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A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

NEWSLETTER

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EMPLOYER SPONSORED DISABILITY INSURANCE

THOMAS M. MONSON, ESQ.

Are you a participant in an employer sponsored disability insurance program that pays income to you if you become disabled? If so, you may be in for a shock when you try to collect the benefits that your policy promises.

In most instances, group policies are subject to ERISA (Employee Retirement Income Security Act of 1974) regulations. ERISA was enacted by Congress for the purpose of protecting employee benefits for plan participants. ERISA also sets forth the "administrative process" which must be followed by a participant and the insurance company. Unfortunately, Congress did not set forth specific, concise requirements for these disability plans. This omission allowed each insurance company to write its own policy language, the interpretation of which has been left to the courts.

There is a reason that group disability policies cost, on average, one-sixth of a quality individual insurance policy: group policies are designed to limit coverage and thus limit the benefits payable by the insurance company. This is accomplished in many ways, including: (1) narrow policy definitions of the words "disabled" or "disability;" (2) reduction or elimination of coverage for certain conditions (e.g., mental conditions, self-reported conditions, etc.); (3) offsets of other income (such as workers compensation benefits, state disability benefits, and social security disability benefits) against the amounts payable under the group policy; (4) policy language which gives the insurance company the right to decide, at its own "discretion," whether or not your medical records prove you are disabled; (5) time limitations under which you are considered disabled from your own job as opposed to being disabled from any job; and (6) annual or biannual requirements that you "re-prove" your disability.

Most ERISA disability policies require that a claimant also apply for state disability and social security disability benefits. This is required as the insurance companies are allowed to reduce the amount they pay by the amount the claimant receives from state disability and social security disability programs.

When Congress enacted ERISA, it apparently failed to consider that insurance companies are in the business of making money. This profit motive can be in direct conflict with the insurance company's ERISA-imposed fiduciary duty to act in the best interests of the group policy plan participants. However, proving a link between the profit motive and a denial of benefits is extremely difficult.

A claimant can also be lulled into a belief that the insurance company representative is doing its best to help the claimant prove his or her claim. While the claims adjuster may sound sympathetic and appear to be working on the claimant's behalf, the reality is that the claims adjuster is on the payroll of the insurance company and could be receiving a performance evaluation based on the adjuster's ability to terminate the claim.

Many claimants who receive a benefit denial letter attempt to write their own appeal letter without understanding the ramifications of what a "self-appeal" could do to their ability to prevail in a Federal lawsuit. In most lawsuits against the insurance company, the only evidence that the court can consider is the documentation already contained in the claim file. New evidence generally is not allowed after a lawsuit has been filed. Claimants are unaware of this pitfall and unwittingly do not document their claim file with adequate or proper information. This ties the hands of the court when it evaluates whether or not the insurance company has terminated benefits improperly. If evidence is not in the claim file before the lawsuit is filed, the court generally cannot consider it.

The bottom line: 1) review your group disability policy to understand fully the coverage it does and does not provide; 2) understand that, if you are receiving Social Security disability benefits, you are not automatically qualified for group disability benefits; 3) understand that group policies are not written using the same language as an individual disability policy; and 4) understand that, once you have been approved for benefits, your benefits may not remain in place and unchallenged by the insurance company until you reach age 65.

If you have benefits under a group long-term disability policy, you become disabled, and you expect to collect benefits under that policy, you need to know your policy and the application of ERISA. You will have to anticipate every strategy that will be employed by the insurance company to defeat your claim. You will have to proceed in the face of numerous complicated court decisions, and you will have to paper the file with everything but the kitchen sink.

CALIFORNIA PROPERTY TAX CONSEQUENCES IN THE ESTATE PLANNING CONTEXT (Part I)

RAY W. RIDLON, ESQ.

Estate planning often involves property transfers - either during one's lifetime or after death. Failure to understand the property tax ramifications of a real property transfer can lead to property tax shock for the parties involved. For this reason, property transfers should be analyzed in advance to determine whether the transfer can be structured to take advantage of the exclusions to property tax reassessment.

Background

In 1978, Proposition 13 added Article XIIIA to the California Constitution and established that the maximum property tax a County may assess is equal to 1% of the "full cash value" of the real property, and the amount each County may annually increase the property taxes is limited to 2% per year.

For property tax purposes, "full cash value" means the County Assessor's valuation of the real property for 1975-76 or, thereafter, the appraised value of real property when purchased or newly constructed, or when a "change in ownership" occurs. A "change in ownership" is defined under Section 60 of the California Revenue and Taxation Code as a "transfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest."

When a change in ownership occurs, the real property will generally be reassessed at market value by the County Assessor as of the date of the change in ownership. As a result, property taxes may increase dramatically.

