

●★ ■ ROBERT C. NOVY
■ DOUGLAS J. HULL
▲ ■ JASON L. WYATT

- Member Nat'l Academy of Elder Law Attorneys
- ★ NJ Commissioner on Aging (1995-1997)
- Member NJ Bar
- ▲ LL.M. Taxation

NOVY Counsellors at Law
& ASSOCIATES
PROTECTING AND PRESERVING YOUR LEGACY

2915 Ridgeway Rd. (Rt. 571)
Manchester, New Jersey 08759
(732) 657-0600
Fax (732) 657-7225
Real Estate Fax (732) 657-0192
www.novylaw.com

Morrmouth County Office
By Appointment Only
2150 Highway 35
Brook 35 Plaza
Sea Girt, NJ 08750
Phone: 732-359-0221

LETTER OF INSTRUCTION

A **Letter of Instruction** may list any specific funeral arrangements, obituary notice and any other special requests you would like to have followed upon your death.

This **Letter of Instruction** also affords you the opportunity to bequeath certain articles of tangible personal property to whom you choose, thus avoiding problems among family members. The **Letter** may be amended from time to time after you have executed your Last Will and Testament.

We recommend a few words of caution in this regard. Your Will must make reference to a **Letter of Instruction**. The Letter must be signed and dated, and should be kept together with a copy of your Will. Our office welcomes the opportunity to review your Letter of Instruction and will gladly retain a copy of the latest version on file together with your estate plan.

This **Letter of Instruction** should be specific so as to avoid questions among beneficiaries. For example, if you are leaving different articles of jewelry to various family members of friends, each article should be described with particularity, so that your Executor knows which article of jewelry would be given to a certain person. Generally, if you are leaving paintings to different people, you should describe each painting in terms of what it depicts and even where it is located in your home.

To assist you, we have printed a SAMPLE Letter of Instruction on the reverse side of this page which you may use as a guide.

LETTER OF INSTRUCTION

IN ADDITION TO MY LAST WILL AND TESTAMENT dated _____, I direct my Executor named therein follow the terms of this, my Letter of Instruction, as set forth below:

1. I direct my Executor arrange for my burial at _____. I request that a viewing be permitted prior to burial and that a religious service be performed by _____.
2. I request that an obituary notice be published in the Asbury Park Press including my name, age, and years of employment at _____. I also request that my obituary indicate that I served as a Colonel in the U.S. Army, that I was decorated with a Bronze Star, and was honorably discharged. I was an active member in the following groups and organizations:
 - a. Kiwanis Club, Leisure Village West Chapter.
 - b. The Literacy Volunteers, Ocean County Chapter,
 - c. A congregant at _____ Church, Lakehurst, New Jersey.
3. I give my gold wedding band to my wife, Nancy.
4. I give my Rolex wrist watch with diamonds and onyx to my wife, Nancy.
5. I request that all of my clothing be donated to the Salvation Army, Ocean County Chapter.
6. I give my tool collection to my brother-in-law, James.
7. I give my painting depicting water lilies and ivy by Georgia O'Keefe, located in the foyer area of my home, to my wife, Nancy.
8. I give all other articles of tangible personal property to my wife, Nancy. If she predeceases me, I direct all articles of tangible personal property be given to my children.

Signed: _____

Dated: _____

●★■ ROBERT C. NOVY
■ DOUGLAS J. HULL
▲■ JASON L. WYATT

NOVY Counselors at Law
& ASSOCIATES
PROTECTING AND PRESERVING YOUR LEGACY

2915 Ridgeway Rd. (Rt. 571)
Manchester, New Jersey 08759
(732) 657-0600

Fax (732) 657-7225
Real Estate Fax (732) 657-0192
www.novylaw.com

Morrmouth County Office
By Appointment Only
2150 Highway 35
Brook 35 Plaza
Sea Girt, NJ 08750
Phone: 732-359-0221

- Member Nat'l Academy of Elder Law Attorneys
- ★ NJ Commissioner on Aging (1995-1997)
- Member NJ Bar
- ▲ LL.M. Taxation

FREQUENTLY ASKED QUESTIONS AND ANSWERS

ON MEDICAID

1. What is Medicaid?
Medicaid is welfare health care coverage
Nursing home payments for those who qualify
2. Who qualified for Medicaid? Medical assessment required.
Aged - 65 years
Blind - SS Disability
Disabled
3. What services does Medicaid cover?
Nursing home bills
Doctor bills
Prescriptions
4. What if I have Medicare?
Medicare will be your primary coverage, Medicaid would be secondary.
5. If a person thinks they are in need of help, when should they make an appointment?
Immediately, it takes time to gather all the information the Board of Social Services requires to be approved for Medicaid.
6. Does a person need an appointment prior to going to the Medicaid office?
Yes, you should be aware of all the options you have.
7. What documents are required for your appointment when you go to apply for Medicaid?
You will be given a list of all required documents.
8. Do you have to tell the Medicaid intake worker all of your assets when you apply for Medicaid?
Yes, or it's fraud.

