KOWALCZYK, TOLLES, DEERY & HILTON, LLP

ESTATE PLANNING QUARTERLY

YOUR CLIENT AND THE NURSING HOME: MEDICAID FOLKLORE

There is a common belief among the average person, and even many attorneys, that once a parent or spouse is in the nursing home, it is too late to do anything. This is only true if there are no remaining assets. The bottom line is, if someone is already in a nursing home, there is much that can be done.

Another misconception and mistake is the often used "transfer of the home to the kids" technique. I still see this advice given, despite the fact that it is fraught with problems. What if the parent wants to sell the home in the future? What if one of the children gets divorced? What if one of the children dies before the parent? All of these possibilities can lead to problems.

When a child dies owning the parent's property, the property will likely pass to the son or daughter-in-law. In some instances, minor children may be the new owners. Divorce and bankruptcy can also have serious effects on ownership.

More importantly, if the parent goes into a nursing home within five years of the transfer of the home, there is a penalty attached. The result may be worse than if the parents didn't transfer the home. The penalty can be undone, but it requires cooperation from all of the children. This is often difficult to achieve.

Financial advisors, accountants and attorneys alike need to be on the lookout for situations and issues that require attention. If a client indicates they want to start gifting assets, give them sound advice and tell them to be careful.

If you have a client with a spouse or partner in the nursing home, there is still action that can and should be taken to protect as much as possible. Particularly for a well spouse, it can be critical to protect assets for future care at home. It is important that you act quickly.

The process, known in the Elder Law world as "crisis planning," involves techniques using trusts, promissory notes and Medicaid applications. In essence, a trust is created and assets are then transferred to it, rather than to children. A portion of the assets are then transferred back using a promissory note. In doing so, the attorney can protect 50% to 60% of the person's assets regardless of the fact that they are in the nursing home.

If you have a client who is sick, has had a fall, is in rehabilitation or is in a nursing home, the family must get to a qualified Elder Law attorney for advice.

As an advisor, you are in a position to hear about these issues. Listen to your clients, because often they will not even know what they are looking for, or even that they can get help. It is our job to keep them well informed and get them help they need.

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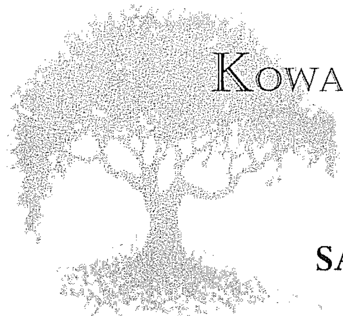

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ADVANCED PLANNING – SAVING MILLIONS IN ESTATE TAXES

Lately, we have been more concerned about simply having enough money to retire, and not the issue of estate taxes. However, all of us have clients that are wealthy and this warrants serious concern about estate taxes.

Currently, the federal tax exclusion allows married clients to protect $7 million and a single, $3.5 million.* This protection for a married couple is not automatic, however, and it requires carefully-drafted estate planning and funding to accomplish. The tax savings can be enhanced by creating an Irrevocable Life Insurance Trust (ILIT), where the trust owns life insurance that is not part of the estate.

But what if we have someone with $10 million or $20 million?

Basic techniques are a must, but saving beyond the basics requires advanced planning. There are several techniques, but the one that is gaining ground is a sale of an asset to an intentionally defective grantor trust (IDGT). The process works well because interest rates are currently so low. The technique works like this:

A client sells an appreciable asset, such as real estate rental property or a business, to an irrevocable trust. The trust then pays the seller for the asset at the current applicable interest rate (AFR). Because the trust is a grantor trust for tax purposes, there is no capital gain on the sale. This process "freezes" the value of the property and allows it and the gain in value to pass to the beneficiaries tax free. This technique can save significant tax dollars if the asset is of the type that will realize substantial growth in value.

For those people with a tax liability in the $5 million plus range, a charitable lead trust (CLAT) with a family foundation can completely wipe out taxes, while at the same time provide years of employment for family members. It also has the benefit of creating a true family legacy for years to come.

These types of planning are not for the faint of heart. They requires significant input from CPA's' financial advisors and attorneys. Nor are they inexpensive or a quick fix, but they are a measurable solution for people with serious tax issues.

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* Next Issue - I will discuss the New York State Estate Tax, how it applies to your clients, and why it is mistakenly overlooked, resulting in thousands of unnecessary taxes.

UPCOMING TOPICS:

- Planning for Baby Boomers.
- Does your business have value?
- How we can plan when a spouse is experiencing a life-ending illness.

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