

**Begley &
Bookbinder, PC**

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Specializing in Elder & Disability Law

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INTRODUCING OUR SPECIAL REPORTS

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Over the past year Begley & Bookbinder, working in conjunction with several distinguished colleagues throughout the country, has developed a series of Special Reports to assist our clients. The purpose of these reports is to identify for our clients some of the issues they may be facing and educate our clients as to some possible solutions. Whenever possible, it is desirable for the client to peruse these reports prior to our initial meeting. When that is not possible, we try to make these reports available at the time of the initial meeting so that our clients can review them prior to our second meeting. All of our Special Reports are on our firm website, which is www.begleylawyer.com. Clients and members of the public can download those Special Reports from the website. The topics covered by the Reports are as follows:

- (1) *Financing Long-Term Care.* This Report is designed to acquaint clients with the five ways to pay for long-term care. The Report also identifies a number of tax issues that should be addressed in planning, as well as some strategies designed to achieve eligibility for public benefits to finance the long-term care.
- (2) *Estate Planning.* This Report discusses the various types of death taxes that may be imposed, including federal estate tax, New Jersey estate tax, and New Jersey Inheritance Tax. Gift taxes are also discussed. Depending on the client's family situation and goals, various tools are available to assist the client in achieving his goals. Those tools are discussed in some length.

- (3) *Estate Administration.* This Report addresses the issues involved in administering the estate of a decedent. The process begins with probating a Will, then proceeds to marshalling the assets of the estate, paying any outstanding bills, and filing tax returns (including but not being limited to Federal Estate Tax, New Jersey Estate Tax, New Jersey Inheritance Tax, Final Income Tax, Income Tax Returns for the estate, and out-of-state tax returns for states in which the decedent owned real estate). The Executor's goal is to administer the estate quickly and efficiently and to avoid personal liability for acting inappropriately.
- (4) *Estate Planning for Parents of Children with Disabilities.* Parents of children with disabilities have a heavy burden. Often the children with disabilities are unable to work and will need significant financial and emotional support for the rest of their lives. Many of these children will be able to obtain public benefits, such as SSI, SSD, Medicaid, Medicare, Section 8 Housing or Group Homes. Many of these public benefit programs are means-tested. For many parents of children with disabilities, a special needs trust is a must. This Report discusses issues and solutions in dealing with children with disabilities.
- (5) *Utilizing Special Needs Trusts for Disabled Persons with Litigation Proceeds.* If a person with a disability receives proceeds from litigation, he will lose his means-tested public benefits. A certain type of special needs trust is required to preserve those benefits. This type of special needs trust is different from the special needs trust funded by the assets of a parent or other third party. This Report discusses the rules pertaining to self-settled special needs trusts, as well as the advantages and disadvantages of structured settlements.
- (6) *Using Public Benefits to Pay for Matrimonial Settlements.* In a divorce action involving a spouse or child with disabilities, a special needs trust is often a useful tool. If the spouse or child is receiving means-tested public benefits and they receive money by way of equitable distribution, alimony or child support, those benefits may be lost. By appropriately structuring a special needs trust, the divorce action may be easier to settle, because public benefit money can be accessed to pay for some of the needs of the spouse or child with a disability.
- (7) *Providing for Your Grandchildren.* During our lifetime our grandchildren have put many a smile on our faces. Death presents an opportunity to put a smile on theirs. Some clients decide to leave a small sum of money outright to their grandchildren in their Wills. This is usually a token sum that the grandchild will spend quickly and it is not a concern whether it is spent wisely or not. The purpose is to make the grandchild happy. This often results in the money being used for a new or newer car. Other clients leave

grandchildren more significant sums of money with the idea that it will be used for education. One way to do that would be to count the number of children and divide the estate into that number plus one additional share. The additional share would be divided equally among the grandchildren and a trust established for that purpose.

- (8) *Blended Families.* A blended family is a family where one or both spouses have children from a previous marriage. In many cases, the clients have been previously married and have children from those prior marriages. In other cases, the client's children are members of blended families. In many cases, each spouse makes a Will leaving their estate to the surviving spouse with the understanding that on the death of the surviving spouse all children of both spouses will be provided for. Unfortunately, after the death of the first spouse the second spouse frequently changes his or her Will to disinherit the children of the spouse who died first. There are a number of tools to ensure that this unhappy result does not occur.
- (9) *Vacation Area Homes.* If clients own a home in a vacation area, there are usually significant tax and management issues that need to be addressed. Will ownership of the home result in significant federal and state estate taxation? What are the capital gains tax implications of selling the home? What are the tax benefits to retaining the home until the client's death? There are a number of tools available to be considered.

