

**MSBA PROBATE & TRUST LAW SECTION E-NEWSLETTER**

October 2021

**Call for Submissions**

We are always looking for attorneys to write brief articles for this newsletter. Articles can focus on any issues relevant to probate and trust law. This newsletter is distributed to the Probate and Trust Law Section membership, which consists of approximately 1,140 practitioners. Writing for the newsletter is a great way to share your knowledge and expertise with your colleagues.

If you are interested in submitting an article, please contact Kiley Henry ([henry.kiley@dorsey.com](mailto:henry.kiley@dorsey.com)) or Jennifer Colich ([colich.jennifer@dorsey.com](mailto:colich.jennifer@dorsey.com)).

Please visit the Section's website for article ideas and to see the various articles that have been written in the past.

Best Regards,  
Kiley Henry & Jennifer Colich  
Probate & Trust Newsletter Editors

**Upcoming Events and CLE Programs**

- **Greater MN Probate & Trust Study Group Conference Call**
  - October 20, 2021 at 9:00 a.m.; November 17, 2021, 9:00 a.m.; December 15, 2021, 9:00 a.m.
  - Call-in Number: (888) 354-0094; Passcode: 9295091072
  - Contact Bradley W. Hanson ([bhanson@quinlivan.com](mailto:bhanson@quinlivan.com); (320) 251-1414) with any questions or to join the group
- **MSBA Probate & Trust Law Section Meeting**
  - Thursday, October 21, 2021 at 3:30 p.m.
  - Location: Due to Covid-19, the meeting will be held virtually
  - Contact Tram Nguyen ([tnguyen@mnbars.org](mailto:tnguyen@mnbars.org)) with any questions or if you would like to attend the meeting virtually
- **CLEs**
  - MSBA/HCBA/RCBA, October 7, 2021: [Virtual Court Practice - The Judicial Perspective](#)
  - RCBA, October 14, 2021: [Don't Let Taxes Spook You! Identifying Tax Impacts for Planning, Administering, Litigating, and Settling Estates](#)
  - HCBA, October 21, 2021: [HCBA New Lawyers Virtual Trivia](#)

- HCBA, October 28, 2021: [New Guardianship legislation 1 Year Later - What Works, What Does Not, and What Must be Changed](#)
- HCBA, October 28, 2021: [It's All in the Family - Transferring and Terminating Family Interests in Real Property](#)
- MSBA, October 29, 2021: [One Profession - First Judicial District](#)

## **Coping with Alzheimer's and Dementia From a Legal and Planning Perspective**

By: Lloyd Stern, Eric Friske, and Maria Plese

Increased standards of living and medical advances in our country over recent decades have resulted in greatly increased life expectancies. Unfortunately, with these additional years comes the increased risk that a substantial number of us will suffer from some form of dementia-related illness or memory loss.

It is now estimated that 5.8 million Americans are currently living with Alzheimer's disease and related dementia. If no effective cures are found, that number is expected to triple over the next thirty years. It is no surprise that individuals suffering from these conditions are worried about how they can maintain their own dignity through the progression of these diseases and how they can lessen its impact on their friends and families.

Realizing that there will be coming difficulties resulting from memory loss and lack of capacity, we owe it to ourselves and our families to plan while we are in good health and have the capacity to express our intentions and desires. It is important to start simple planning either before the onset of disease, or in the early stages of disease progression, in order to avoid more complex and costly alternatives, such as the court-directed conservatorships and/or guardianships discussed below.

### **Early Planning and Decision-Making Capacity**

It is often difficult to ascertain when someone has lost the legal capacity to make decisions for themselves. It is important to understand that capacity is a legal standard and the diagnosis of dementia by a medical professional does not automatically equate to an inability to make all decisions for yourself. An individual with a mild dementia diagnosis, for example, may still have the ability to execute legal documents before his or her disease progresses.

To start, some basic estate planning tools can be used to ease the struggles associated with dementia-related diseases and preserve that person's intentions for his or her friends and family, including powers of attorney, health care directives, and even a Provider Orders for Life Sustaining Treatment (also known as "POLSTS") which requires a physician's signature, may be appropriate.

When an individual has significant assets, property in multiple states, or complex family situations to deal with, more substantial, complex planning is generally advisable. Revocable or "Living" trusts are often an important part of a comprehensive estate plan and generally provide great flexibility for many important aspects of both personal decision-making and tax planning.

### **Differences between Guardianships and Conservatorships**

When it is too late to take advantage of advanced planning, a court-directed conservatorship or guardianship may be an appropriate step to protect a loved one who is suffering from a dementia-related illness.

Simply put, a conservatorship is where a court appoints an individual or professional fiduciary to handle another person's financial affairs. This person is known as the conservator. A conservator does not have the authority to make medical, housing, or other personal care decisions for the protected person.

In contrast, a guardianship grants an individual or professional fiduciary known as the guardian with the authority to handle medical, housing, or other personal care decisions. Under guardianships, the person in need of protection is referred to as the ward. Guardianships generally do not give the guardian any authority to handle the ward's finances. However, in the event there is no duly appointed conservator of the ward's estate, a guardian may have the power to approve or withhold approval of any contract, except for necessities, that the ward may wish to make, and also may have the power to apply on behalf of the ward for any assistance, services, or benefits available to the ward through any unit of government.

As lawyers and personal advisors, we have the ability to work with individuals in recommending and implementing a variety of legal strategies and tailored techniques that will help lessen the adverse impact of memory loss on clients and their families. We take pride in helping our clients and their families maintain their focus on what matters most and lessen the stress that can come with aging.

If you would like to know more about the topics discussed in this article, please contact one of the attorneys on the Henson Efron Estate Planning Team.

### **Summary of Proposed Legislation to Change Estate and Gift Tax Planning**

On September 13, 2021, the House Ways and Means Committee approved and released proposed tax legislation (now H.R. 5376) and a section-by-section summary. Below are several pertinent takeaways:

- Effective January 1, 2022, estate and gift tax exemptions would drop back to \$5 million, adjusted for inflation (\$6,020,000 starting in 2022), down from the current \$11.7 million per person;
- Technical changes essentially ending the use of grantor trusts;
- Elimination of availability of valuation discounts for entities that hold non-business assets such as cash, equity, and certain types of real estate (effective as of enactment);
- The proposal does not include an elimination in the step-up in basis at death, which had previously been widely discussed as a possibility;
- No changes to the 40% federal estate tax rate;
- Increasing the top individual income tax rate to 39.6% (from 37%) for married couples earning over \$450,000 and singles earning over \$400,000;
- Effective as of September 13, 2021, increasing the top capital gains rate to 25% (from 20%) for "certain high income individuals"; and

- Retirement account contribution limits for taxpayers whose aggregate retirement account balance exceeded \$10 million in the prior tax year. The limit would apply to married couples with taxable income over \$450,000 and singles earning over \$400,000. In addition, in the year following any year the retirement account balance exceeds \$10 million, these qualified individuals are required to withdraw 50% of any amount over \$10 million.

The Bill - [untitled \(house.gov\)](#)

Section-by-section summary of House proposal: [SubtitleISxS.pdf \(house.gov\)](#)

- Starting on Page 8: Part 2 – Tax Increases for High-Income Individuals
- Starting on Page 10: Part 3 – Modification of Rules Relating to Retirement Plans
- Starting on Page 12: Part 4 – Funding the Internal Revenue Service and Improving Taxpayer Compliance

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