9. What if I have other Health Insurance (BC/BS, AARP)?
You will have an option of keeping it, if you want to keep the insurance, the premium will be deducted from your monthly income.
10. How are Life Insurance policies looked at?
If it's a Group Policy - they have no surrender value, they are only payable upon death so they are exempt.
Any other policy that has a surrender value is looked at as an asset and can be surrendered and added to the spend down, assigned to a funeral home to pay for a prepaid burial.
11. Are fixed term annuities considered part of the assets and looked at by Medicaid?
Yes
12. How is the community spouse protected?
Can purchase a new car if needed
Repairs to the home
Purchase appliance needed in the home
13. What is the current look back period on resources and Trust?
Resources - bank accounts - 5 years
Trust - 5 years
14. What are resource limits?
\$2,000.00 - Medicaid only
\$4,000.00 - Medically Needy, New Jersey Care
15. What is the Medicaid income limit?
\$2,022.00
16. What is the ceiling for community spouse?
Minimum \$21,912.00
Maximum \$109,560.00
17. What is the maximum for spousal allowance?
\$2,739.00

- ★ ■ ROBERT C. NOVY
- DOUGLAS J. HULL
- ▲ ■ JASON L. WYATT

NOVY Counsellors at Law
& ASSOCIATES
 PROTECTING AND PRESERVING YOUR LEGACY

2915 Ridgeway Rd. (Rt. 571)
 Manchester, New Jersey 08759
 (732) 657-0600

Fax (732) 657-7225
 Real Estate Fax (732) 657-0192
www.novylaw.com

Monmouth County Office
 By Appointment Only
 2150 Highway 35
 Brook 35 Plaza
 Sea Girt, NJ 08750
 Phone: 732-359-0221

- Member Nat'l Academy of Elder Law Attorneys
- ★ NJ Commissioner on Aging (1995-1997)
- Member NJ Bar
- ▲ LLM Taxation

ESTATE TAX PLANNING
GIFT-GIVING

By: Robert C. Novy, Esq.

You can legally give away up to \$13,000.00 per year tax-free to as many people as you desire. Neither you (the donor) nor the recipient (the done) would have to pay tax on the gift. However, if you make a gift over the \$13,000.00 annual gift exclusion, you are required to file a "gift tax return" with the IRS.

Whether making a gift reduces the size of your estate or simply slows its growth depends on your earnings and expenditures over the next several years. But it is an important way to pass along part of your estate tax free, and a gift may be used by your children at this stage of their lives. The bottom line for any gifting-plan is that you must always retain enough assets so that you feel comfortable, and so that you will never be without the resources you need. In making such gifts, you need to consider the respective age and maturity of each recipient, the fact that each gift becomes irrevocable and cannot be taken back or reclaimed by you in the future, and the income previously earned from the property given is lost in future years.

Another consideration when making annual gifts to someone other than cash such as real property or investments, you need to take into consideration what possible income tax consequences the transfer of this property may have on the recipient. When you purchase a stock, bond, real estate or other investment, the price you pay is known as your "cost basis". In the case of stocks, any splits or stock dividends will further reduce this "basis" per share. In the case of real estate, any improvements or additions (such as the addition of a porch, new roof or other capital or structural improvement) will increase the "cost basis" of that real estate.

When you gift securities or real estate to an individual, your original "cost basis" is transferred to the recipient. Therefore, for example, if you purchased 100 shares of stock for \$10.00 a share and that stock has now appreciated to \$100.00 per share, you would be transferring stock with an original "cost basis" of \$1,000.00 (100 shares X \$10.00 per share = \$1,000.00). However, that same stock now has a current market value of \$10,000.00 (100 share X \$100.00 current fair market value = \$10,000.00). When the recipient of this gift sells the stock he or she will realize a gain of \$9,000.00, and will be taxed accordingly.

