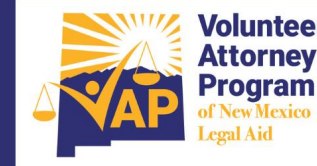


Welcome to the VAP Pro Bono Collaborative ECHO CLE Session July 16, 2024

Succession Planning

Agenda



Introductions - Nedia Isabella (Bella) Zayani, Statewide Pro Bono Coordinator, New Mexico Legal Aid, Inc.



Announcements for Session: Marissa Gonzalez, VAP Paralegal, New Mexico Legal Aid, Inc.



Topic Presentation: *Succession Planning*



Topic Presenter: Judge Cristy J. Carbon-Gaul, The Law Office of Cristy J. Carbon-Gaul

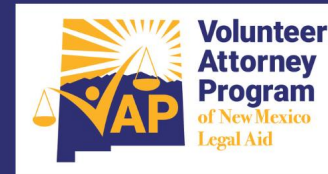


Case Analysis and Q&A: Judge Cristy J. Carbon-Gaul, The Law Office of Cristy J. Carbon-Gaul



Overview & Closing Remarks: Volunteer Attorney Program of New Mexico Legal Aid

IT IS NOT IF, IT IS WHEN-
Succession Planning.





WHO NEEDS AN ESTATE PLAN? EVERYONE!



PURPOSE OF PLANNING

- Lifetime issues
- Family issues
- Wealth protection
- Tax avoidance
- Succession Planning

WHAT DOES AN ESTATE PLAN INCLUDE?

- Will
- Statement of Disposition of Tangible Personal Property
- Revocable Trust
- Life Insurance/ Irrevocable Trust
- Durable General Power of Attorney
- Durable Health Care Power of Attorney
- Organ Donation / Cremation and Funeral Instructions
- Beneficiary Designations
- Re-titling of Assets

WHERE THERE IS NO WILL

- No named beneficiaries
- No named guardian
- No named personal representative
- No testamentary trust

THE WILL

- The will is the instrument that directs how your assets are to be distributed after your death.
 - Personal representatives
 - Testamentary Trust
 - Minor children
 - Blended families

REVOCABLE OR “LIVING TRUST”

- Trust Agreement
- Pour-Over Will
- Restatements
- Funding Trust (checking accounts)
- Incapacity

WILL VS. REVOCABLE TRUST

- Tax planning
- Organize now or later
- Administration

Estate Taxes

1. Current Estate Tax
\$13.610
2. Capital Gain
3. Income Taxes - IRA

Portability Election for Estate Tax

- In 2010, the portability election became available for married couples when both spouses are U.S. Citizens
- You have five years to make the election

Gifting

- Unified Credit Gifts
- Annual Exclusion \$18,000
- Restrictions on Gifts- maybe Irrevocable Trust
- Stock Restriction Agreement/Operating Agreement
- Use of LLC (discussed further below)

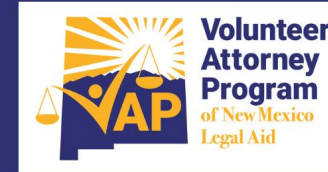
Changes to Estate Tax Law

- Sunset provision kicks-in on December 31, 2025
- You need to start analyzing your estate tax issues now

Need for POAs

1. Effective Date of POA
2. Need for Successor
3. Not Redacting the Statutory Powers
4. Use for Gifting
5. Freshness Date

Does Your Agent Match your Succession Plan?



Putting Children on Accounts and Deeds

- For the business account
- Deeds- capital gain issue
- Administrative Ease
- Liability Issues

When Death Certificates are Slow

- ➡ **Access to Liquidity**
- ➡ **Prepayment for Burial/Cremation**

Beneficiary Designations

1. Coordinate with Estate Plan/
making educated decisions
2. Naming Minors



Understanding your Financial Situation when Spouse/Partner dies

- ➡ **PENSIONS-ARE THEY TWO
LIFE ANNUITIES?**
- ➡ **Social Security**



Understanding Ramifications of Remarriage

- Pensions
- Social Security
- Pre-Nuptial Agreements

Confirming Titling of Real Property and Beneficiary Designations

TITLING OF ASSETS

- TENANTS IN COMMON
- JOINT TENANTS
- Inherited Property- check titles,
i.e Mora County

Use of LLCs for Real Property

1. Making Sure You Are Treating Them as a Separate Entity
2. Operating Agreement
3. Banking
4. Separate Insurance

How Many LLCs Do You Need?

