

Basic Estate Planning. . .What Do You Need? Here Are My Answers - Part 1



As we get older, protection of assets and having a comfortable retirement becomes a more significant goal than achieving 50% annual return from your stocks. You want to provide as best you can for yourself and your children. For most people, your estate plans need not be complicated, especially since the federal exemption from estate tax has relegated estate tax planning to a less important role. I am going to set forth what I consider basic planning that will take care of 98% of most families problems. Clients ask very basic questions and I will share my answers with you.

You Need A Power Of Attorney That Is Comprehensive And Durable

Before signing a power of attorney you should have a good idea of who you want to act as your agent and that person should be trusted. Do not sign a power of attorney unless you feel comfortable with your appointee(s). Powers of Attorney in NY apply only to property and assets and do not apply to health care decision making. Also, please do not be fooled into thinking that a simple form or a store bought power of attorney will do the trick. It won't. See an attorney who could draft a power of attorney which should last forever.

You Need A Simple Health Care Proxy

A health care proxy has been created by the NY state legislature. You merely appoint a person to make your health care decisions for you if you are unable to do so. There is provision for an alternate agent should your appointee be unable to act for any reason. Recent changes to the health care proxy allow people to make arrangements for organ donations if that is your desire.

Nursing Home Bed Policy

When a Nursing Home (referred to as a "Facility" herein) transfers a patient to a hospital or allows a resident to go on therapeutic leave, the Facility must give written notice to the patient and to a family member which sets forth:

(1) The Facility's policy re bed-hold (meaning how long a period of time the facility will forego giving that bed to another resident while the first resident is not using it for the reasons stated herein) under the Medicaid plan;

(2) The written plan of the Facility to allow a resident to

return to the Facility when the period of time that the resident is out of the Facility exceeds the bed-hold policy. A resident who has remained outside of the Facility beyond the bed-hold period must be allowed to return to the Facility immediately on the first availability of a bed in a semi-private room.

What is important is that the Facility must maintain identical policies re transfer, discharge and the provision of services for all residents.

Medicaid Rules

Under Medicaid rules, the facility must have a bed

hold policy if a Medicaid recipient has been a resident of the facility for at least 30 days. Generally Medicaid will pay for a bed hold for 20 days. If the resident needs hospitalization for a longer period, then the nursing home can use the bed for another resident but must make the first bed available to the person whose bed was given up to another.



Your Own Personal Private Retirement Annuity

With the devastation in the stock market, seniors are clamoring for methods to protect their retirement and at the same time reduce any potential estate taxes.

In our office we used a method for other reasons that can now be used to produce a monthly flow. Its similar to finding that experiments with one drug find lasting and good effects for other problems.

Here's How it Works:

Say a 75 year old person

wishes to create a lifetime monthly income of \$3,000. If that person entered into a private annuity agreement with her children by giving them \$275,000, the children will be required by contract to pay the parent \$3,000 a month for life. This assumes an 6.2% annual interest rate. A person who is 75 years old



has a life expectancy of about 12 years. Irrespective of how the person actually lives, the monthly annuity must be paid. Frequently a parent will make gifts to the children which are then added by the children to the investments originally made. This will allow the parent to know that the children will have sufficient funds with which to honor the private annuity. When the parent dies, no part of the \$275,000 is part of the parent's taxable estate.

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Taxation

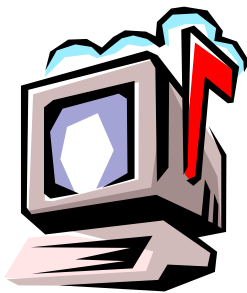
When the private annuity contract is entered into, no portion of the \$275,000 is taxed to the children. To the extent that the children invest the funds and earn interest or dividends, they will then need to pay a tax on the earnings.

For the parent, a portion of each monthly payment is income (the portion attributed to the interest earned at 6.2%) and the balance is treated as a return of the \$275,000 to the parent and thus not taxable to the parent.

If you would like to learn more about this, let us know.

Visit us on the Web . . .