However, if that person inherited this same property upon your death he or she would inherit it at the date of death value, (known as a “stepped up” basis) rather than at the original “cost basis” purchased by you. This will legally permit the beneficiary to inherit the same stock at date of death value, and legally avoid paying an income tax on the capital gain or appreciation if the beneficiary sells the inherited property at its date of death value.

Therefore, before making annual gifts a person needs to consider many things. In addition to being able to afford making annual gifts, an individual should consider the gifted property’s original “cost basis”, current market value, the difference, if any, between its original “basis” and current value, the potential income tax to be paid upon its subsequent sale and the estate tax consequence of not making any gift at all. Therefore, careful consideration should be given prior to making gifts of stocks or real estate or other highly appreciated assets. The \$13,000.00 annual gift exclusion does not apply to the payment of medical or educational expenses made for the benefit of a grandchild.

Each individual has different goals and objectives. That is why gift-giving should be considered on an individual basis. Lastly, this annual gift exclusion is indexed by the federal government based upon the inflation rate. As such, the amount of this permissible annual gift will be expected to rise in future years.

- ★ ■ ROBERT C. NOVY
- DOUGLAS J. HULL
- ▲ ■ JASON L. WYATT

NOVY Counselors at Law
& ASSOCIATES
 PROTECTING AND PRESERVING YOUR LEGACY

2915 Ridgeway Rd. (Rt. 571)
 Manchester, New Jersey 08759
 (732) 657-0600

Fax (732) 657-7225
 Real Estate Fax (732) 657-0192
www.novylaw.com

Morrmouth County Office
 By Appointment Only
 2150 Highway 35
 Brook 35 Plaza
 Sea Girt, NJ 08750
 Phone: 732-359-0221

- Member Nat'l Academy of Elder Law Attorneys
- ★ NJ Commissioner on Aging (1995-1997)
- Member NJ Bar
- ▲ LLM Taxation

NURSING HOME NEGLIGENCE

It is estimated that there are over 1.8 million elderly people residing in nursing homes in the United States. There is clear evidence that nursing home abuse and negligence is on the rise. In fact, one estimate indicates that such negligence and abuse occurs in one out of every three nursing homes. Quite simply, many nursing homes fall short of the quality, care and individualized attention they promise to provide to their residents.

Nursing home abuse is inexcusable and can have devastating effects on its victims, their families and loved ones. That is why, when one suspects that a loved one is the victim of nursing home abuse, it is important to speak to a qualified attorney.

In legal terms, nursing home negligence is defined as the failure of any person having the care or custody of a nursing home resident to exercise that degree of care which a reasonable person in a like position would exercise by failing, for example, to give the resident the care, services or goods necessary to avoid harm or illness. In a broad sense, negligence is carelessness. The most common examples of nursing home negligence include:

- Failure to maintain proper nutrition and hydration
- Failure to prevent the development of bedsores
- Failure to provide adequate supervision and assistant devices to prevent accidents
- Physical abuse

Most often, the negligence seen in a nursing home is part of a pattern of neglect. A nursing home's failure to properly monitor and/or administer a resident's meal and food intake commonly results in malnutrition. Likewise, the failure to timely reposition a nursing home resident can result in bedsores. These types of injuries develop over time and are the result of a pattern of neglect.

Unfortunately, in many cases, the root case of nursing home negligence is nothing more than sheer corporate greed. Often the nursing home will put profits over patients. For example, to increase profits, many nursing homes decrease staff, provide less training for

the staff employed, cut management and oversight personnel and hire employees who are not properly trained. The result is that the nursing home residents are vulnerable to neglect and injury.

Fortunately, these residents have a voice and the law is rapidly developing to provide safeguards that nursing home residents deserve. The New Jersey Nursing Home Bill of Rights provides a broad array of rights of nursing home residents, as well as a list of responsibilities of the nursing home. Likewise, the Federal Nursing Home Reform Act provides specific guidelines which nursing homes that accept Medicare and Medicaid must adhere to.

When a resident suffers an injury in a nursing home as a result of negligence and neglect, the State and Federal laws provide significant remedies. An attorney well versed in this evolving field of law can help the victim of such negligence and their family to right the wrong that has been perpetrated upon them.

We all must remember that these facilities are truly "home" to their residents. One should always feel safe and taken care of in their home. Our seniors deserve nothing less. The law has recognized this and has provided strict standards and remedies for victims of nursing home negligence.

If you would like to know more about this field and the services Novy & Associates, L.L.C. can render for the victim of nursing home negligence, please feel free to contact us at (732) 657-0600.