Certain transfers are not considered changes in ownership and thus do not trigger reassessment. For example, exclusions may be available for the following transfers:

- Interspousal transfers, including transfers between registered domestic partners
- Parent-child transfers
- Grandparent-grandchild transfers

- Joint tenancy transfers
- Trust transfers (meeting certain criteria)
- Certain transfers involving legal entities

Interspousal Transfers

Transfers between spouses are excluded from reassessment. This exclusion includes transfers between spouses during marriage, transfers between spouses occurring because of the death of a spouse, and transfers made pursuant to a property settlement agreement or a decree of dissolution of a marriage or legal separation. As of January 1, 2006, the interspousal transfer exclusion applies to transfers between registered domestic partners.

Parent-Child Transfers

Certain transfers of real property between a parent and a child are excluded from reassessment, whether the transfers occur by sale, gift, or inheritance. The parent-child exclusion is a two-way street, meaning the transfer can be from parent to child or from child to parent.

A "child" for purposes of the parent-child exclusion includes: (1) any child born of the parent(s); (2) any stepchild while the relationship of stepparent and stepchild exists; (3) any son-in-law or daughter-in-law of the parent(s) (the relationship of parent and son-in-law or daughter-in-law exists until the marriage on which the relationship is based is terminated by divorce or, if the relationship is terminated by death, until remarriage of the surviving son-in-law or daughter-in-law); and (4) any adopted child who was adopted before the age of 18.

A transfer of a principal residence between parent and child is fully excluded from property tax reassessment; there is no limitation on the value of the principal residence. Additional property other than the principal residence, up to $1,000,000 in “assessed value” may be transferred by each eligible transferor. In other words, mom and dad together may transfer their principal residence plus an additional $2,000,000 in assessed value of other real property to their children without reassessment.

The value of the “other” property that may be excluded is based upon its assessed value, not fair market value. For example, assume mom and dad transfer to their children a piece of commercial property they purchased twenty years ago. Though the property has a current fair market value of $5,000,000, the property is assessed by the County Assessor at less than $2,000,000 because of the limited annual increases allowed by Proposition 13. Because the assessed value of the property is less than $2,000,000 (or $1,000,000 per parent), the parents can transfer the entire property (valued at $5,000,000) to their children without causing a reassessment. [Note: This example pertains only to property taxes; it does not address gift or estate tax issues.]

To obtain the parent-child exclusion, a claim must be filed with the County Assessor’s office where the property is located by the earliest of (1) three years after the parent-child transfer, or (2) before a transfer of the property to a third party. If a claim is filed after the three-year deadline, the exclusion will not be granted retroactive to the date of the transfer, but will be granted prospectively for the year the claim was filed and the future years.

Grandparent-Grandchild Transfers

The rules pertaining to the exclusion from property tax reassessment for transfers between grandparent and grandchild are similar to the rules for the parent-child exclusion. However, the grandparent-grandchild exclusion is a one-way street. In other words, an exclusion from reassessment is available only for a transfer of property from a grandparent to his or her grandchild. It is not available for a transfer of property from a grandchild to his or her grandparent.

This exclusion is available only if the parents of the grandchild are deceased as of the date of the transfer. If, for example, the grandparent’s child is deceased, but the deceased child’s spouse is still alive, the grandparent-grandchild exclusion will be available only if the surviving spouse and the deceased child were divorced or the surviving spouse remarried prior to the date of the grandparent-grandchild transfer.

The grandparent-grandchild exclusion is an extension of the parent-child exclusion. If a grandchild has already received a principal residence from his or her parent(s), and the parent-child exclusion was applied to that transfer, no

further principal residence exclusion is available for a transfer of a personal residence to the grandchild from his or her grandparent(s). However, if the parent did not use up his or her entire $1 million exclusion for "other" property (discussed above), the value of any property transferred from the grandparent to the grandchild, including the grandparent's principal residence, can be applied against the remaining value available under the "other" property exclusion.

No Exclusion for Transfers Between Siblings

There is no exclusion for transfers of property between siblings. For example, assume a son (S) and a daughter (D) inherit their parents' principal residence and, shortly thereafter, S purchases the 50% interest held by D. The inheritance of 50% by each of S and D is excluded from property tax reassessment due to the parent-child exclusion. However, because there is no sibling-to-sibling exclusion for property tax purposes, the subsequent transfer of the 50% interest from D to S constitutes a change in ownership and is reassessed at fair market value.

The parents could possibly have avoided the reassessment by leaving the entire residence to S, assuming there were other assets to leave to D. As another alternative, S might have purchased a 50% interest in the parents' residence while mom or dad was still alive, giving the parent(s) a promissory note for that purchase. The parents' trust or will could have distributed the remaining 50% interest in the home to S, with the promissory note going to D as her share of the estate. Either way, reassessment of the property would have been completely avoided.

The next part of this article will appear in our next issue.

If you would like to receive further information regarding the topics in this newsletter, or if you would like to let us know any issues or topics you would like to see addressed in future newsletters, please contact us at (619) 239-7777 or newsletter@mmpph.com.

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