

# FREEDMAN AND FISH, LLP

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## HOME TRANSFERS



By Robert Freedman, Esq.

Considering transferring your home to your children? It is something to think about. It may be advisable. It might avoid probate of your Will, or the need to have a Court administer the Estate if it is coordinated with a plan for your other assets. It may protect your home from a 'right of recovery' if you receive Medicaid benefits to pay for home care or nursing home services. (Although you can own your home and still receive Medicaid, Medicaid may recover from your Estate after you die.)

But before you transfer, consider the following warnings: The transfer of the home to the children may cause you to lose your Senior Citizen Real Property Tax Exemption, or your Enhanced Star Exemption; it may create a substantial capital gains tax for your children when they sell the house; it may make you ineligible for Medicaid coverage of nursing home care or certain home care programs; it may cause you to owe a gift tax or a larger Estate tax if your Estate is more than \$1 million. You must also think carefully about your children. Is there a risk of conflict between you and your children, or among your children? What happens if a child gets divorced or predeceases you? What if a child has gambling debts or a drinking problem and risks your house in dangerous investments?

Considering transferring your house to your children? If you are, you should consult with one of the attorneys at Freedman and Fish who can advise you about the tax consequences, the effect on Medicaid eligibility and what will happen to the distribution of your house after you die. We can advise you of the benefits and warn you of the risks and look for the best way to structure the transfer to protect you and to protect your money.

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If you would like more information about:

Estate Planning, Elder Law or Planning for Persons with Disabilities please call either

our New York Office at 212-953-1172

or

our Brooklyn Office at 718-238-6960

# SAVING ON TAXES WHILE SAVING FOR COLLEGE: NEW YORK STATE'S 529 PLANS

BY JOANNE B. SPELLANE, ESQ.

In 1997, under IRC §529, the Federal government authorized state-sponsored college savings plans with special estate tax savings. These plans are an ideal option for parents and grandparents who wish to make gifts to minors specifically to help with skyrocketing educational costs. New York readily adopted these plans as of December 31, 2001. Not only are the plan's earnings tax free, but distributions from these special accounts are tax free as long as the money is used for expenses related to higher education. All levels of educational institutions as well as trade or vocational schools, public or private colleges or universities both inside and outside New York State are included. Qualified expenses include fees, eligible room and board, books, supplies, and required equipment.

New York's College Savings Plan ("CSP") offers an improved opportunity to save substantially larger amounts than other savings options such as Education IRA's that allow only \$2,000 per year. An individual can contribute up to \$100,000 to a §529 Plan. The requirements of these plans are:

**The Plan:** The Account must be owned by one individual, and must name a single beneficiary. The beneficiary can be anyone: relative, friend, spouse – even the account owner can be the beneficiary. However a trust cannot be a beneficiary. There are no limitations on age, income, or state of residence. The beneficiary may be changed, but the new beneficiary must be limited to the immediate family of the former beneficiary. In New York, the CSP is managed by TIAA, as a part of TIAA-CREF, a leading Teacher's service organization. Accounts can be opened with as little as \$15.00, and arrangements can be made to have contributions automatically deposited through payroll deductions. Account

owners may not exercise investment direction and must irrevocably choose from the following four investment options: (1) *Managed Allocation Option*: uses an age-based approach to allocate investments between equities and fixed income (for example, investment strategy is based on the age of the beneficiary, age 10 years, who will enter college at age 18); (2) *Aggressive Managed Allocation Option*: also uses an age-based approach, but is more heavily weighted in equities during a beneficiary's younger years, shifting to fixed income as the beneficiary nears to college age; (3) *High Equity Option*: does not focus on the age of the beneficiary, but invests between 75% - 100% in stock holdings; (4) *Guaranteed Option*: does not focus on age, but guarantees principal and a minimum interest rate (currently 3%). (NB: this option means that principal and a minimum interest rate will be guaranteed by TIAA-CREF Life Insurance Company to the College Savings Program Trust, not the individual account owner.)

*In a 529 plan, the account owner retains control over how the funds are spent, in stark contrast to the traditional custodial account, where the beneficiary receives the money automatically upon reaching the age of majority.*

**Tax Implications:** New York taxpayers can deduct contributions up to \$5000 per year from their NY taxable income (a husband and wife filing jointly can deduct up to \$10,000 per year). Contributions to a 529 Plan account are generally considered completed gifts to the beneficiary for federal estate and gift tax purposes. If an account owner dies while there is a balance in the account, the value of the account would NOT be included in the

participant's estate. However, upon the death of the beneficiary, the value of the account is includible in the beneficiary's gross estate for federal estate tax purposes.

