LITTMAN KROOKS LLP

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PLANNING *For Your* FUTURE

A newsletter about important estate planning and elder law issues

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It's 2004, a new year and a time for new beginnings, fresh starts and making resolutions. If one of your New Year's resolutions is to plan for the future, today is the day to start. Call us today and let us help you plan for your and your family's future.

Have you been thinking of providing money for your grandchild's or child's education? In this issue, we discuss 529 Plans which help you save for a child or grandchild's higher education. Also in this issue, we address German War Reparations and Medicaid. In addition, we have included the Medicaid Resource and Income Levels for 2004.

I hope this issue finds you and your loved ones in the best of health!

Bernard A. Krooks, Esq.
Managing Partner, Littman Krooks LLP

FIRM NEWS

We are pleased to announce that *Howard S. Krooks, Esq.* has been elected Chair of the New York State Bar Association Elder Law Section. The Elder Law Section has a membership of over 2,700 attorneys. Howard's term will commence on June 1, 2004. Congratulations, Howard!

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MEDICAID *Resource* & *Income* LEVELS FOR 2004

On January 1st of each calendar year, adjustments are made to many of the public benefits numbers in accordance with adjustments in the cost of living index. The following Medicaid numbers reflect the 2004 levels *(effective January 1, 2004)*:

Medicaid Income Levels:

For a Single Individual $659 (plus $20 income disregard)

For a Couple $950

Medicaid Resource Levels:

For a Single Individual $3,950

For a Couple $5,700

Community Spouse Resource Allowance ("CSRA"):

Minimum: $74,820 Maximum: $92,760

Minimum Monthly Maintenance Needs Allowance ("MMMNA"): $2,319

MEDICAID PLANNING WITH *529* PLANS

By Bernard A. Krooks, Esq.

Sally is six years old. Sally's grandparents, Joan and Bill, would like to contribute towards her college education. They plan to open an account and make contributions to the account each year on Sally's birthday. Their hope is that over time the account will grow and be a significant help in paying for Sally's college.

Section 529 of the Internal Revenue Code provides for an excellent method to save for a child or grandchild's higher education. 529 Plans are offered in all states, although some state programs are better than others. A person may establish a 529 Plan in any state, not necessarily in the state in which the person resides. State plans vary. It pays to shop for the best plan.

Withdrawals from a 529 Plan may be made at any time but if the withdrawal is not used for qualified higher education expenses, the earnings are taxed as ordinary income to the distributee and a 10% penalty is imposed on the amount withdrawn. The distributee could be either the account owner or the beneficiary. The penalty is waived on death or disability of the beneficiary.

Estate & Gift Tax Considerations

Amounts in 529 Plans are generally not includable in the estate of the contributor or the beneficiary for federal estate tax purposes.

Contributions to 529 Plans qualify as annual exclusion gifts. 529 Plans may

be "pre-funded" with up to five years of annual exclusion gifts provided the donor elects to make the contribution to the account ratably over five years for gift tax purposes. Therefore, a gift of $55,000 may be made in one year provided no gift is made in any of the next four years. The donor must be careful to coordinate gifts to 529 Plans with other annual exclusion gifts.

Income Tax

The principal tax advantage of 529 Plans is that the investment income earned escapes federal income tax. Many states, including New York, allow state income tax deductions for contributions to a 529 Plan. The funds withdrawn from the Plan, however, must be used for qualified higher education expenses for the beneficiary.

Contribution Limitations

Investment minimums are usually very low and may be made only in cash. The 529 Plan must prohibit contributions in excess of the amount necessary to provide for the qualified higher education expenses of the beneficiary. This amount varies with each state plan.

Beneficiaries

Beneficiaries can be changed at any time so long as the new beneficiary is a "member of the family" of the current beneficiary. In this way monies remaining in an account after a beneficiary completes his/her education may be used for another family member. Similarly, if the initial beneficiary does not attend college another family member may use the funds. Members of the family include the following:

- Spouse
- Descendants
- Stepchildren
- Siblings and Step-siblings
- Parents and Grandparents
- Stepfather or Stepmother
- Nieces and Nephews
- Mother, Father, Son, Daughter, Brother, Sister
- First Cousins
- Spouses of any of the above

Qualified Higher Education Expenses

Qualified higher education expenses include: tuition, fees, books, supplies, and equipment. They also include room and board if the beneficiary is an "eligible student." An eligible student is one who carries at least half the normal full-time workload for the course of study being pursued. Room and board is the amount normally assessed for dormitory living if the beneficiary lives in the dormitory,

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MEDICAID PLANNING WITH 529 PLANS
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or $1,500 per year if the beneficiary lives with his/her parent or guardian, or $2,500 per year if the beneficiary lives anywhere else.

