

# SMART PLANNER

Useful Tips for a Better Tomorrow

Oct/Nov 2014



## Does Your Last Will and Testament Include Your On-Line Passwords?



**There's a big buzz lately about digital assets.** What are they? Why do you need to be concerned about them anyway? Why on earth would you need to include them in your Will and in your power of attorney?

Well, take a step back and think about this.

We exist in the electronic world. Our photos, communications, personal information, and our “essence” are no longer in a scrap book, photo album, or collection of old letters stored in the attic. It's now all stored on the web or in the “cloud.”

So here's the question: *When you become disabled or die, who could access your on-line data*, this treasure trove of family history and memories?

We need to now ensure that if we become disabled, and when we die, someone can access this data. Unfortunately, most states do not yet have laws governing this area of the law. Many web hosts and software providers do not have consistent treatment on whether, when, or how to allow someone else to access your data.

That ubiquitous “Terms of Service” button that you click on that says “I agree” is not helpful in stating access rights, not that anyone ever reads the fine print anyway.

It is sort of like when the HIPAA rules were promulgated years ago—everyone was nervous about who could access your health care data. Everyone calmed down after a while and adjusted, but at least there were rules—national rules—about accessing health care data.

### **No set of rules exists for your electronic existence.**

At a minimum, in your Last Will and Testament and in your Powers of Attorney, you should include provisions allowing your Executor and your Agent, respectively, to access all of your digital assets. You should also leave behind, somewhere where it can be found, a list of your user IDs and passwords.

### **As an example, here's a sample provision for a Power of Attorney (a similar provision would be in a Will):**

*“to exercise all powers I may have over any computer, digital device, data storage device, user account, electronically stored information, and any domain name, whether the same are in my own name or that I own or lawfully use jointly with anyone; and to access, manage, control, delete and terminate any such asset or account, all as my Agent determines is necessary or advisable. I hereby give my lawful consent and fully authorize my Agent to access, manage, control, delete and terminate any electronically stored information and communications to the*

(Continued on page 3)

## GOOD TO KNOW

### **If you have older versions of your Will, do not keep them!**

It's critical that you destroy all versions but the current one. If an older version is found and no one knows about your latest Will, the older Will may be followed and it's very possible that your wishes will NOT be honored.

## 15 Songs that Defined the Boomer Generation

### **We bet these tunes bring back some memories!**

- 1) Jailhouse Rock – Elvis Presley
- 2) That'll Be the Day – Buddy Holly
- 3) At the Hop – Danny and the Juniors
- 4) Johnny B. Goode – Chuck Berry
- 5) What'd I Say – Ray Charles
- 6) The Twist – Chubby Checker
- 7) I Want to Hold Your Hand – The Beatles
- 8) Dancing in the Street – Martha and the Vandellas
- 9) [I Can't Get No] Satisfaction – Rolling Stones
- 10) Like a Rolling Stone – Bob Dylan
- 11) Good Vibrations – The Beach Boys
- 12) Respect – Aretha Franklin
- 13) Light My Fire – The Doors
- 14) A Day in the Life – The Beatles
- 15) What's Going On – Marvin Gaye



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It's Time. Plan Today for Your Tomorrow.

# The One Thing You Should Know About Nursing Home Evictions

By Attorney Carmine Perri

Going to a nursing home is hard enough, imagine being evicted? Good news. There are laws in place to prevent that from happening.

Within a nursing home, just like any other place you call home, you are entitled to certain rights. These rights include not being able to be evicted for any reason beyond the six listed in the United States' Code:

- 1 The discharge is necessary for the resident's welfare and his or her needs cannot be met in the facility.
- 2 The resident's health has improved and no longer needs the facility's services.
- 3 The resident is endangering the safety of others.
- 4 The resident is endangering the health of others.
- 5 The resident has failed to pay for (or to have paid under Medicare or Medicaid) a stay at the facility.
- 6 The facility ceases to operate.

## Illegitimate reasons for discharge

Some nursing homes for their own convenience try to evict residents using illegitimate reasons. This sometimes includes applying pressure on residents and their families to "voluntarily" leave the facility.

