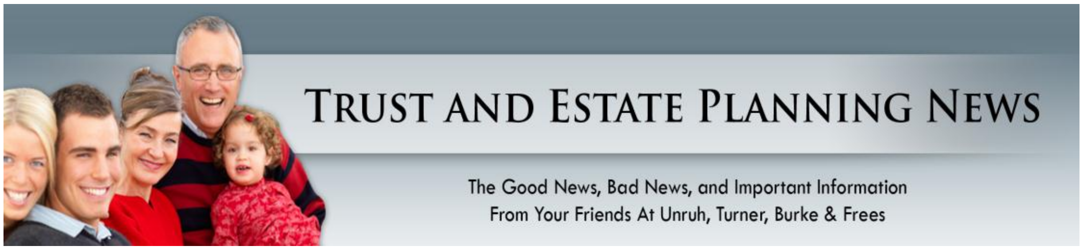
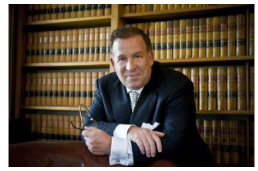


FALL/WINTER 2012

In This Issue

Avoiding Wills Disputes? What Your Estate Planning Attorney Needs And Why Revealing Personal Information Matters & The Lessons Of Thomas Kinkade



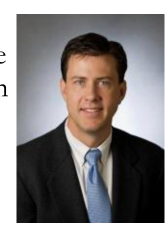
By: David M. Frees III, JD | Ever wonder how much or what type of information has to be revealed to your estate planning attorney to make sure they do the job right? The more information you share regarding finances, beneficiaries and relationships as well as other pertinent issues, the better your attorney will be able to assist you during the estate planning process. And, the less likely your plan is to be challenged.

If you neglect to disclose information to your attorney, your estate planning may not fully safeguard your assets or carry out your wishes as you originally intended. For instance, consider the estate of Thomas Kinkade, a well-known American painter who died in 2012. That estate is still in dispute because of a lack of information provided to his estate planning attorney. In short, he omitted gifts to his companion and executed "side documents" that contradicted his will and other planning documents.

Kinkade had a wife and family, but also had a girlfriend. Kinkade's girlfriend has produced two handwritten wills, known as holographic wills. These two handwritten wills indicated that she was the sole beneficiary of his estate. Additionally, the wills suggested that the girlfriend was entitled to Kinkade's $66 million art collection, as well as, $10 million to manage a museum highlighting his art. When the girlfriend came forward with the holographic wills, Kinkade's wife and family were stunned as they had probated documents carefully that were prepared by his lawyer.

The girlfriend then filed a motion to probate the disputed wills. However, the estate attorney refuted the motion suggesting that Kinkade's girlfriend had breached a confidentiality agreement intended to protect his wife and family. Furthermore, the estate attorney suggested that estate and trust documents were considered final meaning that the girlfriend's holographic wills were not valid. ***Continued on Page 3.***

Understanding the Many Different Rules of Gifting



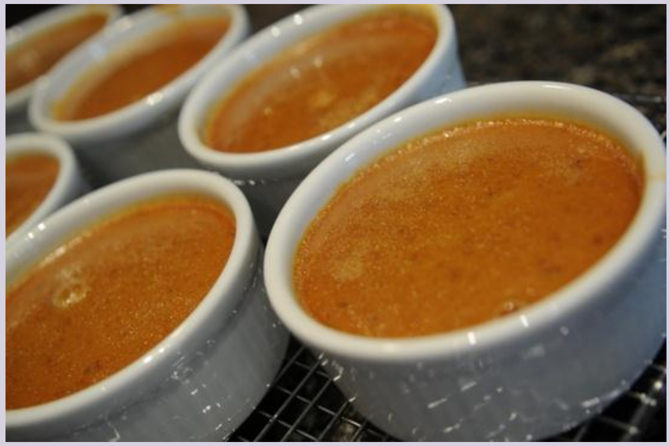
By: Douglas L. Kaune, JD | We regularly have clients come to discuss gifting assets to their children and other recipients. Some clients are interested in gifting to protect assets from taxation and others from nursing home spending. I am no longer surprised at how much misinformation there is about the ability to gift. Some clients come to the meeting with the preconceived notion that they cannot give more than whatever the annual federal gift exemption amount is in that year (presently $13,000). They believe incorrectly that any amount gifted above that threshold will result in an automatic gift tax having to be paid. Others come to me thinking that so long as they gift under $13,000 per person per year they will not create any problems related to Medicaid application should long term care become necessary. Both of these notions are incorrect and can result in significant economic loss and failure to properly plan. There are any number of variations on these misconceptions, but the thrust of this story is that misinformation and lack of information relating to gifting can cause serious problems.

