



PROPER PLANNING MAY CREATE PEACE OF MIND



January 2008

LONG TERM CARE PLANNING FOR DOMESTIC PARTNERS

In prior newsletters we have addressed the importance of advance planning for hetero and homosexual domestic partners from the perspective of estate and incapacity planning. Equally important is addressing long-term care planning. When an ill spouse applies for Medicaid assistance, the healthy spouse is permitted to keep a certain level of assets to protect them from becoming impoverished. However, domestic partners in the LGBT community (lesbian, gay, bisexual and transgender) and cohabiting heterosexual couples do not receive the same legal protection as married couples under the Medicaid laws.

One planning option that is available when a domestic partner needs to apply for Medicaid is called a ‘pooled trust.’ Pooled trusts have been authorized by law since 1993. They serve a similar purpose as do special needs trusts—namely to preserve countable resources and permit the individual to qualify for Medicaid assistance. Those resources can be used to improve the quality of life and care of the domestic partner who is ill or disabled. For example, the trust assets can be used to compensate the domestic partner who is caring for the ill partner or, pay for private

home health care services.

A pooled trust must be established and administered by a non-profit organization (contrasted with a special needs trust that can be established by a parent, grandparent, guardian and the trustee can be an individual or a corporation). In order to join an existing pooled trust, the domestic partner must be disabled as defined by the Social Security Administration. A diagnosis such as HIV or Aids will qualify as a disability.

The pooled trust agreement must contain a ‘pay-back provision.’ This means should any assets remain in the trust at the death of the trust beneficiary, the assets may be used either to repay the Medicaid lien or, used to benefit other members of the pooled trust. Some pooled trusts in Florida have an arrangement with the Agency for Health Care Administration whereby a certain percentage of the remaining assets are repaid to the State and a certain percentage distributed to whomever is designated by the Medicaid recipient (i.e. the surviving domestic partner).

Lawsuit settlement proceeds and inheritances are countable assets and may impact a domestic partner’s ability to receive government assistance

(SSI, HUD housing, food stamps, etc). Proper planning is necessary.



Happy
 New Year

Practice Areas

Estate & Incapacity Planning

- ◆ Last Will & Testament
- ◆ Probate & Trust Administration
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

Emergency & Advocacy Services

- ◆ Emergency & Standard Guardianships
- ◆ Long Term Care Facility Residents’ Rights
- ◆ Medicaid Applications & Appeals

Government Assistance

- ◆ Special Needs Trusts
- ◆ Representation of Special Needs Trust’s Trustees
- ◆ Protecting Lawsuit Proceeds and Inheritances While Preserving Medicaid and SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery

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