It is not uncommon for families to hear from nursing facilities that their loved ones need to be discharged because they are disruptive or they refuse medical treatment. Neither of these are sufficient reasons for threatening eviction. Nursing homes have the responsibility to employ the professional skills necessary to appropriately handle disruptive residents. That's an important part of their job.

## If reasons are legitimate, what happens?

So what if the resident falls under any of the six conditions? What happens, for example, if a nursing home can legitimately make the



case that it cannot meet the needs of a resident?

First, sufficient notice in writing must be given by the nursing home to residents, their loved ones and advocates before initiating a discharge. This must be issued, except in extraordinary instances involving health and safety concerns, at least 30 days and no more than 60 days prior to the proposed discharge.

## The notice must include:

- the reason or reasons for the discharge
- the effective date of the discharge
- the location where the resident will be transferred to
- the procedures and timeline for appealing the discharge

It also must be made clear that residents do have the right to appeal. To facilitate appeals, residents must be given the name, address and phone number of the state's long-term care ombudsman. Families of residents with developmental disabilities or who are mentally ill must be given the contact information of the agencies responsible for their protection and advocacy.

Finally, it is the right of residents when being legally discharged to receive from the nursing home proper preparation and detailed information to ensure a safe and orderly transfer from the facility.

## You have protection

So the good news is that if you or a loved one resides in a nursing home, you have protection under the law. Despite what you may have been told, you cannot be kicked out for any reason other than one of the six reasons stated clearly and simply in the United States' Code.

If you know of someone threatened with eviction, rest assured that the law is on your side. If you need me to step in for you and intercede to enforce the law and the resident's rights, contact me as soon as possible at (860) 236-7673.



## WHAT'S UP WITH US

Attorney Claudia Englisby was appointed co-chair of the Elder Law Committee of the Hartford County Bar Association. She was also elected to the board of HARC, a non-profit organization that helps people with intellectual disabilities to enjoy lives of quality, inclusion and dignity by providing support, education and advocacy.

## SOCIAL SECURITY STATEMENTS

Starting in September, the Social Security Administration is mailing paper estimated-benefits statements every five years to workers between 25 and 60 who aren't getting benefits and haven't signed up to view their statements at:

[www.socialsecurity.gov/myaccount](http://www.socialsecurity.gov/myaccount).

(Paper statements stopped in 2011 to save costs)

# Can a Person who Receives Disability Benefits Own a Car?

**The short answer is yes.** Although many disability benefit programs like Supplemental Security Income (SSI) and Medicaid impose resource limits on beneficiaries, a beneficiary's household is allowed to own one vehicle of any value as long as it is used to transport the beneficiary or a member of the beneficiary's household.

But the longer answer is more complicated – car ownership in the context of someone with special needs is not a simple proposition. For starters, there is the question of who owns the vehicle. If the car is being purchased with the beneficiary's own money, he will in all likelihood be the owner, because the purchase of a car for another person could violate the government's strict transfer-of-resource rules. However, car ownership by the beneficiary could be problematic if the beneficiary is not going to be the vehicle's primary driver because the beneficiary would be liable if the primary driver is in an accident. In this case, it may make sense to have a special needs trust own the car instead.

One must always consider safety issues, especially if the beneficiary is also going to be the primary driver of the vehicle. Although the beneficiary may be able to obtain a driver's license, her condition may make it difficult to safely operate a vehicle, and in this case it may make sense for someone else to own and operate the car instead.

In some cases, especially if the beneficiary has significant special needs, he may require a specially equipped vehicle, which can be very costly to own and operate. In these cases, a special needs trust can own the vehicle and also hold funds for upgrades and maintenance without compromising the beneficiary's access to public benefits. However, trust ownership comes with its own problems, including difficulties with insurance and potential exposure of trust assets if the vehicle is involved in an accident.

Car ownership may seem simple, but it involves quite a number of complicated considerations. It is always best to speak with your special needs planner prior to purchasing a vehicle for the benefit of anyone with special needs so that the purchase can be structured in a way that will best suit your family's needs.