This article will speak to three major government entities that monitor gifts and the related impact on the person making the gift. They are the Pennsylvania Department of Revenue, Internal Revenue Service (IRS) and Medicaid through the PA Department of Welfare (DPW). These entities are all operating with their own rules. Therefore, if you learn one set of rules, know that those rules are separate and distinct from the others. As an example, a gift that is permissible under IRS rules might not be permissible for Medicaid purposes. I have purposely not entered into a discussion about the income tax and capital gains tax issues related to gifting. It is important to note that these are also important topics that I am happy to review at another time.

Continued on Page 3.

Pumpkin Custard with Cookie Crumb Crust (adapted by David Frees from Rustic Fruit Desserts by Cory Schreiber and Julie Richardson); serves 8 (or 16 if you use smaller ramekins)

1-1/4 cups crushed gingersnap or your favorite shortbread cookies
2 cups half-and-half
2 eggs
4 egg yolks
1/2 cup packed brown sugar
1/2 cup sugar
2 tbsp molasses
15 oz can pumpkin puree
1/2 tsp salt
1/2 tsp ground cinnamon
1/2 tsp ground ginger
1/4 tsp ground cloves
1 tbsp vanilla extract



1. Preheat the oven to 325F. Divide the crushed cookie crumbs among eight 5-oz ramekins.

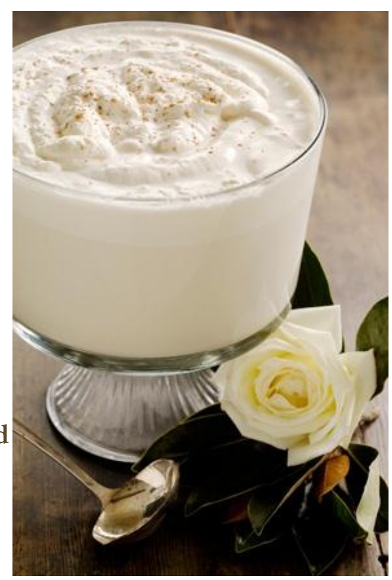
2. In a small saucepan, bring the half-and-half to a light simmer over medium heat. Whisk the eggs and yolks together in a bowl, then whisk in both sugars and the molasses. Slowly pour the hot half-and-half into the egg mixture while whisking continuously. Stir the pumpkin, salt, cinnamon, ginger, cloves and vanilla together in a large bowl. Slowly add the egg mixture, whisking just enough to combine ingredients (this will keep air bubbles to a minimum which contributes to a creamier texture when baked).

3. Set a fine-mesh sieve over a 6-cup bowl, then strain the custard. Distribute the custard evenly among the ramekins, filling them almost to the top. Place a large roasting pan on the centre rack of the oven, put the ramekins in the roasting pan, and carefully add enough hot water to the pan to come halfway up the sides of the ramekins.

4. Bake the custard for 50-60 minutes, or until puffed slightly on the edges and almost set when jiggled. Carefully remove the ramekins from the pan and place on a wire rack. Cool completely on the rack before covering lightly with plastic wrap and refrigerate for at least 5 hours and up to 2 days. Leftovers will last up to 4 days.

Dave Frees makes his own homemade pumpkin custard and he's willing to share the recipe, just contact Lisa, 610-644-3833 and we will get you details!

