

Estate & Financial Planning Council of Southern New Jersey



Member of the National Association of Estate Planners and Councils

MARCH 19, 2015 BREAKFAST MEETING THE MONEY PIT— THE SALE OF REAL ESTATE IN AN ESTATE

Thursday, March 19, 2015

The Mansion on Main Street
3000 Main Street, Voorhees, NJ 08043

Speakers:

Robert L. Baker, Jr. Esq. and C. Gavin Opperman, Esq.,
from Subranni Zauber LLC

Time:

8-8:30 am— Breakfast
8:30-9:30 am—Educational Program

The EFPCSNJ March 19, 2015 Breakfast Meeting is being Sponsored by:



For additional Information Please see Page : 7

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REMINDER...

- ***There's Still time to Register for the March 19, 2015 Breakfast Meeting—*** Thursday, March 19, 2015 details on page 7
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- ***Mark Your Calendars!*** EFPCSNJ 2014-2015 Meeting Schedule on page 3
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LETTER FROM THE PRESIDENT

Dear Council Members:



The winter seemed to overstay its welcome but EFPCSNJ is looking forward to the Spring and the great events that we have coming up.

The EFPCSNJ Elder Care Legal Forum was held on Thursday, January 22, 2015 at Tavistock Country Club in Haddonfield, NJ. EFPCSNJ welcomed a variety of vendors and enjoyed a very informative and educational presentation from

Shirley Whitenack, Esq. from Schenck, Price, Smith & King, LLP. Thank you to all attendees, to our Vendors, our Sponsors and to Ms. Whitenack for making the Second Annual Elder Care Legal Forum a great event.

The next EFPCSNJ Breakfast Meeting will be held on Thursday, March 19, 2015 at The Mansion in Voorhees. Robert L. Baker, Jr. Esq and C. Gavin Opperman, Esq. from Subranni Zaubers, LLC will be presenting an educational program titled, "The Money Pit—The Sale of Real Estate in an Estate." This program will not only cover the selling of real estate property in an estate but will also feature information on various impediments to clearing a title, information on loss mitigation strategies to convey clear title and preserve other estate assets. I would like to thank our sponsors, The Community Foundation of South Jersey, Foundation Title and Wilmington Trust for their support. I hope to see you all there, this program is not to be missed.

Please mark your calendars for the last two EFPCSNJ events for the 2015 meeting year. The May 21, 2015 Breakfast Meeting will feature Tomas Varley of PNC Delaware Trust Company speaking on Asset Protection. Then it's time for the 2015 Installation of Officers and Member Awards Dinner which will be held this year on Tuesday, June 9, 2015. The event will be held at the beautiful Moorestown Community House on Main Street in Moorestown. This is always a great event for EFPCSNJ and the 2015 event is shaping up to be another wonderful night. Additional information on both events will be received via email and will be on the EFPCSNJ website in the near future.

Finally, there are limited sponsorship opportunities remaining for our 2014-2015 meeting year. This is a great way to support EFPCSNJ and allow EFPCSNJ to continue to bring quality programs and events to its members. If you are interested in more information about sponsoring one of our educational programs please see the information on page 12 of this newsletter or contact Abby Murray for additional information.

Many thanks and see you at The Mansion on Thursday, March 19, 2015 at the next Breakfast Meeting!

Sincerely,
Yasmeen S. Khaleel, Esq.
Council President

William S. Merriken, Jr., ChFC

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For more information contact Tim at EFPCSNJ@mail.com or 856-795-0551.

2014-2015 MEETING SCHEDULE

Educational Meetings are usually approved for 1.0 CFP & CPE credits.
Meeting registration and more information can be found at www.EFPCSNJ.org

Thursday, September 18, 2014

Topic: Samurai Planning: Cutting Edge Concepts for 2015

Speakers: Gary DeVicci, MSFS, CFP,

David J. Gill, Jr. MST, CPA/PFS, CFP

Kevin J. DiMedio, Esq.

Location: Tavistock Country Club, 100 Tavistock Lane, Haddonfield, NJ 08033

Schedule: Cocktails 5:30 p.m.; Dinner 6:15 p.m.; Program 7:00–8:30 p.m.

Sponsors: SeniorWise Care Management.

Thursday, November 20, 2014

Topic: How to Help Your Clients Prepare For and Manage The Complexities of Tax Controversy

Location: The Mansion on Main Street, Voorhees, NJ

Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m.

