

A GOOD RESULT

BY BEN KINIRY, ESQ.

I would like to take this time to tell you about one of my client experiences. I love to solve problems and enjoy helping families come up with unique solutions to meet their particular needs. In this case I think I did both.

In past articles I have discussed the topics of **Medicaid**, **Special Needs Trusts** and **IRA Inheritance Trusts** and some of the major points involved with each area of the law. This writing explains how I was able to aid clients in balancing some of their challenging, and somewhat conflicting, goals by utilizing my knowledge of these complex areas of the law.

The Clients: Last summer I met with Winston and Clementine Churchill (do I have to tell you that these are NOT their real names?). The Churchills have two children, Diana and Mary. In short, the Churchills desired to leave their two daughters an inheritance, especially Mary, who had some life struggles and is not likely to have adequate savings for retirement.

Some pertinent facts: Both Winston and Clementine were in their eighties. Winston was still working part-time, more for the health insurance benefits than the income. Clementine has some physical health issues and she is starting to be forgetful. Winston's IRA was holding approximately \$500,000 and Clementine's \$350,000. The Churchill's home was literally falling apart and would cost too much to repair. Mary lived locally, but had recently become unemployed. Diana lives about a thousand miles away, is married and doing relatively well.

There was much done in the way of discussing wants verses needs and priorities. In the end we came up with what I believe to be a well-balanced plan given the clients priorities and working within the confines of the law.

New Living Arrangement: The house was sold and the Churchills rented a three bedroom apartment. Mary moved in and became an employee under a **care-giver contract** to help Clementine (when set up correctly by an elder law attorney, the payments to Mary will not penalize or disqualify the family for the **Medicaid long term care benefit**). Mary now earns a living and is paying in toward her Social Security retirement benefits. As you can imagine, this arrangement also provides the sister, Diana, with peace of mind.

Fiduciary Appointments: Diana was assigned the role of Power of Attorney as she is well equipped to take care of the financials (Clementine historically handled the money and with some reluctance,



passed the torch to Diana). Mary was assigned the role of Health Care Power of Attorney as she resides with her parents and had previously worked in the medical profession.

Asset Protection Planning: In order to come up with a plan for asset protection purposes, it was necessary for the family to prioritize how their retirement savings would be spent. This is a highly personal decision. Many couples will spend every dime on maintaining their chosen quality of life. Others prioritize their child's future over their own needs. Somewhere in there, their personalities and goals guide the ultimate planning result.

The Churchills wanted to leave something to the girls and to be able to pay their bills, but did not want all of their life savings to be spent on long term care costs, if such care was ever necessary. The main driver was their daughter, Mary. They were (and likely still are) seriously concerned about her ability to "fend for herself" when they are no longer with us. Another issue is that they also wanted to treat their daughters equally, even though they believed that Diana can "take care of herself."

How did we balance up these competing interests?

Let's take **Clementine's estate** first. Upon her passing, one hundred percent of her retirement benefits will go into an IRA Inheritance Trust. Half will be held for the benefit of each daughter and Diana will be trustee for both shares. Why is Diana trustee for Mary? There is a fear that Mary would cash in the funds, pay all taxes due, miss out on the growth of the funds and spend it all in a most unwise manner.

The decision to bypass Winston was made based on the family's opinion that Winston had a reasonable amount of retirement funds and income to pay for his desired quality of life, without the need of receiving benefit from Clementine's estate. As can be seen, by bypassing Winston, any funds remaining in Clementine's estate would potentially meet the goal of leaving an inheritance for their daughters.

Winston's estate: Upon Winston's death, his IRA would pay to an IRA Inheritance Trust as well. His IRA would then be split into

three shares pursuant to a formula designed to leave Clementine with a net worth of \$300,000 at the time of his death. The first share would go **to his estate** and would, pursuant to the **terms of his Last Will & Testament**, be held in a Special Needs Trust for the benefit of Clementine. If any funds remained in Clementine's Special Needs Trust upon her death, the remaining fund will pour into the IRA Inheritance Trust for the benefit of the two daughters.

As can be seen, regardless of who dies first, the goal of leaving some funds for the daughters as an inheritance may be met.

You may ask, why did Winston leave his assets for Clementine's benefit to **his estate** and the use of his **Last Will & Testament**, when you seem to like probate court avoidance techniques? Well, you are very clever to have caught this detail, perhaps the bold coloring helped bring this key point to your attention. If Winston had directed the funds be held in a Special Needs Trust or any other trust other than one under his Last Will & Testament, then upon Clementine's death any remaining funds would be subject to a payback to the State under the State's Medicaid Recovery Program. In the alternative, a Special Needs Trust under your Will, does not have the payback requirement. This is what some would call a "loophole," and others would call "the law." The information in this article does not constitute legal or medical advice.

TO RECAP, this type of trust allows your children to inherit your retirement benefits and to stretch out the required minimum distributions to them AND protect the inheritance from assignment, pledge, attachment, execution or claims of any creditor, such as an ex son-in-law taking some of your retirement funds in a divorce.

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