Medicaid Considerations

Funds in the account are the property of the account owner and, therefore, are available resources for Medicaid eligibility purposes. Thus, even though a 529 account may be created many years in advance of a nursing home placement, the funds in the 529 account may not be protected. However, the solution to this problem is a 529 Trust. The trust provides that the parent or grandparent cannot withdraw the contribution. This makes the assets unavailable for Medicaid eligibility purposes. These trusts can be established as part of an individual's estate plan or as part of a Medicaid planning strategy. Where appropriate, gifts can be made to qualify for the annual gift tax exclusion.

While planning for a family member's college education is a prudent thing to do, it is important for you to understand the tax and long-term care ramifications of your actions. Before planning for future education expenses, consult with us and we will help you review your options, including all tax and long-term care considerations.

GERMAN WAR *Reparations*

– Tips On How to Keep These Funds Exempt Under Medicaid Rules

By Howard S. Krooks, Esq.

Applying for Medicaid benefits in New York is not an easy task. Aside from providing Medicaid with documentation of an applicant's entire financial and personal history, one must familiarize him/herself with the rules pertaining to which assets and items of income are countable for purposes of determining whether an applicant meets the stringent resource and income limitations. While Medicaid counts a great deal of an applicant's income (such as Social Security income, pension income, dividend and interest income, etc.), not all of the income available to an applicant is counted in determining his/her financial eligibility for Medicaid. Certain types of income are disregarded. Perhaps one of the more common income disregards is the receipt of German War Reparations.

Since January 1, 1991, German War Reparations received by a Medicaid applicant/recipient have not been counted as income in determining an individual's Medicaid eligibility. Furthermore, such payments are not counted in determining the amount of monthly income a recipient is required to pay monthly to a nursing home. However, like many other things in life, there are traps for the unwary. For example, co-mingling German War Reparations with other funds which are not exempt may render the entire amount countable for Medicaid eligibility purposes. Thus, if a person has a savings account with $100,000 of countable assets, and $150,000 of German Reparation Funds are placed into this existing account, Medicaid may treat all $250,000 as available for long-term care costs. Another issue pertains to how the account which holds German War Reparations is titled. For example, if the account is titled solely in the name of the individual applying for Medicaid, while the funds remain exempt during the individual's lifetime, Medicaid could file a claim against the funds in the account upon the person's death. Thus, careful planning will be required in order to avoid this result.

Here are a few points to keep in mind when dealing with German War Reparations:

- German War Reparations received from the Republic of Germany should be kept in a separate bank account and not co-mingled with other, non-exempt funds.
- Although German War Reparations are exempt from consideration in determining an individual's Medicaid eligibility, interest earned on funds contained in these accounts is not exempt and is countable.
- "Nazi Persecution Funds" also are exempt from being counted as an asset. This refers to funds received by an individual based upon recent diplomatic and legal recovery efforts to compensate victims for stolen property (precious metals, jewelry, money held in Swiss bank accounts, etc).

For more information on how German War Reparations impact Medicaid eligibility, please give us a call. We will be happy to help you protect your valuable assets.

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Frequently Asked Questions Regarding German War Reparations

1. ***Can an individual who did not keep German War Reparations segregated from other funds still maintain the exempt nature of these funds?***
   The answer will depend on whether and what documentation you have to prove that the funds received represent German War Reparations. If you have a transcript from the German government indicating the amount of reparations the individual received over time, then you may be able to segregate the funds after the fact and claim them as exempt funds for Medicaid eligibility purposes.

2. ***Must I establish a so-called Restitution Trust in order to preserve the exempt status of German Reparation Funds?***
   The answer is no, you do not have to create a trust which holds the reparations in order for the reparations to be considered exempt for Medicaid eligibility purposes. Although the trust will provide a management vehicle for investment of the funds, it is not necessary to create the trust in order for the funds to be exempt.

3. ***Can I freely transfer German war reparation funds held in a segregated account without incurring a penalty period for purposes of establishing eligibility for nursing home Medicaid?***
   Yes.

If you are interested in having an Elder Law Attorney from Littman Krooks LLP speak to your group, please contact Nicole Garcia at 914-684-2100.

If you have moved or have address corrections, please contact Nicole Garcia at 914-684-2100. Please also call Nicole if there is someone else you know who would enjoy receiving our complimentary newsletter and we will add them to our mailing list.

If you would like to have a copy of this newsletter e-mailed to you, please e-mail Nicole Garcia at ngarcia@lkllp.com

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