Sponsors: Jackson National and SeniorWise Care Management.

Thursday, January 22, 2015

Topic: EFPCSNJ 2nd Annual Elder Care Legal Forum

Location: Tavistock Country Club, Haddonfield, NJ

Schedule: Vendor Showcase & Cocktail Hour—4:30pm.; Dinner 6:00 p.m.; Opening Remarks 6:45 p.m.

Educational Program 7:00-8:30 p.m.

Sponsors: Edward Jones, IKOR, Rothkoff Law Group

Thursday, March 19, 2015

Topic: The Money Pit—The Sale of Real Estate in an Estate

Speakers: Robert L. Baker, Jr. Esq. and C. Gavin Opperman, Esq., from Subranni Zauber LLC

Location: The Mansion, Voorhees, NJ

Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m.

Sponsors: Community Foundation of South Jersey, Foundation Title and Wilmington Trust

Thursday, May 21, 2015

Topic: Asset Protection

Location: The Mansion on Main Street, Voorhees, NJ

Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m.

Sponsors: Glenmede & SeniorWise Care Management. One sponsorship opportunity is still available

Thursday, June 9, 2015

Installation of Officers and Member Awards Dinner

Location: The Moorestown Community House

16 East Main Street, Moorestown, NJ 08057

Time: 6:00 p.m.—9:00 p.m.

Sponsors: Sponsorship Opportunities are Still available

INTERESTED IN SPONSORING AN EVENT?

Do not miss this opportunity to sponsor an EFPCSNJ Event - Call 856-795-0551 Today!
If you are interested in sponsoring an EFPCSNJ meeting in the 2014–2015 Meeting Year,
please contact Abby Murray at 856-795-0551.

PLANNING WITH MEDICAID ANNUITIES

Jane M. Fearn-Zimmer, Esquire, LL.M.

When a loved one requires 24/7 skilled nursing care, selecting the best facility can be confusing and stressful. Factors for consideration include whether the facility has great dementia programming, the rate of staff turnover, and the period of private pay required, and of course, the client's liquid resources.

Frequently, clients ask me how to pay for their care. Financing long-term care is an important, practical consideration, but it should not be the tail which wags the dog. The first priority must be to select the best care available, for peace of mind. Fortunately, using a Medicaid compliant annuity can be an option to qualify for Medicaid and help a healthy spouse who will continue to reside in the community to pay for their own housing and living costs, without the institutionalized spouse's income, which may be required to be paid over to the long-term care facility. How does this strategy work?

John and Mary Doe are our hypothetical clients. John is eighty-two years old, and suffers from Alzheimer's dementia. John was recently hospitalized due to a fall, and will not be able to return to live in the marital home with Mary. Mary has learned that John will need skilled nursing care at a private pay cost of over \$9,000.00 per month. She is worried about how to pay for that care.

Mary is seventy-nine years old, and is healthier than John. Mary still lives in the former marital home. Her income is from Social Security and is only about \$670.90 gross per month. This is not sufficient for Mary to live on in the community. Also, Mary is declining, and may herself require assisted living. Whether she remains at home or not, she will need John's monthly income, which is only about \$2,000.00. How are Mary and John going to pay for the care John needs and any future care for Mary?

When Mary comes to you, she and John have approximately \$430,000.00 in countable assets, not including their home. As the community spouse, Mary can keep up to \$121,220.00 of the couple's resources, in order for John to qualify financially for Medicaid. If Mary and John have countable resources (i.e., liquid assets such as savings, checking and certificate of deposit accounts, stocks, bonds and life insurance with any cash surrender value), above that level, John will not qualify for Medicaid.

Mary has a choice. She can either spend all of the couple's assets on John's care until she is left with well less than \$121,200.00, at which point, John may become eligible for Medicaid to pay for his skilled nursing care. Alternatively, Mary can purchase a Medicaid compliant spousal annuity for up to \$310,000.00 (\$430,000.00 less \$121,220.00 = \$308,790), and this annuity will provide her with additional monthly income of over \$8,600.00 over a term of three years. Note that by purchasing the annuity for \$310,000 instead of \$308,790.00, we have created a small buffer to spend Mary and John well below the spousal maximum of \$121,200.00, in case they have any assets of which they are unaware or the market value of their assets rise.

