

Asset Protection Law Newsletter



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A FREE LEGAL UPDATE FOR ELDERS AND SAME SEX PARTNERS WHO SEEK ASSET PROTECTION ♦ NOVEMBER 1, 2012 EDITION

INFORMATION ABOUT APPLYING FOR VETERAN AFFAIRS (VA) BENEFITS

There are approximately 16 million living U.S. veterans. For many of these veterans and their families, securing long-term care is foremost in their mind. Many of them are turning to financial and estate planning services that are accredited by the Veterans Administration (VA) to assist them in accessing pension benefits to help with their future care. But some services are offering annuities.

So, whether helping a veteran plan for the future or worrying about making a life savings last, I can offer these suggestions for evaluating these important decisions. Many of them are turning to financial and estate planning services to help with their future care. But some of these financial planners are taking advantage of veterans by putting their money in financial products that may not be suitable.

Pension benefits are available to low-income wartime veterans who are 65 and older, or who are permanently and totally disabled by conditions unrelated to their military service. To receive these benefits, the veteran or their family must submit paperwork to the VA.

Completing this paperwork can be challenging, so the VA accredits financial planners and lawyers who can help veterans and their families. This accreditation means that the individual is trained to fill out and file the VA paperwork to the VA.

But the products they sell to seniors to help finance their long-term care are not endorsed by the VA. This also means the financial planner must be licensed to sell financial and insurance products. So, before agreeing to any assistance with a VA benefit, make sure the individual is accredited through the VA and, if offering an annuity or other insurance product, licensed by the state insurance department.

For example, if the veteran needs long-term care and the pension benefit is not enough to cover the expense, it may be necessary to apply for Medicaid. However, Medicaid has a 60-month look-back period. If an individual has transferred assets at less than market value in that period of time, then they may become ineligible for Medicaid services.

Before agreeing to gifting assets to loved ones or putting the money in a trust, it is important to evaluate the benefit of the monthly pension versus the possible need for long-term care and how that care can be financed.

Some planners were placing senior veterans in products that may not be age-appropriate because the veteran may lose access to funds needed for future expenses. Some organizations may sell deferred annuities to an applicant that would make their funds unavailable to them during their expected lifetime without facing high withdrawal fees.

However, a deferred annuity is structured so that payment for the premium investment is not received for several years and withdrawing funds from it early can be very costly. This kind of annuity would probably not be desirable for an older veteran. Remember, an annuity is not an investment product to help reach a short-term financial goal.

ESTATE PLANNING CHECKLIST FOR SAME SEX PARTNERS IN FLORIDA

1. Will. You may be familiar with the intestacy laws of your state, but without a will, these laws may adversely affect lesbian and gay couples. Generally, "heirs at law" are blood relatives or adopted children.

2. Revocable Trust. This type of trust may provide protection from challenges by disgruntled heirs at law. Moreover, assets in a revocable trust pass outside of probate, providing privacy as well as eliminating probate fees. Implementing a revocable trust today may mean more money to your loved ones later on.

3. Cohabitation Agreement. If you have a spouse or domestic partner, you should consider this cross between a prenuptial agreement and a partnership agreement. Not only can the contract dictate how money and expenses will be managed and divided, but it can also define the duties and responsibilities of each of you, which may very well reduce taxable gifts.

4. Powers of Attorney. A medical power of attorney will be especially important if you want your partner to act for you should you become incapacitated. You must have a separate power of attorney over your affairs, such as businesses, finances and real estate.

5. HIPAA Authorization. In the past few years, the law has changed and people have right to privacy regarding their health information. Under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), specific authorization is now generally required to permit medical personnel to release "protected health care information."

6. Advanced Directive. A "living will" enables you to provide instructions relating to prolonged life support in the event of incurable illness.

7. Funeral, Burial and Remains Planning. You should make plans regarding your funeral, burial and/or remains or your final wishes may not be granted. You may not be buried next to your partner or he may not receive your remains. If there is family tension, a surviving partner may even be excluded from your funeral.

8. Proper Beneficiary Designations. Ensure that beneficiary designations are up-to-date and are in line with your wishes. Be sure to consider banking, investment, and retirement accounts, as well as life insurance policies.

9. Planning with Minors. Lesbian and gay couples with minors have special issues that traditional families may not have to consider. Drafting attorneys need to adequately identify the children in all estate planning documents, especially if they are not the legal children of one partner. Moreover, gifting issues will have to be addressed when dealing with children who are not legally adopted by one partner.

10. Gifting. If you have spent more than \$13,000 per year in gifts, services or support for your partner, you may have inadvertently triggered gift taxes.

11. Medicaid. Transferring assets to a spouse to qualify for Medicaid will not work for same-sex couples. NOTE: Same sex marriages legal in states as Massachusetts and New Hampshire are not recognized in Florida. The Defense of marriage act (DONA) prevents Florida from recognizing same sex marriages occurring in any other state.

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NEWS YOU CAN USE

2012 FLORIDA MEDICAID LIMITS

Gross Monthly Income Limit for Medicaid Applicant:	\$2,094.00
Personal Needs Allowance:	\$35.00
Asset Limit (Individual):	\$2,000.00
Asset Limit (Couple):	\$3,000.00
Medicare Part B Premium:	\$99.90
Community Spouse Resource Allowance:	113,640.00
Minimum Monthly Maintenance Income Allowance:	\$1,839.00
Maximum Monthly Maintenance Needs Allowance:	\$2,841.00
Excess Shelter Standard:	\$552.00

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