

GARDEN STATE CLE LESSON PLAN

A 1.5 CLE CREDIT COURSE

FREE DOWNLOAD LESSON PLAN AND EVALUTION

ESTATE TAXATION AND ESTATE PLANNING

WITH

DAVID R. THIERMAN, ESQ.

AND FEATURING

ROBERT RAMSEY, SENIOR INSTRUCTOR

Program Description

A critical part of every client contact involving the preparation of a will involves and honest discussion of the tax implications on New Jersey and federal estate and gift tax law. This 1.5 credit CLE will provide you with a wide array of techniques for addressing these critical issues.

I. INTRODUCTION

- **Garden State CLE**
- **Panelists**
[David R. Thierman, Esq.
and Robert Ramsey, Senior Instructor]
- **Scope of Topic**
[87 minutes duration and
11 pages of Lesson Plan materials]

II. NURSING HOMES FOR THE ELDERLY

- **At this time, Medicare will pay for up to 100 days of assistance. Elderly pay in their whole life to Medicare and get very little when they get the incurable illness called Alzheimer's or dementia: 100 days and then arrives the letter to private pay hereafter**

III. LIFE COMES BEFORE MONEY

- **Your Living Will and your Power of Attorney affect you at the time you are alive and should be attended to first**
- **Living Will/Health Care Proxy/Advance Health Care Directive allow for the circumstances under which life preserving care can be ended. Feeding tubes, artificial respiration, ventilator, etc.**

- **Religious considerations**
- **Percentage chance clauses are not considered prudent; you cannot address all of the situations in your document but your appointed person CAN**
- **Health care agent is your representative and is a person whose judgment you trust; successor agent is a good idea too**
- **When needed? At time of hospitalization and when you cannot give your own direction**
- **Where to store it? Not in a locked strongbox or safe deposit box or in the attorney's office. These need to be kept with the family so the family can take care of the family.**
- **It is needed for an emergency in many cases. Keep it in an accessible place and in an easily found envelope with your other important legal documents.**
- **58% of people die without a Will**
- **Execution: twice witnessed by non relative or by a notary; self-proving wills have a Notary or Attorney also witness and acknowledge**

IV. POWERS OF ATTORNEY

- **Power of Attorney is a document needed to take care of the injured or disabled person while they are ill, allows a loved one to make decisions**
- **When the disability arises, the help needed from head to toe is the responsibility of someone you trust and believe in**
- **Springing power: power is effective only on disability**
- **Durable: power is effective always or upon the occurrence of disability**
- **Revocation: by destruction, or execution of new Power or by writing a revocation upon the Power**
- **Powers of Attorney are recorded with the Clerk for Real Estate purposes. Most are not recoded until needed for a transaction**
- **When the Will is requested by the client, the attorney must offer the POA and address false assumptions by the client**

V. WILLS

- **Addresses not only money: burial, bills, etc.**
- **Marriage is not an excuse for a will. What about the “What ifs”.....marital elective share is a factor**
- **Mutual wills are not necessarily mutual; Spouses can change their Wills without the consent of another**
- **You can direct where your assets go with a Will**
- **NJ law requires an election by the wife in the Probate Part. They are entitled to an elective share which is about 1/3 of the Estate after using a complicated formula**

VI. TAXATION OF AN ESTATE

- **Where you are resident is vitally important to which state taxes an Estate**
- **Florida has a lower tax on Estates, no income tax, and many move their for that reason**
- **PA has 4.5% inheritance tax, due within 9 months, but if you send the tax within 90 days, you receive a 5 % discount**

- **NJ has an inheritance tax and an estate tax which are not adjusted for inflation purposes**
- **What makes you a NJ/FL/PA resident?**
- **Facts and Circumstances: intent is one of the facts and circumstances, also voting, banking, driver's license, religious affiliation, property owned or rented in a particular state and also time-----> six months and a day is what they look toward for intention to be a resident of the state.**
- **Where you live, not where you die, is what controls. Example: Plane crash**
- **NJ Tax threshold after \$675,000.00 value**
- **Will must be witnessed by two persons**
- **FL Tax threshold after \$5,000,000.00**

