

# Accettura & Hurwitz

*Estate & Elder Law*

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## Please Say Nice Things About Us!

If you are unhappy with our service please contact our office and speak with our office manager, Kim Rapp, and we will do our best to remedy the issue. If you are happy with our service, please visit our Facebook page called “Accettura & Hurwitz: Estate and Elder Law” and/or Google Review and give us a good review so others will know of our good work.

This Newsletter is considered general information and is not intended to constitute individual legal advice. Please contact us if you think the information herein impacts you directly. We look forward to speaking with you soon. Please visit our website [www.elderlawmi.com](http://www.elderlawmi.com)

Very truly yours,

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## FALL 2021 UPDATE

As is our custom, this semiannual correspondence is intended to keep you abreast of developments in estate and elder law. The following is a brief summary of noteworthy developments since our last communication:

### Same-Sex Marriage

Same-sex marriage has been legal in every state in the United States since the U.S. Supreme Court ruling of *Obergefell v Hodges* on June 26, 2015. A number of benefits are available to couples who marry, including the *unlimited marital deduction* (allowing for unlimited transfers between same-sex couples both during life and after death), *portability* (rules that preserve the unused portion of a deceased spouse's estate and gift exclusion amount), and IRA and qualified plan rollovers. The spousal rollover rules are valuable in that they entitle a surviving spouse to roll over a deceased spouse's retirement account and avoid the relatively new (January 1, 2020) rules that require non-spouses to take a full distribution within ten years of a non-spouse's death.

Estate plans drafted prior to June 26, 2015 need to be reviewed, along with real estate ownership and retirement account beneficiary designations. Same sex couples can now adopt a joint estate plan including a joint trust. A joint trust allows the couple to avoid probate on both spouses' deaths.

While Wills are required to be filed with the probate court at death, trusts

need not be filed, thus preserving the confidentiality of your plan.

### Appointment of Funeral Representative

Michigan created the new designation of *Funeral Representative*. Effective June 27, 2016, a Funeral Representative has “the right and power to make decisions about funeral arrangements and the handling, disposition, or disinterment of a decedent's body, including, but not limited to, decisions about cremation.” A properly appointed Funeral Representative has priority over those presumed to make funerary decisions including (in order) the decedent's surviving spouse, descendants, parents and grandparents.

The new designation solves the gnarly problem of consent in the case of cremation. The single voice of the Funeral Representative avoids the need to obtain unanimous family consent to cremation, which funeral homes often required prior to the new law.

To be valid, the designation must be in writing, dated and signed either in the presences of two witnesses or before a notary public. A Funeral Representative may be designated in the decedent's Will, a patient advocate form or in a separate

writing. Our practice at Accettura and Hurwitz is to appoint the Funeral Representative in a client's Will. Under MCL 700.3206(2)(b), a Funeral Representative designation made in a Will is valid whether or not the Will has been admitted to probate.

It may seem counterintuitive, but an individual's funeral wishes are NOT legally binding, even by a Funeral Representative. However, the new designation allows for the appointment of a single Funeral Representative most likely to follow the decedent's

wishes. Those making funerary decisions, whether or not as a Funeral Representative need to exercise caution as they become guarantor for payment for the services they sign for.

Wills created prior to June 27, 2016 should be revised to add the designation of Funeral Representative. Same-sex couples who are not married may wish to appoint a Funeral Representative to avoid the normal family-line priority that applies to those decisions

**CHARITABLE GIVING**

Working in the field of estates and elder law is an honor. We are included in the most intimate family decisions as we document our clients wishes both as to who should be in charge as they age or pass but also to whom they leave their assets. For the most part, our clients leave to their spouse, children and immediate family. It does happen, from time to time, that charities are named. Recently, we were privileged to be involved in the administration of two substantial gifts.



Accettura & Hurwitz staff attended the dedication ceremony at the Belle Isle Aquarium where a plaque was dedicated in honor of Francis Hilla.