If the annuity is Medicaid-compliant, then it will not be treated as a countable asset, and after its purchase, Mary and John now have only \$120,000.00 in countable resources, which means that John is financially eligible for Medicaid. Remember that Mary will be receiving the sum of over \$8,600.00 for three years in addition to her own Social Security. If Mary requires assisted living, she will now have

ample funds to pay for that care until she herself can become eligible for Medicaid.

What are the drawbacks of a Medicaid-compliant annuity? Successfully using a Medicaid compliant annuity requires patience and perseverance. Due to the State of New Jersey's current policies and procedures, litigation in federal court may sometimes be required, so this technique is not suitable for the faint of heart. There are strictly construed legal requirements which must be met, in order for the annuity to be determined Medicaid-compliant, which are discussed below. If the annuity is not a Medicaid individual retirement annuity, the State of New Jersey must be named as the first remainder beneficiary to the extent of any Medicaid benefits for John. This means that if Mary dies before John, some of the principal remaining on the annuity will need to be paid over to the State. (The rest can pass to Mary's beneficiaries, which are likely her children.) Also, the funds invested in the annuity cannot be accessed, the monthly payments on the annuity must be equal in amount, and the annuity's rate of return is generally low. The annuity cannot be assigned or revoked. However, once the applicant becomes Medicaid-eligible, the spouse may keep all of the income from the annuity.

At this time, using annuities which meet the requirements of the Deficit Reduction Act of 2005 remains viable planning strategy in the wake of a Third Circuit Court of Appeals in Weatherbee v. Richman, 595 F. Supp. 2d 607 (W.D.Pa.2008), *aff'd*, 351 Fed. Appx. 786 (3d Cir. 2009) and the express language of the Deficit Reduction Act of 2005, which treats the monthly payments from the annuity as an income stream, rather than a countable asset. Medicaid annuity planning is also supported by a series of recent, unpublished federal district court decisions and administrative decisions in New Jersey and the ruling of the Eighth Circuit Court of Appeals endorsing the use of a DRA-compliant annuity in Geston v. Anderson, (No. 12-2224, September 13, 2013). See e.g. Carlini v. Velez, 2013 U.S. Dist. LEXIS 78160 (No. 12-7290, June 4, 2013) and Flamini v. Velez, 2013 U.S. Dist. LEXIS 101183 (No. 07304, D.N.J. July 19, 2013); *M.W. v. D.M.A.H.S. and Union County Board of Social Services*, (OAL Docket No. HMA 2998-2013, January 28, 2014).

In Carlini, after the federal court enjoined the State from improper treatment of the DRA-compliant annuity purchased, the County Welfare Office processed the Medicaid application for Mr. Carlini and Medicaid paid for his skilled nursing care.

The Flamini v. Velez decision also validated the purchase by the community spouse, of a DRA-compliant individual retirement annuity. The court further found that the law appears expressly designed to permit this specific type of structuring without threatening to compromise Medicaid eligibility.

Why does Medicaid planning with annuities work? The Social Security statute, the accompanying federal regulations, and the SSI administrative guidelines generally classify the payments from an annuity as income. See 20 C.F.R. § 416.1102; *Social Security Administration Program Operations Manual System ("POMS")* SI 00810.005.A.1; 20 C.F.R. § 416.1121(a); POMS SI 00810.015.3.d; SI 00830.160.B1.f.

Under the *Medicare Catastrophic Coverage Act*, the income received by the community spouse cannot impact the Medicaid eligibility of the institutionalized spouse. 42 U.S.C. § 1396r-5(b)(1). Unless otherwise provided in the instrument, income paid to solely in the name of the community spouse is available only to that spouse. This is true whether the income is from “trust” property or “non-trust” property. 42 U.S.C. §§ 1396r-5(b)(2)(A)(i) and (B)(ii)(i). *This means that Mary’s post-eligibility income from the annuity does not count towards John’s income and Mary may keep this income.*

Note that tax-qualified and non-qualified annuities are treated differently by the Deficit Reduction Act of 2005, and, to be compliant, must be irrevocable and nonassignable, actuarially sound, and must have equal monthly payments during the annuity term, with no deferral and no balloon payments made. The annuity must also name the State of New Jersey as the first remainder beneficiary at least to the extent of any Medicaid lien.

