



Case by Case

A PERIODIC NEWSLETTER

Fall 2004

BEN FRANKLIN WAS RIGHT by Barbara S. Koteen

“... [I]n this world, nothing is certain but death and taxes.”

Benjamin Franklin wrote those words in 1789 and they could not be more true today. The State of Connecticut recently combined these two certainties once again by instituting a “special estate tax”. Connecticut already has a succession tax, a tax on the right to inherit property. In addition, we have an estate tax, a tax on the transfer of property at death.

In 2001, Congress enacted the Economic Growth Tax Relief and Recovery Act of 2001 (EGTRRA). This Act reduced the federal estate tax rates and increased the amount that can pass to heirs free of federal estate tax. It also repealed the state death tax credit in increments over a four year period. Most states, including Connecticut, have a “sponge tax” which is a state estate tax equal to the credit allowed on the federal estate tax return for taxes that are paid to the state. A side effect of the 2001 federal legislation, therefore, was the loss of revenue to the states due to the repeal of this credit.

In order to replace the lost revenue, Connecticut enacted a “special estate tax”. The special estate tax applies to the estates of individuals who die between July 1, 2004 and December 31, 2004 with an estate in excess of \$1 million. Prior to this legislation, the federal and state estate tax exempt amounts had been the same. Therefore, estate tax planning done with a goal of minimizing federal estate taxes also minimized state estate taxes. However, because the federal and state exemptions are now different (federal exemption for 2004 is \$1.5 million, Connecticut exemption for the second half of

2004 is \$1 million), you could have an estate plan that will avoid only the federal estate tax.

You may have a Will or Trust that provides for the maximum amount that can pass free of federal estate tax to be held in a credit shelter trust with the balance of the estate or trust passing to your surviving spouse. This common estate plan will avoid all federal estate tax on your death; however, it will not avoid the new Connecticut estate tax which could total \$83,720. In order to avoid the Connecticut estate tax, you may want to revise your existing estate plan.

Although we do not know what Connecticut will do with its estate tax in the future, it is likely to remain in place in some form. If you would like to minimize taxes paid by your estate, you should review your estate plan with our Estate Department. ☺



ESTATE PLANNING

FOR ADULT DISABLED CHILDREN

by Richard S. Fisher

The needs of the disabled adult child require special attention when doing estate planning. In the past, aging parents relied on relatives to care for adult disabled children. But with smaller families and relatives living miles away, parents must develop a long term strategy. Listed below are some of the issues that we address when dealing with adult disabled children:

1. Develop a plan for who will care for the child: Will a relative have supervision? If the child is in a group home, it is still necessary to have someone responsible for decisions to be made regarding the individual. If no one in the family can do this, an organization called PLAN of Connecticut, Inc. will stand in for the family although enrollment in PLAN must be done early in the planning stage. PLAN develops a care plan that can be used in the future. If you are going to use a family member, a similar care plan should be written up and presented to that family member.

2. Provide Adequate Life Insurance: If a family member has agreed to take charge of the disabled child, it may be necessary to provide adequate life insurance if the potential estate is insufficient to provide the funds that had been used during the parent's lifetime. If the estate planning is being done by a couple, second-to-die insurance should be considered since the premiums are lower and the proceeds probably are not needed until the death of the second parent.

3. Consider a Trust: If the parents have sufficient assets, a trust should be considered that would provide benefits for the disabled child to supplement public benefits. This is referred to as a "supplemental needs trust" or a "special needs trust." If the parents have substantial assets, they may want to provide for the disabled child's care outside of the purview of public benefits, in which case a discretionary trust should be established. Make sure your will and incapacity documents are up to date. Needless to say, these type of documents should be required in every case but are even more important when there is a disabled child. In the event of incapacity by a parent, a power of attorney document would allow another individual to act for the parent and provide certain funds and services to the adult disabled child during the period of incapacity.

4. Coordinate Your Estate Planning With Other Family Members: If it is desired that public benefits be used for the disabled child, any potential bequest given by relatives to such child should be done in a manner that would not affect such benefits, perhaps by those bequests being put into a trust, or distributed to another family member to be used for the benefit of the adult disabled child.