VII. THE CONCEPT OF WEALTH

- **A simple will can be done with estate under \$675K and children**
- **With only a small estate over \$25,000.00 in NJ and leaving to your brother, there is tax. If to a niece or nephew, the tax kicks in at \$500.00**

- **The millionaire next door: it's true**
- **Middle class people accumulate assets over a lifetime of work, a lot more than they even understand themselves**
- **\$675K is 37% effective tax rate, at 10 million it is 16%**

VIII. LIFE INSURANCE

- **Passes outside the estate. But, for tax purposes it is taxable by the feds and the States. It is not Death Tax free.**
- **If payable to the estate, it is taxable. If payable to a named beneficiary, not. And there is a 3 year ownership requirement for other owners**
- **What about funding things to occur in the future -----with insurance**
- **Ted Williams example: can the payments to keep one frozen be made from life insurance without tax consequences**
- **If set it up properly, you can pass millions to your beneficiaries without tax, both Inheritance Tax and Estate Tax**
- **Three main docs: Power of Attorney, Living Will and Will**

IX. ESTATE PLANNING WITH AN EXAMPLE OF DISABILITY

- **One hand test—keep your investments at 5 not 10 different banks**
- **Make organization and management easier**
- **Custodial Care**
- **Who is in/out of Will**
- **Predeceasing issues/*per stirpes* provision**
- **Taxes, are they filed?**
- **Lawful tax avoidance, minimizing taxes**
- **Credit Shelter Trust or Disclaimer Trust may be helpful to avoid taxes, leaving assets in the names of another**
- **What type of trust?**
- **What company as trustee?**
- **Family members are more prevalent today than the old bank trust departments, can be a professional too, or any combination**
- **Protecting the corpus is the essential job of a Trustee**

- **Families are complicated and so are the problems of the many beneficiaries**

X. GIFTING

- **If the client can gift during lifetime it helps make the estate planning lawyer's job easier**
- **2011 \$13K requires an IRS gift tax return that is informational only**
- **2012 \$5 million requires an IRS return with no tax**
- **2013 \$1 million requires an IRS return with no tax**
- **NJ allows for a look back for 3 years before death, if over \$500, the gift is includable**
- **Steinbrenner example of date of death and taxation**

XI. DEATH, TAXES AND POLITICS

XII. OTHER STRATEGIES

- **The time value of money**
- **Qualified Personal Residence Trust, to give away at age 85, allows you to discount the gift, but you must live until the age selected.**
- **Spendthrift Trust: distributes money to the beneficiary of the Trust over time. It can last for generations.**
- **Special Needs Trusts protect the qualification of the beneficiary to receive government benefits**

XIII. SELECTION OF EXECUTORS

- **Lawyers, accountants, family member, friend, institutions**
- **Fiduciary responsibility**
- **Choose a person who is astute in financial affairs**

XIV. WHAT IS A “GOOD” ESTATE PLAN?

XV. REVISITING THE ESTATE PLAN

- **If you review your income taxes every year then you should review your documents every few years.**
- **Take into account that tax laws change, usually not for the better**

XVI. ESTATE PRACTICE AND NUMBERS

- **Panelist had a financial background**
- **LLM TAX**
- **Learning curve is about 5 years for basics**
- **Estate work requires PEOPLE SKILLS because it is not about the numbers**
- **Tax aspect**
- **Human aspect. That requires you to adjust to cultural nuances etc.**

XVII. WHAT ABOUT UNDUE INFLUENCE?

- **Meet alone with the client**
- **Check for diminished capacity**
- **Find the natural objects of the bounty of the defendant**
- **Suggest to the client a physical exam**
- **Videotaping is an option**
- **They are not conclusive but they are evidential**

XVIII. GENERAL ADVICE

- **Good thing: clients become friends**
- **But: You see clients get sick and pass away**
- **It is a beautiful and rewarding field but also very demanding**