Regarding tax-qualified individual retirement annuities, two basic requirements must be met for the annuity to be a DRA-compliant annuity. First, the annuity must name the State as the remainder beneficiary in the first position at least to the extent of any Medicaid lien. See 42 U.S.C. § 1396p(c)(1)(F)(i). The second requirement for special treatment as a tax-qualified annuity under the DRA is that the annuity must be a tax-qualified annuity and must be designated within the annuity contract as a tax-qualified annuity under I.R.C. § 408(b), or must be funded with the proceeds of an individual retirement account, inter alia. See 42 U.S.C. § 1396p(c)(1)(G)(i)(I),(II)(aa)-(cc); *Treasury Reg. § 20.2039-5* (annuities under individual retirement plans).

Because an individual retirement annuity contract must comply with the stringent provisions of § 408(b) and the related regulations, an individual retirement annuity contract is irrevocable, non-assignable, non-transferable, actuarially sound and as pays out only equal monthly payments. These attributes are already incorporated by reference into the annuity contract by virtue of its being an individual retirement annuity. A tax-qualified individual retirement annuity subject to the very strict anti-transfer and anti-alienation provisions of the Tax Code and the Treasury Regulations.

A tax-qualified, individual retirement annuity contract must also meet the federal Internal Revenue Service test of substantially equal payments. In other words, the annuity cannot have any provision for a withdrawal right or an advance payment rider. Any such provision must be well below the forty per cent limit on lump sum withdrawals contained in T.R. § 20.2039-5(b) for the annuity to be a qualifying annuity. So long as the withdrawal right remains well below forty per cent of the policy principal, there will be compliance with the “substantially equal payment” test found in T.R. § 20.2039-5(b) and the annuity is a “qualified individual retirement annuity” within the meaning of Treasury Regulation § 20.2039-5.

The requirements for non-qualified, D.R.A. compliant annuities are more restrictive. In order to be DRA-compliant, non-qualified annuities must be irrevocable and non-assignable, actuarially sound, and which provides for equal monthly payments with no balloon or deferred payments. If an annuity satisfies the requirements of § 1396p(c)(1)(G)(ii), the purchase of this annuity cannot be regarded as an available (and thus countable) resource or an uncompensated transfer of assets by the community spouse, and cannot result in the imposition of any Medicaid penalty period. Section § 1396p(c)(1)(G)(ii) provides, in pertinent part:

(G) For purposes of this paragraph with respect to a transfer of assets, the term “assets” includes an annuity purchased by or on behalf of an annuitant who has applied for medical assistance with respect to nursing facility services or other long-term care services under this subchapter **unless ...**

(ii) the annuity—

(I) is irrevocable and nonassignable;

(II) is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the Social Security Administration); and

(III) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

In conclusion, if all of the requirements discussed above are met, using a Medicaid annuity can be an effective asset protection planning strategy for the risk-tolerant client.



For more information, please feel free to contact Jane M. Fearn-Zimmer, Esquire, with the Rothkoff Law Group, at telephone number (856) 616-2923.

This article reflects the opinions of the author and not necessarily those of EFPC of SNJ.

SECOND ANNUAL EFPCSNJ ELDER CARE LEGAL FORUM

The Estate and Financial Planning Council of Southern New Jersey had its Second Annual Elder Care Legal Forum on Thursday, January 22, 2015 at Tavistock Country Club. The Elder Care Legal Forum featured a Vendor Showcase and an educational presentation from Shirley Whitenack, Esq. of Schenck, Price, Smith & King, LLP. It was a great night of Networking combined with a fantastic educational program.



EFPCSNJ MARCH 19, 2015 BREAKFAST MEETING

THE MONEY PIT -

THE SALE OF REAL ESTATE IN AN ESTATE

Speakers: Robert L. Baker, Jr. Esq. and C. Gavin Opperman, Esq.,
from Subranni Zauber LLC

Date: Thursday, March 19, 2015

Schedule: Breakfast 8:00 am, Program 8:30-9:30am

Location: The Mansion, 3000 Main Street, Voorhees, NJ

Price: EFPCSNJ Members: \$25 Non-Members: \$35

Join EFPCSNJ for this program and learn about a variety of different areas regarding the process of selling real property that is part of an estate. Other items covered will be the various impediments to clearing title, and learn how loss mitigation strategies such as the short sale, and the deed in lieu of foreclosure can be utilized in an attempt to convey clear title, and preserve other estate assets.