- ★ ■ ROBERT C. NOVY
- DOUGLAS J. HULL
- ▲ ■ JASON L. WYATT

NOVY Counselors at Law

 PROTECTING AND PRESERVING YOUR LEGACY

2915 Ridgeway Rd. (Rt. 571)
 Manchester, New Jersey 08759
 (732) 657-0600

Fax (732) 657-7225
 Real Estate Fax (732) 657-0192
www.novylaw.com

Monmouth County Office
 By Appointment Only
 2150 Highway 35
 Brook 35 Plaza
 Sea Girt, Nj 08750
 Phone: 732-359-0221

- Member Nat'l Academy of Elder Law Attorneys
- ★ NJ Commissioner on Aging (1995-1997)
- Member NJ Bar
- ▲ LL.M. Taxation

THE TITLING OF ASSETS IN NEW JERSEY FOR ESTATE PLANNING

By: Jason L. Wyatt

As part of our practice, we often have new clients come in to our office and reveal to us that many, if not all, of their assets are titled in such a way that they are not held in the client's name alone. The titling of assets this way results in these assets passing by "operation of law" at the client's eventual death. This means that the assets will *not* pass under the terms of the client's Last Will and Testament or pursuant to a Revocable Trust Agreement. Often times, this frustrates the intent of the client, resulting in unequal distribution of assets. In even worse cases, if such titling is not revealed to the attorney, often times because it is not understood by the client, complicated estate plans, such as those constructed for second marriages or other more complicated family scenarios, as well as those drafted for estate and inheritance tax planning purposes, can be rendered completely useless.

When we speak of assets titled this way, we mean, for example, assets held in joint name, which includes "joint tenants with right of survivorship" (sometimes abbreviated JTWRROS), Payable on Death accounts (abbreviated "POD"), Transfer on Death accounts (abbreviated "TOD") and any asset that carries with it an institutional designation of beneficiary (usually via a beneficiary designation form or "BDF"), such as life insurance, IRAs, and 401(k)s.

There are valid reasons for having assets titled these ways. For example, a jointly titled checking account can be convenient in allowing a child to assist an aging parent with their finances. Also, many retirement assets carry with them protection from potential creditors of the owner's estate; making them payable to a beneficiary, rather than to the estate itself, ensures this protection is afforded. However, unfortunately, designations such as POD and TOD are often pitched to elderly clients by banks, brokers, and other financial professionals with the supposedly laudable goal of "avoiding the cost and expense of probate." Furthermore, media members, writing or speaking to a national audience, will often echo these sentiments, extolling the virtues of avoiding probate because of supposed cost and time savings associated therewith.

The reality is that, in New Jersey, the probate process is generally not time consuming, and not expensive. This is in stark contrast to the majority of states, such as New York and Florida, where probate can, in fact, be quite costly and time consuming. Thus, when the

national media writes of the virtues of avoiding probate, they are not totally wrong; they are writing for the majority of their readers. However, they *are* wrong when it comes to New Jersey residents.

Worse, financial professionals based in New Jersey who recommend titling assets in order to avoid probate must be questioned in their motives. Cynics may be right when they point out that, given the relative ease of probate in New Jersey, financial professionals who suggest titling assets this way for the purpose of probate avoidance may, in fact, have an ulterior motive. Some have suggested that these advisors believe that titling assets in this manner, which results in the automatic inheritance of the assets by the non-deceased party, will more likely result in that recipient keeping the inherited assets at that advisor's institution. This is in contrast to a self-titled asset, which is often marshaled by the executor or administrator of the deceased's estate into a single estate bank account, from which beneficiaries receive their share as a direct payment, usually in the form of a check or checks. Thereafter, the beneficiaries are most likely to add the proceeds to their own funds. This ultimately removes these funds from control by the deceased party's institution, and brings them under the control of the recipient's institution of choice. The original institution has lost business. Compare this process to a TOD or POD account which becomes an account in the recipient's name, and, absent action by the recipient to proactively close the account, remains under the control of the original institution. Thus, while the TOD or POD designation may serve the institution well in keeping assets under management, selling it to the New Jersey client as a probate avoidance tool is somewhat disingenuous, and may in fact render an otherwise well-drafted estate plan meaningless in the process.

Lastly, creating accounts in the above fashion may avoid probate but does not necessarily avoid state and/or federal death taxes. Each client's estate plan should be reviewed with an eye towards determining his/her overall objectives.

As a result, we advise our readers to be careful with the titling of their assets, and to remember that you should always have your estate plan, including the titling of all assets, reviewed by an attorney.