Basel Chairs Civic Organization

Attorney Scott Basel was elected Co-Chair of the Jackson area TRIAD. TRIAD is a partnership of community leaders and law enforcement officials working together to protect seniors from crime.

Attorney Basel's background as a former police officer will likely prove helpful in his new role.



Attorney Basel

Estate Recovery Dies on the Vine ... For Now

After waiting 14 years for Michigan to adopt an “estate recovery” law, the law that was finally passed in Michigan more than a year ago appears to be going nowhere – and that’s good for seniors.

Estate Recovery is the program that allows the State to make a claim against the property of an individual who receives Medicaid benefits, after they die, to recover the costs of services provided to them in certain Medicaid programs, including the cost of care paid by Medicaid for a resident of a nursing home. All 49 other states have such laws. In September 2007, Michigan became the last state to adopt such a law, but the law required federal approval before implementation. The federal government recently rejected Michigan’s plan. So, at least for now, it appears that there is no immediate likelihood that Michigan will have an estate recovery law anytime in the near future.

At this time, it is unclear as to what changes, if any, the federal government would require in order to allow Michigan to proceed. In the meantime, seniors should understand that, while Michigan has no “estate recovery” program in place, there is an exception with respect to annuities owned by people who apply for Medicaid benefits, or owned by the spouses of people who apply for Medicaid benefits. Annuities are subject to a lien requirement that acts as the equivalent of estate recovery. Accordingly, senior citizens who anticipate the possible need for Medicaid assistance should remain extremely cautious before investing in any annuity products.

Be sure to follow this and other legislative issues as they unfold.

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C&T Attorneys Are “Super”

Three Chalgian and Tripp attorneys were selected to be included in the Michigan edition of *Super Lawyers Magazine-2008*. Doug Chalgian and John Bos

were selected to be included in the super lawyers section of *Super Lawyers Magazine* and Amy R. Tripp was selected to be included in the Rising Stars edition of the magazine.

Inclusion in *Super Lawyers Magazine* is based on an exhaustive and rigorous multi-phase selection process which

identifies attorneys who are in the top 5% of lawyers in the state. “It is an honor to be recognized by our peers,” said Doug Chalgian.

In addition, Attorney Chalgian was selected by *Super Lawyers Magazine* as one of the Top-100 lawyers in Michigan.

Finally, Attorneys Chalgian and Bos were also selected to the 2008 Best Lawyers in America.



(L-R) Attorneys Chalgian, Tripp and Bos



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