

# Law Office of Eileen R. Fitzgerald

## Newsletter

**Spring, 2003**

**Email:** [efitzgerald@efitzlaw.com](mailto:efitzgerald@efitzlaw.com)

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**Phone:** 630-493-4380

### News From Eileen

It is very important for individuals to be aware of the documents that are necessary for estate planning and planning in the event of disability. Too often, individuals neglect their planning which makes it very difficult for their families if a crisis occurs. A Power of Attorney for Property and a Power of Attorney for Healthcare are of particular importance for both younger and older people.

Without Powers of Attorney, in the event you are unable to make your own decisions, a guardian must be appointed in court to make decisions for you. A guardianship is costly and can be avoided with proper planning.

I speak at seminars for professional groups, nursing homes, assisted living facilities, banks, etc. on topics such as the importance of proper planning. If you are interested in having me speak at a meeting, please call me (630) 493-4380 or email me at [efitzgerald@efitzlaw.com](mailto:efitzgerald@efitzlaw.com). There is no charge for me to speak at your seminar.

Thank you for your business, your referrals and your continued confidence.

### New Spousal Asset and Income Allowances for Public Aid

The new Public Aid spousal asset allowance for 2003 is \$90,660.00. The new spousal income allowance for 2003 is \$2,267.00.

The Public Aid recipient is allowed to keep \$2,000.00 in assets as well as \$30.00 per month from his or her income. The prepaid burial limits are \$4,502.00 for funeral home services for an irrevocable prepaid funeral and \$1,500.00 for funeral home services for a revocable prepaid burial. There is no limit on amounts spent for burial merchandise including coffin, plot, vault, marker and grave opening.

The look-back period remains at 36 months for non-trust assets or 60 months for assets in a trust. The look-back period refers to the amount of time that Public Aid will check the "paper trail" of a Public Aid applicant's assets. It is wise to use checks to pay for expenses rather than cash because Public Aid requests copies of any expenses over \$500.00. You should be sure your financial records are organized since preparation for a Public Aid application can be very difficult if you do not have proper documentation.

## LAND TRUSTS

More and more clients have been opting for a land trust as a way to pass their real estate to their beneficiaries without going through the probate process. A land trust is an easy way to handle ownership of real estate. The legal title to the real estate is held by the trustee, but all the rights of ownership are exercised by the beneficiary. The beneficiary's name is not disclosed, except to the trustee. The beneficiary of the land trust owns a personal property interest in the land trust, rather than a real property interest in the real estate. The person who owns the real estate and sets up the land trust usually names himself as beneficiary.

A bank is usually the trustee of the land trust. The legal title is held in the bank's name. The bank has a trust department that handles the land trust, and will perform task such as preparing deeds and changing the beneficiary of the land trust, but only when directed by the beneficiary of the land trust.

An important benefit of the land trust is privacy. The identity of the beneficiary is not revealed to the public. If valid and authorized legal processes are followed, certain government agencies and others can inquire about the beneficiary of the land trust and receive that information. Usually the trustee would advise the beneficiary of any inquiry.

Another benefit of a land trust is that a judgment against one beneficiary of the trust will not be a lien upon the real estate held in the trust. The interest in a land trust can be subject to claims of creditors, but the creditors must take additional steps to make the claim against the property.

Another key benefit of a land trust is the transfer of ownership upon death. Often, individuals will put property in joint tenancy (possibly with their children) in order to allow the property to pass to their beneficiaries

without the expense and delay of probate proceedings. The disadvantage of doing this is that the joint tenant becomes an owner of the property. The real owner of the property cannot deal with the property without the signature of the joint owner. If the owner wanted to obtain a loan against the property, both joint tenants would have to sign the documents. Joint tenancy also puts the real owner's property at risk of a judgment or creditor of the joint owner.

Using a land trust, the property passes to the beneficiary of the land trust without the expense and delay of probate. This allows the owner to retain sole ownership of the property during his or her lifetime and have complete control over the property.

Land trusts allow partial interests in property. Beneficiaries can own a percentage interest in the property rather than an entire or one-half interest.

A land trust is created by signing a trust agreement. The land trust agreement is not prepared by the bank. It is usually prepared by an attorney. The owner of the property becomes the beneficiary of the land trust and tells the bank to hold title to the real estate. The trust agreement also tells the bank who will be the beneficiary (the owner of the property) of the land trust at the time the land trust is signed and after the death of the initial beneficiary (the spouse or children of the owner, for example). The land trust agreement also tells the bank who will have the authority to manage and control the property. That person may be the same or different than the present beneficiary.

The bank charges a one time acceptance fee and an annual fee to act as trustee of the land trust. The one time acceptance fee is usually under \$200.00 and the annual fee is typically under \$100.00. A land trust is one option to pass real estate to beneficiaries without it going through court and the probate process.

