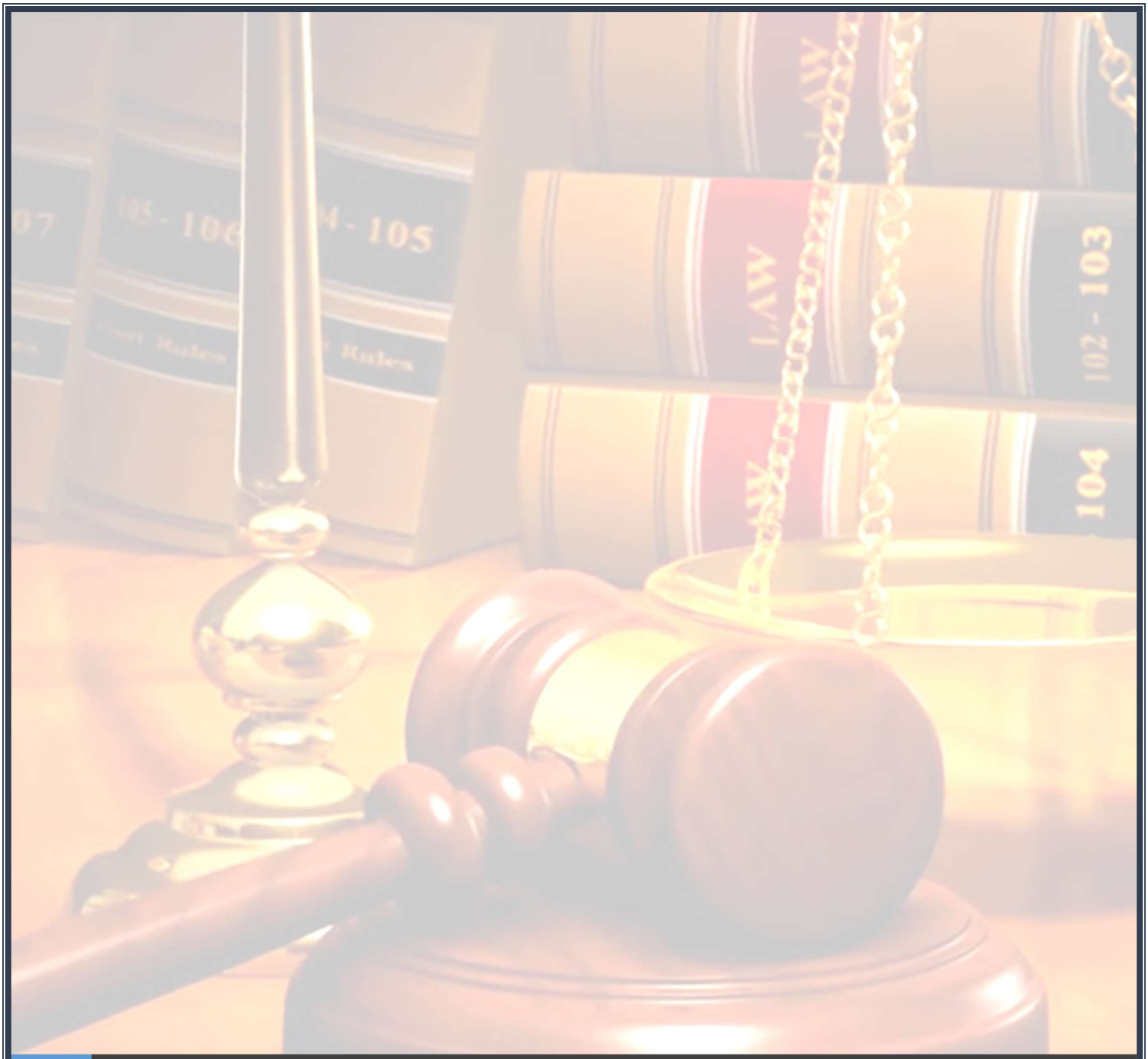

LEGAL PLANNING

INTRODUCTION

THIS CAN'T WAIT!

Most people don't want to think about what would happen if they were in a bad car accident or got sick. It's easier to pretend that things won't' happen to us. But chances are that SOMETHING will happen as we get older.

