

ELDER LAW TODAY

C. Dan Campbell, P. C.

4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308 (940) 696-5015

September 2008

Dedicated to providing Solutions for Seniors

It's hard to believe that it's already September. The years fly by don't they? (I understand why some people leave their Christmas lights up year round!).

I recently read an article in the Wall Street Journal suggesting that people use the election year as a reminder to review their estate planning documents (sort of like changing your batteries in your smoke alarm when we go off daylight savings time). I recommend to my clients 4 basic estate planning documents: a current Will; a "financial" durable power of attorney; a "medical" durable power of attorney; and a HIPAA (medical privacy) Release. If the client has out of state real property; wants professional management of assets if he/she becomes unable to manage; wants to ensure that separate property stays separate in case of death or divorce; or is simply wanting to avoid probate then a Living (revocable) Trust may also be in order. We are in uncertain times with the estate tax laws changing: this year the exemption is \$2M per person—(with the right kind of Wills we can protect double that amount for a married couple); next year its \$3.5M (\$7M can be protected for a married couple); in 2010 the estate tax disappears; but in 2011 it returns to only \$1M per person. So what do we do in uncertain times? For a married couple, I suggest that they consider "disclaimer bypass trust wills" that allows the surviving spouse to "look and see" as to whether or not they want the first spouse's estate to be held in trust for the survivor's benefit—or if they simply want the "first spouse to die's" estate to pass outright to the survivor. I think this is the best approach for couples who are concerned about possible estate taxes. Then too, we

have the election coming up: both candidates are saying they want to increase the estate tax exemption: rumors are from \$3.5M to \$5M. It's anyone's guess.

Of course, estate tax savings, is only one aspect of estate planning. For all estates—regardless of the size—what may be more important is to make sure that the family is protected from other potential problems. What do I mean? Assume you have a child that has health problems, whether physical or mental—maybe that child would be eligible for government benefits (Medicaid)? Does it make sense to create a "special needs trust" for that child (thereby retaining Medicaid eligibility) instead of leaving him or her an inheritance outright? Or maybe it's a spousal situation--and instead of leaving assets outright to the surviving spouse, a "spousal support trust" makes sense for the surviving spouse (in case he or she needs long term care—I wrote about this in a previous newsletter). Quite frankly, I recommend to my clients in practically all situations that they consider leaving assets in a "lifetime trust" for the benefit of each of their children (separate trusts for each child)—instead of outright to the child --but allow each child to be trustee of his or her own trust (if you think that he or she is a good steward; otherwise name someone else as trustee). If properly drafted, that trust can allow the assets to be available to the child for "health, education, maintenance and support" and yet, if that child encounters creditor problems (or marital problems), the assets will be protected! (It's like the child "having his cake and eating it too".) It makes a lot of sense, in my opinion.

That's all for now. Hope you and yours have a wonderful Fall!