

ELDERLAW

NEWS

New Jersey

®

Legal News for the Aging and Disabled

September 2001



GOVERNMENT EXPANDS EFFORTS TO AID ELDERLY IN WAKE OF TERRORIST ATTACKS

Talk in Washington of Social Security "lock boxes," budgetary deficits, and restraints on government spending vanished last week after the terrorist attacks on the World Trade Center and the Pentagon.

Last Friday Congress appropriated \$40 billion for disaster relief, essentially authorizing the Bush Administration to spend the money any way it sees fit in order to deal with the emergency.

The House voted Thursday to give families of terror victims tax breaks normally reserved for casualties in war zones. The bill, H. R. 2884, would forgive 2001 income taxes for all victims of the terrorist attacks and effectively cut in half any estate tax. It would also make federal disaster benefits tax-free and ensure that no tax applies to payments from airlines to families of passengers killed in the 4 crashes. The measure is expected to pass.

In NJ, the State Dept. of Banking and Insurance has set up a toll free line, 1-800-224-3710, for people with questions about their insurance or concerns about their access to bank accounts. State officials are also helping the families of missing victims by changing Surrogates' rules in order to speed up the process of settling victims' estates. The State Dept. of Law and Public Safety has established a resource

page on the web at <http://www.state.nj.us/lps/emerghome.htm>. The Victims and Families Hotline is 866-652-7474.

Agencies of the federal government have likewise taken action to protect the nation's elderly.

Health and Human Services (HHS) announced that Medicare, Medicaid and other eligible beneficiaries living in Lower Manhattan who are having trouble getting their usual health care services and social services for daily living needs can now call a 24-hour, rapid response hotline for help: 1-800-331-7767.

HHS also made \$2.5 million available for community health and social services in New York City, including \$500,000 to provide support services to seniors. Many senior centers may need assistance with transportation, health care, meals and counseling services.

In an emergency message sent to all providers and health plans, HHS Centers For Medicare & Medicaid Services (CMS) assures them that it will financially back all of their efforts to provide aid to Medicare and Medicaid beneficiaries. CMS asked providers to provide emergency care first and worry about reimbursement later.

CMS is waiving one of Medicare's rules for skilled-nursing

facilities in the New York and Washington areas to help the facilities relieve overburdened hospitals. The rule is Medicare's requirement that beneficiaries stay at least three days in an acute care hospital prior to skilled-nursing care. The requirement is being dropped because hospitals in the disaster areas were discharging some patients to nursing homes sooner than usual to provide space for the injured.

The Office of Personnel Management (OPM) released a statement: "Survivors of federal civilian employees killed in Tuesday's attacks likely are eligible for annuities under the Civil Service Retirement System or Federal Employees Retirement System. To certify their eligibility and apply for those benefits, survivors can call 724-794-2005, where the OPM has staffers available to handle calls."

The Social Security Administration said its operators have special instructions for handling disaster-related calls. Claims for Social Security benefits may be filed by calling 1-800-772-1213.

"If you are concerned that your Social Security check for September won't arrive on time, don't worry," says the SSA. "The recent national tragedy has not affected our ability to send your check as scheduled."

(Portions of this article were reprinted from the Elder Law

ESTATE PLANNING FOR GAYS, LESBIANS, SINGLES AND UNMARRIED COUPLES

1.0 INTRODUCTION.

The legal issues involved in estate planning for gays, lesbians, singles and unmarried couples are similar for several reasons. These persons are all classified as "single" under the law, and are treated identically under the federal estate and state inheritance taxes, gift tax and Medicaid laws. Moreover, the overall estate planning goals of homosexuals, both singles and couples, are usually the same as those of heterosexuals. That is, whatever their sexual orientation, individuals usually desire that, at death, their assets pass to their loved ones in a manner which is quick, easy, and results in the least amount of taxation. For these individuals, estate taxation is particularly onerous if a proper estate plan is not established. However, estate planning for gays and lesbians presents special considerations because current law presents obstacles to the achievement of estate planning objectives by homosexual couples.