Holiday Eggnog (adapted from Paula Deen's "Mama's Eggnog" recipe)



1/2 pint Bourbon
1 pint heavy cream
4 pints milk
3/4 cup sugar
6 eggs, separated
1 tablespoon Vanilla
Nutmeg

Directions In a bowl beat the egg yolks with the 1/2 cup of sugar until thick. In another bowl beat the egg whites with 1/4 cup of sugar until thick. In a third bowl beat the cream until thick. Add the cream to the yolk, fold in the egg whites, and add the milk, Bourbon, Vanilla, and a pinch of nutmeg if desired.
Chill in freezer before serving. Serve Eggnog in a large punch bowl.

Avoiding Wills Disputes ***(cont. from Page 1)*** Ultimately, the dispute of Kinkade's estate will be left for the court to decide. However, if Kinkade would have met with his estate planning attorney and disclosed this information the outcome could have been much different. Kinkade and his attorney would have come up with a plan so that his specific wishes regarding his estate would have been made very clear and would have been less open for attack. Instead, Kinkade left behind estate planning documents as well as handwritten wills that oppose one another causing significant confusion and cost.

Even though you are not required to reveal information to your estate attorney regarding relationships or other personal issues it is in your best interest to do so. By not disclosing relevant information your estate can be put at risk just like Thomas Kinkade's estate.

Finally, if despite your best intent a dispute has developed concerning an estate, will, or trust, then consider mediation to resolve these problems in a faster, and more cost efficient way. For additional information on solving estate, will, and trust disputes with mediation see our estate mediation videos. http://www.utbf.com/mediation/2012/09/video-report-on-mediation-of-will-estate-contests-to-save-money-and-time/

Gifting ***(cont from Page 1)*** **Federal Taxation of Gifts**: You can give any amount up to your remaining Federal estate Tax credit without incurring a gift tax. That credit is presently, $5.12 million, but is scheduled to be reduced to $1.0 million at the end of 2012. In addition to the large estate tax credit, you also have a bonus annual exclusion, presently $13,000 per person. If you give more than $13k in a year to one person, you must file a gift tax return to reduce your credit, but no tax will be due unless you exceed the lifetime gifting exemption. For example, if I give my son $133,000 this year, I will have my annual exclusion of $13k and through a gift tax return filing, the remaining $120k will be reduced from my $5.12 so I would only have $5.0 million in credit remaining. No tax would be due as a result of the transaction.

Pennsylvania Taxation of Gifts: There is no limit to the amount you can gift and there is no gift tax. So long as you live one year after the date of the gift, there will be no PA inheritance tax on the amount gifted. If you die prior to the one year anniversary date of the gift, the gifted amount will be subject to PA inheritance tax. There is a small exclusion of $3,000 for amounts gifted within one year that would escape tax.

It is very important that you separate the tax related gifting issues and those related to Medicaid. They are two separate concerns and the laws work independent of one another. I cannot stress enough the importance of knowing each of these sets of rules and the impact they might have on you should you make significant gifts. Below is a synopsis of the Medicaid related issues when considering gifts.

Medicaid Gifting Rules: Nursing home costs have increased significantly and are likely to continue to rise. Medicaid is the federally funded, state run program to pay for individuals who cannot afford nursing home care. It is becoming increasingly difficult for the federal government to afford to pay for the nursing care costs of the elderly who are deemed indigent. Therefore, the federal government has instituted a system of rules to restrict your ability to gift to protect assets from nursing care spending. Early action is now the key to successful planning as you will see below. To counteract the giving of gifts for the purpose of protecting assets, the federal governments passed the Deficit Reduction Act (DRA). The DRA increased the stringency of gift-giving rules under Medicaid. The DRA specifically focuses on the transfer of real estate and other assets owned by nursing home residents who ultimately apply for Medicaid. Under the law, any Medicaid recipient who will be entering a nursing home and is seeking to have Medicaid cover the entire cost is subject to having all property and asset transfers reviewed. There is a five-year "look-back period," meaning any transfers that occurred up to five years before the recipient applied for nursing home coverage will be counted. Any property or asset transfer by the nursing home resident in which the resident did not receive full value in return will result in an ineligibility period.

