



Michael Gilfix, Esq.

THE FEAR OF LONG-TERM CARE AND LOSING YOUR HOME

The cost of nursing home care is approaching \$5,000 per month in most facilities. In some, it is in excess of \$7,000 per month. How many of us have estates that can withstand this cost without the loss of a lifetime's savings?

We have worked with literally hundreds of individuals and families facing this issue.



Francis A. La Poll, Esq.

- Perhaps there is a diagnosis of dementia of the Alzheimer's type. With it comes the relentless fear of nursing home placement, if not the reality
- There may be a diagnosis of Parkinson's Disease or another debilitating condition that can compromise mental capacity and the ability to function physically. Here, too, there is the fear and often the reality of needing nursing home care.
- A debilitating stroke, broken bone, or a host of other medical problems can result in nursing home care.

In virtually every case, we can do something about this. We can protect the estate.

While Medicare provides no real assistance to individuals facing this problem, Medi-Cal can pay all or a portion of the cost of nursing home care. Indeed, it is the source of last resort, the last hope.

To qualify for the program, an individual or a couple need not be impoverished. Rather,

it is a matter of complying with legal requirements and having assets either in the right form or transferring them in a manner that is consistent with law.

When we accept responsibility for asset preservation in this context, there are two other issues that are devastatingly important. They go well beyond the issue of qualifying for Medi-Cal.

One is the "estate claim" that can be asserted by the State of California at the time of an individual's death. Simply stated, the state wants to be reimbursed for dollars it spent caring for an individual who was 55 years of age or over and who received Medi-Cal benefits. Here, too, proper legal planning can help you avoid this claim.

The second and closely related issue is tax. There are many and powerful tax

issues - gift tax, capital gains tax, and estate tax - that must be taken into account. We have seen "Medi-cal plans" save \$50,000

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Your "Lawyer for Life" Michael Gilfix will appear on KGO's "Lawtalk" with host Len Tillem on August 11 th from 6 to 7p.m. Radio AM-810. Be sure to tune in and listen.

Michael Gilfix Joins KGO's Len Tillem on "Lawtalk"



On June 2, 2002, KGO's Len Tillem invited Michael Gilfix to appear on his show as an elder law and estate planning expert.

The KGO switchboard (lit up) by callers with questions for Michael Gilfix that included Special Needs Trusts for disabled family members, protective steps to save their residence from a MediCal estate claim, and numerous questions regarding trust administration and how to protect trusts from challenges.

So successful was this program, that Michael Gilfix will again appear on Tillem's "Lawtalk" on August 11th from 6 - 7 p.m.. Be sure to tune in and listen.



MANY OF US HAVE DISABLED FAMILY MEMBERS PLAN FOR THEM, PROTECT THEM, PROTECT YOUR ESTATE

If you don't have a disabled family member, you know many individuals who do. Mental and physical problems do not discriminate against particular racial or socioeconomic groups.

If you have a child, in particular, who is disabled, or if you know someone who does, you simply must know about Special Needs Trusts. These trusts are designed to hold assets for the benefit of an individual who is receiving public benefits and to help that person without disturbing eligibility.

- If the person is receiving Supplemental Security Income (SSI) or Medi-Cal, they would continue to do so.
- If they are in subsidized housing, they would continue to live there.

Why use the Special Needs Trust for a disabled individual?

1. The disabled beneficiary will keep her income (SSI) and health care (Medi-Cal) benefits.

2. Money in the trust can be used to pay for items and services not covered by public benefits.
3. Money in the trust can be used to pay for a doctor who will not accept Medi-Cal.
4. Parents control where trust assets go after the child is deceased.

The only alternatives to the Special Needs Trust are (1) leaving nothing to the child, or (2) leaving money in trust that does not have these restrictions. This latter course of action will cause the loss of public benefits. After the assets are consumed, the child will go back on public benefits. This is disruptive, not helpful.

In planning these trusts, there are tax and family issues to address. We have decades of experience in dealing with these issues. ♦

NEW TAX LAWS by Michael Gilfix, Esq.



On June 12, 2002, the United States Senate effectively blocked legislation that would permanently eliminate the estate tax.

This means that the existing, mind-bending law remains in effect. This also means that it remains confusing for estate planning purposes.

As the estate tax law is now written, the level of individual protection increases until the year 2010, in which year the estate tax is eliminated. As of January 1, 2011, the estate tax returns and the level of protection plummets to only \$1 million per person.

It was our previous prediction that Congress would pass estate tax legislation and allow more generous estate tax protection without eliminating the estate tax. Our guess was that the level of estate tax protection would be in the area of \$3 million to \$4 million per person. A Democrat-sponsored bill to do just this - to increase the permanent level of estate tax protection to \$4 million per person - was defeated by Republicans who want the entire tax eliminated.

We continue to believe that the tax will not be eliminated.

► **What to do?** Our advice remains the same: Be sure you are clear about the size of your estate, put the best plan into effect, live long, and enjoy yourself.

If you are worried about the estate tax, talk with us so we can address your concerns. Proactive planning always makes sense.

► **Role of your Durable Power of Attorney:** A Gilfix & La Poll Associates-drafted Durable Power of Attorney often includes a provision allowing your agent or your "attorney in fact," to undertake tax and estate planning on your behalf if you are incapacitated. This could prove to be very important if you are in fact incapacitated when the law changes to the detriment of your estate.

*If your Durable Power of Attorney does not include such authority, contact us and a new DPA can be prepared.

