



# Estate Strategies

## The Cobbler's Children Syndrome & Estate Planning

By: Marlaine Teahan

“So why did you finally execute a will?” Last week, this provocative question was in my LinkedIn feed, asked by someone in the funeral industry. One attorney posted that she eagerly awaited the responses. So far, there are none. Why? Because most people haven't executed a will.

For years, I've heard statistics that less than half of all Americans have a will. Rocket Lawyer reports that 64% of Americans do not have a will and 55% of Americans with children do not have a will. When Rocket Lawyer asked why, the most common reason given by 57% was that they “just haven't gotten around to making one.”<sup>1</sup>

We all know that estate planning is important, but until a close friend or family member has an accident, gets cancer, or dies, we don't realize how urgent it really is. Are we going to be like the cobbler's children who have no shoes? Ben Dattner, Ph.D., wrote an article called “Cobblers Children Syndrome in the Workplace.” According to Dattner, this syndrome is at work in organizations and individuals, such as the IT Consultant who uses outdated technology, or the anorexic who cooks great meals for others but won't enjoy them. He points out that there may be a defensive aspect to this syndrome, saying, “A person may develop a rigid and inflexible world view as a way of protecting him or herself from inner rebelliousness.”<sup>2</sup>

I'll state the obvious application of the defensive aspect of the Cobbler's Children Syndrome to estate planning: we avoid estate planning to protect ourselves from facing the reality of death. However, you owe it to your spouse and children to buy shoes, face death head on, and get your estate planning in order. Consider the following ten issues when you plan:

**GET A TRUST.** A fully funded revocable grantor trust (commonly called a “Living Trust”) avoids probate, protects children and those with special needs, and can help reduce or eliminate federal estate taxes. For many people, a trust is the centerpiece of their estate plan; for others, a Will is all you need.

**GET A WILL.** A Will allows you to direct the persons and or charities that will receive your assets upon your death. If you do not have a Will, the State of Michigan will direct (by the intestacy laws) how your assets will be distributed.

*Continued on Page 6*

<sup>1</sup> “Rocket Lawyer Delivers No Excuses Estate Planning for April ‘Make-A-Will Month’,” RocketLawyer.com, February 18, 2015.

<sup>2</sup> Ben Dattner Ph.D., “Cobblers Children Syndrome in the Workplace,” PsychologyToday.com, published on December 6, 2008 in Credit and Blame at Work, online post, February 18, 2015.

## In this Issue

### Asset Protection Planning



Protection planning techniques to protect your assets, while still maintaining as much control as possible..... Page 3.

### New Property Tax Uncapping Exemptions



Property owners could benefit financially from a new state law making succession planning more affordable..... Page 5.

### Coaches vs. Cancer Challenge



Fraser Trebilcock teams up with MSU Basketball Coach, Tom Izzo to raise money for Cancer research..... Page 7.

# News & Upcoming Events



517.377.0869

[mteahan@fraserlawfirm.com](mailto:mteahan@fraserlawfirm.com)

**Marlane C. Teahan** was selected once again to serve as Chair of Fraser Trebilcock's Trusts & Estates practice. She has also recently been elected to the Board of Trustees for the Capital Region Community Foundation, where she will serve on the Marketing Committee. Marlane was honored recently by Super Lawyers Magazine as one of the Top 50 Female Attorneys in Michigan, one of the Top 50 Consumer Law Attorneys in Michigan, and one of the Top 25 Female Consumer Law Attorneys in Michigan.



517.377.0890

[mkellogg@fraserlawfirm.com](mailto:mkellogg@fraserlawfirm.com)

**Mark E. Kellogg**, an attorney and CPA, was recently chosen to serve as the Chair of Fraser Trebilcock's Business and Tax Law practice. He was also re-elected President of DeWitt Schools Board of Education, and as President of the MI chapter of the American Association of Attorney – Certified Public Accountants. Mark recently gave a talk on "Planning for Unique Assets". You can find the full presentation on our website, [fraserlawfirm.com/resources/blog](http://fraserlawfirm.com/resources/blog).



