

What's New:

Well, we had some changes over the last year, Judy Perrin, who we will greatly miss, joined the Allmerica Financial Group. Pierangelo Corticelli returned to college to study for his Masters Degree. We had some additions, the most notable being Mr. Angelo Corticelli, the former head of the Institutional Medicaid Unit (of the Department of Social Services) in Westchester. He now handles Medicaid applications and Medicaid recertifications for Bress Law Firm. Additionally, April L. Ragona, RN is assisting with public relations and brings to her position her experience as a registered nurse. We now have added to our lawyer associations by associating with Harvey Grosberg, Esq. Harvey conducts his private law practice in our offices. Nancy Nichols, Esq. continues to provide estate tax services to clients.

Powers of Attorney

Signing a power of attorney (POA) is probably one of the best things you could do to plan for future events. Merely signing a POA does not mean that you have parted with any power over your assets. It merely means that you have given another person(s) the power to deal with your assets. If for any reason you could not take action involving your assets (a stroke or other disability), someone else can at least do what you would have wanted to do. You must, however, have absolute trust in the person to whom you are giving the POA. If you don't, don't give that person the POA.

Also, the form of POA you might obtain from a bank or another institution is only good at

that bank or financial institution. Another bank need not accept it. Instead, go to an attorney who will prepare a POA that will be accepted at all New York banks. That is the "statutory power of attorney." This is a POA that has been approved by the New York legislature and must be accepted by all New York banks. In our next issue, I will discuss some of the provisions which ought to be added to the statutory POA.

The Truth About Health Care Proxies

Health care proxies allow A to designate B to make health care decisions for A if A cannot make decisions for him/herself. The health care proxy is different from a Living (see "PROXIES" on page 2)

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When Should you Revise your Will?

Generally, there is no need to change a will unless you need or desire some change in its provisions. For example, you may want to create a trust in the Will for a disabled spouse. Or, you may want to create a trust for a grandchild thus assuring that there will be sufficient funds for a grandchild's education. You may want to designate a new Executor for some reason. Those matters would require a change in your Will. Or there may be changes in the law which will require changes in your Will. Indeed there have been a number of changes in the law some of which will become effective next year. Therefore, some of you would be well-advised to consider discussing the new law with your lawyer so that your Will takes advantage of whatever the new laws allow. There are too many law changes to discuss in this newsletter but I will be discussing changes during the next year.

Medicaid Changes

Our firm spends a great deal of time helping families prepare financially for long term care, which is usually care at home or in a nursing home. As a result of action taken by Congress in August, 1997, the infamous "Granny Goes to Jail" law has been repealed. I am sorry to say that Congress substituted (see "MEDICAID" on page 3)

Confusion About the \$10,000 per Person Rule

I can't think of any concept more misunderstood than the rule which allows people to give away (without tax effect) \$10,000 per year per person. Can a person give away more than \$10,000 per person per year? Of course! Look, in addition to the \$10,000 a year per person (\$20,000 for spouses who split their gifts which is usually what occurs), everybody has a \$600,000 exemption for federal gift tax purposes and a \$115,000 exemption for New

York State gift tax purposes. Say A gives to B \$50,000 in any calendar year, What happens? The first \$10,000 is gift tax free and the next \$40,000 reduces a person's gift tax exemption from \$600,000 to \$560,000. That's it! There is no tax due. If you have less than \$600,000 of total assets you will never need to pay a gift or estate tax to the IRS. Doesn't that sound good? Our next issue will discuss how gift giving affects a person's eligibility for Medicaid.

I CAN'T THINK OF ANY CONCEPT MORE

"PROXIES" (cont'd from page 1) Will in that the Living Will does not appoint anyone. Thus, with a Living Will there is no person to champion A's wishes. A spouse, merely by being a spouse, is not able to do so. No one can act for a person without a health care proxy.

Unfortunately, proxies are not uniformly honored by physicians and hospitals. That doesn't mean you should not sign a health care proxy. If you wish someone to make your decisions if you can't, then you must sign a proxy. Without it, no one could

act for you and the hospital or physician is duty-bound to try to keep you alive.

Most states will recognize the proxy or health care power of attorney signed in another state but I don't know whether all institutions and physicians in other states will do so.

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NEW New York Living Trust Legislation

New York has adopted legislation which adds certain formalities to entering into Trust arrangements. Most of the changes make it easier for people to use a Trust as a substitute for a Will. That is, many people employ a Trust in order to avoid probate, time delays and costs associated with probate. Use of a Trust is useful if there is a concern for a Will contest, if a person owns real estate outside of New York State or there is a fear of a cognitive disability. These are just a few of

the reasons. Some people are not happy about having to transfer all of their assets to the Trust if probate is to be avoided.

... MANY PEOPLE EMPLOY A TRUST IN ORDER TO AVOID PROBATE, TIME DELAYS AND COSTS ASSOCIATED WITH PROBATE.

They don't like the idea of being required to keep all of their assets owned by a Trust and in the Trust name. These living Trusts, which

are usually revocable (meaning that the Trust can be changed or revoked - which is one of the appeals of such a Trust) DO NOT protect a person's assets if that person needs long term care.

"MEDICAID" (cont'd from page 2) granny's lawyer or financial advisor for granny in the jail cell. The fact is that no one has gone to jail and no one has been threatened with jail. Unfortunately, as a result of this law, many people who could have protected their assets did not do so out of fear - misplaced fear. It is important that clients understand the law. Don't go by what your neighbor tells you or for that matter what you read in the press. Frequently, the press is wrong about the law and the public suffers in the process. I will leave you with one important and often misunderstood point. If a person needs care at home only (not care in a nursing home) and that person transfers assets (gifts them to others or to a trust), that person, if otherwise eligible for Medicaid, will be entitled to Medicaid immediately. That's right, IMMEDIATELY! And that is because the rules which penalize people when they transfer assets to reduce their assets to the eligibility requirements of Medicaid do NOT apply to care in the community, which means the usual home care.

Fees at Bress Law

Almost all services performed at Bress Law Firm are done so at a specific fee or range of fees. We generally base your fees on the value of our experience and the estimated time it should take to perform a service or services. If we don't advise you of our fees, ask! There are no secrets. We want you to know the fees for the work to be done because we don't want you or us to be surprised. In this way, we and our clients know the cost of our services in advance. We find it to be the best way to conduct a relationship.

Seminars We Provide

Dean Bress will be happy to provide a seminar to your group or organization without charge provided that there is a minimum number of people who would be interested in learning about Asset Protection and Estate Tax Planning, which are our areas of concentration. Call us and ask for April L. Ragona, RN, if you would like to know more about our seminars or wish to arrange for us to conduct a seminar.



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Coming in Future Issues. . .

- ◆ Why are Some People Using the New Alaska Trust
- ◆ What should go in your Power of Attorney
- ◆ What's Happening with Family Partnerships
- ◆ Planning in Second Marriages
- ◆ What Happened to Offshore Trusts
- ◆ Asset Protection Trusts and Long Term Care
- ◆ How to Squeeze your IRA
- ◆ The New New York Estate Tax Changes
- ◆ Tax Differences Between Gifting and Inheritances
- ◆ Recent Federal Estate Tax Changes
- ◆ When to Use Private Annuities
- ◆ Is Buying Long Term Care Insurance Smart
- ◆ Disability Trusts

If there is a subject that you would like us to explain, let us know. If the subject will be of sufficient general interest to our clients and friends, we will discuss it in one of our issues.

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