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By Julian Gray and Frank Petrich

Elder Law: Answering questions on trusts, assets and more

This month we're dipping into our email bag to answer two of the frequently asked questions we get and also to provide some updates to previous columns. The first question was as a result of one of our columns on a specific type of Special Needs Trust:

Q: Our family trust includes a provision for a Special Needs Trust for our autistic son after both of us are gone. This is a single trust, not a pooled trust. We expect to leave assets of $500,000 to $600,000. Half would go to our daughter, who is not disabled, and half would go to the special needs trust.

Our questions are these: 1. What would happen to the assets of a single trust, when our son dies? 2. When you create a pooled trust, need there be some "community" of beneficiaries who are connected with some common interest, like a group home (Which our son is not living in). 3. If our son had a pooled trust established in one state, and moved to another state, could the assets be transferred to another pooled trust in the other state, or must they remain in the original trust?

A: While we would need to examine your current estate plan, including the Special Needs Trust. here are some general answers to your questions:

1. States have different rules on what happens to the remaining funds in a Special Needs Trust once the beneficiary dies or the trust is terminated. Pennsylvania is actually better than other states because you can direct the funds to go to another beneficiary of your choice, such as a nondisabled child.

2. The pooled trust has no "connection" among the beneficiaries other than they all have the same trustee and their funds are collectively invested because alone they are usually insignificant, relatively speaking. With the amount of assets you are considering, we would probably not recommend using a pooled trust.

3. Funds in a trust can be moved from state to state. When we draft a trust, we usually put the initial situs (where the property is considered to be located for legal purposes) of the trust in the state of trust creation for a variety of reasons. For example, if you moved from California, your plan may not be Pennsylvania law compliant anymore. This is common for people who move around the country. However, we also consider giving the trust the ability to "move".

Q: As an only child, I have bank, CD and mutual fund accounts held for convenience in joint tenants with right of survivorship — when one of the owners dies, the account automatically goes to the survivor(s) with my two elderly parents. I recently read that if I die first, my surviving parents will have to pay 4.5 percent Pennsylvania inheritance tax on "my" third of these accounts, despite the fact that all of the money is theirs. Is this true?

Is it a better strategy to have just my two parents listed as joint tenants with right of survivorship, designating myself as having power of attorney over their accounts (allowing check writing and convenience access on their behalf) AND as the beneficiary of either an "In Trust For" or "Pay On Death" account registration (avoiding probate)?

A: Yes, when titling assets jointly, there can be unintended consequences, such as a parent paying inheritance tax on their own money. However, there is usually a bigger concern here, which is how to help protect their assets from a variety of other consequences and generally implementing a well-rounded plan that can simultaneously address several concerns, such as: state and federal death taxes, probate, Medicaid eligibility for long-term care, Veterans benefits, etc.

Many people are unaware of all the issues out there until confronted with a serious problem and then it is sometimes too late to do anything. Thus, we would advise you to sit down with an attorney to review the titling of these accounts in your specific situation along with reviewing your parents' objectives.

UPDATES

Inherited IRAs

The U.S. Supreme Court on June 12 unanimously ruled that funds held in inherited IRAs are not exempt from creditors in a federal bankruptcy proceeding. The court found that such inherited IRA funds aren't set aside for retirement because the owner of these inherited IRAs can't invest additional money in the account and the owner is required to withdraw money from the account even though not at retirement age.

So, if you have inherited IRAs in your portfolio, it would be a good idea to review them with your financial adviser and/or attorney to determine the extent to which, if any, they may be at risk. In addition you could then consider what options are available to protect these monies (and, perhaps your children if they are your beneficiaries) from this risk, such as using an IRA Trust.

Improvement standard

In further clarifying that "improvement" is not required to obtain Medicare coverage in a skilled nursing, home health or outpatient therapy setting, the Center for Medicare and Medicaid Services revised their Medicare Benefit Policies Manuals. This was pursuant to the Jimmo v. Sebelius settlement approved in January 2013.

Powers of Attorney

A Power of Attorney, as most of our readers know, is a legal document that can give someone you name the authority to do things on your behalf. Pennsylvania has made some significant changes to our statute governing powers of attorney. The revisions were signed into law by Gov. Corbett on July 2 and are known collectively as Act 95. Because of its complexity, we will devote our August column to a summary of the law. We just want you to be aware that this extremely important statute has been changed.

And, don't forget the olde Slovenian proverb, which is all too true: "Old age is having a choice of two temptations and choosing the one that will get you home earlier."

Julian Gray and Frank Petrich are both Certified Elder Law Attorneys with over 50 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com and visit their web site at www.grayelderlaw.com

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