

*Staple
Here*

*Elder Care
&
The Law*

Jack M. Rosenkranz
ROSENKRANZ LAW FIRM
Attorneys at Law

www.law4elders.com
813-223-4195

House Calls Available

*Table of Contents**

| | |
|----------------------------------|----|
| Introduction..... | 1 |
| Record Keeping..... | 1 |
| Living Wills..... | 2 |
| Healthcare Surrogates..... | 3 |
| Durable Power of Attorney..... | 3 |
| Guardianship..... | 4 |
| Pre-need Guardianships..... | 5 |
| Ethical Wills..... | 5 |
| Medicare..... | 6 |
| Medicaid..... | 8 |
| Veterans Benefits..... | 10 |
| Federal Estate & Gift Taxes..... | 11 |
| Probate..... | 12 |
| Operation of Law..... | 13 |
| Trusts..... | 13 |
| Conclusion..... | 15 |

412 East Madison Street, Suite 900
 Post Office Box 1999
 Tampa, FL 33601-1999

Satellite offices
 St. Petersburg and Sun City Center

*Many of the monetary and other guidelines discussed in this booklet change frequently. Please be certain to verify their accuracy before acting based on these numbers.

Introduction

Those who plan for the end of life save their loved ones much anguish, frustration, and often a great deal of money. Although it can be difficult to face end-of-life planning, few decisions are as important.

This booklet attempts to explain in broad terms the various long-term physical care vehicles for the elderly such as Medicare/Medicaid, living wills, and guardianships. We will also provide an overview of financial matters such as probate, trusts, and estate taxes.

As you read, keep in mind that three ways exist to transfer assets after death: by wills, by trusts, and by operation of law. Generally a good estate plan maximizes the last wishes to be carried out.

Record Keeping

Be sure to keep a copy of your healthcare planning documents and funeral arrangements in an easily accessible place. Storing your only copy in a safe deposit box, or even with your attorney, might make the documents unavailable on weekends or holidays.

Give a list of your assets, your important papers, your debtors and creditors, life insurance policies,

death benefits, funeral arrangements, to your loved ones, your banker, your attorney, (this is redundant if you love your attorney), or to some other trusted person who is likely to survive you. Be certain your loved ones know where to find this list, as well as your other important papers. During emotionally trying times, what seems obvious to you might not be to them.

Without a comprehensive list, your assets may go unclaimed or be converted by those who may not be authorized. If you have worked hard for your assets, then you should ensure you preserve what you have left for your friends, family, charities, or whomever you have intended to receive the benefits of your bounty.

Please visit our website for a copy of *What I Have and Where It Is* a spreadsheet to help you keep track of your important documents and belongings. On our site you will also find *Your Final Touches: The Planning Everyone Should Do*, which provides additional information on planning funerals.

Living Wills

You have the right to compel the termination or continuation of your life support systems if you are terminally ill, so long as that intention is properly expressed through a living will.

Since healthcare providers and institutions have various ethical, legal and financial responsibilities, it is important that this document be drafted to reflect your wishes.

Healthcare Surrogates

Because a living will applies only if you are terminally ill, a health surrogate is an extremely important part of long-term care planning. This document may be more effective at a time of crisis than a living will because it will protect your wishes even when you are in an unstable situation and have not been declared terminally ill. Provided for by a special statute, it is the strongest way to protect your healthcare choices when you are unable to speak for yourself.

You can authorize your healthcare surrogate to refuse life-sustaining care in certain circumstances, or to prolong it when current medical standards would otherwise terminate it.

Durable Power of Attorney

A power of attorney also authorizes another to act in your behalf under certain circumstances. In Florida until 1974, a power of attorney became invalid once the principal was disabled. By placing certain language in the power of attorney,, however,

the document becomes a “durable power of attorney” through which you may authorize any person, not just a family member, to act in your behalf even though you are disabled. A durable power of attorney authorizes someone other than you to handle your personal business.

