Do-It-Yourself Will Leads to Unwanted Result

If you choose to write your own will, you run the risk of not having your estate distributed the way you want, as a recent Pennsylvania case illustrates.

George Zeevering apparently wanted his estate to go to two of his five children. Instead of seeking out an elder law attorney to advise him on drawing up an estate plan, he decided to write his own will. The will gave his pickup truck to his daughter Diane and his summer property to his son Wayne. Mr. Zeevering also wrote in the will that he was intentionally leaving out his other three children.

The problem with the will was that Mr. Zeevering did not specify what to do with the remainder of his estate (called a "residuary clause"). While Mr. Zeevering probably intended that the rest of his estate – which totaled $217,000 – would go to his favorite children, he didn't state that in the will. Because the will had no residuary clause, the remainder of Mr. Zeevering's estate passed under the state law that specifies who inherits when there is no will. Under Pennsylvania law, this meant that the rest of Mr. Zeevering's estate would be divided equally between his five children.

A state court confirmed this result, but only after the children had spent much more in attorney fees than their father would have paid a lawyer to have his will done properly. While you may save some money drafting your own will, you are in danger of making mistakes that can cause unneeded conflict and don't get the result you want. Always seek the advice of your elder law attorney before creating an estate plan.

To read more about this case, click here.

Heirs and IRS Reach Agreement on Unsaleable Artwork Valued at $65 Million

How much is something worth if it can never be sold? When the children of art dealer Ileana Sonnabend inherited her valuable collection of artwork in 2007, among the pieces was a ground-breaking "combine" by Robert Rauschenberg titled "Canyon."

The children paid $471 million in federal and state estate taxes on their mother's estimated $1 billion collection, but they did not think they had to pay any tax on "Canyon." The 1959 work, it turns out, can never be sold because it includes a stuffed bald eagle. Bald eagles are under federal protection and selling or trading one, even if it is part of a famous work of art, is a crime.

The Internal Revenue Service (IRS), however, saw things differently and appraised the work at $65 million. On that basis, the IRS said the estate owed $29.2 million in taxes plus another $11.7 million in penalties.

The children and the IRS have finally reached an agreement: the IRS will drop the tax assessment on the condition that the children donate "Canyon" to a museum and claim no tax deduction for the donation.

After a contest between two major New York City cultural institutions – the Museum of Modern Art and the Metropolitan Museum of Art – over who will get Rauschenberg's masterwork, the children have decided to donate it to the Modern. As the *New York Times* put it, "the eagle has now landed."

Nursing Home Patient under Custodial Care Not Entitled to Coverage from Insurance

A U.S. court of appeals holds that a nursing home patient was not entitled to coverage from her health insurance plan for her nursing home stay because she received primarily custodial care, not skilled nursing services. *Becker v. Chrysler LLC Health Care Benefits Plan* (7th Cir., No. 11-2624, Aug. 20, 2012).

Evelyn Jeranek had health insurance through her husband's employer. The plan provided that it would not cover benefits for a terminally ill enrollee whose condition is primarily custodial and no longer requires skilled nursing service. Ms. Jeranek entered a nursing home suffering from congenital heart failure, among other maladies. She refused treatment several times, as well as her doctor's recommendation that she go to the hospital.

The nursing home submitted a claim to Ms. Jeranek's insurance company, which denied the claim after finding that Ms. Jeranek had a chronic stable condition that did not require skilled nursing care. After Ms. Jeranek died, her personal representative sued the insurer, arguing that Ms. Jeranek's was a complex patient that required the care of skilled nursing personnel. The district court granted summary judgment to the insurance company, and Ms. Jeranek's personal

representative appealed.

The U.S. Court of Appeals, 7th Circuit, affirms, holding that the plan did not cover Ms. Jeranek's nursing home stay because she did not receive skilled nursing services. According to the court, there is nothing in the plan that "suggests that 'skilled nursing personnel' equates with the provision of 'skilled nursing services,'" so there was a basis for the insurance company's conclusion that the care provided was entirely custodial.

For the full text of this decision, go to: http://www.ca7.uscourts.gov/tmp/KX0KLNEF.pdf.

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Long-Term Care Insurance Future Questionable

The future of long-term care insurance is uncertain and the viability of the market is in question, according to a new report by Moody's Investors Service.

Limited claims experience, long policy horizons, rising premiums and extreme market consolidation are all contributing to the indefinite outlook, writes Laura Bazer, Moody's vice president and author of the report, "Long-Term Care Insurance: Sector Profile."

"Key credit considerations for the sector are the relative newness of long-term care insurance and the long-tailed and

complex product structure, which make it difficult to price the product profitably and to reserve for," Bazer said.

Early policies offered too-generous benefits in light of what turned out to be higher utilization and lower rates of lapsed policies than actuaries had forecast. Lately insurers have been increasing reserves, which has resulted in losses for some over the past two years and may not fix the problem.

"While recent hefty reserve and rate increases could improve the profitability of legacy blocks, or at least stem losses," Bazer said, "persistent low interest rates and anti-selection could confound the remediation process."

The response of some insurers has been to retreat from long-term care business, while those that remain are raising rates and cutting benefits. But Bazer said potential buyers may resist these changes, and regulators may block or limit new rate increases on a constituency like senior citizens living on fixed incomes.

Moody's notes that there is now only one major player, Genworth, and it wrote 38 percent of the individual long-term care insurance premium in 2011. With fewer sellers, sales could fall, calling into question the viability of the entire market, according to Moody's.

For an *Insurance Journal* article on the report titled "Is Long-Term Care Insurance Dying?", click here.

Federal Court Rules That Gay

Widow Is Entitled to Estate Tax Refund

Finding that the Defense of Marriage Act's (DOMA's) denial of equal benefits to same-sex couples violates the Equal Protection Clause of the Fifth Amendment, a federal court judge has awarded the surviving spouse of a lesbian couple reimbursement for the tax bill she paid on her wife's estate.

Edith Windsor and Thea Spyer became engaged in 1967 and were married in Canada in 2007, although they lived in New York City. Ordinarily, spouses can leave any amount of property to their spouses free of federal estate tax. But when Ms. Spyer died in 2009, Ms. Windsor, now 82, had to pay Ms Spyer's estate tax bill because of DOMA, a 1996 law that denies federal recognition of gay marriages.

Although New York State considered the couple married, the federal government did not and taxed Ms. Syper's estate as though the two were not married. Ms. Windsor sued the U.S. government seeking to have DOMA declared unconstitutional and asking for a refund of the more than $350,000 in estate taxes she was forced to pay.

Federal court judge Barbara Jones from the U.S. District Court for the Southern District of New York ruled that there was no rational basis for DOMA's prohibition on recognizing same-sex marriages. Jones stated that it was unclear how DOMA preserves traditional marriage, which is one of the stated purposes of the law. As ElderLawAnswers reported last year, President Obama decided to stop defending DOMA, so members of Congress formed an advisory group to defend the law. This is the fifth case to strike down DOMA.

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