

Accettura & Hurwitz

Estate & Elder Law

32305 Grand River Avenue
Farmington, MI 48336

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Phone: 248.848.9409 | Fax: 248.848.9349 | www.elderlawmi.com

Farmington Office: 32305 Grand River Avenue, Farmington, MI 48336

Royal Oak Office: 1022 S. Washington, Royal Oak, MI 48067

Medicare. Since at least 90% of rehab facilities accept both Medicare and Medicaid, it would be a shame to accept a discharge to a facility that you will have to leave when your Medicare days (potentially up to 100 days) run out. Also, **please call us if we haven't seen you since 2018.**

Please Say Nice Things About Us!

If you are unhappy with our service please contact our office and speak with our office manager, Kim Rapp, and we will do our best to remedy the issue. If you are happy with our service, please visit our Facebook page called "Accettura & Hurwitz: Estate and Elder Law" and/or Google Review and give us a good review so others will know of our good work.

This Newsletter is considered general information and is not intended to constitute individual legal advice. Please contact us if you think the information herein impacts you directly. We look forward to speaking with you soon. Please visit our website www.elderlawmi.com

Very truly yours,

ACCETTURA & HURWITZ

P. Mark Accettura Samuel A. Hurwitz Rebecca A. Coyle Wendy Turner Austin R. Accettura



P. Mark Accettura, Esq.
maccettura@elderlawmi.com



Samuel A. Hurwitz, Esq.
shurwitz@elderlawmi.com



Rebecca A. Coyle, Esq.
bcoyle@elderlawmi.com



Wendy K. Turner, Esq.
wturner@elderlawmi.com



Austin Accettura
aaccettura@elderlawmi.com



Kimberly G. Rapp
Office Manager
kgrapp@elderlawmi.com

SPRING 2023 UPDATE

As is our custom, this semiannual correspondence is intended to keep you abreast of developments in estate and elder law. The following is a brief summary of noteworthy developments since our last communication:

This newsletter is dedicated to the subject of optimizing the benefits of your estate plan and minimizing the difficulties in wrapping up your estate at the time of death. You went through the cost and effort of creating an estate plan, make sure it reflects your wishes and avoids probate. We also address what we see as the growing problem among our aging clients of unfiled income tax returns and lapsed homeowners' insurance.

Do I need a Financial Advisor? An Accountant?

We observe that about half of our clients work with financial advisors (FA), and a much higher percentage work with a CPA or other accounting professional. We are often asked by our clients who have not worked with professionals whether we recommend they do. Our answer is almost universally "yes." There are a number of reasons we think our clients are well served by obtaining professional help.

The investment arena is extremely complex. A financial advisor can help identify goals and recommend investment decisions to achieve those goals. A FA can also help regulate the human impulse to "sell everything" on signs of economic turbulence or go "all in" on a hot stock.

Couples face a unique challenge. Often, one spouse oversees investing and filing tax returns. While convenient when both are alive and well, the survivor is often "completely lost" when the spouse or partner in charge passes or loses capacity. A better approach is for the couple to work together with a financial advisor. By doing so, the non-financial spouse will become acquainted with the advisor, the couple's potentially disparate philosophies and risk tolerances will be addressed, and the likelihood of a seamless transition on the death or incapacity of the financial spouse will be enhanced.

Using a professional tax preparer will help you stay on track with your filings, especially in later years, and will be a resource for the surviving non-money spouse. An accountant familiar with your history is also invaluable to those who administer your estate after both spouses have passed.

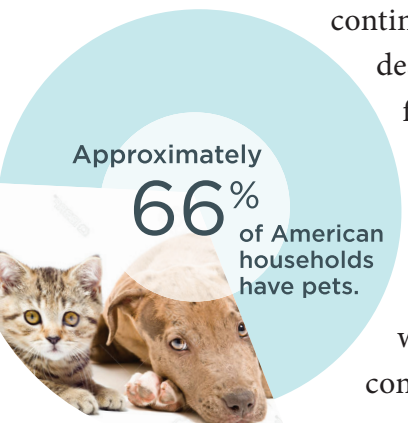
IRA Required Minimum Distribution “RMD” Update

On December 29, 2022, the president signed Secure Act 2.0 into law. The Act contains over 90 changes impacting retirement plans. The most significant changes affecting our estate planning clients is the increase of the required minimum distribution age to age 73 beginning January 1, 2023. IRA owners turning age 72 in 2023 would not be required to take RMDs in 2023. The RMD age moves up again to age 75 effective January 1, 2033.

