

“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill

ELDER LAW TODAY

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Well, it's already July 20th when I am at my computer – I am now realizing why some people leave Christmas lights on their roof all year long since the years seem to fly by. When I was probably 12 years old, I would complain that time was moving so slowly (probably anticipating Christmas!) and my dad would say “you just wait –when you turn 50 those years will start clicking by –as he would snap his fingers” . You know, he was right and I am well beyond 50!!

Some sad news (for me!). John Brooks, my partner for some 40 years, has decided to relocate his office to his son's office building (behind Century City). His new information as of August 1st will be Law Offices of John P. Brooks, 2629 Plaza Parkway, Suite A2, Wichita Falls, Texas and his phone number will be (940) 696-5018. I will miss the camaraderie for sure. I will remain at our present location and Hope Butterfield, my legal secretary; Cindy Lamb, my legal assistant; and Danna West my office administrator/marketing director will remain with me (thank goodness!!).

Are you kidding me – is it really possible to modify a Will after the person has died? And, by the way, can a judge allow a guardian of an incapacitated person to make gifts of that incapacitated person's assets?

Today I want to discuss a couple of pretty interesting concepts that you may need to keep in mind if the situation presents itself. Assume that John Doe had a Will that left all of his assets outright to his wife, Jane. John dies. Jane is in a nursing home suffering from Alzheimer's Disease and she is on Medicaid (as are about 90% of people in a nursing home --most people who enter a nursing home are either on Medicaid or, because of the monthly private pay rate of around \$5000.00 to \$6000.00, will soon be after they exhaust their assets). With proper planning, John could have had a Will that left assets in a “spousal care trust” that would have allowed the assets in his name to be used for special needs she might have while preserving her Medicaid eligibility. But that is not what happened – his Will left everything to her outright!!

But, guess what? It is possible for the executor of John's Will (keeping in mind he has already died) to file a petition in court **and ask the judge to judicially modify John's Will!!!** Section 255.451 of the Texas Estates Code provides as follows: “On the petition of a personal representative (ie: executor) a court may order that the terms of the will be modified or reformed, that the personal representative be directed or permitted to

perform acts that are not authorized or that are prohibited by the terms of the will, or that the personal representative be prohibited from performing acts that are required by the terms of the will, if:

- (1) modification of administrative, nondispositive terms of the will is necessary or appropriate to prevent waste or impairment of the estate's administration

- (2) the order is necessary or appropriate to achieve the testator's tax objectives or **to qualify a distributee for government benefits** and is not contrary to the testator's intent.

So, “bottom line” a Will can actually be changed by a judge after the person has already died under appropriate circumstances and this could be very helpful to “fix” a Will that should have been done differently.

BUT WAIT (sort of like the TV ads that are trying to get you to buy their stuff) THERE'S MORE!!! Section 1162.01 of the Estates Code allows a guardian of an estate of an incapacitated person to file an application with the court to make gifts of the ward's property (that is not required for the support of the ward or the ward's family) to minimize income or estate taxes **or to transfer assets of the ward in order to qualify the ward for government benefits (such as Medicaid).**

That being said, you have to keep in mind that whether or not the gifts can be made by the guardian will depend entirely upon the judge. We had a case recently where we filed an application to make gifts to grandchildren of a lady who was quite elderly, in a nursing home and under a guardianship, but the judge refused to allow the gifts to be made ---even though the grandchildren were beneficiaries under her Will. He basically said “there is nothing that shows that she (the elderly grandmother) is benefiting from this proposed gift”. We introduced into evidence her Will that leaves all assets to these granddaughters. We also showed the court that she would have had other remaining assets that would have been quite ample for her support. We also introduced into evidence mortality tables showing her life expectancy. He was not willing to allow the gifts. So, sometimes the “best laid plans of mice and men oft go awry”.

Upcoming Seminar At Homewood Suites: **“The Care and Feeding of Living Trusts”**. A recent newspaper flier in the TRN advertising a Living Trust seminar on bright yellow paper came to my home. The “scare tactics” they use is abominable. So, I am going to give a

seminar on living trusts. My good friend Gary Silverman (and his associate Michelle Kuehner) and I will be presenting this free seminar (and I promise you “no salesman will call”). Gary and Michelle will discuss how to Assure the Safety of Your Assets, Both Inside and Outside Your Trust. I will deal with living (revocable) trusts.

The date of the Seminar is August 31, 2017. It will be from 6:00 PM to 8:00 PM at the Homewood Suites located at 2675 Plaza Parkway. Please call 696-5015 and make your reservation today seating is limited to 50 folks!

That’s it for now. Enjoy the rest of your summer!

C. Dan Campbell

Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate Planning and Probate Law and Civil Trial Law. **This newsletter is not intended to be nor should it be construed as the giving of legal advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area of law.** This newsletter is published as a service of C. Dan Campbell, P.C., 4245 Kemp Blvd., Suite 800, Wichita Falls, Texas 76308. Visit our website at: www.cdancampbell.com

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