We try to make our Web site at www.bresslaw.com relevant to what is going on and relevant to our clients.



We will continue to do so, therefore, we invite client ideas about matters which they believe

our Web site should cover. We also try to keep an updated list of our future seminars. Visit us. We would like to know what your views are.

A Note About Your IRAs

Many of our clients do not realize that their IRA and 401(k) beneficiary designations are as important (or even more so) as their Wills. They may have a well thought out Will, but a poorly considered beneficiary designation policy.

The mere fact that you are handed a simple designation form does not mean that you can not have your own form. Your own form could mirror your Will's provisions. For example, let's say that you are in a second marriage, want to provide for your spouse but at the time of your spouse's death, you want your children to be the beneficiaries of the IRA. Can you do it? Of course you can, but you need to use the right tools. If you make your spouse the direct principal beneficiary of your IRA or 401 (k), you can not be assured of the fact that the balance in your IRA will go to your children upon his\her death. Indeed your spouse could do a rollover of your IRA into his\her own and then place that spouse's children as the beneficiary. Your children could be excluded.



are the ultimate beneficiaries. It usually involves using a revocable trust the beneficiary of the IRAs. After that the trust takes over and provides for your wishes. You do not need contingent beneficiaries or complicated percentages of formulas. The trust does all the work for you.

Or, say you have a child whose judgment is not what it should be. If you make that child a beneficiary of your IRA, are you doing that child a favor? I don't think so. Remember, the IRA funds should be used in the same manner that you would use them for the benefit of that child if you were alive. When

you employ a revocable trust the beneficiary of retirement plan will be the trust. The assets of the trust can be utilized by a caring trustee in a manner which applies your values as they apply to one or more beneficiaries. Perhaps you want to pay for education, the birth of a child, health needs, or to encourage some particular effort or behavior. It's your money and it could be your decision, not your child's. You need to decide what is important for you and your family.

There are a number of methods to achieve your goals, reduce estate taxes, and require that your children

Basic Medicare Enrollment Issues

There is a great deal of confusion about the initial Medicare enrollment for Parts A and B, switching to a Health Maintenance Organization (HMO), and switching back to traditional Medicare. Perhaps the best way to focus on the issues is to ask and answer our client's frequently asked questions. This article will not cover all of these issues so future newsletters will focus on issues not covered below.



age 65 or if you have been receiving social security disability benefits for 24 months. If you do not fall into the foregoing categories, then you can enroll for traditional Medicare at age 65. There is an enrollment period that begins to run starting with the 3 month period prior to your 65th birthday and ends 7 months later (or 4 months after your 65th birthday). The enrollment is effected through the Social Security Administration Office. You may also be able to apply online. You may want to visit

wait for a general enrollment period. The general enrollment period begins to run on January 1 and expires on March 31 of each year.

If I Do Enroll on a Timely Basis, When Does My Coverage Become Effective?

With one exception, your coverage becomes effective on the first day of the calendar month in which you register. So if you become 65 on November 20th and have enrolled during November, Medicare coverage begins on November 1st.

The exception is that if your birthday is on the 1st day of a calendar month, the coverage will begin on the 1st day of the prior month (even though the coverage actually begins before your 65th birthday).

How Does Enrollment in Medicare Work And What Do I Need to Do?

A person will be automatically enrolled if that person is receiving social security prior to

What Happens If I Miss The Enrollment Period?

If you miss the initial enrollment period, then you must

Lease Renewal

Bress Law Firm is once again extending its lease for another term of years. We have found that clients are satisfied with the location of our offices and that the parking is ample. We are also intending to alter the look of the front area of the office to give it a different appearance after 10 years. Stop by when you can; we will be happy to see you.



Gift Tax Returns

While we will be sending out our usual annual notices in January, 2003 about the need to file gift tax returns for gifts made in 2002, please don't forget to file. In most cases, no taxes will be due because of the federal exemption of \$1,000,000 (by the way the annual exemption has gone to \$11,000 annually per person from \$10,000 annually per person) but the filing of a return is nevertheless required.

