Social Security Disability and Medicaid Law Newsletter

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A FREE LEGAL UPDATE FOR ELDERS AND OTHERS WHO SEEK ASSET PROTECTION ♦ FEBRUARY, 2015 EDITION

BANK PAYS PRICE FOR REFUSING TO HONOR REQUEST MADE UNDER A POWER OF ATTORNEY

A durable power of attorney (POA) allows the person creating the document, called the "principal," to name a trusted agent who can act on his behalf in almost any situation.

But because of the risk of abuse, many banks will scrutinize a POA carefully before allowing the agent to act on the principal's behalf, and often a bank will refuse to honor a POA.

In a recent Florida case, Bank of America rebuffed an agent's request that funds be withdrawn from the principal's account. The agent fought back in court and just won a $64,000 judgment against the bank.

Clarence Smith, Sr., named his son, Clarence Smith, Jr., as his agent under a POA. When his father no longer wanted to manage his own finances, he asked Clarence Jr. to step in as his agent. Clarence Jr. reviewed his father's account activity and became suspicious about some withdrawals from a bank account that Clarence Sr. owned jointly with a friend from his retirement community.

Acting as his father's agent under the POA, Clarence Jr., asked Bank of America to transfer $65,000 from the account into a new account that listed only his father as the owner. Before doing so, Bank of America contacted the other person named on the account.

When she told the bank that she did not want the funds withdrawn and also accused Clarence Jr. of stealing his father's money, Bank of America refused to honor Clarence Jr.'s request.

The other account owner then withdrew all of the funds from the account and placed them into her own account, effectively preventing Clarence Sr. from accessing his own money. Clarence Sr. died several weeks later.

Clarence Jr. sued Bank of America under a Florida law that imposes penalties on financial institutions that refuse to honor reasonable requests from agents named in properly executed POAs. In November 2009, after a week-long trial, a Florida jury returned a verdict against the bank and awarded $64,142 to Clarence Sr.'s estate.

The jury found that Bank of America had not acted reasonably when it rejected Clarence Jr.'s request, even though the joint owner of the bank account had not agreed to the release of the funds.

Bank of America plans to appeal. "We believe that neither the facts nor the law support the verdict," said spokeswoman Shirley Norton.

While this case clearly illustrates the conflicts that can arise through the use of a POA, it also raises the issue of the proper use of joint bank accounts in estate planning.

Under most state laws, when two or more people own "joint" bank accounts, each of them has the right to the entire account, no matter whose money is actually in the account.

While joint accounts can often be useful, sometimes, as in this case, joint owners or their agents can disagree about the use of funds in the accounts. When that happens, the party who makes it to the bank first often wins.

A qualified elder law attorney can explain the pros and cons of joint ownership, can draft an effective POA, and can assist family members when disputes arise.

THINGS TO REMEMBER AT TAX TIME

April 15th is approaching and it is time to begin crossing T's and dotting I's in preparation for paying taxes. As tax time draws near, you want to make sure you file all the proper forms and take all deductions you're entitled to. Following are some things to keep in mind as you prepare your tax form.

Gifts. Did you give away any money this year? The gift tax can be very confusing. If you gave away more than $13,000 in 2009, you will have to file a Form 709, the gift tax return. This does not necessarily mean you will owe taxes on the money, however.

Medical Expenses. Many types of medical expenses are tax deductible, from hospital stays to hearing aids. To claim the deduction, your medical expenses have to be more than 7.5 percent of your adjusted gross income.

This includes all out-of-pocket costs for prescriptions (including deductibles and co-pays) and Medicare Part B and Part C and Part D premiums. (Medicare Part B premiums are usually deducted out of your Social Security benefits, so be sure to check your 1099 for the amount.)

You can only deduct medical expenses you paid during the year, regardless of when the services were provided, and medical expenses are not deductible if they are reimbursable by insurance.

Parental Deduction. If you are caring or your mother or father, you may be able to claim your parent as a dependent on your income taxes. This would allow you to get an exemption $3,650 in 2009) for him or her.

Long-Term Care Insurance Premiums. Premiums for "qualified" long-term care policies are treated as an unreimbursed medical expense. Long-term care insurance premiums are deductible for the taxpayer, his or her spouse and other dependents.

Social Security Benefits. Although Social Security benefits are generally not taxable, people with substantial income in addition to their Social Security may pay taxes on their benefits. If you file a federal tax return as an individual and your "combined income," including one half of your Social Security benefits and nontaxable interest income is between $25,000 and $34,000, 50 percent of your Social Security benefits will be considered taxable.

If your combined income is above $34,000, 85 percent of your Social Security benefits is subject to income tax.

Real Estate Taxes. If you don't have enough deductions to itemize, you can still increase the amount of your standard deduction by the amount of your real estate taxes up to $500 ($1,000 if filing jointly).

Home Sale Exclusion. Married couples can exclude from income up to $500,000 in profit on the sale of a home ($250,000 for single individuals). If a surviving spouse sells the home, he or she can still claim the exclusion as long as the house was sold after 2007 and no more than two years after the spouse's death.

Elderly or Disabled Tax Credit. Some low-income elderly or disabled individuals are entitled to a special tax credit. To be eligible, you must meet income limits.

News You Can Use

2015 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	**$2,199.00**
Personal Needs Allowance:	**$105.00**
Asset Limit (Individual):	**$2,000.00**
Asset Limit (Couple):	**$3,000.00**
Medicare Part B Premium:	**$104.90**
Community Spouse Resource Allowance**:**	**$119,220.00**
Mimimum Monthly Maintenance Income Allowance:	**$1,966.25**
Maximum Monthly Maintenance Income Allowance:	**$2,980.50**