## Medicare and Nursing Home Costs

Many people assume that Medicare and their Medicare supplement policy will pay for nursing home care. In fact Medicare pays for very little nursing home care and there are requirements that must be met before Medicare will pay. Those requirements are:

1. The Medicare recipient must enter the nursing home no more than 30 days after a hospital stay.
2. The hospital stay must have been at least three days, not including the day of discharge.
3. The patient must receive a skilled level of care.

In order to be considered skilled, the care must be ordered by a physician and delivered by or under the supervision of a professional. Medicare will pay the full cost of nursing home care for 20 days but only if skilled care is needed. Medicare will pay part of the next 80 days, but the patient pays a deductible of \$105.00 per day. If the patient has a Medicare supplement it will probably pay the deductible. When the nursing home determines that the patient is not receiving a skilled level of care or if the patient reaches a plateau where he is not improving with therapy or other skilled care, Medicare will stop paying. If the patient is in the nursing home for custodial care only, Medicare will not pay. Custodial care is assistance with bathing, dressing, eating and toileting. If Medicare doesn't pay for nursing home care then the patient pays from his own funds, subject to some assets that the patient can keep. If the patient doesn't have any funds then he must apply for Medicaid.

## Do You Own Stock in Certificate Form?

Do you have many stock certificates for many companies and therefore many 1099's at tax time? There is a way to organize the certificates and that is with a brokerage account. The broker

will hold the stock in your account. The dividends will be deposited to a money market account held in the brokerage account. You can write checks from your money market account. You will receive one 1099 at the end of the year for the dividends from all stock companies. The new year is typically time to get organized. A brokerage account is a good way to organize your stocks and all the paperwork.

## TAX INFORMATION

Individual Tax returns are due on April 15, 2003. If you pay estimated taxes, the first installment is also due on April 15th. Below are a few tax tidbits to keep in mind while preparing your income tax returns.

(1) If you were the beneficiary of a trust or an estate you should be receiving your Schedule K-1. This document shows the income and deductions that must be included on your Form 1040. Since I handle many trusts and estates, I also prepare the income tax returns. If you need assistance with the K-1, please call me.

(2) I also handle residential real estate sales and purchases. If you sold your home in 2002 and owned the home and lived there for the last 2 out of 5 years the sale does not have to be reported on your income tax return, if your gain does not exceed \$250,000.00 if you are single or \$500,000.00 if you are married filing jointly. You should be sure to provide your tax preparer with the closing statements from both transactions (assuming you sold a home and purchased a new one) so the proper amount of real estate taxes can be deducted.

(3) Nursing home expenses are also deductible. The IRS Publication 502-Medical and Dental Expenses- indicates that the cost of medical care in a nursing home is deductible. This includes the cost of meals and lodging in the home if the main reason for being there is to get medical care. The cost of meals and lodging is not deductible if the reason for being in the home is personal, although the cost of medical care is deductible.

**Law Office of Eileen R. Fitzgerald**  
**1561 Warren Avenue**  
**Downers Grove, IL 60515**

\* Please notify us at 630-493-4380 or [efitzgerald@efitzlaw.com](mailto:efitzgerald@efitzlaw.com) if there is a change of name or address.

### **T.O.D. AND P.O.D. ACCOUNTS**

There are several ways to avoid probate and one way is to name a beneficiary of an asset. Banks typically name beneficiaries on accounts in one of two ways. The first way is with a POD account. POD is an acronym for payable on death. If John Doe owns an account, POD to Jean Smith, then Jean is the beneficiary of the account. When John dies, Jean will own the account. The second way that banks name beneficiaries is to have a Totten trust. In that case John Doe is the trustee for Jean Smith. Upon John's death, Jean is the owner of the account. (Totten trusts should be specifically mentioned in a power of attorney for property in order for the agent under the power of attorney to have access to the account.)

When dealing with stock or brokerage accounts, a beneficiary is named in a TOD account. TOD is an acronym for transfer on death. Usually brokerage companies charge a fee to establish a TOD account. If John Doe has a brokerage account, TOD to Jean then upon John's death, Jean owns all the assets in brokerage account.

### **IN SEARCH OF SENIOR CARE?**

"A PLACE FOR MOM" is a free senior care referral service. A family advisor will contact retirement communities, assisted living facilities, nursing homes, in home health care providers, etc. to gather information on services, prices, amenities and availability. She will take the leg work out of choosing a facility for your loved one. She will be able to tell you pertinent information such as which nursing homes have Medicaid beds. There is no cost to families since many facilities reimburse A PLACE FOR MOM for their services.

For more information on this unique service, you can contact KITTY WATSON at (708) 503-0960. Kitty has years of experience with the senior community.

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Another way to obtain information about nursing homes is from the Medicare website. The site is [www.medicare.gov/nursing/overview.asp](http://www.medicare.gov/nursing/overview.asp). It gives checklists, guides to comparing nursing homes and other helpful information.

*There are only two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle.— Albert Einstein*