Caregiving: A Sacred Journey

Estate Planning
Problems and Solutions
for Your Loved Ones

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I've Got Some Good News....

...and I've Got Some Bad News



Loved One Becomes Incapacitated...No Prior Planning for Finances

Conservatorship During Lifetime

Without appropriate legal instruments to manage your assets during incapacity, a court supervised <u>Conservatorship</u> and

<u>Guardianship</u> is likely inescapable



Conservatorships = Potential Problems

- "Time-Consuming"
- "Expensive"
- "Cumbersome"
- "Creates Delays"
- "Emotionally Trying"
- Significant legal consequences





Prior Planning With
- Revocable Trust
- Power of Attorney

Avoid Conservatorships with Trusts

Establishing a Trust

An individual can appoint a trustee to manage his or her financial affairs and thus can avoid the need for an appointment of a conservator



Avoid Conservatorships with Durable Powers of Attorney

Durable Power of Attorney

An individual can delegate to an agent the power to make financial transactions on his behalf if he is unable to do so himself.



Caution – Powers of Attorney

"A power of attorney that is not well-thought out can not only be ineffective but may be even counterproductive in achieving the principal's overall objectives"



Estate Planning Journal – March 2005

Just a few important provisions …

(and there are many, many more to consider)

- Providing Adequate Instructions
- Management provisions for retirement accounts
- Provisions for collecting governmental benefits
- Continuation gifting programs
- Care for pets
- Power to fund trusts
- Power to make advanced funeral arrangements
- Powers regarding US Mail
- Powers regarding Taxes
- Require Regular Accountings



Wait a minute….I've got a better idea

That's too much of a legal hassle…I'll just put my name on mom's account so I can help her!



Solution: "The Incapacity Duo"

Consider creating:

- Comprehensive General Durable Power of Attorney
- Trust to hold legal title to assets during lifetime



Bad News #2

Loved One Becomes Incapacitated…
No Prior Planning for Healthcare Issues

Modern Medicine: The Problem

Today 85% of all deaths occur in hospitals and nursing homes (i.e., long term care)



Modern Medicine: The Problem

Result: Longer periods where you "lack decision making capacity"

- Who will make decisions?
- How to Avoid Family Conflict?
- What types of care are desired (or not desired)?
- What About "end of life" Decisions?



Good News #2

Prior Planning With

- Healthcare POA
- Living Will
- Global HIPAA Release

Solution: Health Care Directive

- Identifies "decision-makers"
- Unambiguously states health care wishes
- Gives critical guidance to family & loved ones



Best Practice: The Enhanced Health Care Power of Attorney

- Unambiguous Chain of Command
- Detailed Enumeration of Powers Conferred
- Specific Instructions
- Understandable Statements of Intent
- Organ Donation
- Ensure Readily Available and Accessible



Living Will

<u>Colorado</u>: Advanced Directive for Medical or Surgical Treatment



- Why?
- What?

HIPAA – Locks Down Information

- Medical personnel face stiff penalties
- Reluctant to permit access to vital information
- Solution: <u>HIPAA Authorizations</u>
  - In Health Care Power of Attorney – Decision Makers
  - Standalone HIPPA Authorizations – Others



Bad News #3

Loved One Dies…
No Prior Planning for Asset and Wealth Transfer

The Dreaded "P" Word….

Probate

- What?
- When?
- How?



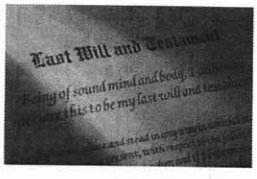
Good News #3

Prior Planning With

- Last Will & Testament
- Beneficiary Deed
- Revocable Living Trust

Last Will and Testament

- You Decide – Not Colorado
- To Whom?
- How Much?
- Who's in Charge?
- What about my body?
- What about my "stuff" in my house and garage?



Family Fall-Outs: Tangible Personal Property

- Problem: No established plan for the distribution of tangible personal property
- Solution: "Personal property memorandum." -- Clearly articulated directions, and lifetime family communications



What about the real estate?

- Reminder - Probate
- Solution: Beneficiary (TOD) Deed



Wait a minute....I've got a better idea

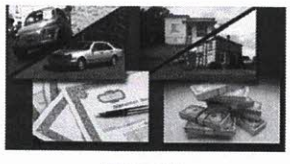
That's too much of a legal hassle...I'll just put my name on mom's deed as a joint tenant...that will avoid probate!

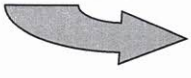


But...

Sometimes a Last Will and Testament won't achieve your estate planning objectives

Some Clients Place Assets In Trust







Results of Comprehensive Trust

- Coordinated Bucket to hold, then distribute assets
- - Can Plan for Special Needs Beneficiaries
- - Can Plan for Spendthrift Beneficiaries
- - Can Plan for Divorcing Beneficiaries
- - Can Plan for Minor Beneficiaries
- Eliminates probate court involvement
- Hand-picked "trustees" are immediately empowered to act
- Privacy maximized
- Delays minimized
- Beneficiary protection



Not Coordinating Your Beneficiary Designations

Your Last Will and Living Trust do NOT Control What Happens to the Money in Your Accounts….WHAT???

- **Beneficiary Designations (or POD/TOD) on Life Insurance, Retirement Accounts, Bank Accounts, Investment Accounts, etc., control what happens to those assets.**



Prior Planning…

- **Ensure POD/TOD and Beneficiary Designations are consistent with their well-designed estate plan!!**

Potpourri of Legal Issues

- Where are the legal documents?
- I need a notary but my loved one can't travel?
- There's a house full of "stuff"…I can't deal with it!

Thank You!

- **Questions?**
- **Comments?**



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