The Act also reduces the excise tax imposed for failure to take required minimum distributions (RMDs). The Act reduces the penalty to 25% on the shortfall (the rate was 50% prior to the Act, the most severe penalty in the tax code) and goes down to 10% if the delinquent RMD is taken by the end of the second year following the year it was due. The new penalty provisions apply began January 1, 2023. Relief was and continues to be available if the failure was due to “reasonable error” such as serious illness. IRS Form 5329 is used to apply for forgiveness.

How Do I Provide For My Pets After I Die?

Questions arise as to who will be responsible for their continuing care after their owner’s death and how it will be paid for. United States law regards pets as property, and thus ineligible to directly inherit money or property. Prior to 1990 there was no direct way to set aside funds for the continuing care of pets.



Resolution of the problem began to evolve in 1990 when the first pet trust statute was introduced. Currently, every state, including Michigan, has adopted statutes that allow for the creation of

enforceable trusts for the care of animals. Pet trusts can also provide for pets in the event their owner becomes incompetent.

It is our practice at Accettura & Hurwitz for clients who wish to provide for their pets to create a pet trust as a sub-trust within our typical revocable living trust. We recommend that the grantor designate the person who will act as caregiver or allow the successor trustee to appoint one. Funds set aside in the pet trust, typically a dollar amount, do not go directly to the caretaker. Instead, they are held in trust and managed by the trustee, which could be the designated caretaker. However, some believe that it is best to avoid having the caregiver be the beneficiary of remaining funds to avoid an incentive for a pet’s early demise.

Pet trusts can also give direction as to the care of pets, funeral and burial arrangements, compensation for the caregiver, and name the the beneficiary of amounts remaining in trust after the death of the last surviving pet.

It is important to choose the correct dollar amount to adequately provide for the pet’s lifetime care. An amount that is extremely low would be a burden to the caregiver. Excessively large allocations invite court challenge by remainder beneficiaries.

Whether or not you need a pet trust depends on a number of factors including the life expectancy of your pets (horses and parakeets can live for decades), the cost of their care, and whether there are members of you family who are ready and willing to provide for their care.

Do I Need a Trust?

In most cases the answer is “yes.” Trusts avoid probate and allow the maker to provide for a number of unforeseen contingencies like the death of beneficiaries prior to the death of the maker.

What about trust substitutes like TOD, POD and ITF Designations?

Designations like transfer on death (TOD), pay on death (POD) and in-trust-for (ITF) direct who shall inherit financial assets upon the death of the account owner. These designations avoid probate but can lead to unintended consequences.

The owner of bank, credit union, brokerage and other financial accounts may designate a beneficiary to whom the account will be paid upon the death of the owner. TOD and POD designations have different origins but today are used interchangeably. During life, TOD and POD account owners retain complete control of their accounts. Designated beneficiaries have no rights during the life of the account owners.

Despite their ease of use, TOD, POD and ITF designations have a number of disadvantages including:

- 1 Probate is required if all designated beneficiaries predecease the owner.
- 2 Multiple beneficiaries must receive equal share.
- 3 If a beneficiary predeceases owner, the account does not pass to the predeceased beneficiary’s children as parents often intend, and
- 4 Probate will be required for minor beneficiaries.

TOD, POD and ITF accounts that name a revocable trust as beneficiary avoid the aforementioned disadvantages. Thus, TOD, POD and ITF accounts that name a trust as beneficiary (rather than individuals) are an acceptable substitute for transferring ownership of accounts into trust (which is a critical part of the trust funding process). For the reasons below, however, we never recommending using the ITF designation.

ITF designations are different than TOD and PODs. ITF accounts are bank or investment account that are held for the benefit of someone else (often a minor). ITFs are often referred to as informal trusts because

there is no written trust document in place. Under Michigan law, ITF accounts are paid to the named beneficiary upon the death of the last surviving account holder. What makes them different from TOD and PODs is that ITF accounts may confer rights to beneficiaries during the life of the account owner. While beneficiaries of ITF accounts cannot withdraw funds from the account during the owner’s lifetime, the account owner (who is acting as an informal trustee) may have a fiduciary obligation to use the funds in the account solely for the benefit of beneficiaries. With no direction under Michigan law, the owner may have an obligation to manage the ITF account in a way that maximizes its value to the beneficiary and arguably could be irrevocable.

With little or no legislative guidance under Michigan law, the use of the ITF designation creates confusion as to the relationship of the owner and beneficiary. Although we are not aware of any cases in Michigan, ITF beneficiaries may prevent the owner from withdrawing funds from the ITF account. Creditors of the beneficiary may also attempt to attached ITF accounts, arguing that such funds are being held for the beneficiary.

Call Us Immediately When...

Call us from the hospital *before* you are discharged to “rehab.” While hospital discharge planners may suggest a facility, it is ultimately your right to choose the nursing home (nursing homes provide both rehabilitation and long-term care services) where you wish to continue your recovery. Hospital discharge planners often choose facilities that only accept

