

## NEWS & NOTEWORTHY

**New Identity**—The firm reveals its new logo and identity in this newsletter. These changes reflect the expansion of our services to disability law in addition to elder law. The firm is no longer a solo practice consisting of one lawyer, Attorney Dillman, but has grown with the merger of Attorney Sharon Pope along with its associate attorney, Attorney Rebecca Eddy. These changes will enable us to continue to give our clients the top level service that we are noted for in our core areas of practice: estate and trust planning, probate and fiduciary services, elder law, and disability law. We are here to serve you!!

In April, Attorney Pope exhibited at the Autism Society of Connecticut's annual conference. The firm's new tag line, "Clarity for the future," was incorporated into our exhibit: "Clarity for the future: Let us help you put the pieces together."

In March, Attorney Pope presented a program titled "Home and Community-Based Services and Self-Funded Special Needs Trusts," to professional members of Connecticut's Planned Lifetime Assistance (PLAN) Network.

### LOOK INSIDE FOR:

- Living Trust Scams
- Gift Taxes-Know the Rules
- Multi-state Client's Estate Plan



**Dillman & Pope**

ELDER AND DISABILITY LAW

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# Clarity for the future.<sup>SM</sup>

ELDER AND DISABILITY LAW  
PROFESSIONAL NEWSLETTER

MAY/JUNE 2007

## IN THIS ISSUE:

### LIVING TRUST SCAMS

Lawsuits allege senior's purchase of living trust plan not in best interests.

### GIFT TAXES-KNOW THE RULES

Refresher on federal gift tax rules along with filing requirements.

### TAILOR THE ESTATE PLAN FOR MULTI-STATE CLIENT

Avoid probate in multi-states and make sure powers of attorney are accepted in each state.

### NEW & NEWSWORTHY

- New firm identity and tag line
- Autism Society conference
- Community based services seminar

## States Go After Living Trust Scams

Minnesota's attorney general became the third attorney general to file suit against two California companies that allegedly sold inappropriate living trusts and annuities to seniors. Last year, state attorneys general in Pennsylvania and North Carolina filed suit against the same companies. In 2006, the North Carolina attorney general won an order preventing the companies from selling products in the state while the lawsuit against it is pending.

According to the lawsuits, the two companies, both run by a father and son from California, convinced seniors they were receiving impartial investment advice when in reality the companies were pushing their own products. The lawsuits allege that sales agents convinced seniors to purchase living trusts that were not necessarily in their best interest and were not tailored to their individual needs. After consumers agreed to purchase the living trust plans, the agents allegedly persuaded them to exchange or convert their investments for annuities, even if the annuity would have a negative financial impact or tax consequence.

In one case, an 85-year-old Pennsylvania man was allegedly sold a 10-year deferred annuity with his first payout not coming until he turned 95. In North Carolina, according to the attorney general's charges, an agent convinced a couple in their seventies to cancel an insurance policy, cash in their investments, and put all of their savings into an annuity that he promised would earn 7 percent interest. The agent didn't tell them the interest rate was guaranteed for only one year and they would face steep penalties if they needed to withdraw their money. Another North Carolina woman cashed in



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# Will You Owe a Gift Tax This Year?

The rules surrounding taxes on gifts often create confusion during tax season – or any other time. Below are some of the nuts and bolts of the gift tax, including when a gift tax form needs to be filed.

The annual gift tax exclusion for 2007 is \$12,000. This means that any person who gives away \$12,000 or less to any one individual (anyone other than their spouse) does not have to report the gift or gifts to the IRS; any person who gives away more than \$12,000 to any one person, however, will have to file a Form 709, the gift tax return. But just because you file a Form 709 doesn't mean you necessarily have to pay taxes; this depends on your past gift-giving history.

The IRS allows you to give away a total of \$1 million during your lifetime before a gift tax is owed. This \$1 million exclusion means that even if you have to file a Form 709 because you gave away more than \$12,000 to any one person during the year, you will owe taxes only if you have given away more than a total of \$1 million in the past. As a result, the filing of a Form 709 is only formality for most people. Keep in mind that any part of the \$1 million credit that is reported on the gift return actually counts against your overall federal estate tax exclusion, which is \$2 million this year.

However, there are several ways to give away more than \$1 million over a lifetime without owing taxes. Keep in mind that Form 709 is only required when you give away more than the annual exclusion. So a married couple with a married child can give away \$48,000 in one year without having to report the gift: each parent gives the child and the child's spouse \$12,000 each. If a couple did this for 25 years, they would have given away \$1.2 million without even having to report the gifts, much less having them count against their lifetime \$1 million exclusion.

Also it would be possible for the couple to give away \$96,000 within a short span of time – \$48,000 in December and \$48,000 in January of the next calendar year. (Note that if both spouses have made gifts, each must file a separate Form 709.)

Another way for a gift to be exempted from reporting requirements – no matter the gift's size – is to pay for someone else's medical care or educational tuition. There is also a special regulation in the tax code that

enables a donor to use up five years' worth of her exclusions and gift \$60,000 to a 529 account at one time.

Finally, tax deductible gifts made to charities need not be reported on a gift tax return unless the donor retains some interest in the gifted property.

**But just because you have to file a Form 709 doesn't mean you necessarily have to pay taxes.**

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an IRA to purchase an annuity after the sales agent allegedly told her the IRA would run out of money in five years. He allegedly didn't tell her that the annuity would cut her monthly income from \$1,700 to less than \$300.

There are a number of steps you can take to avoid getting scammed, including avoiding high-pressure sales tactics and high-speed sales pitches, not trusting companies that say the AARP is selling or endorsing their product, and making sure a living trust is properly funded. In addition, to help older adults and families make better decisions about annuities, the **Healthcare and Elder Law Programs Corporation (H.E.L.P.)** has created a Web site, [www.annuitytruth.org](http://www.annuitytruth.org). The site features H.E.L.P.'s new seven-part "Special Report: Annuities and Older Adults," as well as a list of federal and state agency contacts for making complaints if a person has been sold an annuity in unsuitable circumstances. Of course one of the most important things you can do is make sure you get estate planning advice from a qualified elder law attorney.

## Tailoring a Will and Power of Attorney for Multiple States

If you own property in more than one state, do you need estate planning documents for each state? The answer is probably no, but you need to do some planning if you want to avoid going through probates in each of the states.

A lawyer can generally draft a will that is generic enough to be probated in any state except Louisiana, which has very specific rules. However, according to ElderLawAnswers founder Harry Margolis, who is quoted in a recent *Wall Street Journal* article (Tailor Will for Multiple States, March 9, 2007) on the subject, if you aren't careful, you still may have to go through probate in every state you have property in. To avoid this, you have two options.

If your estate is under the estate tax limit and you don't have family complications, you may hold your property jointly with your spouse. Joint property will pass to your spouse without going through probate. If holding property jointly won't work, you can put your property into a revocable trust. Property in a revocable trust will pass to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution won't be held up by the probate process.

A power of attorney – which allows a person you appoint to act in your place for financial purposes if you ever become incapacitated – is an important estate planning document for anyone, including individuals with property in multiple states. One power of attorney should work in multiple states as long as it is written generally enough. Mr. Margolis cautions, however, that even if the power of attorney complies with state law, a bank may not accept it. He recommends letting the bank know about your power of attorney and making sure there are no specific forms that the bank requires. For a consultation with a qualified elder law attorney, please contact us.