Making legal choices and plans for the future is important no matter who you are. You've got to have your i's dotted and your t's crossed. But it's especially important as you age. Alzheimer's disease or any other unexpected catastrophe can be devastating.

That's why legal planning is so important. You have to plan ahead so that YOU can decide who makes decisions if you can't make them for yourself. Most people want their spouse to make important decisions on their behalf if they can't make them. But that doesn't happen automatically. You need to have the right documents in place BEFORE something happens.

Afterward, it's too late. Well, perhaps it's not technically too late. In theory, your spouse could petition a court for guardianship over you if were legally incapacitated. But that's a long, complicated, and expensive legal process. And even then, your spouse has to appear regularly before the court to justify his or her actions.

By planning for probate not only after you die, but also for the inevitable probate that occurs while you are still living but sick, you are empowering yourself and your loved ones to have the flexibility to make the best choices possible.

An attorney is the best person to prepare all the right paperwork. But a financial advisor is essential to assist in the process to make sure that you have all the right paperwork in place so that your spouse has access to the money if you are sick. Many investment companies have special requirements that trump a standard Power of Attorney. Only your financial advisor will know about any requirements specific to an investment company.

While planning for this takes some effort, it doesn't take much time (a couple of hours at most). Taking that little bit of time now to plan for the future will help you enjoy the present all the more.

Another way to protect your hard-earned money is through legal planning. And as with anything else, there are areas of legal planning that you've probably already put some thought into, like inheritances and estates. But there still may be things your advisor hasn't told you…things like:

- How a medical directive is different than a living will or medical power of attorney…or…
- How to avoid probate without a trust.

As you'll soon realize, no one's told you the whole truth about legal planning…no matter how much you think you know.

WHY THE INDUSTRY DOESN'T GIVE YOU THE WHOLE TRUTH

You may realize that probate isn't the best way to pass along your money after you are gone. And you may realize that there are two types of probate: the kind that you go through while you're alive and that which occurs when you die. But no matter which kind of probate you are familiar with, you'll be happy to know that no investment ever has to go through any kind of probate. Better yet, you don't need to set up an expensive trust to avoid probate. In fact, avoiding probate is as easy as correctly titling your stocks, bonds, mutual funds, CD's, and bank accounts. By making sure everything is correctly titled, nothing you own will go into any kind of probate. And it costs you nothing to make this happen.

Obviously, no one wants their assets to go through probate – not you, not me, not your friends…no one. It's no secret that probate is a four-letter word that should be avoided at all costs. But if that's true, shouldn't your advisor already know that you don't want your assets to go through probate? And if he or she knows it, why hasn't he or she addressed this issue with you?

Remember, avoiding probate is both free and easy! If you go to your advisor and say, "I don't want my assets to go through probate," he or she is going to pull out a special form and have you fill it out. On the form, you'll have to indicate who you want your assets to go to, but once you fill it out and sign it, that's it. No legal headaches, no waiting, no setting up estates. It's done.

By the way, you can do the same thing at your bank. If you go to your banker and tell them you don't want your assets and accounts going through probate, they are going to have you fill out the exact same form.

WHY DON'T YOUR BANKERS AND ADVISORS WANT YOU TO KNOW THIS?

Since your banker and broker know that no one wants their assets to go through probate, why hasn't something already been done? If these forms are so easy to fill out and don't cost anything, why hasn't your broker already told you about them?

It's a simple answer: They want to keep your money at their firm as long as possible. The average probate lasts two or three years (and many last longer than that). And while your money is in probate, it stays right in your bank and brokerage accounts. Therefore, even when you're gone, your advisor and bank continue to make money off your assets.

If you haven't already done so, tell your advisor that you don't want your assets to go through probate. Better yet, take your assets to an advisor who knows and cares about your best interests.

After all, there are really only three reasons an advisor wouldn't already have done this for all of his or her clients:

- They didn't know about the form
- They didn't care that their clients might have to spend years in probate
- They intentionally withheld the information to have a chance at keeping the accounts longer

And none of those are good reasons!

INHERITANCE…A GOOD OR BAD THING?

