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National Academy of
Elder Law Attorneys, Inc.

MEMBER

The articles in this newsletter are written by the attorneys of South County Senior Law & Estate Planning Center, LLC as an informational resource for our friends and clients. Nothing in this publication is intended as legal advice for anyone's particular legal situation. If you have a specific legal issue, please call our office for assistance.

THE IMPORTANCE OF PROPER ESTATE PLANNING

Why create an estate plan?

Regardless of the amount or titling of your assets, everyone needs at least a basic estate plan: everyone dies, and there is a 58% probability that you will suffer a disability of 90 days or more during your life. Failing to plan commonly results in the imposition of default "remedies," such as guardianships, conservatorships, and intestate succession, as well as additional expenses, taxes, and delays.

AARP reports that only 60% of people over age 50 have wills, 45% of these people have durable powers of attorney, 30% of these people have advance medical directives, and only 23% have living trusts. These statistics indicate that most people fail to make a comprehensive estate plan. And of those who have completed their estate plans, the odds are that they haven't reviewed their plans in years.

At a minimum, a comprehensive estate plan will

address the following issues:

- Whom do I want to make healthcare decisions for me if I become disabled?
- What medical care do I want if I am dying and cannot make decisions concerning my care?
- If I become disabled, how will I pay for my nursing home or long-term care and for the support of those dependent upon me?
- Whom do I want to manage my assets and personal affairs if I become disabled?
- Whom do I want to settle my affairs and distribute my property after my death?
- Where do I want my property to go at my death?
- How can I minimize expenses, taxes (income, probate, and estate taxes) and delays if I become disabled or die?
- When I die, do I have

sufficient assets or insurance to pay administrative expenses and taxes resulting from my death and to provide for my beneficiaries?

One must pay particular attention to estate planning for persons with disabilities or impairments or persons with minor, immature, disabled or impaired beneficiaries. A supplemental or special needs trust can be created for a disabled person in order to preserve the disabled person's SSI or Medicaid eligibility. Those with (1) disabled or impaired beneficiaries, (2) minor or immature beneficiaries, or (3) beneficiaries with credit, marital, or substance abuse problems can create third party special needs trusts, spendthrift trusts, or incentive trusts to protect the beneficiaries and the trust assets.

One of the most important decisions that one must make in creating an effective estate plan is the selection of the people who will implement the plan. *(continued on page 3)*

The choice of an attorney is an important decision and should not be based solely on advertising.

Naming Your Children on Your Accounts

By Mavis W. Kennedy, CELA

Recently, a client came into my office to discuss estate planning. The client's husband had died a few months ago, and she wanted to make things easy for her children and avoid probate when she died. She had three children, and wanted her estate divided equally among her children at her death. She stated she had already added her oldest daughter and one of the other two children to all of her bank accounts. When I asked why, she explained that she wanted her daughter to be able to pay her bills if something happened to her, she wanted to avoid probate, and she trusted her daughter. She stated that she wanted to add her daughter to her home as well.

What this client did is quite common. However, there are a number of reasons why it may not be desirable to make your children joint owners of your assets. The following is a list to consider before designating an adult child as a joint owner:

1. If the child declares bankruptcy, develops a tax problem with the IRS, is sued, or becomes involved in a divorce, the client's assets could be affected. Even if the client ultimately avoids an attachment of the client's assets in such instances, the client may incur substantial legal fees to do so.

2. If the client becomes incompetent and the oldest daughter is paying the bills, there is the likelihood of a dispute among the children as to which accounts should be used to pay the client's expenses. If the assets are unequally titled, some children may be left with nothing while others receive the full amount in the account at the client's death.

3. Once the client adds a child as a co-owner, the client may not be able to make changes to a bank account, liquidate stock, or sell a home without the child's consent.

4. If the client adds her child to her home and other appreciable assets (such as stocks), the child will owe capital gains taxes when the child sells the assets after the client's death.

5. Transferring assets to her child or adding her child as a co-owner could result in a five-year period of ineligibility for Medicaid if the client needs nursing home care within five years after the transfer.

6. The child, regardless of how trustworthy he or she is, may not elect to evenly share the client's wealth with the other siblings. The child may feel entitled to a larger share for taking care of the client, or may harbor ill feelings toward a sibling that affect distributions. Even if the child does want to share the client's estate evenly with siblings, the child may be obligated to file a gift tax return in distributing the client's assets, and the child's own taxable estate could be adversely affected.

These pitfalls to joint ownership can be avoided with relatively simple estate planning. Instead of naming children as joint owners, pay-on-death designations, including beneficiary deeds, or creating a trust and transferring ownership to the trust, will ensure that assets pass equally to the children outside of probate. The client's child can manage the client's financial affairs as Successor Trustee or attorney in fact under a durable power of attorney, and avoid the potential risks of joint ownership.

ESTRANGED FATHER RECEIVES ESTATE

One hundred years ago the California Supreme Court warned that "... succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts," and that "... it is vain to argue against the injustice of the rule ...". This rule of law, that is, strict adherence to the laws of intestate succession, has not changed. In a recent decision, the California Court of Appeals followed the law as declared by

the California Supreme Court.

