Accettura & Hurwitz
Estate & Elder Law

32305 Grand River Avenue
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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,

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SPRING 2021 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:

Proposed Changes to Death Taxes

The Biden Administration has proposed significant changes to the taxation of inheritances. Most significantly, the proposed *American Families Plan* would end the one-hundred-year-old capital gains tax exemption on inherited assets sold after a taxpayer's death. While it is unlikely that the proposal will pass in its current form, it is an indication that the current administration is targeting inheritances as a source of revenue. A little primer on the United States inheritance tax system is in order to put the proposed changes and possible future proposals in context.

Gift and Estate Tax

There are two different and potentially overlapping forms of inheritance tax in the United States: the gift and estate tax and the income tax. Gift and estate tax is levied on estates to the extent they exceed a certain value (currently $11.7 million (as indexed)), which is scheduled to be reduced to $6 million (as indexed) in 2026. For our purposes, the income tax can be broken into two parts: ordinary income and capital gains.

Income Tax

Ordinary income includes things like the decedent's final wages, bond income, and most significantly, retirement accounts like 401ks and IRAs. The proposed law does not change the tax on ordinary income items. Ordinary tax items received by the decedent's beneficiaries will continue to be taxed to beneficiaries at each beneficiary's individual tax rate upon receipt. The big changes are proposed on inherited capital gains assets.

Capital Gains

Capital assets, like appreciated stock and real estate, have long been given favorable tax treatment. During life, long-term capital gains (measured as the spread between the amount realized on the sale of a capital asset and the amount originally paid, or "basis") are taxed at a much lower rate than ordinary income. By contrast, the tax on inherited capital assets is waived.

Capital gains are forgiven at death through a mechanism known as the "stepped-up" basis. Beneficiaries are deemed to have paid the date-of-death fair market value for inherited capital gain assets. So, for example, while a capital asset sold during life that was purchased for ten dollars is

sold for one hundred dollars results in a ninety-dollar capital gain, the same sale after his death would be tax-free since the decedent's beneficiaries are deemed to have paid one hundred dollars (fair market value of the stock at death) for the stock. Bonus!

Under the Biden proposal, the untaxed gains on investments held at death would be taxed to the extent they exceed an exemption of $1million. The proposal allows an additional $250,000 for the sale of a home. For a married couple the total exemption would be doubled to up to $2.5 million of gain. In a complete departure from existing law, the capital gain is automatic; the tax is due whether or not capital assets are sold.

Here's how the proposed law would work. When grandma died she owned stock worth $3million that she bought for $1 million. Under existing law, neither grandma nor her heirs would owe federal income tax on the $2 million of stock gains because her "cost basis" the starting point for measuring taxable gains on assets is "stepped up" to their value at the date of death. In addition, no estate tax would be owed because her total assets are below the estate-tax exemption.

Under the new law, grandma's final income tax return would show $1 million of taxable gains (the $2 million dollar actual gain reduced by her $1million exemption). What is worse, the tax is due whether or not her beneficiaries sell her assets. Her death is treated as a sale that triggers the tax. It appears that if she would also pay tax on her home if it had appreciated more than $250 thousand dollars.

Still much is unknown about the proposal. When would it be effective? Could a deceased spouse share the unused portion of his or her $1 million with their surviving spouse? Will there be changes to the gift tax rules to prevent decedents from paying the capital gains tax upon death? Despite many unknowns it is not too early to begin thinking about these issues as Congress clearly sees the death of a taxpayer as an appropriate time to tax. Remember, a unified Congress just as recently as 2019 shortened the stretch on IRAs to ten years for non-spouses.

Your Refrigerator Magnet

Back by popular demand! Attached is your very own refrigerator magnet. Display it in a place where you will be reminded to keep your estate plan current and to let your family and loved ones know who to call in the event of your illness or passing.

What's The Difference:
Patient Advocate vs DNR vs Physician Orders for Scope of Treatment (POST)?

There may come a time when we cannot participate in our own health care decisions. Fortunately, a number of tools are available under Michigan law that allow for the appointment of substitute decision makers and to direct the type of medical interventions we do and don't want. Referred to generally as advance directives, we have the Durable Powers of Attorney for Health Care (HCPOA), Do Not Resuscitate (DNR) orders, and the relatively new Physician Orders for Scope of Treatment (POST). So, what does each do and when should they be used?

Patient Advocate

The most versatile and critically important health care document is the HCPOA. In it, the maker appoints a Patient Advocate to assist in day-to-day health care decisions and, if desired, to "pull the plug" in the event of terminal illness. A HCPOA must be signed by its maker but need not be signed by a medical professional. A patient advocate may sign both a DNR and a POST on behalf of disabled patient. HCPOAs are effective both in and out of hospitals. In fact, federal law requires that upon admission hospitals ask whether incoming patients have an advanced directive.

DNR

DNR orders have a very specific and limited use: they allow a person to refuse life support if his or her breathing and heart has stopped. DNRs must be signed by the patient (or a Patient Advocate acting under a HCPOA) and the patient's attending physician. DNRs are not effective in hospitals.

POST

Physician Orders for Scope of Treatment (POST) are a relatively new (2018) advance directive tool. POSTs are the product of an advanced-care planning discussion between the patient (or patient advocate or guardian) and his or her attending doctor (or physician's assistant, or nurse practitioner). A POST is signed by both the patient and the attending health care provider and constitutes a physician's active orders for treatment of a patient not expected to live more than one year. POSTs offer more end-of-life treatment options than a simple DNR, including direction on whether or not to resuscitate, ventilation, defibrillation, comfort measures, and other non-emergent measures.

A key component of POST is a thoughtful advance-care planning conversation between a patient and his or her attending health professional before the form is signed by both parties. The primary goal of POST is to improve the chances that the medical treatment preferences of a seriously ill patient will be honored by healthcare providers.

A POST complements the advance directives available in Michigan including health care powers of attorneys and DNRs. POST forms, printed on pink 65lb card stock, are valid for one year from the date of signing. POST forms are only officially recognized in out-of-hospitals settings like EMS call to a patient's home, assisted living facilities or nursing homes. If a patient's choices on a POST form conflicts with his or her preferences in an earlier-executed HCPOA or DNR, the medical orders in POST take precedence.

We encouraged terminally ill patients to schedule an appointment with their primary care physician to discuss whether establishing POST is appropriate. It is also critically important to maintain an up-to-date HCPOA to allow a trusted patient advocate to have the end-of life discussion with medical personnel in the event you unable to speak on your own behalf.

	Patient Signature Required	Doctor Signature Required	Recognized in Hospital	Duration of Validity
HCPOA Patient Advocate	**YES**	**NO**	**YES**	**Indefinite**
DNR	**YES** (or Patient Advocate)	**YES**	**NO**	**Indefinite**
POST	**YES** (or Patient Advocate or Guardian)	**YES**	**NO**	**1 YEAR**

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 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 2011.**