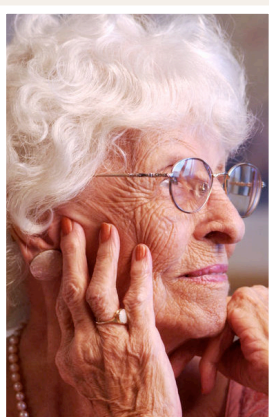


ELDER LAW *Update*

NEWS AND IMPORTANT INFORMATION FOR SENIORS AND THEIR FAMILIES



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CAN (AND SHOULD) THE CLASS ACT BE RESURRECTED?

Our country seems to be facing a simultaneous growth and recession... unfortunately; the two seem to be at odds. What we are referring to is the growth of the elderly population and the recession of funds available to help this aging community pay for the care they need.

The economic downturn of the past few years has hit the elderly with a double-whammy. Many of them lost close to all of their savings when the stock market bottomed out, and now budget cuts to state-funded healthcare services threaten to force many of them out of their homes, hospitals or nursing facilities.

A number of states (Alabama, Arizona, California, Colorado, Florida, Kansas, Mississippi, Missouri, Nevada, New Jersey, New York and Texas, just to name a few) have already made cuts to elderly services, including in-home-care services. The situation is grim, and it's safe to say that present trends are expected to continue.

These budget cuts impact more than just senior citizens—they affect the professional caregivers and home aides who lose their jobs when state programs are cancelled, as well as the families of the elderly. When these seniors lose their ability to live at home or pay for health care it's their families who will have to pick up the slack either by contributing to the costs of care, or more often, by becoming the caregiver themselves.

Some elder care advocates have decided that now is the time to take action. Now that President Obama has begun his second term, and the Supreme Court has ruled the Affordable Care Act constitutional, these advocates for the elderly are quietly talking about resurrecting the Class Act, the Community Living Assistance Services and Supports Act, which if passed would have allowed working adults (including the self-employed) to pay reasonable monthly premiums for a fixed time, then be eligible for cash benefits if they needed help at a later age with the activities of daily living.

The idea behind the Class Act was that people would take responsibility for helping to finance their own future care—no federal dollars were involved. The bill never intended to pay all the costs, but it could have made a big difference for families hit by disability; especially disabilities related to age.

Unfortunately, the Class Act became a casualty of the war over healthcare which dominated much of President Obama's first term. Now that this particular battle has settled down, however, many of the aging and disability groups, unions and medical associations that have always backed some form of national long-term care insurance are hoping that the Class Act can be resurrected—even if it comes under a new name.

One thing is for sure: Seniors face an uncertain future. More and more retirees and near-retirees are naming how to pay increasing medical expenses as the number one concern of retirement. Federal programs don't pay nearly enough, savings and long-term care insurance are increasingly unreliable (and is often "too little, too late,") and seniors are unwilling to saddle their children and families with the growing expense. Whether relief comes in the form of the Class Act, or whether another solution is put forward, something has to be done for the aging American population.

HOW SENIORS CAN BENEFIT FROM SPECIAL NEEDS TRUSTS



Special Needs Trusts are created specifically to provide for the control and distribution of assets held by a trustee for the benefit of a beneficiary who may not be able to provide for themselves. Special Needs Trusts are often designed for children with disabilities, but a Special Needs Trust does not have to be so limited. As long as the trust is established by a parent, grandparent, legal guardian, or court, it can benefit a person of any age—including an adult.

More and more families with disabled parents or adult siblings are looking into the specifics of creating a Special Needs Trust for adults. The cost of medical expenses is rising, especially for senior citizens, but it's getting much more difficult to purchase long-term care insurance. If you waited until you were in your golden years, or until after experiencing a disabling accident, you have likely waited too long and will have to rely on Social Security, Medi-Cal, or other sources.

Unfortunately, many state and local governments are tightening income restrictions for medical benefits and supportive services, which are typically paid for by Social Security and Medi-Cal. Those services are tough to find—or afford—in the private sector for many adults with disabilities so severe that they can't live alone. As a result, it's increasingly important to structure an inheritance in a way that won't disqualify the recipient for such benefits down the road.

A "self-funded" Special Needs Trust can be created according to the same rules mentioned in the first paragraph, but once established it can receive and hold assets (such as gifts, inheritance, or a lawsuit settlement) that are owed to or once belonged to the beneficiary of the trust. The trust funds will not be "owned" by the beneficiary, but can be used to supplement (not replace) the public benefits of the disabled beneficiary. This is important because if the beneficiary of the trust becomes "too wealthy" (by government standards) he or she could be disqualified from benefits such as Supplemental Security Income or Medi-Cal. A Special Needs Trust must be managed by a trustee—NOT the beneficiary—so care must be taken to choose the right person or committee as trustee.

A Special Needs Trust can mean the difference between living an enriched life and barely getting by. If you or someone in your life has a disability or other special need, inquire about a Special Needs Trust as a way to hold assets and retain government benefits; it could make a world of difference.

BENEFICIAL CHANGES TO GIFT AND ESTATE TAX IN 2013



The beginning of 2013 has brought good news for wealthy American families, and for seniors who were concerned about the possibility of a significant change to the gift tax and estate tax exemptions! The American Taxpayer Relief Act, passed by Congress in the first week of the year, has solidified the beneficial tax rates of 2012. The estate and gift tax exemptions are now permanently set at \$5 million (indexed for inflation.) Any individual whose assets are over that level will pay a tax rate of 40 percent. What this means is that with the inflation indexing, the exemption is already up to about \$5.25 million per person — double for a couple — and it will rise at a rate that will allow most Americans to continue to avoid paying federal estate taxes.

This new law, which solidifies the tax exemptions and rates, should make estate planning and asset protection much easier than it has been in years past. Less wealthy seniors and families can look forward to a future of more straightforward wills and trusts, without nearly as much need for gifting deadlines or lifetime wealth transfers.

The American Taxpayer Relief Act, however, does not mean that seniors can put off preparing for the future or taking steps to protect their assets. The federal exemptions may be set high, but many state and local tax exemptions are still much, much lower, and should be taken into account. Couples or individuals who would like to move assets out of their estate through gifting should still consult their trusted advisors before making any drastic moves. And if you plan to retire to another state based on the lure of their tax policies you should plan carefully for that as well. Not only can we help you plan for your future, but we can also ensure that you are prepared in the present should the unexpected occur.