The Michigan Elder Law Reporter™

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Skyrockets In Flight…

Declare Your Independence, Write A Letter!

Your Letter's A Delight!

[Guaranteed Devoid Of Editing, Spelling, Grammar, Or Legal Advice]

> Will I be liable for taxes on the interest paid on a savings account if I am added to my mother's account?
>
> My mother is elderly, and she worries about her bills being paid if she's incapacitated. She wants to add me to her savings account, but I would not be withdrawing money from the account unless it was to pay her bills in the event of a catastrophic health emergency. I would not personally benefit from the interest accrued in the account.

Who Pays The Taxes? Depends…

Very common for mom and dad to "add a kid to the account." Putting a kid on the account might mean making the child the co-owner of the account or only giving the child access to the account to pay bills while the parent is alive. Sometimes parents "put the kid on the account" by naming a child as "pay on death" beneficiary without current access. These all have different consequences.

Mother might make you co-owner of an account holding only mother's money and using mother's social security number. Either of you may withdraw any amount at any time for any purpose. If you outlive mother, the money is yours. This is a joint account. The income is taxed to mother until she dies. After death, the income is taxed to you. If you put your social security number on the account after mother's death, you will receive the Form 1099 reporting the interest in your name to the Internal Revenue Service ("IRS"). If you do not substitute your social security number for your mother's after she dies, you will still be taxed on that interest income as "income in respect of a decedent." That is, you'll be taxed when the IRS catches up with you.

Mother might give you authority to spend the money in her savings account, without making you an owner. This is like a power of attorney. You do not own the money and should not spend it on yourself. When mother dies, your authority over the money dies. You are not liable for the income or the taxes. But now you'll be heading to probate court to find out who gets the balance of the money in the account.

Finally, mother might make you "pay on death" beneficiary. Just including this one for completeness since you would not be able to access the account until after mother dies. Not too helpful when it comes to "pay[ing] her bills in the event of a catastrophic health emergency." With "POD" accounts, the money is yours when mother dies, but not before. Once the money is yours, the interest is now income to you and you must pay the resulting tax.

Is This A Good Idea?

Answer: Well, that depends…

What if mother is poor? Let's say mother owns no real estate, has no other investments, no other kids, and this savings account is the result of frugal conservation of her Social Security retirement income. Now you can understand making the only child a joint owner of the savings. It doesn't cost anything to set up, there's no one else to complain, and there's no need for accountability. If you blow all mother's meager savings on your own selfish desires… well, mother gave you the money when she made you joint owner. She screwed up, she trusted you. Actions have consequences. And if you are loyal, loving, and true, she has solved a problem with little time and expense.

What if mother is not poor? Mother owns a home. Mother has investments. Mother has other kids. Doesn't really matter how much or how many. Now you have the opportunity for conflict that can cost much more than the savings account dollars. If there is real estate or significant dollars, mother (or father) should be considering a trust. With the trust comes accountability along with the access. You can pay the bills, but you are responsible to mom and the other beneficiaries. And after mom passes, you distribute the remaining assets according to the trust.

Common Mistake That Screws Everything Up

So mom or dad put you on the account. You want to help out by shopping for them. You go to your big box membership store and buy groceries and necessaries for your parent. You circle the items on the receipt that you have delivered to their home. You repay yourself from their account. You keep copies of the store receipt and the ATM withdrawal slip in a special shoe box. What could go wrong?

Plenty. When you shop for mom or dad, use their money and their credit or debit card. If you use your own because it is more convenient or other common sense reason, your loving parent will be penalized when it comes time for Medicaid.

How can this be? Medicaid presumes that anything you buy for your folks is a gift. And without a contemporaneous written agreement, Medicaid must presume that your purchases for mom and dad were gifts. That means that any money mom and dad gave you was also a gift. You gifted them. They gifted you. And any gifts made in the last 5 years before applying for Medicaid will result in imposition of a penalty period and denial of benefits.

What to do? Use mom or dad's credit or debit card when making purchases for them. And do not worry about their bank balances, long-term care will dispose of those funds pronto!

Sometimes We Get An Easy One

Most kids don't know what mom and dad own. They don't know what, they don't know where, they don't know how much. Typical. So how are you supposed to know about all that when they die?

> I got granted Petition ?order to dispense with administrator over my mom's estate witch is for small estates
>
> Well turned out estate is larger than I thought so there are investment accounts that are not on letter of administration so they won't release what do I do

Pretty tough.

You didn't think there was much stuff, so you filed under the small estate procedure. Reasonably. You found out there was more. Now you must file a regular probate case. And send out notices. And prepare an inventory (including the stuff you handled using the small estate order). And give an accounting. Et cetera.