*(Academy of Special Needs Planners)*

## CzepigaDalyPope Team Places in the Top 10!

Thanks to all who donated to and walked with our team at Bushnell Park in Hartford last month...because of your generosity, our Team Big Heart placed in the top 10 teams by raising \$3,800 for the Alzheimer's Association.



## I would like to leave my IRA to my grandchildren, who are younger than 18. What will happen to the assets if I die before they become adults?

This can get dicey because while tax law requires certain actions (such as retitling the account and taking distributions), minors cannot sign IRA agreements, manage investments or arrange for the distributions. You need to appoint a guardian or a trust to handle such things if you die before the children reach adulthood. We suggest checking with your IRA custodian to see what its procedures are when a minor inherits an IRA.

*We invite you to submit your questions to us at [plantoday@ctseniorlaw.com](mailto:plantoday@ctseniorlaw.com).*

## On-Line Passwords

*(Continued from page 1)*

*fullest extent allowable under any state or federal privacy or other laws, and to take any actions I am authorized to take under all applicable Terms of Service, Terms of Use, licensing and other account agreements or laws."*

Connecticut, where we practice estate planning and elder law, is one of a few states that have tried to address this area, but the law only governs access to email accounts.

So, until laws are enacted that are uniform and more broadly drafted to include more than just email, you have no choice but to take matters into your own hands. How do you do this? Give us a call and we'll include provisions in your Will and Powers of Attorney so that access to, and ownership of, your digital assets, your "electronic existence," is passed on the way you wish.

## ATTEND OUR ADULT EDUCATION CLASSES

	Estate Planning	Paying for Long-Term Care
Glastonbury (860) 652-7253 Manchester Community College (860) 512-2824	October 23	November 18
Farmington (860) 404-0290 West Hartford (860) 561-6900 Berlin (860) 828-8135 Vernon (860) 870-6060 x10 Newington (860) 667-5850 Simsbury (860) 658-3870	October 29	October 28 November 5 November 5 November 6 November 12 November 13 November 18

*Call the sponsor town to register for these classes*



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Information contained in this newsletter should not be construed as legal advice, and readers should not act upon any legal information contained in this publication without professional counsel.

## Special Insert For Legal, Financial and Healthcare Professionals

### Medicaid Applicant's Promissory Note is Not Available Resource

A U.S. district court holds that a Medicaid applicant's promissory note is not an available resource because it cannot be converted to cash. *Frantz v. Lake* (U.S. Dist. Ct., W. D. Okla., No. CIV-14-117-W, Aug. 22, 2014).

Oklahoma nursing home resident Dorothy Frantz loaned her daughter \$98,000 in exchange for a promissory note. The note provided that Ms. Frantz's daughter would repay the note and that neither Ms. Frantz nor her daughter could sell or assign the note. Ms. Frantz applied for Medicaid benefits. The state determined the promissory note was an available resource because it was a trust-like device.

Ms. Frantz appealed the denial of benefits, but the state affirmed, ruling the promissory note was either a trust-like

device or it had no value and was therefore a transfer for below-market value. Ms. Frantz sued the state in federal court, arguing the promissory note was not an available resource.

The U.S. District Court, Western District of Oklahoma, grants Ms. Frantz summary judgment, holding that the promissory note was not a trust-like device. According to the court, because the promissory note could not be converted into cash, it was not an available resource. In addition, the court finds that the note was not subject to a transfer penalty because it was actuarially sound.

*(ElderlawAnswers.com)*

*Editors Note:* Connecticut's Department of Social Services considers a promissory note to be an available asset.

### Firefighter May Designate Special Needs Trust as Beneficiary of Pension

In a case argued by attorney Donald Vanarelli, the New Jersey Supreme Court reverses a lower court and holds that a firefighter may designate his son's special needs trust as the beneficiary of his pension plan. (*Saccone v. Board of Trustees of the Police and Firemen's Retirement System*)

Thomas Saccone, a retired New Jersey firefighter, asked the New Jersey Police and Firemen's Retirement System (PFRS) for permission to name his severely disabled son's special needs trust as the contingent beneficiary of his \$4,254.37 monthly pension. PFRS refused to allow Mr. Saccone to name the trust as a beneficiary, claiming that only widows or children of a firefighter are entitled to the pension benefit and that the statutory definition of a "child" does not include a trust.