Generally, as long as the contributions are less than the applicable annual exclusion amount (currently \$11,000) per year, no federal gift tax return need be filed. However, if the annual contribution exceeds the \$11,000 per donor for each beneficiary, a gift tax return will have to be filed.

In addition, each account owner has his or her own federal lifetime unified estate and gift tax credit which may be applied to gifts exceeding the \$11,000 annual exclusion. The current lifetime unified credit provides the equivalent of a federal estate and gift tax exemption of \$1,000,000. Thus, while a federal gift tax return is required for annual gifts in excess of \$11,000 per beneficiary, no gift tax is actually due until all applicable exemptions have been used by the donor.

**The Risks:** (1) The account must be in place for three years before the owner can withdraw money to pay for the qualified higher education expenses of the beneficiary without incurring a penalty; (2) Funds in the account will not be considered in the determination of eligibility for New York State-administered financial aid programs, but federal or institutional aid programs may consider the amounts when determining eligibility. Thus, the existence of these funds may reduce the beneficiary's ability to qualify for financial aid; (3) Medicaid has not ruled on whether these gifts are considered a prohibited transfer. It could be agreed that this transfer was not made to become Medicaid eligible. For information on establishing a 529 plan, please contact our firm for a special appointment.

## Long Term Care Insurance—Financial Alternatives to Long-Term Care

### By Judith D. Grimaldi, Esq.



Television ads, magazine articles, telemarketers and direct mailers remind us daily of a new option in planning for long-term care, LONG-TERM CARE INSURANCE. With the lengthening of the life cycle to 80, 90 and even 100 years, the likelihood that an individual will face a chronic illness is ever increasing. It is clear that most health insurance coverage such as Medicare, HMO's, supplemental health insurance and other general health insurance limits coverage to acute illness and treatment. Coverage for the care needs of individuals who suffer with progressive or chronic diseases such as Alzheimer's, Parkinson's, heart disease, and/or debilitating respiratory impairments, or those who have mobility deficits from arthritis or a stroke, must pay for their own custodial care at home or in a nursing home. Many of our clients wish to use Medicaid benefits to finance their long-term care needs. Others plan to use their savings or retirement resources. Insurance companies are promoting special long-term insurance plans to meet the need for chronic care. Long-term care insurance policies have finally developed to the degree that this choice is now viable and satisfactory. Better policies are now being offered at a time when retirees have the necessary discretionary income to pay the annual premium. These can range from \$3,000 to \$6,000 for a sufficient policy aimed at providing both in-home and nursing home care.

The recommended elements which are necessary for adequate long-term insurance coverage are:

- At least 3 years of coverage;
- A daily benefit rate of at least \$250/day for nursing home care and \$150/day for home care.
- Liberal gate keepers – who decides if the coverage should be authorized.
- Reasonable requirements concerning ADL deficits which includes dementia.
- Inflation protections – how does the daily benefit rate keep pace with inflation?
- A waiver of premium – when benefits are authorized.
- Is there some consumer choice as to who provides home care?
- Does the policy cover adult day care, medical equipment, assisted living facility?
- Tax deductibility – the premium is a medical deduction.

*The attorneys at Freedman and Fish, LLP have reviewed many of the long-term care insurance policies offered in New York State. We welcome a chance to review your existing policy. We can evaluate a policy you are considering in order to determine if it will fill your specific care needs. Before you plan to buy a policy, let our firm do the analysis. Planning early and securing the maximum health insurance within your budget may be the most protective step you can take in meeting your long term care needs.*

### Firm news.....

Our attorneys have been busy with many speaking engagements and seminars and nursing home visits to both educate the public and make themselves familiar with the various programs and services available in the New York Metro area. *Allison Busch* and *Marcie Roth* presented a New York State Bar Association CLE on Ethical Issues in advising Senior Clients. ...*Dan Fish* has given presentations at the Alzheimer's Association, Financial Executives Institute and coming in September, he'll give a presentation at the NYU School Of Continuing and Professional Studies. ...*Judie Grimaldi* has spoken on home care options at CNR Health Network, and was a key participant in Assemblymember Joan Millman's Senior Fair Day. *Robert Freedman* spoke at a support group for Huntington's Disease, presented at the Upper West Side Jewish Community Center in NYC regarding Estate Planning for families with Disabled Children, and in June will be chairing the NYSBA Advanced Elder-law Program. *Joanne Spellane* organized an informal meeting for discharge planners at NYU Hospital. Our firm's attorneys participated in ElderLaw Decisions, a program sponsored by the New York State Bar Association and the Council of Senior Centers and Services.



