

Estate Planning Matters

Kramer Radin, LLP
Law Firm

Spring 2012

Volume #XVII, Issue #1



Attorneys at Law

Linda C. Kramer* #
Deborah G. Kramer Radin*
Jerome Galli

The legal services of Kramer Radin, LLP include estate planning, trusts, probate and trust administration, related tax matters, litigation and dispute resolution, elder law, Medi-Cal planning, conservatorships, and real estate.

*Certified Specialist, Estate Planning, Trust and Probate Law, State Bar of California Board of Legal Specializations

"Distinguished" peer review rated Martindale.com and Lawyers.com (LexisNexis/Martindale Hubbell) and selected for *Northern California Super Lawyers* 2010 and 2011 through Thomson Reuters

The information provided herein is not meant to serve as a substitute for legal advice. (See page 3 for full disclaimer)

Tax Update

Federal

We are still waiting for something substantive to come out of Washington, DC regarding federal estate, gift and generation-skipping transfer taxes. The president has lots of tax ideas he wants lawmakers to consider this year. Although they probably won't pass this year, we will have many different schemes floated but we do not anticipate resolution until after the November election.

This leaves precious little time for addressing the December 31, 2012, expiration of the current federal estate, gift and generation-skipping transfer taxes provisions, including the maximum estate tax rate of 35% with an applicable exclusion amount of \$5.12 million. If nothing is done, effective January 1, 2013, the amount that can pass to anyone but a surviving spouse (and not be taxed) will revert to \$1 million and the maximum marginal tax rate will increase to 55%. This will have a huge impact on estate planning and administration decisions.



California

There is currently no estate tax imposed by the State of California. However, even though there are several up-coming possibilities regarding California tax law changes, we are relatively certain there will continue to be no California estate or gift tax because the citizens of California would need to impose one on themselves. This seems unlikely even though there are pressures building to increase various taxes, particularly on the "wealthy" or the "1%".

Other States

As of January 1, 2012, the District of Columbia and the following states impose a separate state estate tax: Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Vermont, and Washington. If you have assets (such as real estate) in any of the above listed states, those assets are subject to that state's estate taxes. The exemption amounts for each state vary widely from \$338,333 to \$5,120,000.

In addition to the above states, the following states impose an inheritance tax: Indiana, Iowa, Kentucky, Maryland, Nebraska, New

Jersey, Pennsylvania and Tennessee. (An estate tax is imposed on the estate of the decedent. An inheritance tax is imposed on the beneficiary rather than the estate. Several states have both.) The impact of an inheritance tax typically will differ based on whether the beneficiary is a spouse, child, relative or unrelated individual. State inheritance taxes vary widely and may change frequently. A qualified attorney or tax advisor in the specific state should be consulted to determine what rules apply to your particular situation.

We will continue to monitor this and keep you informed. In this instance the adage “no news is good news” probably will not apply.

LET YOUR WISHES BE KNOWN

When we review your estate plan with you, our strong recommendation is always that you have a discussion with your named agent under your Advance Health Care Directive and provide him or her with a copy of your completed Directive. Unfortunately, this communication does not always happen.

In a recent article in the San Jose Mercury News, written by Lisa M. Krieger, it was stated that 82% of the people surveyed believed it was important to put end-of-life wishes in writing but only 23% of those people had done so. Many of them indicated they did not want to be treated in a hospital or other institutional setting; they would prefer being at home. However, without written instructions to guide the named agent and the medical professionals, this is often not done.

By not providing written instructions and explaining your wishes to your agent, you possibly have left

that person in a very difficult position in the event of an emergency. Consider the following examples:



An elderly man who had watched his mother and sister die from Alzheimer's did not want such a fate for himself and wrote a letter that he mailed to all of his relatives stating his wishes. If he developed Alzheimer's before there was a cure for it and then contracted another disorder that would shorten his life, he

wanted no heroic measures but would prefer to die because ... “Life without memory is disorienting, meaningless and frustrating.” When later he developed advanced stage Alzheimer's Disease and then contracted a serious lung infection, his family knew they were doing the right thing for him by not authorizing aggressive treatment of the lung infection. He was allowed to die at home as he wished.

