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SECOND MARRIAGE & MEDICAID How will it affect me?

Often people who enter into a second marriage sign a Prenuptial Agreement before doing so. It is common to consider such an agreement when the goal is to protect assets from the first marriage and insure that they will ultimately go to children of the first marriage. This applies to both sides of the agreement, future husband and future wife.

But how does this play out when long-term nursing home care enters the picture? It is one thing for two people to plan in detail what would happen if their marriage is dissolved in the future or when one of the parties passes on before the other; and quite another matter when long-term care and Medicaid are involved. We at Brooks & Brooks have reviewed Prenuptial Agreements (and for that matter Anti-nuptial Agreements) which contain provisions detailing that the parties were responsible for their own long-term care costs in the event nursing home care became a reality for either. Can this really work? In a word, **NO!**

The expectation is that if one's resources are used up for long-term care (or transferred to an asset protection trust 60 months before), one would be entitled to Medicaid benefits to pay for long-term care costs thereafter. However, this assumption does not take into account the Medicaid rules.

EXPLANATION: The rules for married couples, when either is applying for Medicaid benefits, is that the entire amount of assets owned by either or both of the parties is considered. For Medicaid qualifying purposes, a Prenuptial or Anti-nuptial Agreement is totally ignored! The Medicaid authorities do not care that the parties have agreed between themselves to only have each of their own assets available for his or her nursing home care. Medicaid looks solely to the value of the combined assets for both husband and wife and determines how much of those assets the spouse who remains at home can have. Anything above that limit must be spent toward the other spouse's nursing home care, before he or she will be entitled to Medicaid benefits.

This becomes an enormous problem when one spouse comes to the second marriage with far more assets than the other. If that other spouse then has to go to a nursing home, the monied spouse, notwithstanding any Prenuptial Agreement, stands to lose a substantial amount of his or her own assets to the spouse's care.

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Free Workshops

June 14, 2012

Old Library
6:30 to 8:30 p.m.

June 19, 2012

Springville Country Club
with Laura Dealy
Manning and Napier
6:30 to 8:30 p.m.

July 12, 2012

Inn at Holiday Valley
6:30 to 8:30 p.m.

Current Medicaid Exemption Limits

For 2012, the resource limit allowable to the community spouse for Medicaid purposes is \$113,640.00. This does not necessarily mean that if both spouses together have this amount in assets, the community spouse can keep it all. It only means that this amount is the **maximum** amount the community spouse can keep.

WHAT CAN BE DONE? Simply stated: advanced planning or crisis planning.

Advanced Planning: While health is good, consider adopting an asset protection trust to avoid the Medicaid Spend Down Rules. The Asset Protection Trust can protect a spouse's assets for the family and the effect of the Prenuptial Agreement can be also preserved. In this situation, separate assets protection trusts would be recommended for both spouses.

Caveat: Any uncompensated transfers (e.g. transfer of assets to a trust) are subject to the 60 month look back rule for Medicaid qualification purposes. This simply means that the trust should be adopted and funded a full 60 months before a spouse needs to apply for Medicaid benefits.

Crisis Planning: If there is not enough time to comply with the 60 month look back rule, it may be possible to preserve part of the spouses' assets by engaging in crisis planning. As a general rule of thumb, crisis planning will cost twice as much as advanced planning and fewer assets can be protected. However, crisis planning can still be very much worth doing considering the alternative - losing nearly everything to nursing home care.

We at Brooks & Brooks, LLP devote a substantial amount of our time and expertise helping clients adopt asset protection plans to help safeguard and protect family assets and pass those assets on to family, friends and charities. For those individuals that did not properly engage in advanced planning, we assist them in crisis planning to preserve as much as we can for the family while qualifying the client for long-term care Medicaid benefits. Couples in their second marriage that do not have their assets protected from the Medicaid Spend Down Rules are encouraged to contact us for a consultation to determine the risk and planning opportunities to reduce or eliminate the risk completely.

Interesting Federal Income Tax Statistics for 2009

Total number of returns filed = 140,494,127

The higher number of returns filed on the basis of gross income (as a total) were those taxpayers making between \$100,000 and under \$200,000 per year (23.6%).

The highest number of income tax returns filed that paid income tax were for those taxpayers earning between \$100,000 and under \$200,000 per year. Not surprising, the largest number of tax returns filed that included tax-exempt interest income were those taxpayers that earned from \$100,000 to under \$200,000.

Of all returns filed for 2009, most were filed by individuals between the ages of 45 and 55 years old, followed closely by those between the ages of 35 and 45. Coming in a not too distant third were individuals between the ages of 26 and 35. Interestingly, 11 people under the age of 18 filed tax returns in 2009 and reported more than \$10,000,000 of gross income.