Some attorneys will use a durable power of attorney to also authorize your healthcare decisions, not just your financial decisions, but a healthcare surrogate is what we have found to be the most effective means to communicate your healthcare decisions when you no longer are able to.

Guardianship

Florida has a large number of senior citizens with no local family to look to for support. If you have not selected a power of attorney while still competent, then upon being declared incompetent by a judge, a judge will appoint a guardian to take care of you, your property, or both.

Because of past abuses of the system, the legislature and the courts have imposed restrictions on guardianships that tend to make them expensive and create a lack of privacy. At our office, we tend to avoid the guardianship process, but at times no other options exist. In general, though, the expense usually outweighs the benefits, and we will help our

clients look for less restrictive alternatives that they may not be aware of before meeting with us.

Pre-need Guardianships

Selecting a guardian ahead of time can help protect your choice of healthcare surrogate and the holder of the durable power of attorney. If either or both of your choices for those individuals are contested by family members, or their decisions questioned, the decision-making ability of the surrogate or individual with the power of attorney can be stayed pending the appointment of a guardian.

By appointing a guardian ahead of time, usually the same person who is also the surrogate or holds power of attorney, you are providing the court with yet another indication that you have carefully considered your decision of who should make decisions on your behalf.

Ethical Wills

Your end-of-life planning would not be complete without thought given to the spiritual, philosophical, and life lessons you would like to share with your loved ones. Dating back to the early days of the Jewish religion, ethical wills are used throughout the

world to pass along your non-tangible assets to your family.

An ethical will can be as simple as one sentence: “Speak with kindness, always be humble, regard every person as greater than yourself.” Or, it can be as long as book, a full-length biography that tells your story and perhaps that of friends or of other family members as well.

For more information about ethical wills, please visit our website for *Leave Behind Your Values, Not Just Your Valuables*.

Medicare

Medicare pays less than two percent of all nursing home bills and will pay only for skilled care in a Medicare-approved skilled nursing facility following a period of hospitalization of at least three days.

Medicare will not cover custodial care, and even when all the requirements are met, it will pay the entire bill for only the first twenty days. Then Medicare pays part of the bill for an additional eighty days, with the client or his family paying co-insurance amounts. After one hundred days, Medicare provides no assistance.

In an attempt to provide prescription drug coverage, President Bush signed into law the Medicare prescription drug bill late in 2003. Until 2006, special discount cards will give seniors an estimated 10-15 percent savings. In 2006, the will provide a 75% discount on prescriptions until \$2,250 is spent. After seniors pay another \$2850 of their own money, the plan will again begin to pay, this time providing a 95% discount.

Once the annual deductible (\$250) and monthly fees (\$35) are considered, as well as the gap in coverage after \$2,250 is spent, it is not clear that the Medicare drug program is right for everyone. With choices involving traditional Medicare without the drug plan, traditional Medicare with the drug plan, or a private health plan that offers drug coverage and Medicare health services, it is important to understand all the implications of your choice. Also, since delay can end up costing you more because premiums might increase, it is important to weigh your options and make a selection sooner rather than later.

Finally, another complication is choosing between a number of long-term nursing home healthcare policies that are available to fill in where Medicare leaves off. These policies differ significantly in terms of eligibility and benefits, but can be important to help supplement Medicare coverage.

Medicaid

Medicaid will pay nursing home expenses to those qualify. To qualify, income eligibility and resource eligibility must be established. For income, the applicant cannot earn more than \$1,692.00 per month. With respect to assets, a married applicant and his or her spouse are allowed to keep a home, personal effects, a car or two, and other assets, up to \$94,760. The dollar amounts are adjusted every six months, so be sure to check with our office before making any decisions or planning based on these numbers.

Part of good planning can involve divesting assets, but property transfers, including transfers to trusts, are examined closely, and frequently the transferred property is still considered part of the assets for determining eligibility. Property divested within thirty-six months prior to application is included in determining eligibility, as is property divested into or from a trust within sixty month. Special trusts can be established, though, to create eligibility.

