

SMART PLANNER

Useful Tips for a Better Tomorrow

Fall 2016



Celebrate With Me...

To share good news is always welcomed and I invite you to join me in celebrating my upcoming transition within the firm.

On January 1, 2017, I will transition from being a Principal with CzepigaDalyPope to holding the position "Of Counsel." I will continue to consult with the firm and manage its pro bono activities.



Sharon L. Pope

Many of you know my hand-picked team members, Attorney [Claudia Englisby](#) and [Kathleen Tetreault](#). Claudia, who earned her LLM in Elder Law, is Chair of the firm's Special Needs Trust department. Kathleen, who joined us last year after practicing in special education law, includes in her practice advocacy for individuals with intellectual and developmental disabilities.

Claudia and Kathleen, both genuinely compassionate and thoughtful people, are exceptional attorneys. I hope you will continue to warmly welcome them into your close circle of trusted counselors.

As I look ahead to my next chapter, I am excited to increase my time with my grandchildren, volunteer for the causes I hold dear, teach the Elder Law Clinic at UCONN Law School, and mentor students at Yale Law School.

I have treasured my time with my partners Paul Czepiga and Brendan Daly, and am grateful to have contributed to the good work of CzepigaDalyPope. I encourage you to look to our firm as a resource as you plan for your future.

Sincerely,
Sharon L. Pope

BIG NEWS! New Connecticut Power of Attorney Finally Gives You More Protection



After remaining relatively unchanged since 1965 (yes, 40+ years ago), Connecticut has replaced its [power of attorney](#) (POA) laws and form with a new more powerful form and laws to ensure your wishes are honored. This new law is so important and will have such a potentially significant impact on you, that the Connecticut legislature passed the

law in 2015 but gave us all until October 1, 2016 (its effective date) to get ready for it.

Should you revise your existing POA? **DEFINITELY!** If you signed your POA before October 1st, 2016, it is still valid, but you won't have all the powers and protections

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GOOD TO KNOW

Medicare Tool

There is now an assessment tool to help you figure out when you need to enroll in Medicare. Answer a few basic questions and the tool will tell you what steps you need to take to get coverage and spell out how the enrollment periods apply to you.

Go to www.mymedicarematters.org/take-an-assessment.

"Fight for the things that you care about. But do it in a way that will lead others to join you."

– Ruth Bader Ginsburg



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It's Time. Plan Today for Your Tomorrow.

Retirees Cashing in on the Sharing Economy

Have you ever thought it might be nice to make a little extra money to supplement your retirement?



Maybe you need a bit more income just to make ends meet, or maybe you're doing okay but wouldn't mind having some room in your budget for nice-to-have treats like a special night out or a weekend away.

Many digital-savvy seniors have found

fun and creative ways to earn this kind of additional money as participants in the sharing economy.

What is the “sharing economy?”

The sharing economy is a trend fueled by the growing number of peer-to-peer service businesses that match customers with providers via the Internet and digital apps.

The “sharing” part of the sharing economy refers to a business model that relies on providers sharing something they have — a room, a car, time, a skill, etc. Think Airbnb and Uber.

Many seniors are finding that these types of sharing economy platforms are the perfect way to earn some extra cash. It's fairly simple to get started and you have control over what you want to rent/sell/do and also over how much and when you would like to work.

While these companies do not provide any kind of employee benefits, most seniors do not consider that to be a major drawback, since their healthcare is typically already provided for by Medicare or some other program.

What can you do?

If you have an extra room to rent or time to care for someone's beloved pets or would enjoy driving people to the airport, there are a number of companies out there who are ready to help you reach the people who need your services.