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**"In Legal Matters  
- People Matter"**

# CONCEPTS OF INDEPENDENCE

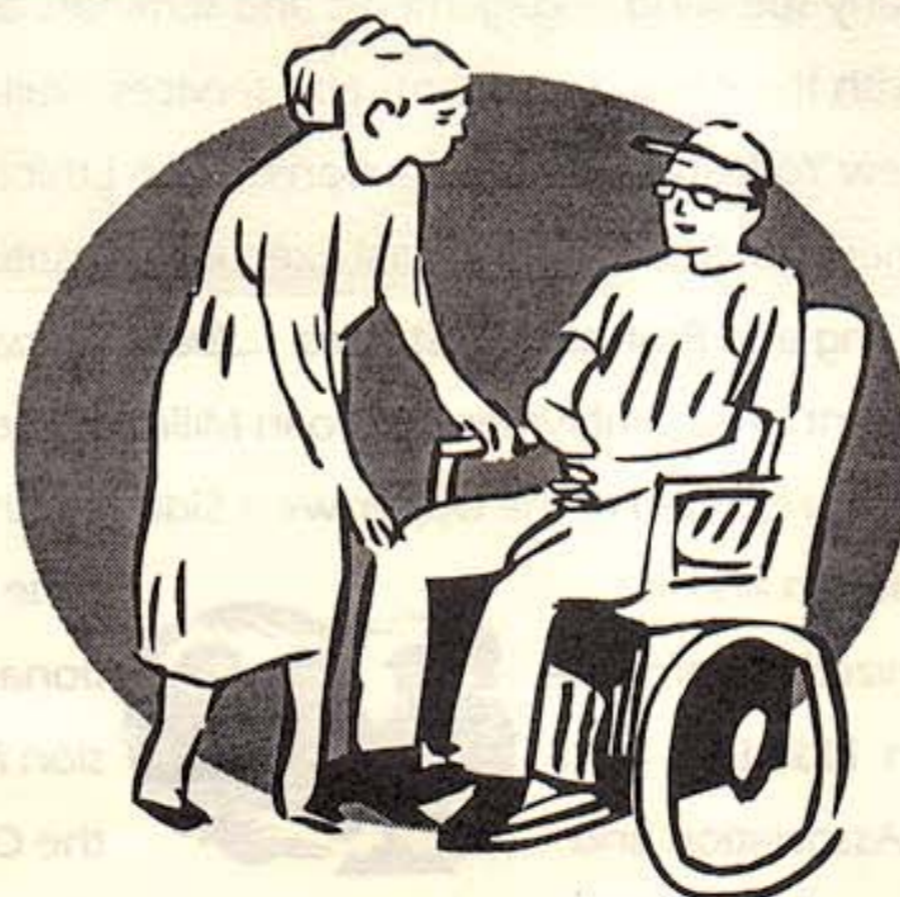
By Pauline Yeung, Esq.

Are you eligible for or already have Medicaid Home Care benefits? Do you have a personal attendant working for you, whom you are satisfied with and wish to keep him or her? You might consider a program known as Concepts of Independence ("Concepts"). Concepts is a non-profit corporation which allows you, your family member or caregiver ("the consumer") the flexibility to choose and manage your own home care service while Medicaid pays the cost of the care. If you are already enrolled or eligible for traditional home care through the Medicaid program, you may be eligible to transfer into the Concepts Program.

Concepts is the first consumer directed program and was established in 1980 to service the five boroughs of New York City and has expanded to over 8 counties throughout New York State. Concepts serves as the fiscal liaison between the consumer and Medicaid.

Thus, it manages the personal attendant's payroll and administers a comprehensive benefit program which includes health, vision, dental insurance, etc.

### So, what is your role if enrolled with Concepts?



As the consumer or family caretaker, you assume the responsibility of managing all aspects of recruiting, interviewing, training, scheduling and supervising the personal attendants. Additionally, you must establish a plan of care and maintain and process timesheets and related documents for the personal attendant, not to exceed the hours authorized by Medicaid. You must develop back-up plans for emergency schedule changes, vacation and holidays and report to Concepts any changes in the status of personal attendants.

The Concepts program can enable you to live independently within your own home and make choices that affect and enhance your quality of life. If you wish to meet with a staff attorney to learn if your home care services could be enhanced through the Concepts of Independence program, please

**Concepts has over 1300 consumers enrolled in the agency today. contact us today.**