Forming special trusts and other types of financial planning to protect your Medicaid benefits has become somewhat controversial. Many individuals are concerned that they won't receive the same level of care at a facility that accepts Medicaid as they would if they were private pay patients. The

reality is that Medicaid pays for the care of approximately seventy percent of the patients in nursing home facilities. These same patients are mixed into the same facility with private pay patients. Like two passengers seated side-by-side on an airline, one might have paid \$250 for a ticket, the other a \$1000. Which one would you rather be? Employing strategies to protect your assets is a legitimate way to protect your and your spouse's financial future.

Even if you are in an assisted living facility or remain at home for your care, you may be eligible for Medicaid benefits under the Medicaid Diversion Program. The same standards that govern Medicaid eligibility govern the Diversion Program. The goal behind the Program is to keep patients in the community for as long as possible. Under the eligibility criteria for the Program, you must be 65 or older, reside in a project area (which includes Hillsborough, Pinellas, Pasco, Manatee, and Sarasota counties), meet Parts A&B Medicare standards, meet Medicaid eligibility up to the ICP level, and meet the ICP level of care.

Eligible services include adult companions; adult day care and health care; chore, homemaker, and personal care services; and prescription drugs. As with most government benefits, it is a useful program that can be a bit difficult to understand without advice from a knowledgeable expert.

Finally, if you have been discharged recently from a hospital and are receiving Medicare payments, it is an optimal time to consult with our office to maximize your benefits.

Veterans Benefits

Veterans benefits are often an overlooked or misunderstood source of financial support for those who served in the active military, naval, or air services, including the US Army, Navy, Air Force, Marines, Coast Guard, as well as other categories of services, such as the US merchant marines.

In the next decade, the number of veterans 85 and older will triple. Even if you do not have your discharge papers proving your veteran status, it is worth looking into receiving your benefits. Our office can help you with that process so you can receive what is justly yours for serving your country.

As a veteran, you may be eligible for nonservice-connected benefits and aid and attendance if you are using your assets to pay for your care. You may also be able to access pharmacies run by the veteran's administration, providing you with significant savings.

For additional information about veterans benefits, please see our website for *Veterans Benefits: Justly Yours for Serving Your Country*.

Federal Estate & Gift Taxes

The federal estate and gift tax provisions change frequently. We have yet to have one client in the office who wants his or her hard-earned money to go to the federal government. Therefore, it is important to know the current limits of the federal laws involved, and to know that the proper forms and documents will be completed both during the planning stages and after you pass away.

Currently there is no estate tax for estates under \$1.5 million, and with proper planning at least \$3 million can be protected. This is an area that is under great change; please contact us if you are unsure about your situation.

You may also want to contact us if you are thinking of making a gift and are concerned about the limits of the federal gift tax law. The law allows you to give \$11,000 per calendar year per recipient, free of estate, gift, and income tax. For example, if a husband and wife have three children and six grandchildren, the husband and wife can each give \$11,000 to each of these descendants on December 31, and the same amount the following day. By doing so, they have quickly eliminated \$396,000 from their combined gross estate. The grandchildren can then give their gifts back to their parents, also free of tax.

Aside from decreasing the gross value of your estate, by gifting your assets during life you can see how your descendants use your property, share their joy and appreciation, and give them the opportunity to thank you. You can use the same philosophy to give money to local charities, your alma mater, or other organizations that may have helped you get where you are today.

Probate

Like most institutions, the probate system is sometimes wrongly criticized by those who are misinformed. Probate is simply the process by which a court authorizes, according to the decedent's will, the paying of a decedent's bills and the transfer of property held solely in the decedent's name. The court will authorize these transfers according to general law if no will is found. Contrary to what some people think, if you don't have a will, the State does not "take" your property. Rather, state law just writes a will for you based on public policy as stated in the law. This is not advantageous to your surviving spouse.