**FRANCES HILLA**

(September 17, 1918 -January 3, 2018)

Frances passed away at the age of ninety-nine, leaving substantial amounts to charity. Her gift to the Belle Isle Aquarium was particularly significant. Frances' gift, along with a matching corporate give and other individual gifts, raised \$1.4 million, which was used to renovate the aquarium. Our staff attended the dedication ceremony where a plaque was dedicated in her honor. The renovations are amazing! The renovated green glass tiles and tanks are home to new exotic fish from around the world.

Thanks to Frances, the oldest continuously operated aquarium in the United States provides a wonderful experience to school children and families in the entire Detroit metropolitan area.

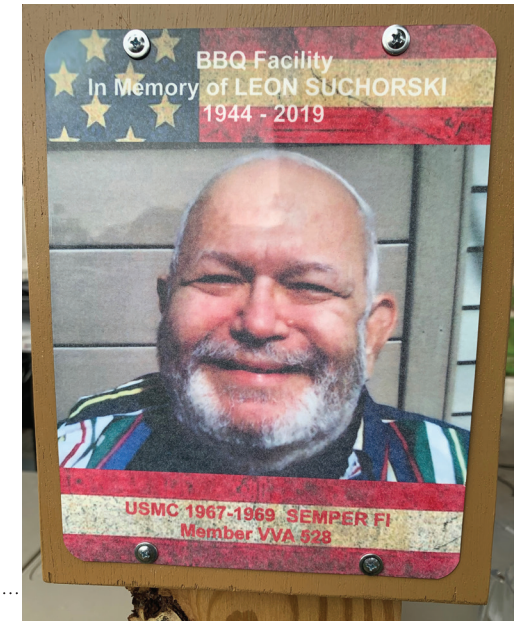


**LEON SUCHORSKI**

(November 8, 1944 to July 22, 2019)

Leon passed without a spouse or descendants. His loves were his family and the United States Marines Corps, where he served. He left the bulk of his estate to various branches of the U.S. military, to be used to assist veterans.

Serving during the Vietnam era, Leon particularly identified with Vietnam veterans and Vietnam Veterans Administration (VVA) Chapter 528 in Plymouth, Michigan, where he was a member. VVA 553 used a portion of its funds to build a pavilion for its members. A dedication ceremony was held in Leon's honor, which was attended by number of his family members.



**Your IRA Is A Long Term Care Resource**

We are seeing significant growth in the value of our client's IRA accounts. While IRAs provide financial security in our retirement, they also serve as an essentially tax-free (to the extent they exceed 7.5% of adjusted gross income) resource when used for home care, assisted living or nursing home care. This may provide some assurance now that for all practical purposes insurance companies no longer offer traditional long term care policies.

Required Minimum Distributions (RMDs) from IRA and other retirement accounts must begin at age 72. Distributions, unless they are of the Roth variety, are taxable in the year received. For this reason, most IRA

owners choose to take only the required minimums. However, IRA distributions should be used to pay for long term care since, when used for this purpose, they are essentially income tax free. Why? Because there is an offsetting medical deduction for home care, assisted living (that includes assistance with at least two activities of daily living (ADLs)), and nursing home care.

You saved for your retirement years. Your IRA will help assure you get the best care if you need it. Using your IRA to pay for that care makes such distributions essentially tax free. By using IRA funds before previously-taxed savings you leave more tax-free amounts to your family.

**Call Us Immediately When...**

Call us from the hospital *before* you are discharged to "rehab." While hospital discharge planners may suggest a facility, it is ultimately your right to choose the nursing home (nursing homes provide both rehabilitation and long-term care services) where you wish to continue your recovery. Hospital discharge planners often choose facilities that only accept Medicare. Since at least 90% of rehab facilities accept both Medicare and Medicaid, it would be a shame to accept a discharge to a facility that you will have to leave when your Medicare days (potentially up to 100 days) run out. Also, *please call us if we haven't seen you since 2016.*