Like a lot of investors, many of us are occasionally reminded of the ups and downs of the financial markets (especially retirees during their retirement years). But thanks to the ups and downs over the years, we periodically are brought back to our senses. The "get everything you can" attitude of the "up" periods give ways to a realization that not all of us are in the accumulation period of our lives. Depending on your age and situation, you are either:

- Preserving your assets…or…
- Spending them to enjoy yourself

The truth is that your generation is a generation of savers, and you should feel proud of yourself for all of your hard work. But you also have one big problem: You have raised a generation of spenders. We've all heard how younger generations spend, spend, spend, and have saved next- to-nothing for retirement. If you ask me, this sounds like a problem waiting to happen. And that means that it's time for a stress test!

Have you ever noticed how some people suddenly treat their parents differently once they turn 65? Maybe it hasn't happened to you personally, but a lot of seniors have had to deal with adult children who think that turning 65 means you suddenly take a "stupid pill" when it comes to money and that you can't think for yourself.

It's pretty ridiculous, especially once you put things into perspective. For example, here's Debbie, a retired widow with her house paid in full, no debt, $300,000 in investments, and a nice $20,000 nest egg in her checking account (just in case). Debbie loves her son, Steve, so she loans him a few thousand dollars every year. Yet Steve has started asking her about her financial matters, bullying her with his opinion, even when she doesn't ask for it. Steve, of course, is sitting with a $300,000 mortgage, $40,000 of car debt, $40,000 in his 401(k), $10,000 in credit card debt, and absolutely no savings. And he just borrowed $5,000 from his mother last week…but now he insists he knows what's best for her money.

If you know anyone whose children treat them like this, be sure to give them some moral support, because they need it. Remind them which generation built this country and which is spending it away.

IT'S NO JOKE

By the way, what is a seven-letter word your children use for financial planning? Inherit.

It sounds like a great joke, but it's not. Ask your children what you should do with your money, and they'll tell you to spend it. And you'd better believe them…because if you don't spend your money – they will!

You may have driven the same car for 15 years because it was still in good shape. But what will happen once your children inherit your money? They'll head down to the dealership and buy a

brand new luxury car with a leather interior. And you know that cruise around the world you and your spouse never took because it was just too expensive? Well, once you leave your children their inheritance, it's "Hello, Disney World!"

So, if there is something you really want to do, but haven't done because it's too expensive, do it anyway. Treat yourself. It's your money. You've worked hard to save it, so aren't you entitled to enjoy it?

We all know that you can't take it with you. And unless you use some of your savings to enjoy yourself, it's going to end up in one of three places: your children's bank account, the nursing home, or the IRS. And since you're responsible for the risks you take with your money, shouldn't you also be responsible for the rewards?

A client once told me that he wants the last check he writes to be to the undertaker. And he wants it to bounce! That's a great mentality to have!

YOUR FINANCES CONSIST OF MORE THAN YOUR MONEY

If you ask a bunch of people how they are doing financially, you'll get a wide range of answers. Some will tell you they are doing great…that they made a 15% return last year. Others will tell you they are doing lousy…that they lost 15% last year.

But do returns have anything to do with how you're doing financially?

Returns are certainly important, but great returns alone don't mean that you are doing fine financially. That 15% return you made last year doesn't matter much if you gave a big chunk of it to Uncle Sam, spent all of it on long-term care costs, or if your return was eaten up by probate and estate costs. So while your returns are important, they amount to nothing if you don't take care of your affairs. If you leave everything in chaos when you die, your surviving spouse will not only spend all those returns you've bragged about, but more. And with all the stress involved in cleaning up investments and accounts, not to mention taxes and other problems, he or she will probably be on the verge of a breakdown.

> *The old adage is true: the one who takes care of the money dies first. So, begin your legal planning immediately, and explain everything to your spouse.*

GIVE YOUR SPOUSE YOUR JOHN HANCOCK

Conservatorship probate (the probate that occurs while the person is still living) is more frustrating and difficult than going through probate at death.

Let's say that John's finances end up in conservatorship probate. John, who is married to Elaine, has come down with Alzheimer's, is no longer mentally capable of taking care of himself, and is unable to function. Since John has lost his legal capacity to think and act for himself, he needs more care than Elaine can provide. With John in a nursing home, Elaine wants to sell their house and move into a condominium which requires no maintenance.

