



TRUSTED COUNSEL IS A QUARTERLY NEWSLETTER FOR  
THE CLIENTS AND FRIENDS OF THE RACK LAW FIRM, P.C.

## CONGRESS TIGHTENS MEDICAID ELIGIBILITY RULES

The rules governing Medicaid eligibility have remained relatively stable since 1993. However, in February of 2005, Congress changed those rules dramatically with the Deficit Reduction Act of 2005, which was signed into law by President Bush on February 8, 2006. The goal of the Medicaid provisions in this budget-oriented bill was to restrict the use of various strategies designed to preserve assets from complete spend-down for long term care. Unfortunately, the Act may have several consequences which harm individuals and the nursing homes that care for them.

The most significant changes to Medicaid eligibility under DRA are the extension of the look-back period to 60 months and the maximum ineligibility period to 60 months, rather than the current 36-month period for individuals. The real impact of these changes can be found in the shift of the start of the period of ineligibility for a transfer of assets from the first day of the month of the transfer to the later of that date or "the date on which the individual is eligible for medical assistance under the State plan and would otherwise be receiving institutional level care...but for the application of the penalty period..."

Translation: in order for the penalty period to begin, a person must be in the nursing home and have spent down to \$2,000. If the penalty is imposed at that time, then the resident will be out of funds, ineligible for Medicaid, and awaiting eviction by the nursing home. If the amount transferred by grandmother to family is substantial (such as

### Welcome to our Firm:

*We are now well into our first year as The Rack Law Firm, P.C., yet we are still basking in the exhilaration of a successful new enterprise. Clients and friends alike have wished us well, and notes of congratulations are still arriving in the mail.*

*Although the celebration has settled in to the sober and serious work of our law practice, there is a heartfelt sense of destiny here that I wanted to be sure to share with you. Every day, our colleagues, some of whom you will meet in this Inaugural Edition, lend their considerable intellectual capital to client matters with a team spirit that validates my vision for this Firm and our clients.*

*Thanks go out to all who have wished us well, with special appreciation to our clients and their advisors for their continued loyalty. We invite you to visit with us at our new offices and to introduce you to our new estate and trust litigation attorney, Ann Mayhew Golski (see her profile inside).*

- Kevin

her home place or life savings), she could be ineligible for up to 5 years for Medicaid payment of nursing care. This scenario will no doubt lead to dilemmas and disagreements in the family as to the sources of funds to pay for care in the interim.

Transfers made prior to February 8 will continue to be treated under the former rules (date of transfer starts period of ineligibility), while those made thereafter will be penalized under the new rules (uncompensated transfers will result in ineligibility starting with the application date).

Several other restrictions found in the DRA include a limitation on the home exemption to \$500,000 for individuals, and the elimination of "balloon" annuities and self-canceling installment notes ("SCINs") as asset transfer techniques. On the positive side, the purchase of a life estate in a child's home is permitted, and caregiver compensation agreements, which provide for payments by parent to a caregiver-child, were not affected by the new law. Likewise, special needs trusts remain valid under DRA.

Despite the significant change in the transfer penalty period rules, many viable options remain to preserve resources for the family in the face of substantial long-term care expenses. In coming editions of Trusted Counsel, we will evaluate specific Medicaid planning techniques affected (or not) by the new Act and keep you posted on related Virginia legislation.

### CONGRATULATIONS

*Kevin B. Rack has been selected  
by his peers as one of  
Virginia's Legal Elite for 2006*



# THE RACK LAW FIRM, P.C.

Providing experienced counsel on limited legal matters in the practice areas of estate planning and administration, estate and tax litigation, elder law, and the formation and administration of small businesses and tax-exempt organizations.



Kevin B. Rack

## Kevin B. Rack

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Mr. Rack, founder of the Firm, concentrates his practice in the planning and drafting of estate planning documents and the administration of trusts and decedents' estates. He handles sophisticated estate and gift taxation matters as well as family business succession planning and legal issues affecting the elderly. He is also experienced in fiduciary litigation and related matters before the Internal Revenue Service and the U.S. Tax Court.

For six of the past seven years, Mr. Rack has been named as one of Virginia's "Legal Elite" in Virginia Business magazine in the category of attorneys specializing in taxation, trusts and estates.

## C. Jordan Ball, III

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Mr. Ball has had extensive experience in a variety of tax matters, including estate, gift, income (Federal and multi-state), and business taxation. He has handled tax controversies before the IRS at the audit, administrative tribunal and tax court levels as an attorney with a boutique tax firm in New York City.

His estate planning practice ranges from simple wills and trusts to sophisticated tax planning vehicles. As a tax attorney with Kim & Chang, Asia's largest law firm, Mr. Ball advised multinational firms in the development of business structures and Korean tax matters in particular. He also forms and advises non-profit organizations as to obtaining and maintaining tax-exempt status.

## Nathan R. Olansen

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Mr. Olansen has extensive experience in the preparation of fiduciary income and estate tax returns, as well as returns for partnerships, corporations and private foundations. He assists clients with the administration of trusts and estates, whether through the probate process or in private trusts.

He provides legal advice on business entity start-ups, corporate re-organizations and family business succession planning, and he represents clients before the IRS in tax disputes, appeals and litigation. Tax-exempt organizations, including entities ranging from small charities to large private foundations, also benefit from Mr. Olansen's tax counsel.