616.301.0800

517.377.0887

[mmysliwicz@fraserlawfirm.com](mailto:mmysliwicz@fraserlawfirm.com)

**Melisa M. W. Mysliwicz** recently gave a talk on Medicaid to the Ingham County Bar Association Probate and Trust Section. Coming up on May 7, 2015, she will address the Greater Lansing Association of REALTORS regarding new exemptions from uncapping of taxable value of residential real property. Read her article on this topic, and learn how it may impact you, on page 5. In September, Melisa will speak at the Institute of Continuing Legal Education's Elder Law Institute on "Government Benefits A to Z".

## Meet the Newest Member of our Team



517.377.0892

[kdare@fraserlawfirm.com](mailto:kdare@fraserlawfirm.com)

Please join us in welcoming Kristen M. Dare to our Fraser Trebilcock family. Kristy began in December 2014 as a paralegal in the Trusts & Estate Department, bringing with her several years of experience in the trusts and estates area. She works under the guidance of attorneys Marlane Teahan, Mark Kellogg, Melisa Mysliwicz, and Mike James.

Kristy has an Associate's degree in Business and Paralegal Studies and will graduate in May, 2015 from Ferris State University with a Bachelor's degree in Business Administration. As a paralegal, Kristy provides service to our clients in the areas of estate planning and trust & estate administration. Kristy looks forward to working with you and your family and is committed to providing friendly, efficient, and top-quality service.

# Protecting Your Assets in a Litigious Society

By: Mark E. Kellogg

When meeting with clients and assisting them with an estate plan, I am frequently asked questions about asset protection. This seems to be a more common occurrence with clients who are business owners, those who own commercial real estate, or are doctors, lawyers or in another profession, and may be at a greater risk of being sued. Given our litigious society, asset protection planning has become an increasingly integral part of estate planning for clients. Asset protection planning uses strategies and techniques to protect your assets from potential creditors, while still maintaining as much control as possible over your assets.



There are some general concepts that are important for you to know:

- Planning must begin before a claim or potential liability arises. I have received that frantic call from a client being sued or concerned about being sued. Unfortunately, at that point it may be too late to protect assets. All states have certain laws prohibiting what's called fraudulent transfers or fraudulent conveyances.
- Asset protection planning and estate planning are not always easily coordinated. Making gifts to children or heirs may make sense in the estate planning context, but may constitute fraudulent transfers if made for asset protection purposes.
- Avoid commingling personal assets and business assets. Business entities such as corporations, partnerships and limited liability companies are meant to be vehicles for commercial operations, and are not intended to be a personal bank account to protect assets. You should also avoid placing personal assets into a business entity. It is imperative that business owners respect the separate identity of the business and maintain the integrity of the company. Failure to maintain a certain separation will increase the risk for the business to be pierced by a creditor through the alter-ego theory.

Even with these concerns, there are some relatively simple steps that you can take to protect assets under Michigan law:

1. Make sure that your vehicles are titled only to one person. For instance, instead of having the title to a car held jointly by you and your spouse, it should instead be in the name of the person who uses it most. This also includes motorcycles, motorhomes, and even watercraft. Use the same strategy with vehicles driven primarily by your children.
2. Under Michigan law, with the exception of federal tax liens, a creditor of your spouse cannot reach your interest in entireties property, otherwise known as tenants by entireties protection. This applies to all ownership of real property (and certain real property interests such as a land contract vendor's interest or mortgage interest) and certain types of personal property, including certain investments like bonds, stock certificates, and brokerage accounts. Without an expression of contrary intent, the transfer of real property to a husband and wife will be deemed to have created a tenancy by the entireties. However, keep in mind that upon the death of one spouse, the property will become the sole property of the surviving spouse and become subject to all pending judgments and other claims that may exist against the surviving spouse.
3. Maintain sufficient liability insurance, which should include your home, cars, watercraft and other motor vehicle insurance, as well as insurance related to the risks associated with your profession or business. Also, consider an umbrella insurance policy.
4. Shelter as many of your assets as possible in a qualified retirement plan. After the U.S. Supreme Court case of *Patterson v. Shumate*, 504 U.S. 753 (1992), assets in a qualified ERISA plan are outside the reach of a participant's creditors. Note that assets in Individual Retirement Accounts do not receive the same protection as an ERISA qualified plan. Pursuant to most recent case law, IRAs are not protected outside of bankruptcy, due to the preemption of federal law as it applies to non-ERISA plans, such as IRAs. In the bankruptcy context, IRAs are offered limited protection under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Public Law 109-8, April 20, 2005.
5. Life Insurance can be another way to protect and pass assets on to certain beneficiaries. Under Michigan law, creditors cannot reach certain family beneficiaries' interests in policy proceeds, except to the extent necessary to recapture premiums paid on the policy which were paid with the intent to defraud creditors.