Since is it important to "check in" and have your trust and other estate planning documents reviewed every other year, perhaps it is time to do that. If you would like to get together and review your planning documents in the context of the new estate tax law, be sure to bring an updated list of assets to the appointment, along with a list of your questions. ♦

WILL AND TRUST CONTESTS



Have you been denied an inheritance and believe that it was unfair? How do you challenge a will or a trust that fails to provide for close family members or otherwise fails to provide for an expected gift or bequest?

Many people ask us these questions.

GILFIX & LA POLL SETTLES SAN FRANCISCO WILL CONTEST

The office of Gilfix and La Poll represented the children of an individual who died in 2001. The will failed to provide for his children and instead distributed everything to a charity. His children felt that this was wrong, that their parent never would have done this if he was in his right mind.

Our office filed a will contest alleging that the decedent “lacked capacity” to prepare a will at the time that he did so.

The circumstances were troubling and the handwritten will was prepared shortly before his death.

After we conducted our preliminary research and investigated the relevant facts, we contacted the organization that was to inherit the entire estate. Within a matter of weeks, this matter was settled and the children received *50% of this estate*.

All matters cannot be resolved so favorably, but the lesson is clear: If you feel that a will or trust is somehow inappropriate, see us about the grounds upon which a challenge can be based. Remember, such challenges must be filed immediately.

Alternatively, a parent or other loved one may be living and taking steps that are clearly inappropriate. This individual may be the victim of “elder abuse.” Protective steps may be necessary. ♦



WOW! The Math Is In.

Mathematics do not lie. A creative, timely plan implemented by Gilfix and La Poll Associates some nine years ago saved a family \$420,000.

Attorney Michael Gilfix obtained a court order allowing the proceeds of a personal injury settlement to go into a “Special Needs Trust” for the benefit of a 77 year old woman in a San Francisco nursing home. This enabled her to continue receiving Medi-Cal as the primary source of payment for the cost of her care. It also enabled her son, acting as trustee, to use money in the Special Needs Trust for her benefit. During the last ten years of her life, he used these funds to hire companion aides to be with her when he was unable to do so, and to pay for treatments and support she otherwise would not have been able to afford.

If this trust were not established - particularly with its unique terms - the entire settlement would have been lost and there would have been no “safety net” to pay for this person’s many needs that were not covered by Medi-Cal or any other form of public benefits.

Lessons Learned:

1. If someone you know is in a nursing home and either has or will have any financial resources, Gilfix & La Poll Associates can work with the family to protect those assets while ensuring quality care.
2. Our special expertise and experience create planning opportunities. ♦

“Ashes to Ashes: Party Favors”

Rosemary Leary, former wife of deceased Timothy Leary, threw her annual “TIMOTHY LEARY MEMORIAL PARTY” in May of 2001. Party attendees were treated to very special party favors. Seventy-five small baggies of Timothy Leary’s cremated ashes were passed out to these fortunate guests.



When There is a Death in the Family



In the best of circumstances, death is traumatic for family members. Questions about the estate usually come to mind. These questions should be answered so they do not lead to worry and distress. We offer the following abbreviated checklist:

1. Pay no bills that arrive in the name of the decedent - scam artists often send fake bills with the expectation that they will not be reviewed.

2. Cancel all credit cards held in the name of the decedent.

3. Locate all estate planning documents and keep them in a safe, centralized place.

4. **Call Gilfix & La Poll Associates to have immediate questions answered and to schedule an appointment.**

➤ If the decedent had a revocable trust, the trust must be administered; many formal steps must be taken.

➤ If the decedent had only a will, the probate process must be commenced in a timely manner.

Remember, it is an unfortunate myth that nothing has to

be done after death if an individual had a trust. Tax and other advantages must be secured in the trust administration process. The rights of beneficiaries have to be protected. The trustee has a high level of fiduciary responsibility.♦

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for a family in the context of nursing home bills and then lose \$80,000 in capital gains taxes because tax issues were virtually ignored. Needless to say, we do not ignore these issues.

Aging can be a time of wonderment and fulfilled dreams. It can also bring medical problems that simply must be addressed. Our job, for you, is to see to it that you receive the best quality care and that your family's assets are protected to the greatest extent possible. We believe that these objectives can be harmonized.

As a final note, tell other family members, friends, and neighbors that they need not simply become resigned and depressed and watch their estate, the product of a lifetime's labors, go out the window because of health problems. Tell them to give us a call so that we can give them proper information and advice.♦

"It Depends."

Attorney Michael Gilfix was talking with a jocular, older client and was asked a rather complex "yes or no" question. His response, not atypical, was "It depends."

Never say "depends" to a senior citizen, immediately quipped our client.

Watching Michael Gilfix

Michael Gilfix accepts a limited number of speaking engagements each year that require travel - he likes being at home.

We thought you would be interested in some of the speaking engagements Mike has accepted recently. They include:

- (1) American Institute for Philanthropic Studies Long Beach
- (2) Professional Fiduciary Association San Mateo
- (3) American Institute of Certified Public Accountants . . Portland
- (4) National Academy of Elder Law Attorneys Albuquerque
- (5) KGO Radio "LawTalk" with Len Tillem San Francisco

Gilfix & La Poll Associates Services:

Asset Preservation and Peace of Mind Through Estate Planning

Gilfix & La Poll Associates' attorneys specialize in legal planning that is highly sophisticated and sensitive to the needs of older Californians.

Recommended services include:

- Living Trusts That Avoid Probate
- Wills and Probate Management
- Estate ("Death") Tax Avoidance
- Durable Powers of Attorney for Health Care
- Tax and Estate Planning for Owners of Family Businesses and Larger Estates
- Medi-Cal Planning
- Elder Abuse Actions, Trust Disputes, Will Contests



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