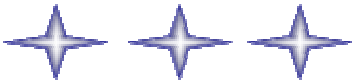
A second issue is that children often want to continue to own the vacation area home upon the parent's death. Often families have grown up in these homes and there is a strong emotional attachment. During the client's lifetime, the home has served as a magnet to bring the family together. Without proper planning the home can serve as a wedge to drive the family apart when the parents are gone. It is useful during the parent's lifetime to develop an agreement to be signed by the parents and children as to how the property will be managed upon the parent's death. Who will manage the property? Who will make up a schedule of when each child can use the property? If a child does not intend to use the property can he rent his weeks and keep the rental income? Are pets to be allowed? What happens if someone does not pay his share of the normal operating expenses? How are capital improvements, such as replacing a roof, to be handled?

- (10) *Bloodline Trusts.* There is an old saying that we can pick our friends, but we can't pick our families. Our children often select spouses who have significant flaws. Some in-laws are physically and emotionally abusive, some are spendthrifts, and some have bad habits, such as drug addiction, alcoholism or gambling problems. Most parents want their hard-earned money to stay in the family on death. They do not want problem in-laws to get

control of these assets. The Special Report on Bloodline Trusts explains how a trust can be designed to keep the money in the family.

- (11) *Domestic Partners.* There are two types of domestic partners. One is a same sex couple and the other is an unmarried heterosexual couple. The New Jersey Domestic Partnership Act and the more recent Civil Union law have expanded the rights of domestic partners. However, there are still significant gaps that need to be addressed in estate planning. Among the issues to be considered is ownership of a home. What happens if the contribution to the purchase of the home is unequal? Who pays the expenses? What happens if one party wants to leave? These and other questions pertaining to domestic partnerships are discussed in the Special Report.
- (12) *Providing for Your Pets.* Pet owners want to ensure the pet's security and care. New Jersey has authorized pet trusts. By utilizing a pet trust, the pet owner can leave a sum of money to a trust to be used for the maintenance of the pet, including food, shelter and veterinary care. A pet caregiver should be identified who is often, but not always, different from the trustee. The pet caregiver can be paid for his or her services. Issues, such as burial or cremation, euthanasia, and the pet funeral, should all be addressed.
- (13) *Planning for Your Business.* Small business owners have special problems and special opportunities. Often, small businesses start as sole proprietorships, but grow to the point where another business entity should be selected. This Special Report discusses the choice of business entity, partnership or shareholder agreements, employment agreements, and maintaining the business entity. One of the reasons clients form corporations and LLCs is to protect against liabilities. However, if the LLC or corporate books are not properly maintained, it may be easy to pierce the corporate veil and reach the assets of the business owner.
- (14) *Charitable Giving.* Many clients are charitably inclined. They intend to benefit a charity or charities during their lifetime and on death. There are a number of opportunities to not only benefit charities, but save significant income, estate and inheritance taxes as well. This Report discussed a number of tools that are available for this purpose.
- (15) *Nursing Homes: Resolving a Nursing Home's Medicaid Application.* Under the Deficit Reduction Act of 2005 transfers of assets are severely restricted. The problem is that many of our clients do not know about these rules or understand them and many have made significant transfers of assets that have been dissipated by their children. These clients will begin arriving in nursing homes on Medicare and only after the Medicare days run out will the facility realize that there is no money to pay for care. Non-payment

is a reason to discharge a resident, but there must be a discharge plan in place ensuring the health and safety of the resident. Generally, this means transferring the resident to another facility. Since the resident has no money and is ineligible for Medicaid, it is unlikely that another facility will accept the patient. Some nursing homes will engage in hospital dumping, but this may be severely curtailed. There are opportunities available to protect a nursing home in this situation. This Report is really designed for nursing home administrators and chief financial officers.



Begley & Bookbinder, P.C. is an Elder & Disability Law Firm with offices in Moorestown, Stone Harbor and Lawrenceville, New Jersey and can be contacted at 800-533-7227. The firm services southern and central New Jersey and eastern Pennsylvania.

The Firm provides services in connection with protecting assets from nursing home costs, Medicaid applications, Estate Planning and Estate Administration, Special Needs Planning and Guardianships. If you have a legal problem in one of these areas of law, contact Begley & Bookbinder at 800-533-7227.

Our web site contains a library of firm newsletters, articles, on-line forms for Medicaid, Estate Planning and Guardianship, as well as our upcoming speaking engagements, our products, and other relevant information.

If you have any comments, e-mail us at ccaruso@begleylawyer.com

If you are interested in having an Elder & Disabilities Law Attorney from Begley & Bookbinder speak at an event, please contact Colleen Caruso at (856) 787-4237.

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