Most counties have a county website. Most county websites have a special page for the county probate court. Most county probate court website pages have a letter from the Chief Judge of the county probate court. Most letters from the Chief Judge of the county probate court on the website say something like:

> An attorney should be consulted and retained to handle the probate proceedings. Estates are almost always complicated enough to justify such professional services. My experience as a judge has been that in most cases in which someone tried to probate an estate without legal assistance, it has been a disaster and the decision was regretted. https://www.accesskent.com/Courts/Probate/proceeding.htm

So, probably not such a bad idea to talk this over with an attorney with some probate experience. I happen to know a few…

Hardest-Working Guy In The Room

Clarence Thomas, American Hero

Smartest Guy In The Room

Credit: U.S. Supreme Court

What can you say about a man who embodies the highest ideals of America? And calls the rest of us to do so as well? A man who survived the worst effects of racial discrimination and yet thrived? Who remained true to his vision of America as "a nation where [people] will not be judged by the color of their skin but by the content of their character."

Do you sometimes wonder what Independence Day was all about? Whether the American Experiment was worth it? Are there any heroes left? If you are looking for inspiration and an affirmation of bedrock principles, you could hardly do better than learn about the life and accomplishments of a living hero, Supreme Court Justice Clarence Thomas. Read the ugly, vicious stuff too. There's lots of it. And consider what it takes to overcome that sort of mean-spirited opposition.

On Independence Day, you could do a lot worse than get to know a man who did as much as any Minuteman or Founding Father to keep America "the last best hope of earth." Plus he's an do-it-yourself'er and RV guy who's traveled all over the USA from one Walmart parking lot to another.

So if you happen to see him this weekend, say "Hi!" for me.

Credit: Washington Examiner

After 33 Years Of Doing This Stuff…

Basic Truths, Honest Observations, Reasonable Questions

Is It Really This Simple?

Basic Truth #1 You will need skilled care. Says the government. 70%. Average of 3 years. Please do not believe me, go to the federal government website: www.longtermcare.gov. See for yourself.

Basic Truth #2 Long-term care is extremely expensive. And getting worse. Hourly rates for in-home care are skyrocketing. Assisted living now costs $5,000 - $10,000 per month. Traditional skilled nursing – for the basics – is now $400 - $500 per day. That's $12,000 - $15,000 per month.

Basic Truth #3 Long-term care costs will continue climbing. Baby boomers are reaching their 80's, the age of greatest need. Fewer young people are around to be caregivers. Do the math: Increased Demand for care. Reduced Supply of caregivers. When Demand goes UP and Supply goes DOWN, what happens to PRICE?

Basic Truth #4 Your kids won't help with #2 and #3. Because you didn't have as many kids as your parents did (or any at all). Also because your kids aren't you and just won't do it.

Honest Observation #1 Once upon a time there was a Sandwich Generation. People who took care of their children and their parents, too. Today, the Sandwich Generation is toast. A thing of the past. Like an Endangered Species, you might, occasionally, still see one in the wild. Rarely. Like the Passenger Pigeon, Sandwich Generation kids used to be everywhere. Pretty soon you'll only be able to find pictures.

Basic Truth #5 You did not save enough for long-term care. Drain the savings. Empty the IRA. Cash in the annuity. Sell the cottage. And the house?

Honest Observation #2 Long-term care insurance doesn't work. Premiums are too high. Benefits are too low. Most big insurance companies have abandoned the individual long-term care insurance market. Prudential? Bye-bye. John Hancock? See ya later.

Basic Truth #6 Long-term care breaks the middle class.

Basic Truth #7 Government programs, mostly Medicaid, pay for 75% of long-term care. The other 25% is paid by folks like you who are going broke. And when you are broke, then Medicaid pays.

Basic Truth #8 Government gets its money from you. Through taxes.

Basic Truth #9 You already paid for long-term care. Through taxes. Should you pay twice? Why should you pay twice?

Honest Observation #3 Middle class folks who plan ahead do not go broke. Do not pay twice. Qualify for Medicaid while providing well for your spouse and kids (if any).

Basic Truth #10 Cleopatra was not the only Queen of Denial. Most folks hope for the best and plan… not at all. Then they hope some more. And then hope a bit more. That's why most folks wind up with the worst. Wind up broke.

Honest Observation #4 Estate planners claim to avoid probate, save taxes, get leftovers to kids. Most estate planning fails. Most trusts fail. Estate planners fail the middle class by planning for death only.

Honest Observation #5 Estate planners profit from probate. Probate work is well paid.

Reasonable Question #1 Do estate planners who profit from probate really want to avoid probate?

Reasonable Question #2 Do estate planners not know that you will go broke through long-term care? Or do they not care?

Reasonable Question #3 If you suffer nursing home poverty, will your loved ones benefit?

Reasonable Question #4 If you already paid for something, should you have to pay again?

Reasonable Question #5 If caring for yourself and your spouse also meant avoiding probate, saving taxes, and getting the leftovers to the kids, would it be a bad idea to care for yourself and your spouse?

Reasonable Question #6 If thousands of middle class individuals and families already planned to protect hundreds of millions of their lifesavings and thousands more actually received the expected long-term care benefits, over the last few decades, is it likely that this is all tom-foolery?

Reasonable Question #7 Would you rather sacrifice your lifesavings than spend an hour of your time discovering what other families already know?

Reasonable Question #8 Is there any good reason not to go to a free LifePlan™ Workshop?

Reasonable Question #9 Why don't you call 616.361.8400? Or drop me an email: david@davidcarrierlaw.com? Or go to the website: www.davidcarrierlaw.com? How could it hurt?

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