After Mr. Saccone requested a formal opinion from the PFRS, an appeals court ruled that the PFRS did not have to issue an advisory opinion at all. However, the Supreme Court of New Jersey overturned the court's decision and required the PFRS to issue the opinion, which it did, denying Mr. Saccone's request. Mr. Saccone appealed, arguing that the pension laws should be liberally construed to assist firefighters' families and that New Jersey public policy favors the creation and funding of special needs trusts. A New Jersey appeals court upheld the denial of Mr. Saccone's request, and Mr. Saccone appealed.

The New Jersey Supreme Court reverses, holding that Mr. Saccone can name a special needs trust as the beneficiary of his pension. The court rules that the reference to "child" in state law is equivalent to a first-party special needs trust established for a child with special needs. According to the court, the PFRS's "strict view of how to implement the word 'child' in the survivors' benefits statute when dealing with the circumstances of an SSI-eligible disabled child of a PFRS retiree forces this class of beneficiary into an untenable situation" that does not advance any public policy. Two judges dissent.

*(Elderlawanswers.com)*

# Widow of Author Tom Clancy Battles Lawyer Over \$6M in Estate Taxes

The widow of author Tom Clancy is battling a Baltimore lawyer over an extra \$6 million in estate taxes she says he is requiring her to pay, contrary to the provisions of her husband's Will.

Alexandra Clancy is trying to get attorney J.W. Thompson "Topper" Webb removed as the executor of Tom Clancy's estimated \$82 million estate, the Baltimore Sun reports.

She contends that Webb should not have planned to pay \$16 million in estate taxes from a trust in which she and the author's children are beneficiaries. That's because a 2013 amendment to Tom Clancy's Will says assets that require her to pay estate taxes should not be included in her trusts, the newspaper explains.

Attorney Norman L. Smith of Fisher & Winner represents the widow. He says handling the matter as Webb is doing is unnecessarily adding \$6 million to the estate tax bill.

Webb did not respond last week to the newspaper's request for comment, but a lawyer for the author's children said the executor's tax plan is viable.

"Miles and Stockbridge is a very competent law firm," wrote Sheila K. Sachs, referring to Webb's firm, in an email to the Sun, "and their administration of the estate may be in accord with the documents, although contrary to Ms. Clancy's position."

Sachs, who practices with Gordon Feinblatt, said it is up to the Maryland probate court overseeing the estate distribution to decide "which interpretation is consistent with the testamentary documents and applicable law."

Tom Clancy's share in the Baltimore Orioles, which is worth some \$65 million, is the estate's biggest asset. It also includes millions in literary assets, real estate, firearms and a Canadian-built army tank from the 1940s valued at \$250,000.

(ABA Journal)

## UPCOMING EVENTS

### CTCPA Trust & Estate and Gift Tax Committee, Paul Czepiga to present:

*Powers of Attorney: What Works and What Doesn't*

Date: October 31

Location: Rocky Hill

### CT Chapter of the National Academy of Elder Law Attorneys Fall Seminar

Date: October 31

Location: Four Points by Sheraton, Meriden

- Brendan Daly, Kathi Machalak, Liz Walsh  
*Avoiding Traps for the Unwary in Processing Medicaid Applications*
- Carmine Perri  
*The Consequence of Putting Pen to Paper: Nursing Facility Admission Agreements*
- Paul Czepiga  
*How DSS regards Non-Testamentary Transfers*

### CTLA Annual Legal Support Staff:

*Embracing Technology*

Date: November 7

Location: Grassy Hill Country Club, Orange

Sharon Pope will be co-chairing the event and speaking about *how to navigate through DAS Liens*, and Brandon Angell will present *Social Media: The good, the bad and the ugly*.

### Connecticut Bar Foundation:

*Veterans in Transition: Military Culture, Mental Health, and Readjustment to Civilian Life Symposium*

Date: November 14

Location: Quinnipiac School of Law

Sharon Pope will be a panelist for the session called *Existing Resources and Benefits, Legal Obstacles, Federal and State Law*.



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