

Law Office of Eileen R. Fitzgerald Newsletter

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News From Eileen

We have been in our new office for six months already. Our new location just north of the railroad tracks is great! We love the additional space and storage. Please note there is handicap access at the back entrance of the building.

Tax season is over! Thank you for your patience during the busy months of March and April.

Also, thank you for your referrals. I often receive calls from clients telling me that a current client has referred them. I appreciate your confidence in me and your referrals.

Section 529 Plans

Section 529 plans are becoming a popular vehicle to gift money to children or grandchildren for their education. The 529 plan has many benefits. If the distributions are used for qualified higher education expenses, any income from the plan is not taxed. Any distributions

not used for qualified higher education expenses are subject to a ten percent surtax. Contributions are considered gifts and qualify for the gift tax annual exclusion – currently \$11,000.00. If elected, a \$55,000 contribution could be made in one year and no gift taxes would be incurred as long as the gift is treated as a series of five equal annual gifts and no other gifts are made for the same beneficiary over the same five year period.

Public Aid Spousal Asset and Income Allowances

Effective January 1, 2002, the Public Aid Asset allowance is \$89,280.00. That means that, in usual circumstances, the spouse who remains at home can keep assets totaling \$89,280.00. There are exceptions, however, that allow the spouse to keep more. Each situation is different. Therefore, it is important to see an elder law attorney for planning purposes. Also effective January 1, 2002 the new spousal income allowance is \$2,232.00 per month. The spouse who remains at home can keep \$2,232.00 per month in income. There are also exceptions that allow the spouse to keep additional income.

PUBLIC AID RULES REGARDING HOMES

Public Aid classifies certain assets as exempt. An exempt asset does not have to be sold to pay for nursing home care. The home is exempt in the following situations:

1. The spouse resides in the home.
2. A disabled or minor child resides in the home.
3. A sibling has resided in the home for the past year and has an equity interest in the home.
4. A child has resided in the home for the past two years and has helped the parent either financially or personally so that the parent could remain in the home.

In situation number one, spouses usually own their home jointly. If one of them is in a nursing home and receiving Public Aid benefits, the home can be transferred to the spouse who is still living in the home (the community spouse). The home does not have to be sold to pay for nursing home care. If the spouse in the nursing home is competent and can sign his or her name, then that spouse can sign the deed transferring the home to the community spouse. If the spouse is not competent, then an agent under a power of attorney or a guardian can sign for the spouse in the nursing home.

In situation number two, if a minor or disabled child has been living with the

parent and the parent is now in a nursing home and receiving Public Aid benefits, the home can be transferred for the child's benefit. If the minor or disabled child has a guardian, the home should be transferred to the guardian. A minor or disabled child cannot hold title to real estate.

An example of situation number three, is if two sisters live together in a home and they are each an owner of the home. If they have lived in the same home for at least one year prior to one of them going to a nursing home and receiving Public Aid benefits, then the home does not have to be sold to pay for nursing home care. The home can be transferred to the sister remaining at home.

In situation number, four the home does not have to be sold and can be transferred to the child. The child must prove that he or she has lived in the home for two years. Proof includes copies of bills with the child's name and address, dated two years prior to the Public Aid application. Proof can also include an affidavit from a neighbor stating that the child has resided in the home for two years prior to the date of the Public Aid application.

Public Aid has rules pertaining to reimbursement to Public Aid for payments made on behalf of a client. One way Public Aid gets reimbursed is to file a lien against real estate. A lien will **not** be filed in the following situations:

1. If a spouse lives in the home.
2. If a disabled or minor child lives

in the home.

3. If a sibling lives in the home, is an owner of the home and has lived in the home for more than one year prior to the other sibling's application for Public Aid.

A lien **will** be filed in the situation where a child has lived in the home for two years prior to the parent's Public Aid application. If the home is transferred to the child, however, Public Aid will not file a lien. Therefore, it is very important that a deed is signed transferring the home to the child if the client wants the child to get the home. The home should probably be transferred in the other situation also because if the Public Aid recipient's name is on the home and the resident of the home dies, Public Aid can file a lien at that time.

In each instance where Public Aid will file a lien, notice must be given. However, if notice of the lien is given by sending it to the owner of the home who resides in the nursing home, that notice may never reach the person who is still living in the home. The resident of the home may not know about the lien until he sells the home or refinances a mortgage on the home. Therefore, if the client does not want a lien filed against the home, it is important that the home is transferred from the client's name so that Public Aid does not have the opportunity to file the lien.

Public Aid will not file a lien against real estate that is held in a land trust. A land trust is a trust established with a bank, where the bank holds the legal title

to the real estate and the owner of the home is the beneficiary of the trust. The owner of the home has the rights of ownership of the home and gives the bank direction to transfer the property when it is going to be sold. The interest that the owner of the home has in the land trust is legally not an interest in real estate, it is an interest in personal property. A lien cannot be filed against personal property. Therefore, Public Aid does not have a method to lien property in a land trust. Real estate held in a land trust is protected from a lien being filed by Public Aid. If the real estate was transferred to the land trust shortly before the Public Aid application is filed, Public Aid can deny the Public Aid application because the transfer was an unauthorized transfer and is subject to Public Aid's penalty calculation. Unauthorized transfers and penalty calculations are two topics that will be addressed in a future newsletter.

In summary, the home can be protected from being sold to pay for nursing home costs. However, a Public Aid applicant must be aware of the rules. It is wise to seek the advice of an elder law attorney when filing for Public Aid or when such an application is anticipated. The sooner planning is done, the better. Please call to schedule an appointment if you would like assistance with Public Aid planning or application.

Age is a number, old is in your head.

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Why Might Medicaid Reject My Application

1. Application was sent incomplete.
2. Prior gifting or transfer of assets caused a penalty period that has not expired.
3. Your assets are higher than the standard asset allowance.
4. Your income can pay for the cost of a nursing home's private pay rate.
5. You do not meet one of the following criteria: blind, aged or disabled.

A decision made by Public Aid is subject to appeal. The appeal request must be made in writing within 60 days of the decision.

New IRA Rules

New rules were adopted last year regarding IRAs. The IRS simplified the rules for computing required minimum distribution from IRAs and provided a longer distribution period. There is now one table available for all beneficiaries, unless the beneficiary is the spouse and is more than 10 years younger than the IRA

owner, in which case there is a special provision and a special table to be used. Under the new rules, the minimum distribution is less than under the old rules.

The rules regarding designated beneficiaries have also changed. A designated beneficiary must be a person or must be a trust with persons who are beneficiaries. This allows further deferral of the payment of tax on the IRA, which is one of the benefits of the IRA.

Under the new rules an individual may change the beneficiary of an IRA after age 70 ½ without affecting his minimum distribution. Also, the designated beneficiary is determined on September 30 of the year following the year of death. This allows family members to perform additional planning or to correct defects in previous beneficiary designations.

There have also been changes in the law regarding the amounts that may be contributed to an IRA. An individual who has earned income can contribute the lesser of 100% of his compensation or \$3,000. A \$500 catch-up contribution is also allowed for an individual who is 50 years and older.