But without John's signature, she's unable to sell the house. And because of his condition, John can't sign the necessary papers to sell the house. That means Elaine is stuck in a difficult situation.

This scenario can apply to anything…homes, IRAs, stock accounts––anything with John's name on it would essentially be frozen.

What Elaine needs is a durable power of attorney… a legal document that allows someone else to act on your behalf should you become incapacitated or unable to function. If John had named Elaine as his power of attorney, she'd be able to take care of everything.

If you and your spouse don't have a power of attorney, getting one should be the first thing on your to-do list tomorrow. Because if you find yourself in a situation similar to Elaine and John, you'll have to jump through a lot of hoops to get things straightened out. You'd have to be appointed conservator of your own spouse. That would mean hiring an attorney, paying several thousands of dollars in legal fees, and going before the court to be appointed as your spouse's conservator. Once that's done, the court will be looking over your shoulder every time you make a decision to ensure that you are spending your money appropriately.

Yet you can avoid all of this just by paying an attorney $50 to $100 to get a power of attorney done. But you can't get a power of attorney after you are incapacitated, so make sure you do it now.

WHOSE JOB IS IT TO MAKE SURE YOUR POWER OF ATTORNEY IS UP TO DATE?

Powers of Attorney deal mostly with your money. And who handles your money and your investments? Your financial advisor. While an attorney needs to draft the initial document, your financial advisor should make sure that it is up-to-date and reflects any changes in your financial situation.

MEDICAL POWERS OF ATTORNEY

But even if you have a financial power of attorney, that's not enough. You need to make sure you have a power of attorney for medical purposes…and more importantly a Quality of Life Directive. Unlike a living will, a Quality of Life Directive is a lot more comprehensive and in-depth.

Quality of Life Directives actually tell your loved ones how you want to be taken care of medically when you can't tell them yourself. How much pain control would you want? Would you want to be taken off life support? What if you were in a coma?

These are all very difficult questions, but you need to take the time to answer them. Otherwise, the decisions will be taken out of your hands.

Fortunately, Quality of Life Directives cover just about every possible scenario you'd need to consider. Best of all, you can get them free from a number of places: your doctor, your hospital, online…you can even get them from a qualified senior advisor.

But it's not enough just to have a Quality of Life Directive. You need to have it with you in the event of an emergency. In fact, five out of ten people who have a medical power of attorney don't have it with them when they show up at the hospital for care. That's because no one carries it around with them. Most of us understand just how important a Quality of Life Directive is, so we put it in a safety deposit box or somewhere secure for safekeeping.

After all, do you stick your Quality of Life Directive in your pock et when you drive to the store for a few things? Probably not.

But let's say you go outside one Sunday afternoon to play with your grandkids, and you begin to have chest pains. You are having a heart attack, so your son or daughter rushes you to the hospital.

When you arrive at the hospital, the first thing the staff will do is shove a clipboard in your face to sign. And what's on that clipboard? A piece of paper that makes the hospital your power of attorney. And by signing it, all the good work you've done has been eliminated. It's done to protect the hospital, not you. In order to make sure your wishes are honored you need to have your Medical Power of Attorney (MPOA) and Quality of Life Directive (QLD) with you.

And since it's not convenient to carry it around at all times, there's an alternative. You can get a laminated card for your wallet that gives the hospital a number to call to obtain your medical power of attorney electronically. EMTs and hospital staff are sure to find it, since they check the patient's wallet or purse for a driver's license, identification, and insurance cards. If you have this card with those things, they'll see it and be able to obtain your Medical Power of Attorney and Quality of Life Directive on demand.

In order to get one of these cards, your MPOA and QLD must be electronically filed. If you don't have this done yet, ask your financial advisor to help you get it done. If they say they can't get one, you'd better find someone who can. One day your life may depend on it!

A MPOA and QLD is the best gift you can give your loved ones. It's hard to know what we want to do with our own bodies, but it's even harder to decide what to do with someone else's body.

If you love your family, think of them and get this done!

