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2010 MEDICAID INCOME AND ASSET LEVELS

The Center for Medicare and Medicaid Services did not increase the Maximum Community Spouse Resource Allowance or the Maximum Monthly Maintenance Needs Allowances for 2010. This is due to the fact that under the current law, there is no cost-of-living adjustment (“COLA”) for Social Security in 2010. Accordingly, as in 2009, the following are the Medicaid income and asset levels in effect in New York for single and married individuals applying for Medicaid chronic care benefits:

Monthly Income:

Single/Institutionalized Spouse:	\$50
Community Spouse:	\$2,739

Assets:

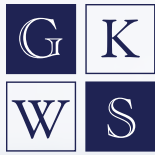
Single/Institutional Spouse:	\$13,800
Community Spouse:	\$74,820-\$109,560

Similarly, the Department of Veterans Affairs did not increase the compensation and pension rates for 2010.

*Plan
Ahead
in
2010*

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NEWSLETTER

Winter 2010

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ESTATE PLANNING TO SUCCEED IN 2010

by Wendy K. Goidel, Esq.

The first decade of the 21st Century is over – and good riddance. Called by many as the “Lost Decade,” it was a time when we experienced terrorism of the most venal kind and an economic collapse that overshadowed even the Great Depression.

As we ushered in 2010, many of us made our typical and ephemeral New Year’s resolutions geared toward self-improvement. However, few of us probably took a critical look at our estate, financial and long-term care planning needs and goals.

While such considerations are the proverbial 800 pound gorilla standing in the corner of the room, we choose either to consciously or subconsciously ignore them. The question is: Why? I ascribe three reasons which form the acronym “AMP”:

- (1) Avoidance;
- (2) Misinformation and
- (3) Procrastination.

AVOIDANCE:

Many people who are relatively young, healthy and financially fit are generally loathe to contemplate the day when they will no longer be so described or may no longer be living the good life. Some may not even be able to discuss these issues while others may equate estate and long-term care planning with an acknowledgment of their potential incapacity or mortality. Notwithstanding the reason for avoidance, the simple truth is this: Failing to plan is planning to fail.

MISINFORMATION:

We are typically inundated with mailings from financial institutions, advisors and attorneys all asking if we have completed or updated our estate planning. We hear information “on the street” or in coffee shops and salons about estate planning and Medicaid eligibility and a lot of it simply isn’t true or accurate. It becomes difficult or even impossible to sort fact from fiction. We receive information from self-professed experts; one suggests that we proceed in one direction while another suggests an opposite approach.

Do I need a will or a living trust? Should I invest in long-term care insurance or try to qualify for Medicaid? Should I convert my traditional IRA to a Roth IRA? What is one to do? Listen to the last “expert” who had your ear? As a result of being bombarded with conflicting estate and financial planning information and recommendations, many of us make the simple choice of doing absolutely nothing. Once again: Failing to plan is planning to fail.

PROCRASTINATION:

Because considering one’s incapacity or mortality is generally distasteful, and because sorting fact from fiction is typically difficult, we tend to table the estate and long-term care planning discussions for another day . . . and then another day. The days turn into months and the months turn into years. By the time we are ready to consider our needs and engage in proper planning, we may be faced with a crisis situation. At that point we are engaged in the discussion not out of want, but due to necessity. In many cases, our condition is such that we have by our neglect abdicated the difficult and painful

(Continued on PAGE 2)

decisions to our loved ones, creating unwanted and unnecessary stress. Planning in a crisis situation severely limits or curtails the available options. And, for the third time: Failing to plan is planning to fail.

So, what is the cure for AMP? Plan to succeed. Commit in 2010 to entering the "ERA of the Estate Plan." Amp up your estate plan by engaging in three activities which form the acronym "ERA":

- (1) Educate;
- (2) Review and
- (3) Act.

EDUCATE:

Commit yourself to becoming educated about estate, financial and long-term care planning. Attend a workshop or an initial

meeting with an estate planning attorney to be introduced to critical issues and concepts. Think about your needs and goals and then articulate them to your attorney. Educate your attorney about yourself, your health, your family members and your assets so that an estate plan can be designed and customized to meet your unique needs and objectives. And, finally, educate your friends and family members about the importance of engaging in the same process.

REVIEW:

Review your income, assets, investment strategies and retirement goals with your financial advisor. If you have estate planning documents, review them with an estate planning attorney

to make sure they still meet your needs and objectives and reflect changes in your health, family, finances and the estate tax and Medicaid rules and regulations. You wouldn't neglect your health or forego routine maintenance on your car. Consider this your annual estate and financial planning check-up.

ACT:

If you have no estate, financial or long-term care plan in place, make an appointment with your trusted advisors now. Fight the urge to procrastinate and take steps to be proactive rather than reactive.

