Estate Planning Matters

Kramer Radin, LLP

Law Firm

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The legal services of Kramer Radin, LLP include estate planning, trusts, probate and trust administration related tax matters, real estate employment law, Medi-Cal planning litigation and dispute resolution.

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<u>In-Home Care</u>

Do It Yourself, Hire Help Directly or Use an Agency?

November is National Caregivers Awareness Month and offers an excellent opportunity to raise our awareness about in-home care options. With people living longer than ever before, looking at individual care needs is essential.

When someone you love needs care and the desire is for her to remain in her home, there are several options. If her needs are minimal and you are capable of providing the necessary help, you may opt to do it yourself. This is possibly the least expensive of the options but it carries a lot of responsibility for the caregiver.

Before taking on this responsibility, it is imperative to carefully assess the level of care needed. For example, is it enough for you just to be in the home "in case" or are there multiple tasks for which help is needed several times a day? Is there cognitive impairment requiring close supervision 24 hours a day? Are the needs for help increasing?

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Also, before taking on this responsibility, it is necessary for you to carefully assess your skill, strength and energy levels as well as your other commitments and time availability.

When the decision is made that you cannot manage this on your own, the next decision is usually between hiring help directly or using an agency. If you hire directly, you have become an employer and are responsible for the following:

- Verifying applicant's certificates, licenses, references and criminal background;
- Verifying employment eligibility in accordance with the requirements shown on Form I-9;
- Withholding and paying social security, Medicare, federal and state income taxes and the California disability insurance premium;
- Paying unemployment taxes if you pay the employee more than $1000 in any calendar quarter;
- Obtaining worker's compensation insurance to cover work-related injuries (most homeowner's insurance specifically excludes coverage for domestic workers).

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Failure to follow employment rules can result in severe penalties and legal liability for you.

If you use a properly run professional home care agency, the hourly and/or daily rate paid will probably be higher than you would pay if you hire directly. But, the agency takes on the responsibilities of verifying license and background checks, withholding and paying income taxes, and insurance liability.

There is no "one size fits all" when you are faced with a loved one's care; but there are options to be considered and adapted to each particular situation. When you are faced with this type of situation, we may be able to assist you with these decisions; please consider contacting us for guidance. You may also consider contacting one or more of the following agencies in our area that offer support and direction including Avenidas (650-289-5400), the Family Caregiver Alliance (415-434-3388) and the Alzheimer's Association (650-962-8111).

Required Minimum Distribution 2009

Waive Distribution? Charitable Contribution?

Most employer-sponsored and many other retirement plans require a minimum required distribution each year for all holders who have reached 70 1/2 years of age during a calendar year. However, the requirement has been waived for 2009 for many types of accounts.

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The Worker, Retiree, and Employee Recovery Act of 2008 (the Act) was passed by Congress and signed into law by President Bush on December 23, 2008. The Act waives Required Minimum Distributions from IRA, 401(k), 403(b), Profit Sharing, Money Purchase Pensions and certain 457 retirement plans for 2009 only.

So, should you waive a distribution for 2009? If the distribution is from an **IRA**, consider the following before deciding.

There is a carry-over from the August 2006 Pension Protection Act that may be a better option for you. The provision allowing an individual who is at least 70 ½ years of age to donate assets held in a traditional or Roth **IRA** to a qualified charity has been extended to December 31, 2009. (**Please note**: this option is available from IRA plans but not employer-sponsored, 401(k), SEP or SIMPLE plans.)

The donation counts toward satisfying the required minimum distribution for people age 70 ½ and older and, if done correctly, as much as $100,000 per year may be donated and not be included in the donor's gross income. The donation must be made directly from the IRA custodian to the qualified charity in order to avoid owing income tax on the distribution.

Despite the maximum $100,000 limit, this donation strategy is not just for the very wealthy. For example, a 72 year old retired woman whose income consists of a pension, social security and a modest required minimum distribution from an IRA may benefit from this provision. Although she gives her favorite charity $6000 every year, her total deductions are not high enough to warrant itemizing on income tax returns and she uses the standard deduction. By distributing the $6000 directly from her required minimum distribution, she ends up not having to pay income tax on that portion of the distribution and the charity receives the same benefit as before.

Because each person's situation is different, we recommend you consult with your tax professional before making a decision regarding an IRA distribution for 2009.

"The philosopher who said that work well done never needs doing over never weeded a garden."

\- Ray D. Everson

Gifting Opportunities and Strategies

As the year draws to an end, many people consider making gifts to loved ones and charities. There are several considerations that enter into the decision including your purpose for the gift and the tax benefits to which you may or may not be entitled. When the gift is to a qualifying charity, there are no dollar limitations on the amount that can be given at any time. However, if the gift is to an individual, there are limitations if one wants to avoid filing a Gift Tax Return and possibly incurring a gift tax.

In calendar 2009 every individual may make a gift to as many people as he or she wishes without needing to file a Gift Tax Return with IRS as long as no one gift exceeds $13,000 in current market value. For people who want to avoid paying capital gain tax on the sale of a highly appreciated asset and/or reduce an estate so that there will be no federal estate tax, the recent recession-lowering of asset values can provide an excellent opportunity for gifting.

Consider the following example: Grandma and Grandpa have an estate with a current value of $8,000,000. Included in that amount is the family Tahoe vacation home that was valued at $1,250,000 on a recent appraisal. Because their four children and the children's families enjoy using the place, their intention is to leave the vacation home to their children and their spouses. However, if Grandma and Grandpa begin a planned gifting program in 2009, they can gift up to a $26,000 portion (Grandma's $13,000 plus Grandpa's $13,000) to each of their children and, if they choose to do so, another $26,000 to each of their children's spouses in 2009 and that same amount again in 2010.

In subsequent years, following a new appraisal that will reflect a significant reduction in appraised value due to multiple ownership, and depending upon the gifting laws then in effect, they can continue to gift until the entire property is in their children's and possibly their children's spouses names, and accordingly out of Grandma and Grandpa's taxable estate.

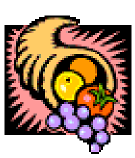
Over the years we have worked with many families in situations such as this saving them many thousand of dollars in estate taxes. If this is something about which you have an interest and/or questions, please contact us.

Estate Tax Update

As of press time, Congress has taken no definitive action on estate tax reform. There are proposals ranging from complete elimination of the tax all the way to reducing the current $3,500,000 exemption back to the $1,000,000 exemption that was in effect in 2002.

Some pundits have stated they believe Congress will extend the current law through 2010 and tackle the matter after elections next year thus ensuring lobbyists will fill their campaign coffers.

We will keep you informed as this issue moves forward.



We wish you and your family a Happy Thanksgiving and Holiday Season.

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