

Founded 1884

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& KIEFER**
A PROFESSIONAL CORPORATION
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SOMERSET COUNTY OFFICE
BY APPOINTMENT

WILLIAM C. GEBHARDT
1884-1929
W. READING GEBHARDT
1919-1980
PHILIP R. GEBHARDT
1924-1986
E. HERBERT KIEFER
1933-1988

- ALSO MEMBER OF PA BAR
- ▼ ALSO MEMBER OF NY BAR
- ◆ CERTIFIED BY THE SUPREME COURT OF NJ AS A MATRIMONIAL LAW ATTORNEY
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ASSET PROTECTION PLANNING

AND

ESTATE PLANNING

By: **John G. Manfreda, Esq.**
Daniel S. Makoski, Esq

I. BASIC DEFINITIONS – What Is Estate Planning?

- (1) Last Will and Testament/Trust Agreement/Probate
- (2) Avoid Family Disputes – Lack of Capacity/Undue Influence Claims
- (3) Choice of Fiduciaries (to carry out instructions)

II. PROBLEMS WITH JOINT OWNERSHIP

- (1) Distortion of Tax Plan/Convenience Account Disputes
- (2) Re-Titling of Assets To Achieve Tax Efficiency

III. MARITAL DEDUCTION & BASIC EXCLUSION AMOUNT

- (1) Unlimited Marital Deduction For US Citizen Spouse
- (2) Federal Estate and Gift Tax BEA/GST Exemptions - \$5.45 Million for 2016
- (3) Use of Disclaimers and Disclaimer Trust Format
- (4) NJ Inheritance Taxes/ 3 Year Rule For Gifts - \$675,000 NJ Estate Tax Exemption
- (5) Portability of the BEA For Surviving Spouse – Federal Estate Tax Only!

IV. ESTATE PLANNING FOR BLENDED FAMILIES

- (1) When Spouses Have Children From Prior Marriages
- (2) Solutions: QTIP Trusts, Irrevocable Wills,
Irrevocable Life Insurance Trusts, Long Term Care Insurance
- (3) Legal Responsibility For Spouse's Health Care Costs

V. GIFTING

- (1) \$14,000.00 Annual Exclusion Gifts for Federal Gift Tax purposes
- (2) Carryover Tax Basis Rules– Beware Capital Gains Tax On Sale!
- (3) Gift Transfers to Caregivers – beware of undue influence claims!
Requires clear & convincing evidence of capacity & donative intent!
- (4) No NJ Gift Tax- a great planning opportunity- but beware!

VI. POWERS OF ATTORNEY and LIVING WILLS

- (1) General Durable Power of Attorney vs. Springing Power of Attorney
- (2) Combined Advance Directive For Health Care – HIPAA Privacy Standards
- (3) POLST – Physician Order For Life Sustaining Treatment

VII. NJ Caregiver Advise, Record, Enable (CARE Act)

- (1) Designation of Family Caregiver – To avoid costly hospital re-admissions
- (2) Form provided by the hospital at discharge of patient
- (3) Discharge Plan to go home – training of Family Caregiver
- (4) Privacy concerns – authorization for release of PHI to Caregiver
- (5) Appointment of Family Caregiver in Living Will permitted
- (6) Family Caregiver need not be related, but must have a significant relationship with patient.
- (7) Family Caregiver designation can be changed at any time by patient.

VIII. MEDICAID ISSUES

- (1) Qualification Process – Exemptions for Applicant and Community Spouse (CS)
- (2) Asset Transfers – the Five Year Lookback Rule/Penalty Period
- (3) Marital Residence and the Community Spouse – beware Change of Health of CS!
- (4) Medicaid does not cover many essential services

IX. LONG TERM CARE ISSUES

- (1) Find The Most Suitable Facility
- (2) Paying For The Cost of Care Privately
- (3) Legal Responsibility For Spouse's Health Care Costs – Beware blended families!

FINAL NOTE: Estate and Asset Protection Planning is a strategic series of well-timed actions and transactions that must be carefully coordinated. No single strategy serves all families well. You are well-advised to seek assistance from qualified professionals who are experienced in these areas of practice.