



“Legal News, You Can Use”

Joseph T. Barberi, P.C.

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Did You Know?

- In Michigan, a woman is not allowed to cut her own hair without her husband's permission.
- In Michigan, it is illegal to let your pig run free in Detroit unless it has a ring in its nose.
- In Kalamazoo, Michigan, it is illegal to serenade your girlfriend.
- In Michigan, any person over the age of 12 may have a license for a handgun as long as they have not been convicted of a felony.
- In Detroit, it is illegal to tie alligators to fire hydrants.
- In Rochester, Michigan, bathing suits must be inspected by the head of police.
- In Wayland, Michigan, anyone can keep their cow on Main Street for 3 cents.

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Between You, and I, and the Fencepost

Divorce...A Time To Change Your Estate Planning Documents

By: Joseph T. Barberi, Attorney



An important step to consider taking when contemplating a divorce is to ensure that your wishes are carried out by executing a new will, a power-of-attorney, and a health care proxy. The review and revision of estate planning documents during a divorce can be crucial because the law deems you to be legally married until the judge signs the divorce decree. In the event that you were to become unable to make decisions or die before that moment, your estranged spouse may still have power over your personal interests and your estate. However, in reviewing and, if need be, revising your estate planning documents, you can be certain that the control over your estate and yourself (in the event that you become incapable of making those decisions) will not lie in the hands of your spouse. You can also, in this revision process, ensure that your estranged spouse's rights are limited as a beneficiary of your estate.

In the event that you do not have a will and you become disabled or die, your estranged spouse will likely be entitled to at least half of your estate and will be in control of the estate as a whole if there are no children. I have actually been involved in a case where the husband suffered a heart attack and died over the lunch hour during his divorce trial. I represented his wife, and as a result of his death, she became “his widow” as opposed to his divorced spouse. Because he had not changed his estate

planning documents, she inherited everything they jointly owned and she was the beneficiary of his trust. If you do have a will and/or a trust, you spouse will most likely be the personal representative and will therefore be named the primary or sole beneficiary of your estate.

“Thinking about a divorce? If so, then it's time to change your estate planning documents.”

Your beneficiary designations are another important consideration. Often, the bulk of estates consist of retirement accounts, life insurance policies and property that is jointly owned. Joint assets, as well as those assets which have named beneficiaries, pass outside of your will and go directly to the designated beneficiary. As a result, it is crucial that one review all of their beneficiary designations in order to make the proper changes. Moreover, if you have previously engaged in estate planning, you have likely designated your spouse as your attorney-in-fact to conduct your financial affairs as well as a Patient Advocate to make health care decisions for you in the event that you cannot make them for yourself. In the context of divorce, these advanced directives are also subject to abuse. Thus, you should immediately consider revoking them so that they cannot be used in an unintended fashion.

One of the most critical issues worth considering is cus-

tody of your minor children. Upon your death, custody of minor children normally passes to the surviving parent. Although the law often gives priority to the surviving parent, the final decision is based on the best interests of the child. In some cases, when the surviving parent is not a suitable guardian for the minor children, it proves advantageous for you to name an alternate guardian in your will together with the reasons that you believe your estranged spouse would not be a suitable guardian for your minor children. And, although the court is never obligated to honor your request, your wishes would certainly be a determinant in deciding the best interests of the child or children. Important language regarding grandparent rights can also be set forth in your will and trust.

In conclusion, the single most important step you may wish to take when contemplating or going through a divorce is to execute a new will, a power-of-attorney and a health care proxy, and if you have a trust, to amend the same. **Do not** wait until the divorce is final to review these documents, and possibly revise them because in the event of your death or disability before the divorce is final, you will still be considered by the court to be legally married and your pending divorce will have no effect on the inheritance of your estranged spouse.

“Super Drunk”

Michigan’s New Operating While Intoxicated Law

By: Geoffrey K. Rettig, Attorney



This coming October 31st, Michigan law regarding Operating While Intoxicated will change substantially. Commonly known as the “Super Drunk” law, the changes in Michigan law will authorize increased penalties and requirements of probation for persons convicted of operating a motor vehicle with a blood alcohol content of .17 or greater. License sanctions are likewise increased for the new violations.

These enhanced provisions are the result of Public Acts 461 and 462 which were signed into law on January 9, 2009. The new enhancements apply only to first time offenders with a high blood alcohol content, or “BAC”. Repeat offenders and “Super Drunk” drivers both face a mandatory one year alcohol treatment requirement under the new law. First time “Super Drunk” drivers face the following enhancements:

- An administrative suspension of driving privileges for one year, with no restricted license available for any purpose for

the first 45 days.

- Restricted license thereafter conditioned on the offender paying to have an ignition interlock installed into their vehicle. Increased maximum fines of not less than \$200 or more than \$700.

“The law is cracking down on those who let offenders drive or who are attempting to avoid the interlock requirements.”

This means that Michigan law will get much tougher on first offenders who have chosen to drink excessively and drive. The new laws also provide for more stringent punishment for those who violate the terms of the ignition interlock requirements. Violators will face a doubling of their license sanction if an attempt is made to operate a restricted vehicle with a BAC (Blood Alcohol Content) of .025 or greater. This means that a new period of 45 days “hard suspension” with an additional 320 days of interlock and restriction will be imposed. It will also be illegal for a person who has been ordered to install an interlock to operate a vehicle without one. As a general guide,

.025 is about equal to one mixed drink, a 12 oz. beer, or a single glass of wine for a person who weighs approximately 160 lbs.