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Thank you to our CLE Sponsor



We have applied for this meeting to qualify for the following CE credits:
1.0 CPE credit (for CPAs), 1.0 CFP credits. 1.0 NJ CLE and 1.0 PA CLE

March 19, 2015 EFPCSNJ Meeting Registration Form

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2014-2015 DUES

Description	Amount
Individual Member @ \$150	
Corporate Members – first 4 members @ \$150	
Corporate Members – 5th member and more @ \$100	
Total	
<p>Please make check payable to EFPCSNJ and mail to: PO Box 460, Collingswood, NJ 08108 You can renew online and pay by credit card by going to the EFPCSNJ website (www.efpcsnj.org) and click "Member Renewal" on the left hand menu bar. An email with your username and password was emailed to you on Tuesday, September 30th, 2014 with other renewal information. If you have questions or would like your username and password, please contact Abby Murray at efpcsnjmbrrsvcs@bowermanagementservices.com or 856-795-0551</p>	

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UPCOMING EFPCSNJ EVENTS

MAY 21, 2015 BREAKFAST MEETING

Thursday, May 21, 2015

Topic: Asset Protection

Speaker: Tom Varley from PNC Delaware Trust Company

Location: The Mansion on Main Street, Voorhees, NJ

Schedule: Breakfast 8:00 a.m.; Program 8:30-9:30a.m.

Price: EFPCSNJ Members—\$25.00, Non-Members—\$35.00

Sponsors: Glenmede & SeniorWise Care Management.

***One sponsorship opportunity is still available ***

2015 INSTALLATION AND MEMBER AWARDS DINNER

Tuesday, June 9, 2015

The Moorestown Community House

16 East Main Street

Moorestown, NJ 08057

Time: 6pm—8pm

Price: EFPCSNJ Members and Non-Members—\$85

Come and celebrate the past year while we
install the new officers of the EFPC of SNJ.

You do not want to miss this opportunity to reconnect with old friends and
make new friends over cocktails and dinner. Cocktails will be at 6:00 pm
followed by the Installation and Awards Dinner at 7:00 pm

Sponsorship Opportunities Available

Please Contact Abby Murray for sponsorship information.

Additional information on both of these events will be emailed to you and on the
EFPCSNJ website in the near future.

For information on all upcoming EFPCSNJ events, please visit our website:

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Assisting clients with tax sensitive estate,
retirement and charitable planning and closely-
held business transactions

76 E. Euclid Avenue · Haddonfield, NJ
856.795.7744
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Council Sponsorship

Becoming a Council sponsor is a great way to support the Council and promote your company's commitment to the financial services profession.

GOLD SPONSOR – \$475

- ~ A 1/4 page ad in every newsletter.
- ~ A link to your company's web site on the patrons page of the Council's web site.

SILVER SPONSOR – \$300

- ~ A business card size ad in every newsletter.

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- ~ Company name on all meeting notices.
- ~ Attendance for 2 at the event.
- ~ Display of materials promoting your firm.
- ~ Verbal recognition at the event.
- ~ Multiple sponsors for the event
- ~ Honorary membership in the Council for current membership year.

For more information contact Abby Murray at
efpcsnjnbrsvcs@bowermanagementservices.com

Tim Bower, CAE

Executive Director

PO Box 460

Collingswood, NJ 08108

Phone: 856-795-0551

Fax: 856-210-1619

**Estate & Financial Planning Council
of Southern New Jersey****Membership Application**Apply online at www.EFPCSNJ.org

Name: _____

Title: _____

Company: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

I am actively engaged in estate and/or financial planning in _____
county for _____ years.

I hold a license or designation/certification and am a member in good standing in the following disciplines: _____ Attorney _____ CPA _____ CFP _____ ChFC
_____ CLU _____ CTFA or qualified professional employed in tax, trust or estate practice by a financial services firm. Other: I have a

certification/designation and my primary area of practice is:

Signature: _____ Date: _____

Recommended

by Member: _____
(please print)

Signature of Member: _____

Membership cost: \$150 per year. You can also submit your membership application online at www.efpcsnj.org. Corporate membership is available.

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Estate & Financial Planning Council of Southern New Jersey

www.EFPCSNJ.org

Member of the National Association of Estate Planners and Councils

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Call for Articles

Please consider submitting an article for inclusion in future newsletter issues. We are now seeking articles for the EFPCSNJ newsletters.

Articles should be between 1,200 and 2,000 words
which is usually three to six typed pages.

Submissions should be sent as a word document to Abby Murray at
efpcsnjmbrsvcs@bowermanagementservices.com.

This is a great way to get involved with EFPCSNJ and to share knowledge and information with the rest of the members.

To view recent newsletters please visit the EFPCSNJ website (www.efpcsnj.org) and go to Documents.