If you would like to succeed rather than fail, and start the ERA of planning, contact us now to attend a workshop or schedule a complimentary consultation.

THE ROTH IRA CONVERSION CONUNDRUM

The major issue in retirement planning has been whether to convert from a traditional IRA to a Roth IRA. That's because in 2010, Congress has eliminated the income restriction for such a conversion. Previously, anyone with an adjusted gross income of \$100,000 or more was precluded from doing so. Beginning in 2010, married couples filing separate returns may also convert.

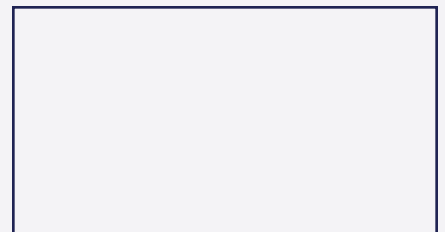
If you currently have a traditional IRA, then you are required to take your minimum distributions by December 31st of the year in which you attain the age of 70 1/2. The exception to that rule was in 2009, when, due to the economic meltdown in the value of accounts, Congress suspended

the taking of required minimum distributions. The conversion may be advantageous, as assets in a Roth IRA grow tax-free and are not subject to required minimum distributions during your lifetime. If you have sufficient income from other sources (i.e., Social Security, pension benefits and dividends and interest), you may not need to withdraw income from your Roth IRA after you retire. This would allow you to accumulate tax-free income and your Roth IRA could essentially act as a "tax shelter," passing additional wealth to your beneficiaries upon your death.

In 2010 only, the taxable conversion amount will automatically be divided equally

between 2011 and 2012, with one-half taxed as ordinary income in 2011 and the other half taxed in 2012. In subsequent years, the tax bill on the converted amount must be paid in the year in which the conversion is completed.

The Estate Planning & Elder Law Center does not dispense tax or investment advice. Thus, to learn more about whether a conversion is appropriate and advantageous for you, please consult with your financial advisor and/or CPA.



NO ESTATE TAX IN 2010, BUT MUCH UNCERTAINTY

Although we have known since 2001 that the federal estate tax was scheduled for a one-year repeal beginning on January 1, 2010, it's hard to believe that the repeal has actually taken effect. Many experts were confident that Congress would have acted to prevent this from happening, perhaps by permanently extending the 2009 federal estate tax level and rates. Although the House had approved such a bill on December 3, 2009, the Senate failed to take similar action.

A brief review of the law will explain why this is so significant. The 2001 tax act signed into law by President George W. Bush was designed to provide significant tax relief. It gradually reduced the maximum federal estate tax (and generation-skipping transfer tax on transfers to grandchildren) from 55% to 45%. It also gradually increased the amount of property that could be passed free of federal estate tax (the "applicable exclusion amount") from \$675,000 per person in 2001 to \$3.5 million per person in 2009. That meant that a married couple who planned correctly could have passed up to \$7 million free of federal estate tax had they both died in 2009.

Although there is no estate tax this year, in 2011, under the existing law, the estate tax rates are scheduled to revert to a top rate of 55% and the applicable exclusion amount will revert to \$1 million. New York will continue to impose an estate tax on estates

exceeding \$1 million. It's unclear whether Congress will take action this year and it's uncertain what the laws will provide or whether they will be enacted retroactively. At least Senator Max Baucus, Chairman of the Senate Finance Committee, recognizes that swift action is necessary to prevent "massive confusion."

To compensate for the loss of estate tax revenue, the 2001 tax act increased the income tax by substantially changing the law with respect to capital gains on property included in a decedent's estate. Before this year, a decedent's assets received a step-up in basis to their fair market value at the date of death. Upon a subsequent sale of assets (such as real property or securities), the surviving spouse or heirs would not have to pay income tax on any of the growth that occurred during the decedent's life. This resulted in an enormous tax savings for many heirs. However, in 2010, there is a limitation on the amount of property that can be "stepped up" in value at the time of death. Property that does not receive the step-up will be subject to tax on all increases in value from the date the decedent first acquired the property. As you can imagine, this can affect many more people than even the change in the estate tax rates. The repeal of the estate tax this year may significantly impact some married couples whose will or trust includes a formula to divide the decedent's property into a credit shelter trust (also referred to as a "bypass" or "family"



trust) and a marital trust, so as to maximize the amount that will pass free of estate tax. The trustee may be forced to fund more assets into the credit shelter trust than necessary, leaving the marital trust relatively empty. However, it is unclear how such formula clauses would be interpreted and how the credit shelter trust would be funded.

In this environment of uncertainty, it is important to be aware of the changes and to make sure your estate plan is drafted or updated to meet your objectives and to provide enough flexibility under changing circumstances. The Estate Planning & Elder Law Center will strive to keep you apprised of further developments in future newsletters and on our blog.