2.0 DELEGATING AUTHORITY: THE IMPORTANCE OF ADVANCE PLANNING.

A significant problem facing gay men and lesbians is that each usually wants to benefit his or her partner, but often meets resistance from family members. The law favors the family members. To insure that a homosexual partner, rather than a family member, maintains control over financial and medical affairs, advance planning is critical. There are a number of important estate documents every person should have, but which are especially crucial for gays and lesbians.

2.1 Disposition by Last Will and Testament vs. Intestacy.

A will identifies the persons who will get your assets after death (your "beneficiaries") and appoints various "fiduciaries", such as a person to settle the estate (an "executor" (male) or "executrix" (female)), a person to administer trusts (a "trustee"), and a person to act as a substitute parent for minor children (a "guardian"). If you do not have a will at the time of your death, your assets pass by "intestacy" which means that state law controls who becomes both the beneficiaries of your estate and your fiduciaries. The intestacy laws in New Jersey do not take into account gay and lesbian relationships. That is, under New Jersey law, the assets of a person who dies without a will go to the surviving spouse, if any, and then to blood relatives such as children, parents, grandchildren and siblings. N.J.S.A. 3B:5-4. Also, a person without a will cannot designate a fiduciary. N.J.S.A. 3B:10-2. Rather, family members will be appointed. A surviving partner will not be able to plan funeral arrangements, and may not even be informed where the funeral is held. Importantly, if the homosexual couple has minor children, the courts will favor biological family members over the partner for guardianship unless a guardian is named in the will.

2.2 Durable Powers of Attorney.

A power of attorney ("POA") document authorizes another person to act as your agent and on your behalf for financial and business affairs. The POA gives the agent broad authority to act as a financial

agent with authority over and access to bank accounts, brokerage accounts, the purchase and sale of property, the power to deal with insurance companies, to establish trusts, to make gifts and change beneficiary designations.

For homosexual couples, a POA has great significance. Absent a POA, financial and business decisions might be taken over by family members who are preferred in the law. To insure that one's life partner is the decision-maker, advance planning is required. The POA can authorize the expenditure of the principal's assets to support the life partner. For heterosexual singles, consideration should be given to naming a family member, friend or trusted advisor as agent.

2.3 Advance Medical Directives and Health Care Proxies.

In New Jersey, an Advance Medical Directive ("AMD") gives instructions for the conditions under which life-sustaining procedures should be utilized when there is no hope of regaining a meaningful quality of life, identifies what medical treatments should be provided, tells whether feeding tubes should be used and whether organs should be donated, among other things. An AMD also designates an agent to make health care decisions. In the absence of an AMD, medical providers may turn to the biological family members to make these decisions, thereby completely shutting out life partners. An AMD should also specify who has visitation rights in the hospital, and may give a partner priority visitation rights over

(Continued on Page 3)

Estate Planning for Gays, Lesbians, Singles and Unmarried Couples

(Continued from Page 2)



biological family members.

2.4 Prepaid Funeral. Homosexuals or singles can plan his or her own funeral by a purchasing prepaid funeral. Otherwise, burial decisions may be left entirely to the biological family and a person may not be buried near his or her life partner.

2.5 Domestic Partnership Agreement. For unmarried couples, a domestic partnership agreement is necessary to establish the ground rules governing the sharing of assets, income and expenses. This agreement should address three categories of assets: those assets which each party brings to the relationship, those assets received by inheritance or gift during the relationship, and those assets earned during the relationship.

3.0 CONCLUSION.

Currently the law favors family members over an unmarried partner in areas involving the control of finances and medical decisions during life and the disposition of assets after death. In order to insure that the life partner, rather than a family member, maintains control over financial and medical affairs, advance planning is critical. Estate planning and the preparation of a Last Will and Testament, Durable Power of Attorney, Advance Medical Directive and Domestic Partnership Agreement are absolutely crucial in providing financial security to a surviving partner.



A PUBLICATION OF THE
LAW OFFICES OF DONALD D. VANARELLI

Standards of Practice for Guardians

Developed By The National Guardianship Association

No. 1: A guardian shall maintain the confidential nature of the ward's affairs at all times.

No. 2: A guardian shall avoid even the appearance of a conflict of interest or impropriety when dealing with the ward.

