

2012

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**Senior Resource Agencies**

As we find ourselves living longer, we also find that many of our grandparents and our parents may need a level of care that we as a family cannot provide them individually. Many children are already facing their own family, job and financial issues. Caring for a parent or grandparent may not be an option. Many families have never been faced with the task of finding a place for mom or dad or finding someone to provide care in the home. There are many wonderful resources in our community to consider. Senior Services of Southwest Michigan is a local non-profit organization in our community that provides not only an enormous amount of information, but a laundry list of resources. You may know about Senior Services based on their Meals on Wheels Program, but they provide many other services within our community. For more information call (269) 382-0515 or go to their website at [www.seniorservices1.org](http://www.seniorservices1.org).

If you are looking for a private organization to help with your family's caregiving needs, Absolute Home Care, founded in 2005, is a locally owned agency which is a leading provider of quality home health care services in the Southwest Michigan area. Their quality caregivers deliver family and client-centered care that allows people to stay in the comfort of their own home while being treated.

Absolute Home Care and Medical Staffing are sensitive to the needs of both the client and their family. They know that this can be a very important time in an older adult's life, one that needs to be treated with care so that they may live a strong and healthy life. They are committed to delivering the best care possible so that your loved one can maintain or achieve the highest level of self-sufficiency. For more information go to [www.absolutehomecare.info](http://www.absolutehomecare.info) or call 888-875-8080.

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**Special Needs Planning**

When I started practicing law over 20 years ago, the concept of a Special Needs Trust was as foreign to me as it probably is to many of you. However, over the last 10 years, the need for Special Needs Trusts has become much more common. For those of my clients that have special need provisions in their Trust, this will serve as a wonderful refresher. For those of you that may have family members facing special circumstances and are not aware of this option, pay close attention.

A special needs beneficiary can be an individual that is mentally impaired or physically impaired. A special needs beneficiary can be of any age. Regardless of the disability or the age, if a beneficiary is entitled to government assistance under SSI and/or Medicaid, a Special Needs Trust should be considered.

A Special Needs Trust is not a stand alone Trust separate from a revocable Trust, it is provisions within your own Trust. A Special Needs Trust allows you to set aside funds for any family member that is receiving SSI or Medicaid, without affecting their benefits. A Special Needs Trust allows your successor Trustee to hold funds in your Trust for the benefit of the special needs beneficiary. The beneficiary has no control over the money, they cannot demand any funds from the Trust and the funds do not appear under the special needs beneficiary's social security number.

A Special Needs Trust places control of the funds in the hands of your Trustee, not the beneficiary. These funds can be used for many of the comforts and luxuries that government benefits do not provide. For example, Medicaid will not provide your special needs beneficiary with entertainment funds, funds to buy clothing or new furniture, funds to travel with family members or even funds to pay their utility bill or phone bill. I am sure that many of you are aware that over the course of time we are going to see government benefits cut more and more each year. Medicaid may someday no longer cover dental care, eye care or costs associated with hearing impairment. If and when the government quits providing these benefits to special needs beneficiaries, your Special Needs Trust will allow the Trustee to step in and make sure funds are available for these very important medical needs.

If you have a simple Last Will and Testament that merely allows funds to be distributed outright to a special needs beneficiary, you will need to revisit or at least consider updating your estate plan. Many family members will opt to by-pass a special needs beneficiary and leave all of the money to their other children with the "understanding" that the other children will hold some funds aside for the special needs beneficiary, in the event a need arises. With today's economy, bankruptcy filings, unemployment rates and divorce rates, relying on this "understanding" with your other beneficiaries puts your special needs beneficiary at risk. Even if your children have every intention of segregating funds for the benefit of your special needs beneficiary, those funds could be lost in the event of a financial crisis or divorce.

In addition to considering a Special Needs Trust, there are also some additional things that you need to consider when dealing with a special needs beneficiary. Will that beneficiary need a legal guardian at the time of your death? Have you prepared instructions addressing the patterns, capabilities, likes and dislikes of the special needs beneficiary that can be passed on to a guardian or a

Trustee? Now is the time to review your documents and instructions and make sure you have addressed each of these issues.

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### Tax Issues

This is just a simple reminder that the death tax for 2012 will stay at a five million dollar exemption per person. It is anticipated that this amount will change or be revisited before 2013, but it is the number we can rely on for this year. Additionally, the amount that you can gift per person, per year without the giver or the receiver having to report the gift to the IRS is \$13,000.

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### Specific Gifts In Your Estate Plan

Many of my clients have put provisions within their Trust that provides that a beneficiary is to receive a specific gift of real estate, ownership in a business or stock when the assets are distributed at death. When the Michigan Trust Code was enacted in April 2010, it addressed the issue of "specific gifts". The new statute states that if your Trust provides that a beneficiary is to receive a specific gift and the Trust is silent as to what happens if that asset is no longer part of your estate plan at the time of death, the Michigan Trust Code takes the position that the beneficiary is to receive something else of equal value. For example, if your Trust leaves your cottage as a specific gift to your oldest son and you sell the cottage before you die, if the Trust does not state that the gift lapses if the cottage is sold, your son will be entitled to receive something of equal value (another parcel of land or cash equivalent to the value of the cottage). This law applies to any and all active Trusts regardless of when they were signed or amended. Therefore, it is important that you review your estate planning documents and if you have provided for a specific gift and that asset is no longer in your estate, you may need to update your estate plan to address whether that specific gift is null and void or whether that gift is to be replaced with a new gift. Much like I have addressed in previous newsletters, if there is a change in circumstances, it is always important to review your estate plan to make sure it still reflects your wishes.

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### A Change In Circumstances

Have any of these happened to you recently: a birth, a death, a change of employment, an inheritance, a change in medical condition, a change in family relationships, marriage, divorce, a change of address for you, your children, your successor Trustee, your Personal Representative, your medical advocates or your agents? Have you opened or closed bank accounts, changed advisors or sold your home? If any of these have occurred, it may be important for you to update your estate plan or provide us with updated information.

Also, when was the last time you opened your Estate Planning notebook? Not only to review your Estate Planning documents to make sure that they still reflect your wishes, but to also make sure you completed the extra forms in your notebook? Such forms include the funeral/burial questionnaire, the anatomical gift form, the specific gifts of personal property form and/or information on the placement of your pets.

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### Email Addresses

As with anything else, your email address is important to us. If your email address changes, please contact our office. Keeping your email up to date with our office will keep things current in our file and we will be able to keep you advised of any updates and/or seminars throughout the year. **If you had previously advised us that you do not use an email address, but have since obtained one, we would appreciate it if you would contact our office and provide that to my assistant Mary at 269-276-0055.** You can also email me at [danielle@rsylawoffice.com](mailto:danielle@rsylawoffice.com) or Mary at [mary@rsylawoffice.com](mailto:mary@rsylawoffice.com). If you do not own a computer, we honor that choice and we will continue to send your newsletter via regular mail.  
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### **Our office continues to offer the following legal services:**

- ▲ Chapter 7 & 13 Bankruptcy ▲ Drunk Driving
- ▲ Criminal Law ▲ Minor in Possession (special focus on college students & young adults)
- ▲ Social Security Disability ▲ Workers Compensation

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