Lahti, Lahti & O'Neill, LLC
Estate Planning and Elder Law

Michael Lahti--Steve O'Neill--Mia Lahti

One Richmond Square – Suite 303N
Providence, Rhode Island 02906
Telephone: (401) 331-0808 Fax: (401) 223-5115
www.llo-law.com

New Bedford Office
651 Orchard Street, Suite 304
New Bedford, MA 02740
(508) 992-8677

Cape Cod Office
72 Route 28, Suite 5
West Harwich, MA 02671
(508) 430-8677

Providing Peace of Mind Since 1976

Estate Planning Solutions *Summer 2011*

LLO Speaks – Notable Recent Estate Planning and Elder Law Presentations by Lahti, Lahti & O'Neill's Attorneys

On Thursday, June 16, 2011, Michael T. Lahti spoke to approximately 250 attorneys at the Rhode Island Bar Association's Annual Meeting. The title of his seminar presentation was ***10 Things You Must Know to Help Your Elder Law Clients***. His talk was described as "a Primer on Basic Elder Law Issues with Discussion of Various Strategies." Subtopics included:

- What Is a Countable Resource
- The "Transferee Exceptions"
- Options Available in a Crisis Situation
- Put Extra Thought into the Power Of Attorney
- Long Term Care Insurance
- Use of Irrevocable Trusts

On June 8, 2011 Steve O'Neill and Michael Lahti jointly presented a morning seminar to about 50 attendees on the subject of ***Estate Planning Fundamentals,*** at the Cranston, Rhode Island headquarters of the **Rhode Island Retired Teachers Association**, at the request of its Board of Directors.

Steve and Michael also recently made an evening presentation of our ***Estate Planning Fundamentals*** seminar to a group of about 25 key East Bay area depositors invited by Webster Bank, at its Barrington, Rhode Island branch.

If your organization would like to have one or more of our attorneys address its members on any Estate Planning or Elder Law topic, please call us at **(401) 331-0808.**

Approximately 2 to 3 times each month, we present invitation-only ***Estate Planning Fundamentals*** luncheon seminars throughout Rhode Island. If you are an existing client, we welcome your attendance at one

CONTENTS OF THIS ISSUE

of these sessions, and we hope that if you attend you will bring along one or more of your acquaintances who may be interested in learning about proper estate planning.

And of course we always welcome the attendance of our professional colleagues and their interested clients.

For a schedule of upcoming seminar presentations, give us a call or visit our recently redesigned website, www.LLO-Law.com, which also contains copies of all LLO's recent ***Estate Planning Solutions*** newsletters and lots of other helpful information. ♦♦♦

Planning for an Incapacitated Loved One, Part I: Special Needs Trusts[1]

Maria H. ("Mia") Lahti, Esq.

Families with disabled dependents are usually familiar with the importance of access to government benefits such as Supplemental Security Income (SSI) and medical health insurance benefits through the Medicaid program. Preserving the family member's access to these important programs can generally be achieved through the use of a Special Needs Trust ("SNT"), often also referred to as a *Supplemental* Needs Trust. In a properly drafted SNT, an individual's assets are not considered to be countable assets for purposes of qualifying for certain government benefits. This allows the family member to retain Medicaid and SSI eligibility, while setting aside funds to *supplement* that individual's needs and expenses.

A SNT can pay for the extra things that make life comfortable and enjoyable above the basics provided by public benefits. This type of trust can pay for things like education, recreation, personal items and medical and dental expenses beyond what Medicaid will pay. If the SNT is sufficiently funded, the disabled person can also receive helpful items such as appliances, electronic equipment and computers, vacations, and other things that enhance the person's quality of life.

There are two types of SNTs. First, there are those established under a will or trust of a parent or other family member for the benefit of a child (including an adult child) with special needs. These are often referred to as *third party SNTs*. This type of SNT typically benefits the child, for life, and then passes to other family members. A second, distinct type of SNT would be employed when the assets being used to fund the SNT already belong to the trust beneficiary, such as a disabled individual who receives an outright inheritance, or judgment proceeds from an accident or medical malpractice. This second type of trust must include a "payback" provision under which the trustee must reimburse the state with assets that remain after the death of the beneficiary for the public assistance provided.

Many parents ask why they can't just leave money in their estate plans to a disabled child's siblings so that they can look after the child. Providing for a disabled person through disinheritance puts the assets at risk. The non-disabled sibling(s) holding the assets could be subjected to judgments arising from bankruptcy or divorce or other lawsuits, or could die and leave the assets to some other person. The use of a SNT guarantees that the funds will be held for the sole benefit of the person under disability.

LLO's estate planning attorneys are familiar with government assistance program rules and regulations, and have all the knowledge and tools needed to properly implement SNTs.

See also Steve O'Neill's immediately following Article, *Dealing with Retirement Benefits in the Context of Special Needs Trusts.* ♦♦♦

Dealing with Retirement Benefits in the Context of Special Needs Trusts

Stephen T. O'Neill, Esq.

Extra caution is required in designating a Special Needs Trust as beneficiary of qualified plan or IRA death benefits. If qualifying the beneficiary for needs-based government programs is your objective, then it is vital to employ a Special

[1] In an upcoming Issue**,** we'll cover **Part II: Guardianship**.

Needs Trust which also qualifies as an "see-through accumulation trust" under the IRS' qualified plan and IRA "minimum distribution rules." Since the Special Needs Trust's beneficiary will typically have no descendants, selecting the contingent beneficiaries of the trust (those who take upon death of the trust's primary beneficiary) becomes an important decision. This is because in this type of trust, the oldest beneficiary (including the contingent beneficiary) becomes the "measuring life" upon which the retirement benefits need to be paid. Selecting an "older" beneficiary might cause the benefits to be distributed more quickly than they might otherwise have to be. If the Special Needs Trust beneficiary has siblings who are relatively close in age to the beneficiary, they can be selected as contingent beneficiaries, and this will allow the trust to qualify as an "accumulation trust" with little or no shortening of the tax-deferred stretch-out period for the qualified plan or IRA distributions.