*Continued on Page 7*

# Statewide Alzheimer's Advocacy Day

May 5, 2015

State Capitol, 9 a.m. - 3:30 p.m.



We are proud to support the local chapter of the Alzheimer's Association, and a group of young professionals, dedicated to the fight against Alzheimer's disease, by sponsoring breakfast at Alzheimer's Advocacy Day. Learn more at [alz.org/mglc](http://alz.org/mglc). Click on "Advocate".

## Walk to End Alzheimer's

September 13, 2015

State Capitol, 11:30 a.m.



For many members of our Fraser team, the fight against Alzheimer's is personal. Some of us have held the hand of a loved one, a close friend, or a grieving client, dealing with the devastating effects of Alzheimer's disease.

The Walk to End Alzheimer's® is the nation's largest event to raise awareness and funding for Alzheimer's Disease. So once again this fall, we'll come together in support of the Alzheimer's Association and its great work to fight the disease. We invite you to join our Fraser Trebilcock team and walk with us.

Together, we can make a difference in the  
fight against Alzheimer's!

Register online: <http://act.alz.org/goto/Team-Fraser>

## CLIENT ALERT:

Contact us immediately if you received a  
Notice of Intent to File Claim Against Estate.

Estate recovery is the State of Michigan program in which the State is paid back for Medicaid benefits provided to certain recipients of long term care. Under certain conditions, the State is allowed to "recover" property from the recipient's "estate."

State law requires that written information be provided to individuals seeking Medicaid eligibility for long-term care services describing estate recovery, and at a minimum, a statement that some or all of their estate may be recovered. Failure to provide this notice has resulted in the denial of several of the State's estate recovery claims by probate courts around the state. The State has appealed a few of these decisions and, as a result, the notice issue is currently pending before the Michigan Court of Appeals. A second issue currently pending before the Michigan Court of Appeals addresses whether/when a hardship exemption exists for homes of modest value.

If you receive a Notice of Intent to File Claim Against Estate with a Michigan Estate Recovery Questionnaire attached to it following the death of a Medicaid long term care recipient age 55 or older, contact us immediately. Extreme care should be taken in both completing the questionnaire and in considering whether all or any portion of the State's claim for estate recovery should be disallowed by the estate's personal representative. We are available to review the facts of your case and to provide counsel as to available options to protect the rights of the decedent, the surviving spouse, and the heirs.

## Does your Lady Bird Deed Still Achieve Your Goals?

Given a recent change in the Michigan State Tax Commission's treatment of Lady Bird deeds, property taxes may increase at death.

Lady Bird deeds are a common way in Michigan to pass property upon death, without probate. Lady Bird deeds create a life estate coupled with a power of appointment retained by the grantor and names a default beneficiary to take the property in the event the power of appointment is not exercised.

If you executed a Lady Bird deed as part of your estate plan, please contact your attorney to discuss whether the Lady Bird deed still achieves your estate planning goals.

# New Property Tax Uncapping Exemptions

By: Melisa M. W. Mysliwicz

Michigan lawmakers recently took steps to provide a number of new exemptions from the “uncapping” of a property’s taxable value upon transfer of ownership of the residential real property to certain relatives, and even includes certain transfers from trusts and estates. These new exemptions will benefit many families, including those with a goal of keeping their Michigan home or cottage in the family for future generations.



Typically, whenever a transfer of ownership of real property occurs, the taxable value of the property uncaps in the following year and is re-set at fifty percent of the property’s true cash value (i.e. the state equalized value). There are, however, a number of exemptions to this which allow for certain transfers to occur without uncapping the taxable value of the property. These exemptions are of great significance to those who hold highly appreciated real property, and now the list of available exemptions has grown considerably. Those receiving residential real property as part of an inheritance or those receiving cottages through cottage succession planning are included among those who will benefit from these new exemptions.