Finally, the type of disability may affect the future planning. If there is a reasonable chance that the adult disabled child will never qualify for public benefits because he/she is not sufficiently disabled there is no need for a "special needs trust" which would be more restrictive than a completely discretionary trust. ☺

NEW ACT AFFECTING SUBDIVISIONS

by Edward F. Nemchek

Public Act 04-210, effective June 1, 2004, is a legislative response to a recent Connecticut Appellate Court case, *Poirer v. Zoning Board of Appeals of the Town of Wilton*. In that case the Court determined that Connecticut General Statutes §8-26a (b) permitted the plaintiffs to build a garage and breezeway on their subdivision lot, as allowed by the zoning regulations in effect at the time of the subdivision's approval, even though subsequently enacted regulations would no longer permit the structures.

The new Act amends the statute by (1) making it applicable to both subdivisions and resubdivisions; (2) providing that construction on a vacant lot shall not be required to conform to a change in the zoning regulations adopted after the date of approval of the lot; and (3) providing that construction on an unimproved lot shall be required to conform to subsequent zoning changes. For purposes of this new language, a lot shall be deemed vacant until the date a building permit is issued and a foundation completed, in accordance with the permit. A lot shall not be deemed vacant if any structures on such lot are subsequently demolished. A lot shall be deemed improved once the building permit is issued and the foundation completed.

The Act specifies that it does not alter or affect a nonconforming use or structure.

NURSING HOME STANDARDS AND LIABILITY IN CONNECTICUT

by Mark P. Santagata

As the American population continues to age, the demands placed upon long term care facilities (nursing homes) increase each year. Those pressures are made worse by the declining revenues provided to nursing homes from state and federal funding programs, and private insurers. Long term care facilities can react to this combination of increased demand and decreased revenue by reducing the number or the quality of their staff, with sometimes disastrous results. A recent study conducted by the U. S. General Accounting Office revealed that more than one-fourth of nursing home residents are either harmed or put at risk of serious injury as a result of inadequate care and poor safety practices.

Nursing homes are subject to stringent state and federal oversight. The Federal Nursing Home Reform Act requires states to establish standards for long term care facilities. The act also regulates these facilities. In part, the regulations require that physicians and family members be informed immediately if a resident suffers an accident, or there is a significant change in the status of a resident's health.

In Connecticut, the Commissioner of Health Services enforces a Connecticut law known as the Patients' Bill of Rights, which, in part, requires a nursing home facility to maintain an environment that is free from abuse, corporal punishment, involuntary seclusion, and physical or chemical restraints for purposes of discipline or convenience. The law details the manner in which patient care must be provided, and requires that all patients have access to a grievance procedure to address deficiencies.

The Connecticut Department of Public Health is charged with regulation of nursing homes. The standards that must be maintained by nursing facilities are rigidly defined. The interior temperature of the facility must be maintained within an acceptable range. Medications can only be administered by qualified health professionals. Staff qualifications are regulated, as are standards of daily care. A nursing home that fails to

comply with these requirements can be disciplined by the Department with actions that range from issuance of a letter of reprimand, to revocation of the facility's license to operate. A nursing home's failure to conform with these mandates can also provide residents with grounds for a civil claim for damages.

Nursing homes must maintain detailed records concerning all events that cause even minor injury, distress, or discomfort to a patient. Reporting standards are more rigorous for incidents that result in serious injury or a significant change in a patient's condition. The administrative staff must conduct monthly reviews of all such events, and determine if preventative action is required.

In the event of an incident that causes risk or injury to a resident, the family should obtain the administrative records as quickly as possible. The records, if accurate, will document the incident and provide insight into deficiencies that may have contributed to the event.

The Department of Public Health will generally respond to a complaint from a nursing home resident or a family member by initiating an investigation. While the Department does not have authority to provide monetary reimbursement to an injured resident, it is always wise to involve the Department. If deficiencies are revealed by the Department investigation, those findings will be helpful in establishing fault in any civil claim pursued on a resident's behalf.

Civil claims can be brought seeking compensation for both the physical and the mental impact of a nursing home's neglect. Claims have been brought for injuries from restraint, bed sores, malnutrition, medical neglect, and improper administration of medication. Not every infraction that gives rise to a complaint to the Department of Public Health warrants the initiation of a civil claim. However, if appropriate, a civil claim provides both compensation to the person who has been injured, and incentive to the nursing home to reduce risks for all its residents. ☺

Personal Notes

Edward F. Nemchek, Judith Ellenthal, and **Sherwood R. Spelke** presented a seminar on recent legislation and case law affecting Connecticut Real Estate Practice before the Regional Bar Association.

