Accettura & Hurwitz

Estate & Elder Law

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FALL 2024 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:

Accettura & Hurwitz Victories!

We recently received substantial settlements for our clients in two separate will contests. Both cases involved wills and trusts procured while the maker either lacked testamentary capacity or was subject to undue influence. Our clients would not have received these results absent our involvement. You don't have to live with being wrongfully disinherited. Let us know if you have been a victim.

Final IRA Regulations

On July 19, 2024, the IRS issued the final regulations updating the IRA required minimum distribution (RMD) rules. For the most part, the final regulations follow the proposed regulations issued in 2022 which are summarized in our Spring 2023 Newsletter (available at www.elderlawmi.com). A few items in the final regs are worth noting.

The date an IRA owner must start taking required minimum distributions (called the "required beginning date, or "RBD" varies based on the owner's age:

- Age 70½ for those born before July 1, 1949
- Age 72 for those born on or after July 1, 1949, but before January 1, 1951
- Age 73 for those born on or after January 1, 1951, but before January 1, 1959; and
- Age 75 for those if born on or after January 1, 1960.

The final regulations allow a small reprieve for families of deceased IRA owners. For some time, the rules have required an individual who was required to begin taking RMDs to take their RMD for the year of their death. If the decedent did not take his or her RMD in the year of death, the new rules allow the decedent's beneficiaries to take the decedent's final RMD by December 31 of the year following the decedent's death (extended from October 31).

Close attention must be paid to RMDs as the IRS has begun enforcing the rather severe penalties that apply to those who fail to take RMDs.

Maximize Your Disabled Child's Benefits

Disabled children are eligible for government benefits. Parents are encouraged to apply for such benefits as soon as their children's disabilities are diagnosed. Applying early will provide a financial safety net for the special needs child as well as better government health insurance coverage.

There are two major governmental disability programs for those who cannot work: Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). Those who apply for either program, the "applicant," must be disabled. SSI benefits are means tested (meaning that an applicant must be disabled and have very limited income and assets), while SSDI benefits instead of being based on means are based on work history.

	SSI	SSDI
Depends on work history	NO, must be disabled, blind, or over the age of 65	YES
Age requirement	NO	Must be over the age of 65
Depends on assets & income "Means Tested"	YES, must have minimal income and resources of less than $2,000	NO
Maximum benefit	Not based on income. Benefit is $943 per month for 2024	Based on prior earned income
Corresponding health benefit	Medicaid	Medicare
Dependents benefits available for spouses & children	NO	YES

Children who became disabled prior to age 22, even without a work history, are eligible for SSI while their parents are alive and not disabled, and SSDI if one of their parents is entitled to retirement social security, disability insurance benefits, or has passed away. The disabled child's benefit under SSI is a flat rate determined by the Social Security Administration, while SSDI is based on a parent's earnings record and is typically 50% to 70% of the parent's benefit.

Children of any age, even at birth, are eligible for SSI if they are unmarried, under age 18 (or under age 22 and regularly attending school), blind or meet the definition of disability. To be considered disabled a child must be medically determined to have a physical or mental impairment (including emotional or learning problems) that result in marked and severe functional limitations, that has lasted or can be expected to last for a continuous period of not less than twelve months. The starting point in calculating the disabled child's benefit is the maximum SSI rate of $943 per month (2024) less a portion of the parent's income and resources. A child receiving SSI are immediately eligible for Medicaid health benefits.

Parents of disabled children are advised to apply for SSI as soon as possible in order to begin benefits and Medicaid insurance coverage. A child receiving SSI can switch to SSDI (called childhood disability benefits (CDB)) when a parent retires, is disabled or dies. By switching to SSDI, the child will not only receive the higher monthly SSDI benefit amount but will also be eligible for Medicare. A child who was receiving SSI/Medicaid will be allowed to retain their Medicaid medical coverage. Such children are in the best possible position as they are dually eligible to receive both Medicaid and Medicare medical coverage. Disabled children who did not apply for SSI/Medicaid will not have Medicaid coverage.