## TOP TEN REASONS TO PLAN YOUR ESTATE THAT HAVE NOTHING TO DO WITH ESTATE TAXES

As of January 1, 2006, the estate tax exemption increased to \$2,000,000 per taxpayer. Accordingly, if the value of your assets (including life insurance death benefits) is less than \$2 million, then no estate tax will apply to transfers to beneficiaries at death (recall that the marital and charitable deductions cover gifts to spouses and 501(c)(3) charities). Even though this increase will avoid estate tax for those under the exemption amount (at least until 2011, when the credit will revert to \$1 million), one must still consider many other issues presented by individual and family circumstances as reasons to develop and implement an estate plan.

The following list is presented for your consideration, in case you have reason to:

- Name a person (and an alternate) to handle your affairs in case of incapacity
- Name a guardian (and an alternate) for your minor children
- Provide for a trustee to manage assets for your spouse or children, or both
- Protect assets for your special needs child
- Prevent disputes between your current spouse and children from a prior marriage
- Keep assets out of the control of in-laws
- Ensure that your estate has liquidity
- Update/revise your IRA or 401(k) plan beneficiary designations
- Protect the value of your business/practice for heirs
- Control the timing and manner in which your estate passes to intended beneficiaries

If one or more of these issues applies to you, don't wait for the next tax law change to address your estate plan.



C. Jordan Ball, III



Nathan R. Olansen



Michelle R. Rack



Ann Mayhew Golski

### Michelle ReDavid Rack

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Ms. Rack brings her considerable litigation experience to the Firm. Disputes arising in the context of contested wills and trusts, breaches of fiduciary duty, abuses of power of attorney against seniors, as well as removal of executors, trustees and conservators, call for seasoned trial lawyers whose practice is limited to these related areas of the law.

While pursuing her law degree at the T.C. Williams School of Law at the University of Richmond, she was named to the Moot Court Board for brief-writing and appellate advocacy skills. Ms. Rack was invited to serve as a Barrister in the American Inns of Court, an elite association of judges, attorneys and law students dedicated to excellence and professionalism in the practice of law in the courtroom.

### Ann Mayhew Golski

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Ms. Golski focuses her practice on litigation of matters affecting estates, trusts, powers of attorney, guardians and incapacitated persons. She also has litigation experience in matters relating to fiduciaries, trusts, estates, businesses, contract disputes, negligence and professional liability.

She is currently an Adjunct Professor of Law, at the College of William & Mary, Marshall-Wythe School of Law. Ms. Golski also served as Law Clerk to Virginia Supreme Court Justice Barbara M. Keenan.

Ms. Golski is admitted to practice before all Virginia courts, the U.S. District Court for the Eastern District of Virginia, the U.S. Court of Appeals for the Fourth Circuit, and the U.S. Bankruptcy Court for the Eastern District of Virginia.

### Mission Statement

It is the mission of every member of the Firm to deliver the highest caliber of legal representation to our clients, to provide client service that meets or exceeds expectations and to conduct the practice of law in a manner which will reflect honor upon ourselves, the legal profession and our community.

## IT IS NOW TRULY BETTER TO GIVE: NEW TAX TREATMENT FOR CHARITABLE CONTRIBUTIONS FROM IRA

For several years now, debate has delayed legislation which would encourage, or at least facilitate, the making of charitable contributions from IRAs. Proponents argued that taxpayers should not have to pay income tax on withdrawals if those funds were then used to make charitable contributions, because the current charitable deduction could not offset the income tax on the full withdrawal amount. Other supporters simply wished to avoid taxation on the required minimum distributions, especially where they were not in need of the funds; a charitable contribution deduction would solve the problem.

Although Congress did not give the relief sought, they did pass the Pension

Protection Act on August 3, 2006, which allows for a limited new option for potential donors with IRA money to give. For 2006 and 2007, persons who are of age 70-1/2 or older can exclude up to \$100,000 in IRA distributions from taxable income, so long as the distribution is made to a tax-exempt organization. Note that the tax-exempt entity cannot be a private foundation or donor-advised fund. For those wishing to offset undesired taxable income, the withdrawal for the gift to charity will satisfy the annual required minimum distribution, so that the gift amount will be excluded from income.

For example, assume Mrs. Abercrombie, age 72, has a roll-over IRA worth \$500,000, with a required minimum distri-



bution (RMD) of \$18,868 that she would prefer not to have to withdraw. She has given to Children's Hospital of the King's Daughters in the past, but she had to pay tax on the IRA income first and the charitable income tax deduction did not offset it. Now, she can pay the \$18,868 to CHKD and exclude the income from her tax altogether. She could even withdraw and contribute up to \$100,000 to her favorite charities, without having to include the income on her tax return.

For more information about the potential charitable giving and tax strategies available with your IRA after the Pension Protection Act, consult your tax advisor.

# ON THE HORIZON

Our next edition of Trusted Counsel will explore the many legal and practical issues faced by a surviving spouse who finds himself or herself disinherited, whether purposely or not. The results may surprise you. We will also explore estate tax and business planning strategies in a changing and unpredictable tax environment. Several important legislative changes took effect in Virginia on July 1, including the new Virginia Uniform Trust



Code, and we will provide a synopsis of those laws which affect our legal practice areas and, thus, our clients. For general information on legal topics within our practice area, check out the Law Library on our website at [www.racklaw.com](http://www.racklaw.com).

We encourage you to visit our website at [www.racklaw.com](http://www.racklaw.com). You can get acquainted with our attorneys, explore the Firm's legal practice areas, and visit our "Law Library" for general information on legal matters ranging

from living trusts to Medicaid planning to tax-exempt organizations. And let us know if you have comments or recommendations for the site!



*I'm proud to pay taxes; the only thing is, I could be just as proud for half the money.*

- Arthur Godfrey



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