To get you started, here are a few sites that will give you some ideas:

- 1 **Have a space you'd like to rent?** Check out how to become an Airbnb host by inviting guests to stay in your spare room, in-law apartment, or vacation home.
- 2 **Interested in driving people around the city?** If you love being behind the wheel and meeting new people, driving for a company like Uber might be just the right fit.
- 3 **Have an extra car that's just taking up space in the garage?** You might want to consider renting your spare vehicle out via Turo or Getaround.
- 4 **Love animals?** Services like Rover and DogVacay will connect you with pet owners who need walking and pet sitting services.
- 5 **Up for handling small tasks?** TaskRabbit and Fiverr are just two of the companies who provide people with a platform to offer a wide range of services, from picking up dry cleaning and assembling IKEA furniture to designing logos and doing voiceovers.
- 6 **Have something to teach?** Online education is a booming industry, and there are many options out there for people who have a skill they'd like to share. Check out WyzAnt, Skillshare, and Udemy to get a taste of the kinds of tutoring, courses, and classes people are offering.

These are just a few of the companies that are creating a wide range of new, flexible, and creative ways for people of all ages — from Millennials to Baby Boomers — to earn money. And, for seniors, participating in the sharing economy can also be a great way to stay active, meet new people, and feel connected to your community and the world at large. ■

How to Apply for Medicaid *(Hint: You'll Need Big Binder Clips)*

How do you actually apply for Medicaid?

If your situation is simple – say you have one bank account, never have been married, don't own a home and you live on your Social Security check – it's a matter of filling out the application and sending it to the Department of Social Services with some basic documentation.

That situation is very rare, however.

Many of us have a much more complicated lifestyle and portfolio. And when this is the case, you have to be extremely careful when applying for Medicaid.

Should you use a lawyer?

Because of the ramifications of incorrect Medicaid planning,

we strongly recommend you work with an elder law attorney, not one of those non-lawyer firms that claim to complete Medicaid applications. These organizations are not familiar with many of the laws governing Medicaid and they completely lack the estate planning expertise that is an integral part of the [Medicaid planning](#) process – especially for married couples.



Where do you get the application?

In Connecticut, the Medicaid application is called W-1 LTC. It is

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INHERITANCE EXPECTATIONS: Can They be Challenged Ahead of Time?

By Carmine Perri

With Thanksgiving and other holidays quickly approaching, soon we will be in full holiday swing. Maybe it is simply the time of year where the word “expectation” is bouncing around in my mind.

With these holidays, we must at least consider the notion that expectations are created and that some of us, from children to adults, have some expectation about receiving gifts (from where is a conversation for you to have with your loved ones).

It appears that these expectations are derived, at least in part, from a predetermined date on a calendar; an event, with all its draping, that includes, among other traditions, a ritual of giving and receiving.

Are holiday expectations any different than the expectations of inheritance upon one’s passing?

I cannot recall how many times over the last two to three years I have heard “mom wanted me to have this” or “I was supposed to get this.”

These questions got me thinking.

Is there a manner in which to judicially resolve inheritance disputes before one passes? The answer is “yes” but not in the State of Connecticut.

In less than a handful of states throughout the country, pre-death [Will contests](#) are permitted (if we lived in Arkansas, North Dakota,

Ohio, or Alaska we would be having a very different conversation). A pre-death Will contest is an action where a court determines the validity or invalidity of a Will *prior* to death.

One of the benefits of a pre-death Will contest is that if one realizes the terms of her Will are likely to disappoint a family member, she could petition the probate court to make a determination that would be binding after her death. Given the substance of this topic, the pros and cons of pre-death Will contests cannot be further explored here.

Let’s return, however, to the word *expectation*. I submit to you, in this context, that “disappointment” is a sibling to “expectation.”

I wonder whether the holidays and the passing of a family member too often conjures up expectations and disappointments instead of causing us to reflect and be thankful for the time we have with someone special or being thankful for the time we had with someone special.

Connecticut law does not permit us to address, pre-death, one’s testamentary plans. Yet, I wonder, why is it necessary at all? ■



New Connecticut Power of Attorney *(continued from front)*

of the new law. And if you don’t have a POA, now is the time to get one!

Here are some of the highlights of the new POA:

- 1 Power of attorneys are now automatically durable, which means if you become incapacitated, the POA is still valid.
- 2 A third party, such as a financial institution, must honor a POA unless they believe that the POA is revoked, the agent has been removed, or the action the agent is attempting to take is outside the scope of authority granted by the POA.
- 3 You can appoint whomever you want to serve as your conservator within your POA.
- 4 Agents who misuse or abuse their position can now be liable. The agent must act in a certain manner unless the POA provides otherwise.