Michael J. Cacace will be speaking at several seminars in the upcoming months: A Lorman Seminar entitled "Advanced Planning and Zoning" to be held at the Trumbull Marriot on November 17, 2004; a seminar on Due Process in Land Use Applications at the

Regional Bar Association; a Connecticut Bar Association seminar entitled "Land Use for Municipal Officials" at Wesleyan University on March 5, 2005; and a Lorman seminar on Planning and Zoning at the Trumbull Marriot on March 18, 2005.

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Paul T. Tusch has been appointed Chair of the Connecticut Bar Association Family Law Section. The CBA is a professional association comprised of lawyers working to enhance the legal profession. The focus of the Family Law Section includes areas such as divorce, legal separation, and parental and children's rights. Paul continues to lecture regularly on various family law related issues on a regular basis.

The Fairfield County Alumnae Seminar announces its 25th anniversary seminar. This year's presentation, "Crime and Punishment: Focus on Women," will take an in-depth look at the vital roles women play as victims, prosecutors, judges, prison wardens, and reformers. Learn how women are working to make a difference. The Alumnae Seminar is presented annually as a public service by a committee of alumnae from the original Seven Sisters colleges. The committee includes Smith alumna **Alice Ann Fitzpatrick**. The seminar is open to the public and will be held Wednesday, October 20, 2004 from 9:00 a.m. to 1:30 p.m. at the Italian Center in Stamford. Interested? Contact Attorney Fitzpatrick at (203) 327-2000.

Ronald E. Kowalski II has been appointed to the Easton Police Commission and was re-appointed to serve as an Attorney Trial Referee and a Fact Finder/Arbitrator for the State of Connecticut Judicial Branch.

Richard S. Fisher will be serving on the Probate Practice Panel for the Regional Bar Association Symposium on Professionalism to be held at Stamford Superior Court on November 5, 2004. Dick, who serves as Treasurer of the Alzheimer's Association Connecticut Chapter, is presenting "Understanding Legal Issues" on October 19, 2004 at Ridgefield Crossings as part of the four-part Caregiver's Course sponsored by the Alzheimer's Association. Dick also gave a presentation on June 10, 2004 at the Financial Planners Association of Connecticut on Elder Care/Elder Law, Medicare/Medicaid, and Long Term Care/Private Pay.

Sherwood R. Spelke was nominated for his third term as Co-Chairman of the Real Estate Section of the Regional Bar Association.

Paul T. Tusch has been elected to the Board of Directors of the Stamford Youth Foundation. He will also serve as one of its Vice Presidents, and as its corporate Secretary. Through its numerous elementary and middle school athletic programs, the Stamford Youth Foundation provides programs and services to help promote and enhance the development of thousands of young boys and girls by instilling a sense of pride, self-esteem, and belonging to the community.

On October 19, **Linda Brown** will be presenting a program geared towards women's financial issues with Chris Perini of Smith Barney, entitled Intergenerational Legacy Planning - a focus on retirement savings strategies, tax law changes and estate planning issues that won't leave you vulnerable at the passing of a loved one. The program will be held at Lockwood-Matthews Museum in Norwalk. To RSVP, call (203) 838-9799.

CACACE, TUSCH & SANTAGATA is a full service general practice law firm dedicated to providing its clients with quality legal work. The firm occupies the second and third floors of the office building located at 777 Summer Street, Stamford, Connecticut, and has an office at 124 West Putnam Avenue, Greenwich, Connecticut. Our attorneys' areas of practice include:

ZONING AND LAND USE PLANNING ❖ REAL ESTATE TRANSACTIONS ❖ CIVIL LITIGATION
ADMINISTRATIVE HEARINGS AND APPEALS ❖ VALUATION OF PROPERTY ❖ FAMILY LAW ❖ LANDLORD/TENANT LAW
ESTATE PLANNING AND PROBATE ❖ ELDER LAW ❖ BUSINESS AND CORPORATE LAW ❖ CRIMINAL LAW

Case by Case is intended to provide a periodic discussion of developments and issues of interest to our clients and friends. If readers have questions concerning the matters discussed herein, they should direct them to Edward F. Nemchek, the attorney responsible for the newsletter's content at: **CACACE, TUSCH & SANTAGATA** by telephone at (203) 327-2000 or by e-mail at **ENEMCHEK@LAWCTS.COM**.

N.B. The information contained in this newsletter is informational and not intended to be legal advice and may not be reproduced in any form without consent. Requests for consent should be directed to Paul T. Tusch, Esq., Cacace, Tusch & Santagata, P.O. Box 15859, 777 Summer Street, Stamford, Connecticut 06901-0859.



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