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Elder Law: Don't put off well-designed estate plan

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By Julian Gray and Frank Petrich /

Recently, we sat down with a prospective client who was taken aback to learn that if he died, his wife would have to go to court simply to access the proceeds of the personal checking account that he had set up in his sole name years ago.

He was further surprised to learn that because he did not have a power of attorney, if he became incapacitated, his wife would not be able to access that checking account without going to court and being appointed his guardian.

These are just two situations that are common surprises for clients who haven't taken the time to create a well-designed estate plan.

You don't have to be rich to determine where you want whatever you have to go when you go. Or, more importantly, who will care for your children if you're not around. We don't think that you would want a court or the state to decide.

Most people are procrastinators, especially in dealing with matters of finances and death. Some of your toughest decisions involve who will be your executor (the person who will be responsible for your estate after you die), your trustee (the person responsible for any trust you might create), the guardian(s) of your minor children, the agent under both a power of attorney (for financial matters) and a Health Care Directive/Living Will.

We'll complicate it a little more for you in that we like to use a "rule of three"; when you name one person to fill one of these roles, have at least two successors to that person. You don't have to use the same individual in each of these roles or in the same order.

Sit down and write out a list of those individuals (and/or institutions) you trust and with whom you are comfortable in these roles. Don't forget to ask them if they would be willing to serve (let's not have any surprises).

Do you even know what your estate is worth? Do you even know where your money is? We had one client tell us and his son, who was to be the client's executor, that there was $20,000 in a can buried under the tree in the backyard. The first question that both the son and we had was: "Which tree?"

Are there any charities you favor? How much, if any, of your estate do you want to leave to them?

Prepare a complete list of your assets, including those jointly owned with another, your beneficiary designated assets and your liabilities at least once a year. Let the person who is to be your executor know this information. See our Oct. 28, 2012, article "Don't Leave Your Loved Ones In The Dark" on the Post-Gazette's website for the type of information you should put and maintain in a binder to make your executor's role easier (and less costly).

Deal with your personal property in a thoughtful way. Some of our worst nightmares have been children fighting over items that have little monetary value but, to them, much sentimental value. These situations create delays in settling an estate, drive up expenses and tear apart families. Devise a method, in advance, of how these personal items are to be distributed and let your family members know.

Also, make your estate planner aware of your goals and objectives as to your estate plan. Do you want to preserve your wealth for future generations? Are there individuals whom you consider the "black sheep" of the family and whom you don't want to get anything? Or, do you only want them to get something under a controlled situation such as a "spendthrift" trust because they have marital issues, an addiction or simply can't handle money?

You are under no obligation to treat every one of your children equally. Remember, what's yours is yours and you're the one to decide what to do with it.

Are you in a second (or, even a third) marriage? How are your children from the first marriage to be treated? Do you have a special-needs child or relative for whom a Special Needs Trust makes sense to preserve any public benefits they may be receiving?

Where is the cash coming from to pay the debts and expense of your estate (funeral, attorney's fees, ongoing expenses of maintaining your house until it's sold or distributed as part of your estate)? How much will you need? Do you have life insurance for this purpose; should you get some? Or, is the cash under that tree in the backyard?

Keep a balance between your goals, what you feel your family may need, the payment of taxes and the practical aspects of implementing your plan. Try to let the affected individuals know your overall plan, divulging only the amount of detail with which you are comfortable.

Things change; estate plans are written on paper, not stone. You have the ability to change your plans when your situation changes.

If you haven't gotten started on your estate plan, do it now!

Filial follow-up

In our April and May 2012 columns (available through the Post-Gazette website), we wrote about the Pennsylvania Filial Responsibility statute and a May 2012 Pennsylvania Superior Court case upholding a lower court verdict (HCR v. Pittas) holding the son of a woman who received nursing facility care responsible for her $93,000 bill.

Well, at the end of March of this year, the Pennsylvania Supreme Court denied the appeal of the son to overturn the Superior Court's decision. What this means is that there now is a precedential ruling that can cause an adult child to be held liable for 100 percent of a parent's nursing home bills. Now, one of the questions is what, if anything, the Pennsylvania legislature will do to change the statute.

With this outcome, we think it worth restating some comments from our May 2012 column: Children, be concerned -- be very concerned.

You can't ignore attention to your parents' long-term care needs and their ability to pay for those needs. You could be liable for their long-term care expenses. Thus, it's incumbent upon you to consult with an attorney knowledgeable in this area of the law to help minimize both your and your parents' exposure to the costs of long-term care.

Julian Gray and Frank Petrich are both certified elder law attorneys with over 55 years of combined elder law experience who practice in the Pittsburgh area at Gray Elder Law. Send questions for consideration in this column to elderlawguys@grayelderlaw.com and visit their website at www.grayelderlaw.com.

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