

Elder Law Advisor

Spring 2014

What is the estate recovery program?

By: Attorney Shanna Yonke

If you require nursing home, assisted living, or in-home care services during your lifetime and cannot afford to pay for the services, you can apply for means-tested public benefits, such as medical assistance (MA) or Family Care. These benefits are paid by the state. Upon your death, the estate recovery program seeks reimbursement for what the state has paid on your behalf.

In Wisconsin, all property in which you have an interest at death is subject to recovery, including life estates, property held in revocable trusts, property that passes by beneficiary designation, joint tenancy property, and survivorship marital property. Beginning July 1, 2014, if your spouse survives you, all of your property that is included in your spouse's estate at death is also subject to recovery.

Several years ago my mother set up a life estate, transferring a remainder interest in her home to my siblings and me. She can no longer afford to maintain the property and would like to sell it. What are some of the legal issues that we should be aware of when the home is sold?

By: Attorney Regina Butler

The sale of real estate whose ownership is split between a life estate interest (i.e., your mother's ownership interest in the real estate) and a remainder interest (i.e., you and your siblings' ownership interest in the real estate) involves certain legal considerations.

First, there are separate income tax rules for your mother as the life estate holder. Then, there are separate income tax rules for you and your siblings with respect to the sale of the remainder interest. Each ownership interest is subject to separate income tax rules. Based on complex rules provided by the Internal Revenue Service, your mother is entitled to a portion of the sale proceeds as the life estate holder and you and your siblings are entitled to the balance of the sale proceeds.

Second, the rules governing how much money your mother is supposed to receive for her life estate interest for income tax purposes are different than the rules governing how much money your mother is supposed to receive for her life estate interest for medical assistance eligibility purposes. If your mother follows the income tax rules and receives sale proceeds based on those rules, she will be making a gift to you and your siblings for medical assistance purposes. This could have an adverse impact on her ability to qualify for medical assistance in order to pay for her long-term care.

All of these legal considerations should be taken into account when real estate that is subject to a life estate is going to be sold that the best possible outcome can be realized.

Save the Date:
Senior Living Shows

"Protect Your Assets" presentation by Attorney Mark Munson, CELA
May 8, 2014 | Patriot Center, Rothschild, WI
Visit www.seniorlivingshows.com for details.

Planning for your Pets

By: Attorney Emilu Starck

For thousands of animal owners in Wisconsin, their pet is an important member of their household. As Toto knows, “there’s no place like home.” But what happens when your home may no longer be an option? A recent Wisconsin appellate court case illustrates why it is important to include your pet in your estate plan.

Before she died, Jane wanted to make sure that her dog, a Bearded Collie mix named Olive, would have a proper home. She wanted to give Olive to either her daughter, Jill, her close friend and neighbor, Lynne, or her friend Julie. Julie opted not to take Olive. Jane wanted her daughter, Jill, to take Olive but Jill declined based on her personal circumstances at the time. Jane wound up giving Olive to Lynne.

Shortly after giving Olive to Lynne, Jane passed away. Shortly after Jane’s death, Lynne gave Olive to her daughter. Upon learning that Lynne gave Olive to her daughter, Jill sued Lynne in order to obtain ownership of Olive.

Ultimately, Jill lost the lawsuit. The court ruled that Olive became Lynne’s property and that Lynne was allowed to do what she wanted with her property (i.e., Olive) because Jane failed to state in writing what her wishes were with respect to Olive.

Individuals who want to ensure their pet does not end up the subject of a court proceeding can avoid what happened to Olive by having proper legal documents. Consulting an attorney to include provisions pertaining to your pet in a power of attorney, or even creating a pet trust, can prevent what happened to Olive from happening to your beloved pet.



Attorney Regina Butler



Working extensively in the financial services industry prior to focusing her practice on estate and tax planning, Regina Butler uses her knowledge of financial complexities to help individuals and business owners develop comprehensive plans to accomplish their personal and financial goals while minimizing tax risks. She works closely with individuals and families to design plans for the disposition of their assets, both during lifetime and at death, that reflect their unique circumstances, values and objectives.

Attorney Emilu Starck



Emilu advises clients on a wide variety of business transactional matters, including the organization of business entities; financing, sale and acquisition transactions; and related matters. Emilu also assists clients with health care matters.

Attorney Shanna Yonke



Shanna advises individuals and business owners in all aspects of personal estate and business planning. As part of her practice, Shanna facilitates the formation, operation, and growth of closely held businesses. As an estate planner, Shanna has particular talent drafting wills and estate plans that accurately capture a client’s life plan while maximizing tax saving opportunities. Shanna also provides personal planning counsel in the areas of asset protection and estate planning.

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- 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 needs
- Tax planning
- Durable powers of attorney for property and finances
- Health care powers of attorney
- Wills
- Trusts
- Marital property agreements
- Real estate
- Guardianship
- Conservatorship
- Veterans’ benefits

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