Violation of the new interlock laws means impoundment of the vehicle and the owner of the vehicle remains liable for all expenses incurred, including storage, towing, and replacement of the destroyed plate. Yes, that’s right. The owner of the offending vehicle is liable for all of the costs and the plate will be destroyed. The law is cracking down on those who let offenders drive or who attempt to avoid the interlock requirements.

These changes, come October, will have a great impact on how prosecutors and judges approach first offenders with high BAC readings. The need for early, aggressive action and proper referrals for alleged offenders have become even more important. If you or someone you know or care about has been arrested for such an offense, contact Joseph T. Barberi, P.C. immediately to discuss your options and how we can help.

Texting While Driving

The decisions you make can change the rest of your life and even end it!

By: Lori Erskin, Paralegal



On April 30, 2010, Governor Jennifer Granholm signed Michigan House Bill 4394, prohibiting drivers from reading, writing, and sending text messages while operating a motor vehicle. The State law went into effect on July 1, 2010. If you are caught, you face a \$100 civil fine. The potential financial impact on one’s wallet should not be the main consideration in deciding whether to text and drive. Causing a senseless car accident because of texting could lead to devastating and permanent negative impacts on many

many lives, including yours. **Research shows that texting while driving can have the same effect as driving with eight (8) drinks in your system.**

In January 2010, Oprah Winfrey’s show revealed to millions of Americans just how dangerous texting can be. She cited a survey which found that 71% of people between the ages of eighteen (18) and forty-nine (49) admit they text or talk on the phone while driving. The message is simple: wait until your car is in park to

send that text.

As a personal injury paralegal, I have seen firsthand the results of this distracted form of driving—and the numbers do not lie. Accident statistics are going up as a result of texting behind the wheel. Sadly, our firm has had numerous clients who have been the victims of accidents caused by drivers who were texting while driving. The results speak for themselves: texting while driving can have fatal consequences. Let’s work together to save lives. The life you save could be your own.



Medicaid

Information You Should Know

By: Brian Rush, Attorney and Carl Barberi, Paralegal

As the old saying goes, the only thing constant is change. This saying cannot be closer to the truth when it comes to planning for or applying for Medicaid benefits. The regulations that govern the Medicaid program in Michigan are modified every three months, or sooner in some cases. This fact makes it extremely important to always check with a reputable Elder Law attorney before making application for Medicaid benefits, either through the Choice Waiver Program or for skilled nursing home care. Doing so without understanding current regulations can have extremely negative consequences. With that being said, here is some information that you may find helpful in trying to make informed decisions.

Home and Community Support

Elderly or disabled Michigan residents who may need assistance to stay in their own home or to receive supplemental help in an assisted living facility (ALF) may be eligible for help through a program currently referred to as **Mi Choice Waiver program**. The Mi Choice Waiver program is administered by agencies approved by the Michigan Department of Community Health (MDCH) with services delivered by personnel either on staff or approved by these agencies. Evaluation for need and availability of services are provided by MDCH approved agencies, but approval for these benefits comes through application to the Michigan Department of Human Services (DHS).

The Mi Choice Waiver Program, formerly Home and Community Based Services Waiver Program (HCBSW), may provide for many health related and/or respite services for those who have medical needs and meet eligibility standards. While the eligibility standards for Medicaid support for a skilled nursing home setting are similar, the in-

“Not consulting with an attorney before applying for Medicaid benefits can have extremely negative consequences.”

come standards are quite different. To be eligible for the Mi Choice Waver Program, an individual applicant’s income cannot exceed \$2,022.00 per month (2010).

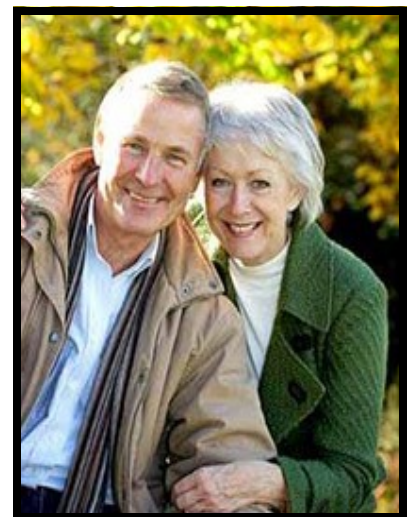
However, a “silver lining” for this program is that the income eligibility standard does not include total income of a husband and wife, but instead looks only at the individual applicant’s income. Another very important distinction between the Mi Choice Program and Medicaid support for skilled nursing home care is that none of the applicant’s income is required to be spent on the services provided.

During Michigan’s fiscal year of 2009, Mi Choice Waiver helped over 900 skilled nursing home residents who wished to return to the community to make this transition. It is anticipated that this number will grow to over 1200 individuals, during Michigan’s 2010 fiscal year. If you think you may be eligible, you should inquire further.

Pre-Eligibility Medical Expenses

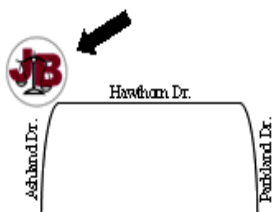
Effective March 9th, 2010, and retroactive to July 1st, 2009, individuals applying for Medicaid support for skilled nursing home care, can request that the amount the individual pays for his/her portion of the cost of care in a skilled nursing home be reduced by unpaid medical expenses incurred by the applicant during the three (3) month period immediately preceding application for Medicaid.

This policy change by the Michigan Department of Human Services is very important as in most cases, an individual applying for Medicaid for a skilled nursing home must generally pay all of his/her available income to the nursing home leaving no funds available to pay medical bills previously incurred by the applicant. If you are applying for help for a loved one, this is very important to consider to keep others from being left with paying for these expenses.



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