- 5 The new law includes what are commonly referred to as “hot powers.” These are extremely powerful, and useful powers that you can confer upon your agent. Agents may now make gifts, change beneficiary designations, and create or change rights of survivorship. These provisions, powerful as they are, must be exercised in a manner consistent with the agent’s authority granted in the POA.
- 6 The new POA form includes the appointment of a successor, so you no longer need a springing POA unless you don’t want the POA to be effective right away.
- 7 There are legal remedies available if a third party rejects it without a reason listed on the statute.

We strongly recommend that anyone who has a Connecticut POA should have it reviewed and updated using the new form. Remember that you should only give someone your POA if you trust them completely—it is a very powerful document. ■

It’s Time. Plan Today for Your Tomorrow. Call us at (860) 236-7673.

How to Apply for Medicaid *(continued from page 2)*

available both in print and online. The application form is available for **download**, and there is also a **fillable form**, which can be directly submitted, printed and mailed, or faxed.

Don't Wait

Right on Page 1 of the application form, in bold, capital letters is the instruction, "DO NOT WAIT TO APPLY."

Even if you don't have all the necessary documentation – and depending on your situation, you may need to submit a boat load of documentation – send in your application with what you do have while you are working on gathering the rest.

Once DSS has your application, it will notify you of any missing items it needs to process your application.

The purpose of the application is to establish your **financial**

eligibility, as Medicaid is a need-based entitlement program. DSS requires detailed information about your income and assets, and living expenses.

Note: You can't give away your assets to become eligible for Medicaid. There is a [five-year look-back period](#). DSS requires five years of financial statements for all active accounts including checking, savings, stocks, bonds, CDs, retirement accounts, annuities, trusts, cash value in life insurance policies, and others.

Plan before a crisis hits

Even if you have the paperwork ready to go, have you mapped out the best strategy that will give you the most help while protecting your assets as much as possible? If not, we recommend that you get help. The best time to start planning of course is before a crisis strikes. ■



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Federal Estate Tax Turns 100: What a bumpy ride it's been

By Paul T. Czepiga

Passed into law on September 8, 1916, The Revenue Act of 1916 created a tax on the transfer of wealth from an estate to its beneficiaries. It applied to net estates, defined as the total property owned by a decedent less deductions for debts and administration costs.

- An exemption of \$50,000 was allowed for residents.
- Tax rates were graduated from 1% on the first \$50,000 to 10% on the portion of the taxable estate exceeding \$5 million.
- At its passage, the estate tax affected less than 1% of people who died and it raised less than 1% of federal revenue.

Not much has changed in that regard over the last 100 years: **today the estate tax makes up one-half of one percent of federal revenues and still affects still only about 1% of people when they die.**

Rates reached as high as 77% from 1941 until 1976. But then, in 2000, Congress passed a law that President Bush signed, gradually leading to the full repeal of the estate tax in 2010.

Actually, in 2010, you could elect, if you died that year, to have no estate tax (and no corresponding step-up in tax basis for capital assets inherited by your beneficiaries) or you could have the estate tax apply, but with a \$5.0 million exemption

from the tax and your beneficiaries would receive a step up in basis on inherited assets.

The Estate Tax Today

Since 2010, the estate tax has had a few changes and now provides (for 2016) a \$5.45 million exemption from the estate tax, indexed annually for inflation, and a flat estate tax rate of 40% for amounts over the exemption amount.

Beware, however, that the federal government also has a gift tax and is unified with the federal estate tax. You may give away up to \$5.45 million without paying any gift tax, but once you exceed the exemption amount on the aggregation of all your gifts, you must pay a 40% gift tax on any further gifts.

Two points to note, however.

- 1 Certain 'small' gifts, defined as less than \$14,000 per person per year (also indexed for inflation and known as "annual exclusion gifts") may be made gift tax free if the gift meets certain requirements (mainly that the recipient of the gift has immediate access to it).
- 2 You only get one \$5.45 million exemption, not two. For example, if you are very generous and make lots of large gifts during your lifetime that exceed the \$14,000 annual

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Assisted Living Residents Not Entitled to Retroactive Medicaid Benefits

Reversing a lower court decision, the Sixth Circuit Court of Appeals holds that assisted living residents applying for Medicaid benefits are not entitled to retroactive benefits.

