Ruder Ware

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Elder Law Advisor

Summer 2018

Recent Changes to ABLE Accounts

ABLE accounts, created in 2014 by the Achieving a Better Life Experience Act, are accounts that can be used by disabled individuals. To qualify for an ABLE account, an individual must experience the onset of the disability before reaching age 26. Each qualifying individual can be the beneficiary of only one ABLE account.

Contributions to a disabled individual's ABLE account are limited to $15,000 per year from all sources combined. All money remaining in an ABLE account after the beneficiary dies must first be used to reimburse the states for Medicaid services provided. This requirement to reimburse is referred to as a "pay-back provision."

Recent changes to ABLE accounts now allow for the transfer of an existing 529 college savings account ("529 Plan") for the disabled individual to his or her ABLE account. Any transfer from the 529 Plan will count towards the $15,000 annual contribution limit for the ABLE account.

Transferring money from a 529 Plan to an ABLE account may provide more flexibility for the beneficiary. Expenditures from a 529 Plan are limited to qualified educational expenses. However, expenditures from an ABLE account can be used for any qualified disability expense, including housing costs. This is a particular advantage if the beneficiary of the ABLE account is also receiving SSI benefits, as the payment of housing costs from the ABLE account will not impact SSI benefits.

A transfer from a 529 Plan may not be right for everyone, however. One advantage to a 529 Plan is that it does not have a pay-back provision. This allows the money remaining in the account after the death of the beneficiary to pass to future generations.

Can a lien be placed on a house in a revocable trust?

Recently, we have been received many questions regarding whether a lien for long-term care can be placed on homes owned by revocable trusts. The questions center on whether a revocable trust created prior to August 1, 2014, can protect the home from a lien. The short answer is no.

The confusion is caused by a change in the law that impacted the Wisconsin Estate Recovery Program beginning on August 1, 2014. Estate Recovery is the program that seeks repayment for certain long-term care services provided during an individual's lifetime. Prior to August 1, 2014, Estate Recovery was limited to repayment from the individual's estate. After August 1, 2014, Estate Recovery was expanded to include more avenues for repayment, including repayment from revocable trusts. However, revocable trusts created prior to August 1, 2014, remain exempt from Estate Recovery.

It is this exemption for revocable trusts created before August 1, 2014, that has been the source of confusion. Although these revocable trusts are exempt from Estate Recovery, they do not prevent the state of Wisconsin from filing a lien against your home while you are living and receiving long-term care Medicaid benefits. No matter when a revocable trust was created, it cannot protect the home from a lien.

In short, your home is never safe from a lien, unless you do not own it. This is why we often recommend transferring your home to an irrevocable trust.

A new requirement mandates the removal of Social Security Numbers from Medicare cards. To comply with that requirement, new Medicare cards are currently being issued. Medicare recipients in Wisconsin will begin receiving their new cards after June 2018.

This is also a good time to contact the Social Security Administration to update your address if you have recently moved.

Ask the Attorneys

Question

Dad transferred his home to me and my three siblings two years ago. We recently sold the home and divided the proceeds four ways. If Dad needs Medicaid before five years are up, I understand that he would be penalized. We don't know what to do with the proceeds from the sale of the home. Should each child save their portion in an account? Can we spend it for his food and housing costs? He is currently living with my brother. We intend to pay him monthly to cover housing and food costs from the proceeds of the sale.

Answer

Yes, the gift of the home from your father would cause a penalty if he applies for Medicaid within five years of the transfer of the home. The five years started when your father signed the deed to transfer the home. The issue you raise is how to make sure everyone helps care for your father by contributing equally to pay for his care. It is human nature that the longer each of you holds the funds in your own account, the more you will each feel it's your own money and be reluctant to share it. In addition, the proceeds from the sale of the home are at risk if any of you run into financial difficulties, divorce, illness, or death.

Making a gift of the home to the children may be the cheapest solution, but often it is not the best solution. If you could go back in time, your father should have transferred the home to an irrevocable trust for the benefit of you and your siblings. The trust would have helped provided a way for the proceeds from the sale of the home to be held in a single account. The trust would have also provided protection from risks you and your siblings face in your day-to-day lives: financial difficulties, divorce, illness, or death. Lastly, the trust would have allowed your father to remain the owner of the home for income tax purposes. This would have also helped avoid capital gains tax on the sale of the home.

Around the State and Nation

Jessica Merkel attended, "An Introduction To Elder Law" on April 6, 2018 and "On Borrowed Time: Emergency Estate Planning" on May 3, 2018.

Jessica Merkel attended the 2018 NAELA Annual Conference in New Orleans on May 14 - 19, 2018.

Jessica Merkel attended the Northwoods Coalition Annual Meeting and Training on June 21 - 22, 2018.

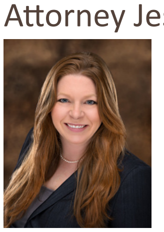
Aric Burch attended the Wisconsin NAELA Unprogram in Door County on June 21 - 22, 2018.

About the Authors

Attorney Aric Burch

Planning for how you or a loved one will pay for nursing home care can be a daunting task. As an elder law attorney, Aric works with seniors and their loved ones to prepare for possible long-term care needs. His goal is to alleviate stress by helping clients develop a plan to provide for their long-term care needs, while preserving their assets to supplement their quality of life and pass to future generations. His motivation is to find solutions for clients who are preparing for future life transition and care needs or are in need of immediate qualification for medical assistance benefits.

Attorney Jessica Merkel



At Ruder Ware, Jessica is an advocate for our elderly clients providing counsel on the use of irrevocable trusts for asset protection, medical assistance eligibility, and special needs trusts. Jessica engages families by listening, empathizing, and supporting their choices to achieve their goals. In addition, she counsels clients on estate and trust planning, taxation, powers of attorney, probate, and trust administration.

Elder Law Services offered by Ruder Ware include:

- Nursing home and long-term care planning
- Asset protection
- Gifting and divestment planning
- Medicare and Medicaid benefits
- Social Security benefits
- Insurance analysis (including long-term care insurance)
- Residential housing and other living options
- Planning for individuals with special disabilities
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship

Elder Law Team

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