As of December 31, 2014, certain transfers of residential real property to your Immediate Relative will not result in uncapping the taxable value of the property. For purposes of this article, the term Immediate Relative includes your mother, father, brother, sister, son (by blood or adoption), daughter (by blood or adoption), grandson, or granddaughter and your spouse’s mother, father, brother, sister, son (by blood or adoption), daughter (by blood or adoption), grandson, or granddaughter. In addition to outright transfers, the expanded list of exemptions include:

- Conveyances to a trust if the property is conveyed by the settlor or the settlor’s spouse, or both, and the sole present beneficiary(ies) of the trust are the settlor’s or settlor’s spouse’s Immediate Relative(s), as defined above.
- Conveyances by distribution from a trust if the distributee is the settlor’s or settlor’s spouse’s Immediate Relative, as defined above.
- Conveyances by distribution under a will or by intestate succession if the distributee is the decedent’s or the decedent’s spouse’s Immediate Relative, as defined above.
- A change that adds or substitutes the settlor’s or settlor’s spouse’s Immediate Relative(s), as defined above, as sole present beneficiary(ies) of a trust holding residential real property.

It is important to note that in order to meet the requirements of the new exemptions, the residential real property may not be used for any commercial purpose following the conveyance. Therefore, transferees who receive residential real property such as apartments and rental properties, including vacation rental properties, will not benefit from the new exemptions available because the taxable values of these types of properties will still uncap upon transfer of ownership.

*Melisa M. W. Mysliwicz has been named a “Rising Star” in Michigan by Super Lawyers Magazine two years in a row, for her work in elder law and trusts and estates. Melisa’s focus on Elder Law and Medicaid planning often sets her apart from other attorneys. She is also an accredited attorney by the Department of Veterans Affairs. When Melisa isn’t working on client matters, she is busy reviewing and editing the State Bar of Michigan’s Probate and Estate Planning Journal as an assistant editor. She is also Chair of the School Board for St. John Vianney Catholic School, near Grand Rapids.*



## The Cobbler's Children Syndrome & Estate Planning, continued

Even if you have a trust, you need to have a "pourover" Will just in case your trust is not fully funded at your death. A pourover Will transfers your probate assets to your trust so that there is only one document that controls the disposition of your assets at your death.

**GET A DURABLE POWER OF ATTORNEY FOR FINANCES.** Having a Durable Power of Attorney for finances gives your designated Agent authority to handle your finances. This is very helpful if you become disabled or incompetent. Without a durable power of attorney, a Court-appointed conservator may be needed to handle your financial affairs.

**GET A DURABLE POWER OF ATTORNEY FOR HEALTH CARE/DESIGNATE A PATIENT ADVOCATE.** When you are unable to communicate your wishes regarding your own medical care, after two doctors certify this fact in writing, your patient advocate can act for you to make decisions regarding your medical and end of life care, hospice, dying at home, and pain relief. Designating your patient advocate may save your loved ones a trip to probate court to be appointed your guardian.

**PLAN FOR A POSSIBLE LAY-OFF OR LOSS OF A JOB.** Create an emergency fund that will get you through two to three months of your financial needs in the event your family's major wage earner loses his or her job.

**OBTAIN DISABILITY INSURANCE.** An accident or illness that leaves you unable to work can cause great financial difficulties, even if it is only a short-term disability. Long-term disabilities can be even more financially devastating. If your employer does not provide short- and long-term disability, investing in these products may provide needed income for your family when you are unable to do so.

**PLAN FOR YOUR MINOR AND DISABLED CHILDREN.** If parents of minor children die without a will or trust, the probate court will set up a conservatorship to protect assets inherited by the children. At 18, the children will receive their inheritance outright. Most people prefer to set up a trust that will set aside money for their children's health, education and support, deferring ultimate distribution of funds until age 25, 30, 35, or later. If a child has special needs, a Special Needs Trust should be considered as part of the parents' estate plan; this can be part of a revocable trust or a standalone Special Needs Trust. Part of planning for your children often includes determining how much of your children's education you want to provide. Then, consult your financial advisor to assist you in making a plan to save money for college or other training/support for your child. Another major component of planning for minor children is to designate a guardian, the person who will care for them until they reach 18. This is a difficult issue for some families but a very important one that needs advance planning. If your children are over 18, don't forget that they should do planning of their own. Durable Powers of Attorney can often avoid the need for your child to have a guardian or conservator appointed. Consider that even college kids should have their own Durable Powers of Attorney for Finances and Health Care.