Assisted living residents Betty Hilleger and Geraldine A. Saunders applied for a Medicaid assisted living waiver from the state of Ohio to pay for home health care. The state found them eligible for benefits, but it denied them retroactive benefits because the state provides only prospective coverage from the date the applicant is enrolled in the waiver program.

Ms. Hilleger and Ms. Saunders filed a class action lawsuit against the state, arguing

that Ohio is violating federal law by providing only prospective assisted living waiver benefits. Federal law requires that retroactive benefits be provided during the three months before the application if the applicant was eligible for benefits during that time. The state argued that eligibility for assisted living waiver benefits is prospective only because it requires, among other things, a face-to-face assessment of the applicant and that because an individual cannot be eligible for benefits prior to the face-to-face assessment, individuals cannot be enrolled retroactively in the waiver program. The U.S. district court granted summary judgment to the class, and the state appealed.

The U.S. Court of Appeals for the Sixth Circuit reverses, holding that the assisted living residents were not entitled to retroactive benefits. According to the court, Ms. Hilleger and Ms. Saunders were ineligible for Medicaid assisted-living benefits until the state approved their service plan. Therefore, the state "complied with federal law, rather than violated it, when it declined to use Medicaid funds to pay for assisted-living services that were provided before [the state] approved a plan of care for the recipient of those services."

(elderlawanswers.com)

Great News for Individuals with Special Needs

By Claudia Englishby

The Special Needs Trust Fairness Act, which had been previously approved by the Senate, has now passed the House of Representatives. Special needs trusts are used to preserve an individual's own funds while allowing such individual to qualify for government benefit. These trusts are a critical element to a life plan for individuals with special needs.

This Act changes an outdated law that only allowed parents, grandparents, guardians or courts to establish a first party special needs trust. By an oversight in the language of the statute, an individual was not allowed to establish his or her own trust. In the past, this requirement put an unfair burden on individuals who were otherwise capable of establishing this trust for their own benefit.

However, due to some minor legislative changes in the house, the bill introducing the act must return to the senate for approval, with the added changes. Once this is passed by the senate again, this bill will be sent to the President. Before long, this important act should be signed into law. Our special needs department is closely monitoring the bill's movement and hopes to make a celebratory announcement soon. Stay tuned....

Annual Exclusion and Federal Estate Tax Exemption for 2017 Projected

In 2017, according to the projections, the annual gift tax exclusion is expected to remain at \$14,000, and the first \$149,000 of gifts to a non-citizen spouse will not be included in the donor's annual amount of taxable gifts under Code Secs. 2503 and 2523(i) (up from \$148,000 in 2016). The estate and gift tax basic exclusion amount is projected to increase to \$5,490,000, with a corresponding unified credit of \$2,141,800. The IRS will release the official figures later in the year.

Federal Estate Tax Turns 100

(continued from front)

exclusion amount, then you erode your one \$5.45 million combined estate and gift tax exemption and you will have that much less exemption available to you when you die to protect your remaining assets from the estate tax.

Note as well that some states, not all, also have their own estate tax scheme and that Connecticut is the only state that also has a gift tax.

Is it fair?

Some say the wealthy can afford to pay an estate tax and that the tax is fair.

Some say that, having paid income taxes on what you were able to squirrel away into savings during your lifetime, you should not again be taxed (estate tax) on those savings when you die.

Some say for the small amount of revenue the estate tax raises, it should just be abolished.

Of course, in matters like this, there is no right or wrong answer as the 'fairness' of the tax is a judgment question.

But be careful and stay tuned.

The Democrats seem to want to dial back the estate tax to how it was in 2009— a \$3.5 million exemption with a 45% estate tax rate—and President Obama has included this in his budget proposals to Congress for many years. And the Republicans seem to favor repeal.

Regardless of what happens this November, the best suggestion I have for you is to stay tuned!



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