We may feel that this particular rule of law regarding inheritance rights is unwise or the application of the rule is unfair. However, if this family situation occurred in Missouri, the outcome would be the same. The California court's recent opinion even shares our opinion of the situation, stating, "It is unfair that father should reap a financial

windfall after the death of his son. This is so because father never even saw his son for the 42 years he lived. We hold that a probate court may not, on principles of equity, disinherit a natural parent who abandons a child who later dies intestate." Estate of Shellenbarger, 2008 Cal. App. LEXIS 2468 (December 29, 2008).

DO YOU HAVE A WILL?

What is a Certified Elder Law Attorney?

A Certified Elder Law Attorney (CELA) is certified in the field of Elder Law by the Board of Certification of the National Elder Law Foundation (NELF), a non-profit organization dedicated to the development and improvement of the professional competence of lawyers in the area of elder law. NELF is the only entity approved by the American Bar Association (ABA) to certify attorneys in the elder law field of specialization. The purpose of the certification program is to identify those lawyers who have the enhanced knowledge, skills, experience and proficiency to be properly identified to the public as certified elder law attorneys.

The Board's expectations of an elder law attorney's knowledge are expansive. To become certified, the attorney must possess a thorough knowledge of the following subjects: (1) Health and long-term care planning; (2) Public benefits (includes Medicaid, Medicare, Social Security); (3) Surrogate decision-making (includes powers of attorney and

guardianship); (4) Legal capacity issues; (5) Income, estate and gift tax issues; (6) Wills, trusts, probate and trust administration planning; and (7) Financial planning question for retirement and investments; (8) Elder abuse, neglect, or exploitation matters; (9) Insurance; (10) Elder Housing issues; (11) Long-term care; (12) Employment/age discrimination; and (13) Retirement. Finally, the attorney must be familiar with professional and non-legal resources and services publicly and privately available to meet the needs of the older person, and must be capable of recognizing the professional conduct and ethical issues that arise during representation.

Certainly, there are lawyers who are not certified that are competent to handle many elder law matters. However, lawyers who are certified as specialists have been recognized by independent professional certifying organizations as having an enhanced level of skill, as well as substantial involvement in estab-

lished legal specialty areas. Certifying organizations require lawyers to demonstrate special training, experience and knowledge to ensure that recognition as a certified specialist is meaningful and reliable.

Attorney Mavis Kennedy of South County Senior Law & Estate Planning Center is a Certified Elder Law Attorney, specializing in the areas of long term care planning (Medicare, Medicaid, VA), estate planning, planning for persons with disabilities, and probate and trust administration. She is also accredited by the VA to submit claims for pension benefits on behalf of veterans. Contact our office for a no-cost initial consultation with Ms. Kennedy.



Mavis W. Kennedy, CELA

THE IMPORTANCE OF PROPER ESTATE PLANNING *(Continued from page 1)*

These people are fiduciaries, and depending on the capacity in which they serve, they will be called a personal representative, trustee or agent. No matter how well designed an estate plan, it will produce poor results if it is poorly implemented. The fiduciary should have good judgment and experience in the management of money and assets, and be loyal. A well-crafted estate plan will appoint successor fiduciaries if the originally named fiduciaries are unable or unwilling to serve.

A comprehensive estate plan may incorporate some or all of the following legal documents: (1) an advance medical directive; (2) a durable power of attorney; (3) a revocable living trust; (4) a supplemental or special needs trust; and (5) a will.

Frequently, it will be necessary to re-title assets and coordinate the designation of beneficiaries of annuities, life insurance policies, IRAs, and retirement plan accounts with the legal documents.

In some cases, it may be advisable to purchase life insurance or long-term care insurance.

Because laws and your personal circumstances change over time, you should regularly review your estate plan. We recommend that you review your estate plan with your attorney whenever you have had a significant change in your circumstances or at least every five years.

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South County Senior Law & Estate Planning Center, LLC has been serving the needs of our senior clients for over twenty years. The firm attorneys, Dennis B. Mertz, Mavis Kennedy, CELA, and Christine F. Hart are members of NAELA, Inc. (National Academy of Elder Law Attorneys), dedicated to meeting the legal needs of all persons of all ages, including seniors.

We concentrate our practices in the areas of estate planning, trusts and estates, powers of attorney, probate, asset preservation, including Medicaid planning and tax advice, Special Needs Trusts and trust administration, nursing home abuse, will contests and other contested estate matters, financial exploitation of the elderly, personal injury, and guardianships and conservatorships. The initial consultation with any of our senior law attorneys is always at no charge or obligation to employ our firm. Call us at (314) 845-0541 to schedule an appointment to discuss any of your legal questions.

SHARE YOUR NEWSLETTER

We encourage you to share this newsletter with anyone who is interested in issues pertaining to seniors. The information in this newsletter may be disseminated without charge or permission, but with appropriate citation to Senior Law Quarterly.

Anyone wishing to be added to our newsletter mailing list should contact our office at (314) 845-0541 with your request.

New Addition to South County Senior Law

Proud parents Scott Vogt and our Paralegal Sara Vogt welcomed their first child, Eliza Kate Vogt, who was born on June 22, 2009 at St. Luke's Hospital in Chesterfield. Scott is currently employed as a Registered Respiratory Therapist at St. Luke's Hospital.

After taking maternity leave for the summer, Sara returned to her position here at the firm on a part-time basis in September.

Scott and Sara are "over the moon" with happiness in taking care of their little girl and watching her grow. "Being parents is so much more fulfilling than we ever dreamed."



Eliza Kate Vogt-Born June 22, 2009