A second example is that of the passing of another elderly man with dementia who contracted an infection in his leg. In an era and geographical area of world-class treatment availability, the family faced the dilemma about the extent to which he should be treated. The family and the doctors were not sure of the man's preferences. Although he had end-of-life instructions they elected to treat the infection aggressively for several days until it became apparent that further treatment would neither cure the infection nor improve the outcome. His final ten days of life were in a hospital the cost of which was in excess of \$300,000.

The moral of this story is: be sure your agent and entire family, if appropriate, are aware of your wishes and have written instructions from you.

“The true harbinger of spring is not crocuses or swallows returning to Capistrano, but the sound of the bat on the ball.”

- Bill Veeck



Alzheimer's (Dementia) and Difficult Behavior

A person with Alzheimer's Disease or some other dementia may often act in unpredictable ways that are inappropriate and/or harmful for the situation. This can lead to misunderstanding, frustration and tension for both the person with the disease and the caregiver.

In order for the caregiver to find a solution to the problem, he or she must determine the cause of the behavior. Was it an event that was upsetting? Could it be the person wants or needs something? It may be that the person is feeling physical discomfort and/or frustration because of not being able to fully communicate with the caregiver. Unfamiliar surroundings, not recognizing one's previously familiar surroundings or not being able to complete a task that was once simple can lead to an outburst.

You, as the caregiver, must be the one who controls the situation because the person with dementia is not in a rational state. Remaining outwardly calm is #1; if the caregiver loses self-control, the situation will escalate rather than come under control. Redirecting attention is often effective.

A person with dementia often lashes out at his or her caregiver. This is generally really an expression of anger at the situation and not at the caregiver. However, when you are the caregiver, it is difficult, but necessary, to remember this and not take it personally. This is particularly true if the caregiver is the spouse or other close family member.

If, as you read the above, you thought that it sounded like a description of your children's behavior at "the terrible twos" or "fearsome fours" along

with the advice you received for handling it, you are right on target. It is very difficult, and sad, to accept that a once responsible and caring adult has reverted to childlike behaviors because of an insidious disease. But, the behavior changes are part of the reality of the disease.

As a caregiver, more and more of your days will be spent in giving care to another person and in worrying about the early signs of memory loss. This is stressful for you. Go ahead and schedule time away for yourself. Plan a vacation with friends, a simple visit to the library or a visit with your grandchildren. It's important for you too to slow down and breathe. There are programs available for your loved one to visit for a day where seniors can enjoy planned activities and socialization all day long, or, you can make arrangements for someone to come to your home. Remember, if you are caring for a loved one full or part time, you deserve a break. We are happy to refer you to such a program-just give us a call.

Helpful Hint

When a person can no longer drive, often the driver's license is allowed to lapse. This may present difficult situations including opening a bank account or having a document notarized. Both situations require current photo (not expired) identification. A California identification card issued by the DMV works very well. An application (DL44) can be obtained from any DMV office or by calling 1-800-777-0133. The ID card is issued at all DMV consumer offices and requires personal appearance. An original signature is required on the application. Information required includes full name, social security number and birth date/legal residence document. There is no fee for a senior (age 62 or older) ID card.

Disclaimer: *Estate Planning Matters* is provided by Kramer Radin, LLP. Opinions and positions stated in this publication are for educational and informational purposes only. It is not intended, and should not be construed, as a specific recommendation or as legal or tax advice. Individuals should contact their own tax advisor or attorney to answer questions about their specific situation or needs before acting upon this information.

In accordance with IRS Circular 230, Kramer Radin, LLP states that any U.S. federal tax information provided in this publication is not intended or written to be used and it cannot be used to avoid tax penalties that may be imposed on the recipient or any other taxpayer, or to promote, market or recommend to another party any tax-related matters.

- Tax Update.....Page 1
- Let Your Wishes Be Known.....Page 2
- Alzheimer's (Dementia) and Difficult Behavior.....Page 3
- Helpful Hint.....Page 3

Inside this issue

Estate Planning Matters

Kramer Radin, LLP Law Firm

Kramer Radin, LLP
Law Firm
280 Second Street, Suite 100
Los Altos, CA 94022

PRST STD U.S. POSTAGE PAID PERMIT #28 LOS ALTOS, CA
--



Estate Planning Matters
Newsletter
Spring 2012