Medicaid Gifting Penalties: Part of the penalty includes being declared ineligible for Medicaid for a potentially significant period of time. The ineligibility period does not begin until you actually apply for Medicaid. Therefore, you must be very careful to be through your 5 year look back period before you apply for Medicaid. The length of the ineligibility period is determined by calculating the value of the assets that were given away, and dividing it by the average cost of private nursing home expenses to see how many months would have been covered. Essentially, Medicaid calculates how long you would have been able to pay for nursing home costs privately using the assets that were gifted. When the penalty period is over, you will be able to apply for Medicaid coverage, and if you made no additional property transfers during that time, you will be accepted and your nursing home costs covered.

Summary: You can see how very different these rules are. You must be very careful where you are getting your information about the gifting rules that most impact you. There can be significant asset protection and tax savings garnered through a properly orchestrated gifting plan. Please contact David or me to discuss your planning goals and objectives. You may be surprised by the planning opportunities that are available to you once you know the "Real" rules and are dispelled of some of the common half truths and co-mingling of various laws relating to the gifting process.

TRUST AND ESTATE PLANNING NEWS

The Good News, Bad News, and Important Information
From Your Friends At Unruh, Turner, Burke & Frees

PO Box 289
Phoenixville, PA 19460
610-933-8069
www.utbf.com/trust-estate
www.paestateplanners.com
www.paelderlawsolutions.com

Tips for Enjoying the Holidays: **First, set your intention to enjoy the holidays and be really present.** By making the conscious decision to open yourself to true well-being and happiness, you'll be more likely not to miss those uplifting moments and even begin to have your radar out for them. Being present in the moment, you are not worrying about what is next on the day's agenda, but really appreciating your experience. **Second, reduce your stress and take good care of yourself.** If you're feeling overwhelmed, remember to take a few breaths. Take a break and enjoy a cup of tea or a hot bath. Try some yoga or exercise, or get out of the doing mode for a little while and let yourself just relax. Disengage the clutch of activity and connect with the moment in a restful way. Neuroscience shows that when you're multitasking, it's virtually impossible to feel happy. **Third, practice gratitude and generosity.** Don't take your good fortune for granted. Consciously reflect on all the blessings in your life each day. Express your appreciation directly to loved ones and friends when you're with them. Anytime you do something that contributes to the well-being of another, let yourself feel the joy of generosity. And be sure to include yourself as the recipient of your own generosity practice. **Finally, have fun!** Remember what it was like when you were a kid during the holidays? Let yourself experience that again. Be around kids if you can. Tune in to and take delight in their enthusiasm. Singing and dancing are excellent ways to get out of your head and open to joy. Remember that the more you can stay connected to your own happiness, the more you become a reminder for others to get in touch with their own well-being, too. We all benefit when you can awaken the joy within you.

From the offices of

David M. Frees, III & Douglas L. Kaune

UNRUH TURNER BURKE & FREES
ATTORNEYS AT LAW
A PROFESSIONAL CORPORATION

If you haven't reviewed your automotive insurance recently, it may be time to do so. We would like to be sure you are fully protected!

Please contact our office to request a copy of

"What you don't know about Car Insurance Can Hurt You."

Please call 888-605-6482 and mention you read the UTBF FALL/WINTER NEWSLETTER - Lisa, Tammy, Donna, or Denise will be happy to assist you.

THANK YOU FOR YOUR REFERRALS!

We want to thank all of the clients, attorneys, advisors, friends, and families, past and present, who have recently trusted us with their personal and professional referrals.

We see referrals not only as an opportunity to help somebody, but also as one of the highest compliments available. There is no better way to say you trust us than to send your loved ones and your clients to us in their time of need for estate planning or as executors or trustees.

Do you know someone who is an executor, a trustee or who needs a will or trust? Let us help them.

Please have them contact us at 888-605-6482 to schedule a consultation with either David Frees or Douglas Kaune. You can rest assured knowing we will provide anyone you send with the same outstanding service you have come to expect from us.