BENEFICIARY PLANNING

Another thing that's extremely important is the correct designation of your beneficiaries. Throughout my years in the financial services business**, I've found that almost 99% of all people have their beneficiaries incorrectly designated**. When this happens, not only are grandchildren and family members accidentally disinherited, but families lose the hard-earned money you left them.

Look at Frank and his wife, Sarah. Frank and Sarah have three sons, and each son has a son of his own. In other words, Frank and Sarah have three sons and three grandsons.

If Frank dies, Sarah gets the couple's money. Easy enough, right? Then once Sarah dies, it goes to the sons and grandsons according to her wishes.

But what if one of their sons dies before either Frank or Sarah? Who are the beneficiaries in that situation?

At first, it doesn't seem like much of a problem. Most people indicate that their inheritance should be split evenly between all their children. That makes sense, as long as all of your children outlive you. But if one of Frank and Sarah's sons die before they do, a grandson gets left out. By indicating that their money should be split evenly among their sons, half of Frank and Sarah's money would go to each of their two living sons. And in the process, they'd leave out the grandson who needed the money most – the one who lost his father.

And that's not the only scenario. Even if Frank and Sarah pre pared for the death of one of their sons, other things could happen. For example, let's say that one of Frank and Sarah's sons died, but they set up their wills so that each surviving son gets one third of their money, and the grandson who lost his father gets a third.

Sounds great… unless family quarrels and divorce enter the picture. Suppose that one of Frank and Sarah's surviving sons divorces his wife after they've inherited Frank and Sarah's money. What

happens if their daughter-in-law is given the money in the divorce, then runs off and marries a lazy jerk who gambles it all away? Now Frank and Sarah have not only disinherited their divorced son, but a third of their money as well.

You may think you are fine because you've thought all this out in your will. If so, good for you…but you are still at risk for these kinds of problems.

Why? Because not everything is covered by your will. In fact, the vast majority of most people's assets don't go through their wills. Things such as life insurance, IRAs, 401(k)s, and annuities do not go through wills. And if you are like most retired investors, where is the bulk of your money? In your life insurance, your IRA, your 401(k), and your annuities. So even if your will states that your grandchildren will get their college tuition paid thanks to you, it won't happen if the money is in your IRA.

Many seniors designate their kids as joint owners of their investments and accounts. This is a dangerous situation to be in, because their actions put your money at risk. Let's say that you and your daughter have joint ownership of all the stocks in your portfolio, and that she was just involved in a car accident. Your daughter is okay, but is sued by one of the other drivers involved. As part of the lawsuit, that individual could go after your portfolio simply because your daughter's name is listed as a co-owner.

AND IT'S NOT ALWAYS ACCIDENTS AND GREED THAT CAUSE THESE KINDS OF PROBLEMS

I once knew a brother and sister who didn't have any other living relatives. The brother had $300,000 in investments, while the sister had $100,000. They intended to look out for each other, so they pooled their money into one joint account.

Sadly, the sister became ill and needed long-term care. And as we discussed in "Long-Term Care Planning", Medicaid doesn't cover long-term care until you are broke. So not only did the sister have to spend her $100,000 on her long-term care, but her brother's money was used as well. By setting up a joint account with his sister, the brother's assets dwindled from $300,000 to just $3,000 – the amount Medicare allowed him to keep.

As you can see, in an effort to solve one problem many people find they've created another. So you need to know the whole picture before you make any changes.

No one willingly disinherits family members they love, but it is possible for accidents like these to take your money away from the people you want to have it. So now is the time to stress test your beneficiary designations, because once you're gone, there isn't anything you can do.

DON'T FORGET!

Nothing just automatically happens when it comes to who will take over for you when you become sick or incapacitated. Not even your spouse of many years gets to make decisions for you UNLESS you have the right legal documents in place BEFORE you become ill.

Everyone understands there is probate when you die. Not everyone understands the inevitable probate that occurs while you are still living but sick. And even those who understand it forget that you have to coordinate your planning with your attorney AND your financial advisor if you want access to ALL of your money. No legal document alone can guarantee access to all your accounts.

Contact us if you are wondering what your attorney needs from your financial planner (and vice versa) to make sure you have access to absolutely everything.