- Operations separate from land
- Separate ranches, non-contiguous property
- LLCs for difference beneficiaries

LLC Operating Agreements

- Owners Establishing Salaries
- Dealing with Grazing Fees
- Homes on the Property
- Appraisals- establishing who is used
- Right to Sell Underlying Assets
- Transferring Tangible Personal Property to the LLC
- Establishing buy-out terms
- Establish who can be a member



DO NOT USE A CORPORATION TO OWN LAND

ROFR- Right of First Refusal

- Allow siblings to buy each other out
- Set the valuation of the property
- Establish a discount and other terms that allow the continuation of the family legacy

LIFE INSURANCE

- Liquidity – taxes, succession planning
- Creating estates
- Replace income
- A lot of insurance
- Not enough insurance
- Obsolete policies

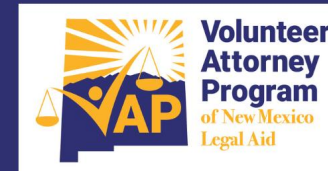
ILIT- Irrevocable Life Insurance Trust

- Have not been used in the last decade or so due to the increase in the Unified Credit
- May be time to reconsider life insurance in estate tax planning
- Need to consider life insurance in a buy-out plan- who is the owner of the insurance policy

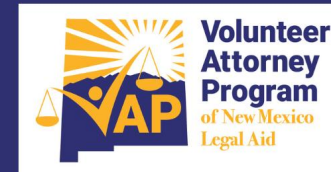
Liability Insurance

- Check your coverage
- Is it tied to the entity
- Umbrella policy

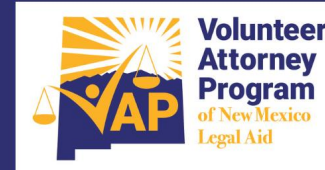
Funding and Restatements for Trusts



Updating In General



Making Sure Your Estate Plan Covers Everyone You Care for Financially or Otherwise





JUDICIAL DISTRICT: District Court



LEGAL ISSUE: Blended family with Medicaid needs

Factual Summary

- Spouse One and Spouse Two have been married for thirty years. They are both in their late 60s and Spouse Two has been diagnosed with Parkinson's.
- Spouse One has three adult children from a previous relationship. Spouse One has one child who has special needs and is on the DD Waiver.
- Spouse Two has one child from a previous relationship.
- Spouse One and Spouse Two have one adult child together.

Question of Practice

- Without a will, who are Spouse One's heirs?
- Who are Spouse Two's heirs?
- Are stepchildren included in the definition of children?
- What do you do if the step-parent wants the stepchild included?
- What issue does a developmentally disabled child/adult raise?



JUDICIAL DISTRICT: District Court



LEGAL ISSUE: Property

Factual Summary

- Carmen Garcia is a widow. She has five children. She owns a number of real properties that she rents.
- **Property One:** Owned By Carmen and her deceased husband, Manuel, as community property.
- **Property Two:** Owned by Carmen and Manuel as joint tenants.
- **Property Three:** Owned by Carmen, Manuel and Jorge, their oldest son, as joint tenants.
- **Property Four:** Owned by Carmen and her brother, Pepe Aragon as tenants in common.
- **Property Five:** Owned by Jose and Maria Aragon, Carmen's parents. Carmen has been renting this home out for decades, paying the taxes and insurance.
- Carmen wants all of the properties to be split evenly between her children, with the hope that they continue to rent the properties for continued income to her children.

Question of Practice

- How does **Property Two** pass?
 - Owned by Carmen and Manuel as joint tenants
- How does **Property Three** pass?
 - Owned by Carmen, Manuel and Jorge, their oldest son, as joint tenants.
- How does **Property Four** pass?
 - Owned by Carmen and her brother, Pepe Aragon as tenants in common.
- How does **Property Five** pass?
 - Owned by Jose and Maris Aragon, Carmen's parents. Carmen has been renting this home out for decades, paying the taxes and insurance.
- How does this property pass?
 - Carmen wants all of the properties to be split evenly between her children, with the hope that they continue to rent the properties for continued income to her children.
- What options exist to set up a plan where the children can continue to own the properties together?

Upcoming Pro Bono Opportunities

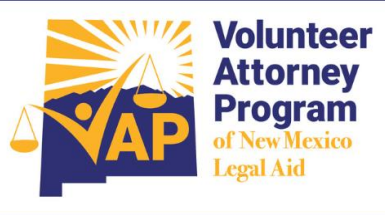
July Legal Fairs:

- Taos Legal Fair: July 19, 2024 from 9:00 a.m. to 4:00 p.m.
- Dona Ana Village Legal Fair: July 20, 2024 from 10:00 a.m. to 5:00 p.m.
- Lawyers in the Library Legal Fair: July 26, 2024 from 9:00 a.m. to 3:00 p.m.

August Legal Fairs:

- Socorro Legal Fair: August 2, 2024 from 10:00 a.m. to 2:00 p.m.
- Lovington Legal Fair: August 23, 2024 from 2:00 p.m. to 4:30 p.m.

For more information regarding volunteering for upcoming legal fairs, please email Bella Zayani at bellaz@nmlegalaid.org.



Thank you for joining Today's VAP Pro Bono Collaborative ECHO CLE Session!

July 16, 2024

Topic and Case Presenter:

Judge Cristy J. Carbon-Gaul, The
Law Office of Cristy J. Carbon-Gaul

Facilitated By:

Nedia Isabella (Bella) Zayani, Esq.
Statewide Pro Bono Coordinator, NM Legal Aid

Meryl Sutton

VAP Paralegal, NM Legal Aid

vapecho@nmlegalaid.org



Cristy J. Carbón-Gaul
Law Office of Cristy J. Carbon-Gaul
505-899-5696
cristy@carbon-gaul.com

Mailing address:
10515 4th St., NW
Albuquerque, New Mexico 87114

Hand deliveries/ Client Meetings:
10143 4th St. NW
Albuquerque, New Mexico 87114