The operation of law and/or trusts (discussed below) can help you avoid probate. Keep in mind, however, that even though you plan to avoid probate, it is still an excellent idea to have a current Florida will to cover assets which inadvertently or unavoidably were not transferred.

Operation of Law

By using the operation of law to transfer property, you are letting the property pass automatically to your heirs without further documentation or planning.

Putting property in joint ownership with a survivorship interest, such as life estates on real property; a joint tenancy with right of survivorship for real property; bank accounts that pay on the death of the account holder; or stocks and bonds held in trust for another party are all ways to transfer property by operation of law. The other person on the property title or account name automatically gets the property when you pass away.

Real estate, automobiles, and life insurance are all examples of assets that can be transferred without probate, if the proper procedure is followed.

Be aware, though, that by adding names to the title, you may create problems in transferring the property or changing the intended beneficiary of the property. Titles transferred before death, however, do not require judicial involvement, and can help you avoid probate in some circumstances.

Trusts

The trust is an enormously flexible vehicle for all

kinds of legal maneuvers. In the typical “revocable living trust,” the settlor (one who makes a trust) appoints himself as trustee until his death or disability. Then a successor manages and uses the trust property until the successor’s death, at which point the remainder is distributed to the settlor’s successor beneficiaries.

Some non-tax benefits include:

- Avoiding probate delays and expenses;
- Managing assets professionally;
- Permitting distribution over a long period;
- Minimizing the risk of multiple inheritance taxes;
- Avoiding publicity;
- Avoiding guardianship;
- Reducing the likelihood of will contests;
- Restricting the wasting of assets by spendthrift beneficiaries and their creditors.

Many people prepare elaborate living trusts, but never fund the trust by putting the appropriate assets into the name of the trustee, and therefore do not implement what was intended. Further, if avoiding probate is your main goal, sometimes you can succeed with simpler and less expensive methods than a living trust. As always, good planning and the advice of good elder law attorney can avoid pitfalls such as this.

Trusts are commonly used to avoid probate, but without a small probate to notify and clear creditors,

the trustee remains liable indefinitely to creditors of the estate.

Conclusion

We welcome your questions and the opportunity to speak with about your long-term physical care and elder law needs. Constantly changing state and federal laws and regulations make this a particularly difficult area of the law to navigate. Our firm keeps current on these changes not only by tracking legislation, but by regularly attending and presenting at local, state, and national elder law seminars. We look at our clients’ situations in a holistic manner, taking into consideration physical, spiritual, and financial needs.

For additional helpful articles on elder law, please visit our website at www.law4elders.com.

Jack M. Rosenkranz

Notes

Jack M. Rosenkranz received his law degree from the Walter F. George School of Law at Mercer University and his undergraduate degree from Memphis State University. In college, and again in law school, he used his skills and his knowledge of political science and public surveys to bring much-needed changes to campus policies. As a result of his efforts at college, he was awarded the John W. Burgess Award for Meritorious Achievement in Political Science.

Mr. Rosenkranz now uses his natural abilities and legal training in his Elder Law practice, which includes Medicaid and Medicare planning, estate planning, advanced directives, Veterans benefits (such as Aid and Attendance), probate, supplemental trusts, and other long-term care planning needs. He was the first to receive both the Outstanding Achievement Award for the Florida Chapter of National Academy of Elder Law Attorneys and the Member of the Year Award for the Elder Law Section of the Florida Bar in the same year.

His peers have selected him as a Leading American Attorney in Elder Law, and he has an AV rating, the highest possible, with Martindale Hubbell. He remains active in the Elder Law Section of the Florida Bar, the Florida Academy of Elder Law Attorneys, and the National Academy of Elder Law Attorneys, Inc. Mr. Rosenkranz mentors new elder law practitioners, sharing with them the knowledge he has obtained from attending and presenting at numerous local, state, and national seminars each year since he began his practice in 1991.

Mr. Rosenkranz has co-hosted a weekly radio program, "The Informed Elder," on 570 WHNZ. He regularly gives presentations and other informative talks about elder law to the public and to other attorneys.