No. 3: Substituted judgment shall be the standard that guides the decision-making of the guardian. When the guardian is unable to ascertain the ward's wishes, the guardian shall employ the best interests standard.

No. 4: A guardian who is responsible for the person of the ward shall involve the ward, to the extent of the ward's ability, in making decisions about the ward's housing, which shall be in the least restrictive environment consistent with the ward's safety. The guardian shall attempt to maximize the self-reliance, autonomy and independence of the ward.

No. 5: A guardian shall develop and monitor a written plan setting forth long-term and short-term goals for the ward.

No. 6: A guardian has a duty to promote and monitor the ward's health and well-being.

No. 7: A guardian of an incapacitated person shall provide competent management of the ward's property, and shall supervise all income and disbursements of the ward's estate in accordance with law.



HHS releases First National Survey of Assisted Living Facilities for the Elderly

HHS has released a report on assisted living facilities finding that most residents surveyed feel they are treated with respect, affection and dignity by facility staff. However, residents also expressed concerns over the number of staff available and staff turnover. The report, the first national study of assisted living facilities for elderly residents, is called A National Study of Assisted Living for the Frail Elderly.

It is available online at <http://aspe.hhs.gov/daltcp/reports/hshp.htm>.

Major findings of the new report include: (1) ½ of the residents were aged 85 or older, educated and relatively affluent. ¼ of the residents had significant cognitive impairments. (2) Although staff were knowledgeable about many care issues, they were less knowledgeable about dementia care and uninformed about the normal characteristics of aging. (3) Observers found the visited facilities to be largely well-maintained, clean, relatively homelike settings with a wide range of social and recreational resources. (4) The median price of the facilities was \$1,800 per month. There was a wide variation in the type of services covered by the base rate.

As of 1997, there were approx. 11,459 assisted living facilities nationwide, with about 611,300 beds and 521,500 residents. On average, residents of these facilities are less severely disabled than residents of nursing homes.



Donald D. Vanarelli, Esq., a **Board-Certified Elder Law Attorney** and **Registered Guardian** with offices in Westfield, will be conducting *free* seminars on “Protecting Your Assets From Catastrophic Nursing Home Costs” and “Estate Planning” at several local libraries this Fall. In these hands-on workshops, participants will learn (1) how to qualify for government assisted medical programs while still preserving their assets for their heirs, and (2) how singles, unmarried couples and homosexuals can best prepare for aging and disability during life and for the disposition of their estates upon death.

UPCOMING WORKSHOPS

How To Protect Your Estate From Catastrophic Nursing Home Costs

Thursday, September 20	Roselle Park Library	7:00 PM-8:30 PM
Wednesday, September 26	Scotch Plains Library	9:30 AM-11:00 AM <i>and</i> 7:00 PM-8:30 PM
Wednesday, October 10	North Plainfield Library	1:00 PM-2:30 PM <i>and</i> 7:00 PM-8:30 PM
Wednesday, November 7	Union Library	7:00 PM-8:30 PM

Estate Planning For Gays, Lesbians, Singles and Unmarried Couples

Tuesday, October 15	Plainfield Library	1:00 PM-2:30 PM <i>and</i> 7:00 PM-8:30 PM
---------------------	--------------------	---

In addition to being certified as an Elder Law Attorney by the National Elder Law Foundation, an ABA-approved certifying organization, Mr. Vanarelli has also been certified as a Registered Guardian by the National Guardianship Foundation. He is founder and Chairman of the Elder Law Committee of the Somerset County Bar Association and is the former Secretary of the New Jersey Chapter of the National Academy of Elder Law Attorneys. Mr. Vanarelli is also an active member of the Union County Elder Law Committee, the Elder Law Section of the New Jersey State Bar Association, the National Academy of Elder Law Attorneys and the National Guardianship Association.

To register, please call 908-232-7400. For more information, visit Mr. Vanarelli's web sites at dvanarelli.lawoffice.com and elderlawanswers.com/attorney/vanarelli.html.

ELDERLAW NEWS

LAW OFFICES OF
DONALD D. VANARELLI
The Legal Centre
211 North Avenue East
Westfield, NJ 07090
Tel: (908) 232-7400
Email: dondv@superlink.net
Website: dvanarelli.lawoffice.com