**PLAN FOR YOUR RETIREMENT.** Work closely with your financial planner to adequately plan for your retirement. Check out a life expectancy tool at [www.livingto100.com](http://www.livingto100.com) to see how long you can expect to live. If you have a long life expectancy, you may wish to save more money now, or work a few years longer to obtain higher Social Security benefits. Ask your attorney for a referral to a competent and trustworthy financial planner.

**PLAN FOR MEDICAID.** Before going into a nursing home, and before applying for Medicaid, consult an attorney familiar with Medicaid's eligibility, divestment, and estate recovery rules. Getting proper advice at this time may save your family thousands of dollars.

**PLAN YOUR FUNERAL.** Pre-planning, and possibly pre-paying, your funeral will take a burden off the shoulders of your loved ones. Decisions you make now will ease their load of decision-making during a difficult time. Consult your local funeral director for more details.

Planning for your disability and death is a rewarding process that will put your mind at rest and benefit your family for years to come.

**Marlaine C. Teahan** chairs the Trusts and Estates practice at Fraser Trebilcock. With nearly 30 years of experience as an attorney, Marlaine works closely with individuals and families to create estate plans to fit each client's unique situation. She handles a wide variety of matters including: drafting wills, trusts and durable powers of attorney; trust and estate administration; guardianship and conservatorship matters; and probate litigation. To learn more about how to put together your own estate plan, contact Marlaine at 517.377.0869 or [mteahan@fraserlawfirm.com](mailto:mteahan@fraserlawfirm.com).

## Protecting Your Assets in a Litigious Society, continued

Clients with significant wealth and/or extraordinary risk may wish to consider more sophisticated asset protection planning methods, such as the establishment of a "family" limited liability company or creation of domestic or offshore asset protection trusts. In addition, more states are enacting legislation for the establishment of domestic asset protection trusts. To ensure that your assets are protected or if you have any questions on asset protection, talk with your attorney about the best options to match your needs.

**Mark E. Kellogg** chairs Fraser Trebilcock's Business and Tax Law practice, and has devoted his nearly 30 years of practice to the needs of family and closely-held businesses and enterprises, business succession, and estate planning. In addition, Mark is a certified public accountant. He holds several leadership positions for legal organizations dealing with business, agriculture, estate, trust and probate law. He also currently serves on the Board of the international organization of Attorneys for Family-held Enterprises (afhe) and is President of the DeWitt Public Schools Board of Education. Contact Mark at 517.377.0890 or [mkellogg@fraserlawfirm.com](mailto:mkellogg@fraserlawfirm.com).



## Team Fraser Trebilcock Takes 1st Place!



We laced up our sneakers in January and teamed up with Michigan State University and Coach Tom Izzo to fundraise for a fantastic cause! Our attorneys and staff faced off for a fun hour of homemade putt-putt golf, basketball, and a football ring toss. In total, our team raised more than \$1500 to support the American Cancer Society, beating out area businesses for the top honor.

Coaches vs. Cancer is a nationwide collaboration between the American Cancer Society and the National Association of Basketball Coaches. It's often recognized by its "Suits and Sneakers" tradition, as coaches sport their sneakers during that week's basketball games to promote cancer awareness.

## Communications with Fraser Trebilcock

Since the closing of the U.S. Postal Service regional sorting facility, we have been experiencing delays of five to seven days for both delivery of and receipt of our client mail. While frustrating for all of us, it is out of our control and we appreciate your patience.

We value our clients and strive to return phone calls and e-mail in a timely fashion; however, there are times when other obligations and commitments prevent us from responding promptly. When leaving voicemails or sending e-mail to our attorneys, please allow a 24-48 hour turn-around for a response.



# Estate Strategies

Spring Newsletter



124 W. Allegan Street, Ste. 1000  
Lansing, MI 48933