



LAW OFFICES OF

JOANNE SCHLENK MCAVEY, PLLC

MEMBER OF NATIONAL ACADEMY OF ELDER LAW ATTORNEYS
PAST CO-CHAIR OF THE ELDER LAW COMMITTEE OF THE SCBA

1641 DEER PARK AVENUE
DEER PARK, NEW YORK 11729
(631) 243-4516
FACSIMILE: (631) 243-2501
E-MAIL: JOANNEMCAVEY@AOL.COM

ELDER LAW UPDATE - WINTER 2008

ANNUITIES & THE STATE AS BENEFICIARY

Significant Change in Medicaid Law

I am amazed at the number of annuities my clients are encouraged to buy. Annuities have always been *expensive* (generous sales commissions), *restrictive* (prohibitive withdrawal penalties for up to 7 years) and *ruthless* (stealing your time and opportunities).

Now that the Deficit Reduction Act of 2005 (DRA), effective February 8, 2006, has been adopted by New York State, the law and its regulations give the consumer one more reason to stay clear of them.

When *qualifying for Medicaid*, the Annuity will be considered a resource or bank account. You simply can not qualify for Medicaid unless you spend it on your medical expenses *or* annuitize it naming the STATE as your beneficiary. *You read it right!* The State becomes your beneficiary if the asset you own is an Annuity. Of course, if you have a spouse or disabled child, the STATE may be named as secondary beneficiary.

This also applies to IRAS which are placed in Annuities, so the risk is high.

Although at first glance, the law *exempts* Pre-DRA Annuities from these requirements, any changes made to these Annuities, post DRA, transform their character, mandating that the STATE be named as beneficiary. The Social Services Regulations have specifically qualified these as requirements.

There are a *number of strategies* which may be employed to remove the Annuity from *Medicaid's consideration*. It will depend on your age and health, on the time and sum of money invested, as well, as your preferences.

ANNUAL LEGAL CHECKUP!

Circumstances change but legal documents do not.

The biggest *misconception* people have is that their Wills determine how their assets will be distributed. This is simply not so! The manner in which title is held determines which assets will pass through a Will and those that will not.

The New Year is a perfect time to review your legal documents, bank accounts, real estate and investments. As to title, if you own any asset jointly with another, or have designated beneficiaries on an account, life insurance, annuity etc., these will pass by operation of law to that named individual upon your passing. This may or may not reflect your intent.

Have personal relationships changed since we last reviewed your documents? Your Powers of Attorney and Health Care Proxies have listed individuals to handle virtually every legal matter you could handle yourself, as well as make medical decisions for you, when you are unable to do so yourself.

For those of you who have prepared Revocable Trusts, have you transferred title of your assets to the Trust? Do you hold title jointly with others or with designated beneficiaries, so as to avoid probate. Do you know the difference? You have control over your resources. Take advantage of it!

Remember also, that Revocable Trusts, joint assets, and 'in trust for accounts' *do not protect* assets from Medicaid. Such assets are countable resources to be used for your long term medical care, *if needed*. If your goal is to protect your assets, you may accomplish this with proper planning.