An additional planning opportunity is available to parents with disabled children who themselves need nursing home care. A gift to a disabled child is not considered an impermissible divestment under Medicaid. A parent needing long term nursing home care may thus make unlimited gifts to disabled children without triggering the five-year Medicaid lookback. By using this gifting strategy, Medicaid will potentially pay for the full cost of the parent's nursing home, and, the parent's gifts will enhance their disabled child's quality of life. We would

recommend that gifts to the disabled child be placed in a Special Needs Trust to prevent disqualification of the disabled child from various government programs including Medicaid.

Can I Sell My Home Tax-Free?

Home values in Michigan and around the country have increased substantially. There seems to be a great deal of confusion as to how such appreciation is taxed on sale. While the rules have not changed in many years, laypeople tend to remember the long-outdated rules. Here are the "new" rules in a nutshell: A single individual can exclude $250,000 and a married couple filing a joint return can exclude $500,000 of the gain on the sale of a principal residence if they meet a few basic requirements. The home must be used as a principal residence for at least two of the five years immediately preceding the sale. The two years need not be consecutive. The exclusion is available every two years.

The infinite special circumstances and exceptions that may apply such as a sale due to divorce, death of a spouse, vacant land next to home, home destroyed or condemned, and homes used partly for business or rental are addressed in IRS Publication 523. A worksheet is included to help calculate your tax.

Are Powers of Attorney Good Enough? Should A Guardian and Conservator be Appointed?

Health care and financial powers of attorney are an essential part of every estate plan. They allow an individual to appoint family members or trusted individuals to help them with their medical and financial decisions if they become unable or just need help. Patient advocates under a health care power of attorney can talk to doctors, make arrangements for care in the home and interface with assisted living or nursing home facilities. Financial powers of attorney appoint an *agent* or *attorney-in-fact* to access funds, pay bills, and execute any financial transaction for the principal.

A key feature of powers of attorney is that they are revokable. The giver of the power doesn't give up the right to self-determination as he or she can cancel the power at any time. While the power to revoke may give comfort to the giver, it may cause problems to the person appointed if the giver begins to make ill advised decisions or is a danger to him or herself or others. The problem can become acute as Michigan law at MCLA 700.5510 allows even an incompetent person to revoke a health care power of attorney.

An appointed patient advocate or agent cannot force a failing principal to get in-home care, stop wandering outside the home, enter assisted living or to stop giving money to phone scammers. Well intentioned family members often feel helpless to prevent harm or abuse of the person they agreed to help. They know that if they push too hard, their power will be revoked (a simple verbal revocation is sufficient).

There may come a time when there is no choice but to seek intervention by the probate court in the form of an appointment of a guardian or conservator. A guardian is a person appointed by the probate court and given authority over the care of another. The powers can be limited by the court but are usually similar to those of a parent over their children. A conservator is also appointed by the probate court to be responsible for the property and finances of another. A conservator's powers can also be limited by the Court.

Guardians and conservators are granted what is essentially a court order granting them the power to act on behalf of the protected individual. The person who is subject to the guardianship and conservatorship loses the power to make their own decisions. We consider the appointment of a guardian or conservator a matter of last resort. Guardianship and conservatorship proceedings are very expensive and intrusive. Appearance in court is required as are doctor reports as well as the testimony of an independent court appointed overseer known as

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a guardian ad litem. Legal counsel will be appointed for the protected individual who does not consent to the guardianship or conservatorship.

Court-ordered guardianship and conservatorship may be the only way to protect vulnerable individuals from harm. You will need legal help as such appointments are formal legal proceedings that are generally outside the skillset of most lay people.

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 2018**.

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 visit our website ***www.elderlawmi.com***.

Very truly yours,
ACCETTURA & HURWITZ

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