

# ESTATE PLANNING AND ELDER LAW

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Name of conference  
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- Bassett & Associates, PPLC – Ann Arbor based firm since 1994
- Member of National Academy of Elder Law Attorneys (NAELA)



# TOPICS FOR TODAY

- What is included in **estate planning**?
- What is the function of a **will**?
- What is a **trust** and when is it helpful?
- What is a financial and medical **power of attorney** and when should I get them in place?
- What are the functions and differences of a **guardianship** and **conservatorship**?
- How can I include a disabled person in my estate planning and gifting without disqualifying them from state programs such as **Medicaid**?
- What are my options with **Long Term Care** and **Home Care**?
- Time for **additional general questions** on today's topics.
- If I leave here today remembering **3 points** – what would they be?

# ESTATE PLANNING - WHAT IS IT? WHO SHOULD DO IT?

- What is it?
  - Planning for the management of assets and care of people in the event of incapacity or death
- Who should do it?
  - Everyone!
- Who should help?
  - A qualified estate planning attorney

# WILLS

- Nominates a personal representative (executor)
- Tells the Court where assets are to be distributed.
- Guardianship nomination for minors & wards
  
- BUT – Having a Will does not avoid Probate!

# TRUSTS

- Distribution of Assets upon death
- Delayed distribution & ongoing management of wealth after death for minor and disabled beneficiaries
- Tax planning & Charitable gift giving
- Probate avoidance
- Privacy & ease of administration
- BUT – Not everyone needs one!

# POA FINANCIAL

- Power of Attorney grants an *agent* the authority to manage the *principal's* assets.
- Flexible – Limited/Durable/Springing/Presently Effective
- Terminates at the moment of principal's death
- Problems we see:
  - Stubborn Financial Institutions
  - Stale Documents
  - Abuse by agent

# POA MEDICAL

- Appoints a Patient Advocate to make care & custody decisions
- Only effective upon incapacity
- Revocable
- Makes guardianship unnecessary
- Considered an “advanced directive”
- Terminates at the moment of principal’s death
  
- Michigan does not recognize living wills



# ADULT GUARDIANSHIP

- Only appropriate and necessary when there is no POA in place
- Person can't make or communicate informed decisions
- No other way to make substituted decisions for the person.
- Drs often tell people to get a guardianship when one is not necessary! Check with a qualified attorney first.
- Guardianship is a process of last resort!

# CONSERVATORSHIP

- Conservatorships & Protective Orders are helpful in financial management where there is no POA for finances in place.
- Can be costly and burdensome
- Court retains ultimate control over money

# SPECIAL NEEDS TRUSTS

- Gifting to a disabled person
  - 3<sup>rd</sup> party SNT
- Disabled person receiving an inheritance/lump sum
  - 1<sup>st</sup> party SNT (pooled or individual)
- Fixing gifts posthumously

# ELDER CARE & PLACEMENT

- Care setting determines the financial planning
- Licensed facilities
- Know your “Assisted Living” arrangement (marketing term!)
- Read the contract
- Visit frequently & ask questions
- Ombudsman and Licensing complaints

# LONG TERM CARE ASSISTANCE

- Private Pay – expect \$7k to \$9k per month!
- Medicare covers up to 100 days of rehab
- Medicaid covers SNF after financially eligible
- Private Insurance
- LTC policies

# MEDICAID ELIGIBILITY

- \$2K in assets and less than \$7032 in income/month
- Spousal Impoverishment Rules
- Medicaid Planning:
  - Spend Down;
  - SBO Trust;
  - Gifting to Disabled Person
  - Reverse Half-Loaf Divestment

# ESTATE RECOVERY

- Recovery of Medicaid \$ after death of recipient
- Right Now – Only by claim in Probate Estate
  - Ladybird Deeds
  - Beneficiaries
- State looking to change that!
  - Stay Tuned.

## Q & A

What additional questions do you have regarding:

# Estate Planning and Elder Law

?



## TOP 3 TAKE AWAY POINTS

1. Always make sure that you are consulting with a **qualified** Elder Law Attorney.
2. Don't wait - get Financial and Health Power of Attorneys **now**.
3. Make sure to tailor estate planning to **your own** family and financial considerations.