

## Estate Planning and IRA's

**M**ore and more people are finding that the bulk of their estate consists of tax deferred IRAs or retirement plan assets. In most cases a spouse is named as the designated beneficiary in the event of the death of the account owner. Upon such a death, the account is paid to the surviving spouse (usually) and there is no estate tax because the property is made available to the spouse in a manner that qualifies it for the unlimited marital deduction. A marital deduction is generally available to the estate when assets pass directly to the sur-

living spouse. So far, so good.

But what if there is insufficient assets to fully utilize the exemption that the law allows (in addition to the marital deduction) which is currently \$675,000 per person. Lets make sure that you understand how this works. Everybody, I mean everybody, has the right to give away at death \$675,000 of assets without having to pay an estate tax. If Husband leaves Wife say \$700,000, there is no tax because of the unlimited marital deduction but now we have in-

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### What's New:

**W**ell, we have some new developments. The designer of this newsletter, we are delighted to say, just gave birth to a beautiful daughter, Gianna Noelle Gravius. Diann Gravius, who lives with Danny, her husband, is a proud resident of Rockland County. We wish Diann and Danny the very best. We also thank her for her valuable assistance with this newsletter.

**Christina Yaskovic**, a new addition to the firm, and a resident of Westchester, is the person who you will most likely make contact with when you telephone our office. She is our representative and she has graciously helped many of our clients with their questions. We thank Chris for all that she has done for us and our clients.

**Jeanmarie Gonnella**, who sets up and attends our seminars, has taken on more and more responsibility with the passing of time. She has become a very valuable part of our team and we thank her for her help.

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creased the Wife's estate. If the Wife has her own assets her estate may need to pay an estate tax on her death. Husband could have let a portion of the assets in trust for her-but not given it to her. A big difference! Now we will utilize the exemption or at least some portion of the exemption.

Now apply that to an IRA. Why not make the designated beneficiary of the IRA a living (revocable) trust? The surviving spouse may still get the same benefits as would be available had no trust been established such as the right to do a rollover on some portion of the retirement plan asset. The other assets stay in the trust for the benefit of the spouse and children. This could be especially useful in subsequent marriages. Ask us about how this works.



**F**or years now, families use Family Limited Partnerships to reduce estate and gift taxes. How do they work? Lets say that you own 1,000 shares of General Motors stock which has a value of \$50 a share or \$50,000. If those

## The Private Annuity

**O**ne of my favorite strategies is using the private annuity. Private because everything stays within the family.

There is no outside insurance company providing the annuity; you do. This strategy is useful in two important areas. One is the use of it to protect a



spouse when one spouse needs a nursing home. The other is to reduce the size of a gross taxable estate. Here is how it works. Parent transfers property to children, a trust or a partnership. In return, the recipient agrees to pay to the transferring person a lifetime annuity based on market interest rates at the time. So for example, say a person has \$1.0 million. That person transfers \$300,000 to a trust and receives a lifetime annuity. The estate has just been reduced by \$300,000. There is no gift because the value of the promise to pay the annuity is equal to the \$300,000 transfer. Ipso facto! The trustees take the funds and invest them and automatically arrange to pay the annuity to the parent. It serves as a retirement plan for the parent as well. The parent treats each payment as part a return of capital, part a capital gain and part ordinary income. The child pays taxes on the increase in

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## Family Limited Partnerships

shares are gifted, a person is making a gift of \$50,000 and will reduce that person's lifetime exemption which we have referred to elsewhere in this newsletter. But, if instead, the shares are contributed to a Family Limited Partnership, the person contributing the shares will receive an interest in the partnership approximately equal to the value of the shares contributed. But because the newly obtained partnership interest is subject to the terms of a partnership agreement, the partnership will not be worth as much as the underlying shares recently contributed.

When the partnership interest is gifted to children (or others), the value of the gift is reduced owing to the restrictions imposed on the partnership interest by the partnership agreement. This allows for gifting more (without paying a tax) than would be true had the underlying General Motors stock been gifted outright. That's it! That is the whole concept in a nutshell. But unless you have a taxable estate, you need not resort to this process because there are tax returns that need to be filed and there are less complicated ways to protect the assets.



## Medicaid and Joint Accounts

**T**here is a great deal of confusion about how to treat a joint account for Medicaid purposes. There is good reason for the confusion and its because the rules vary depending upon where the joint account is established.

For example, lets say that there is a joint account between a parent and a child in a bank in New

York. Say that there is \$30,000 in the account. The parent wants to access the Medicaid program. In order to do so, the parent may not own assets or more than \$3,600. So the parent takes the money out of the account and puts it into the name of the other account owner. That is a transfer which has no effect is all the parent needs is care in the community (home care essentially). If the parent needs a nursing home, the transfer is penalized, meaning that there will be a period of ineligibility for Medicaid paid for nursing home benefits. No one gets into trouble, you just don't get the Medicaid in

the nursing home except if the other account owner can prove that some portion or all of the funds in the joint account came from that other owner; this is not easy to do but if you can do, great.



There is a different rule if the account is at a brokerage house and the broker requires that two signatures are necessary to effect a transfer

of the account or a sale of the securities in the account. Now the account is owned equally by both parties and if the parent needs a nursing home and transfers the one-half interest the transfer will be treated as just that a transfer of 50% of the account-not 100% of the account as was true with a bank account. This produces a very substantial difference in the length of the ineligibility period.



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value of the transfer. In the Medicaid world, the spouse at home gets the annuity and reduces the assets of the spouse at home so that he or she becomes a less likely person to be sued by Medicaid for support of the spouse in the nursing home. I will discuss this strategy in later issues of this publication.



## Gifting Revisited

**W**e are still getting questions about a person's ability to make gifts without the need to pay a tax. Many people still believe that if they gift more than \$10,000 to a person a tax needs to be paid. That is not so. In addition to being able to give away \$10,000 a year per person, you all have an exemption of \$675,000 today (increasing to \$1.0 million in year 2006).

you consider exemption? lutely! Once is gifted it is gross taxable further appreciate the value of will not be subject to an estate tax. This makes the most sense for couples with more than \$1.5 million of assets. People use the irrevocable tax trust as a way to leverage the gift so that even more of the assets are transferred to the next generation free of tax. If you need to, consider using this method.



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## Final Notes

### Bress Law Firm's Personality

We are mindful of some of the very stressful situations that our clients find themselves in when a loved one is sick or dies. These are difficult moments to say the least. We try to make the transition from caregiver to pragmatist as easy as possible. We will show you how to preserve what your family has created. We will be there at your side. Our staff is trained to provide the kind of help you need. Let us assist you. Let us show you how to take the financial stress out of your life. We would like to deal with the medical situation but that is beyond our reach. We will do everything in our power to assist you and your loved one

*Jeanmarie Gonnella*

### Seminars

We have an active seminar program but unfortunately many of the seminars are not open to the public because they are provided to specific groups. We would like to invite all of you who have asked about our seminars but we cannot accommodate individual requests. However, we recommend that you set up a seminar for your particular group. Jeanmarie Gonnella can help you make arrangements

### Our Next Issue. . .

- Using Supplemental Needs Trusts for Personal Injury Settlements
- What's Happening with our Website
- The Bronx Needs Elder Law Attorneys