If your situation involves both a special needs beneficiary and substantial retirement benefits, be sure to consult legal and tax advisors who are familiar with both Special Needs Trusts and the IRS' qualified plan and IRA required minimum distribution rules as they apply to trusts. ♦♦♦

LLO White Paper on Planning for Large Estates in 2011 and 2012

On or about August 15, 2011, Lahti, Lahti & O'Neill, LLC will publish its first ***White Paper***, on the topic ***Estate Planning for Estates of $5 Million or More in 2011 and 2012*** in light of **TRUIRJCA 2010.**

We included a *summary* of the estate planning provisions of **TRUIRJCA 2010** in the January 2011 edition of ***Estate Planning Solutions.*** The estate, gift and generation skipping transfer tax provisions of the 2010 law will lapse on 1/1/13 in the absence of further legislation. LLO's ***White Paper*** will contain detailed recommendations on how to plan for this new law in 2011 and 2012 and beyond.

We'll be providing a copy of this ***LLO White Paper*** to all of our key professional colleagues and to all clients whose estates exceed or approach $5 million. Here's a summary of its contents:

"Testamentary" Planning in 2011 and 2012, including –

- whether and how to take advantage of portability of married couples' exemptions
- optimizing use of the marital deduction and the individual exemption
- Optimizing use of the generation-skipping transfer tax exemption
- Minimizing RI and MA estate tax
- Maintaining the flexibility to deal with various possible 2013 outcomes

Planning Lifetime Transfers in 2011 and 2012, including –

- the effect of the $5 million exemption and the 35% maximum rate on lifetime gifts
- annual exclusion gifts in trust
- "Grantor Trust" Planning
- Valuation Discount Planning
- "Grantor Retained Annuity Trusts" and sales to "Intentional Grantor Trusts"

The ***White Paper*** will also provide guidance on:

- Life Insurance Planning in 2011 and 2012
- Charitable Planning in 2011 and 2012
- Other areas of increased concern in 2011 and 2012

We'd be happy to schedule an initial or update consultation with you or any client or other acquaintance of yours to discuss planning opportunities for estates exceeding or approaching $5,000,000, without cost or obligation. ♦♦♦

Congratulations to Steve O'Neill for having been named a 2011 Rhode Island SuperLawyer in the field Of Estate Planning and Probate. The official announcement will be published in the November 2011 issue of Rhode Island Monthly and New England SuperLawyers Magazine

Polly Want a Trust? Massachusetts Joins Rhode Island and Florida in Adopting a Pet Trust Statute

Effective April 7, 2011, Massachusetts, just like Rhode Island did in 2005 and Florida did in 2007, enacted a statute allowing for the creation of a trust for the care of an animal or animals. The statutes of all three states, which are substantively identical, provide that the Pet Trust instrument may name a trustee and may also name a third party having an interest in the welfare of the animal(s) who in effect steps into the paws (or claws, if you own a bird or a reptile) of the pet for purposes of enforcing the trust. If the trust fails to name either a trustee or a third party "trust enforcer," the court having jurisdiction may do so. The statutes also give courts the power to reduce the amount set aside in trust if the court determines that the amount exceeds what is reasonably needed to care for the animal(s). A statutory "Pet Trust" must terminate at the death of the last of the named animals at which time any remaining balance is distributed as provided in the trust instrument or, if the trust instrument is silent, to the trustmaker if still living (an unlikely scenario as virtually all Pet Trusts will be post-death trusts), or if the trustmaker is deceased, then under the residuary clause of the trustmaker's will.

Lahti, Lahti & O'Neill, LLC will happily incorporate Pet Trust provisions into your estate plan for a relatively modest fee. To get started, call us or visit www.LLO-Law.com to obtain our two-page Pet Profile Form. ♦♦♦

Free Elder Law Workshops for Rhode Island Clients at our Providence Headquarters. Tuesday, Wednesday & Thursday, August 23, 24 & 25, 4-5 p.m.

Michael T. Lahti, who is a **Certified Elder Law Attorney** (one of only four in Rhode Island) will be conducting a ***free workshop*** on ***Elder Law for Rhode Island Clients*** on Tuesday, August 23, Wednesday, August 24 and Thursday, August 25 from 4 PM to 5 PM in LLO's first-floor conference room at our Providence office, one Richmond Square, Providence, RI 02906.

Those attending one of these three identical sessions will learn the steps necessary to protect their homes from nursing home expenses, and why it is absolutely essential to plan ahead.

Space for each workshop is limited to twelve individuals, so call our 24 hour toll-free reservation line at **(1-800-596-0884)** right away to select the date that is best for you, and to reserve your seat(s).

Directions to our Richmond Square office may be found on the **Contact Us** page of our website, www.LLO-Law.com. There is virtually unlimited parking at our Providence HQ, pictured below.

Please Introduce Us!

*Do you have family, friends, colleagues, customers, clients or other acquaintances who might benefit from our 70-plus years of combined estate planning and elder law experience? Acquaintances who may need help in protecting **their** family and property, or in paying less tax?*

If so, give them one of the enclosed **Introduction Certificates**, and ask them to call us.

Pursuant to U.S. Treasury Department Regulations, we are required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication is not intended or written to be used for, and may not be used for, the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

This Newsletter should not be construed as legal advice but rather as general guidance on matters as to which you may wish to consult with a qualified professional advisor.