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Estate Planning
Special Needs Planning

Newsletter



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Avoiding Guardianship Proceedings

One of the most difficult decisions a family may have to make is whether to petition a court to appoint a guardian or conservator for a loved one whom they feel is no longer capable of taking care of their own affairs. Pursuing a petition to appoint a guardian may not only be difficult emotionally, but it may also involve extensive costs.

Guardian proceedings are intrusive. The petitioner may be required to air out in a public proceeding those facts that make the guardian necessary. This can involve issues such as mental illness which can be embarrassing and painful, not only for the loved one, but for the family.

In addition, these proceedings can be costly. The petitioner will not only be required to pay his or her own attorney's fees, but, in Virginia, may also be required to advance court costs and the fee for the *Guardian ad Litem*. While some of these costs may be recoverable if a guardian is appointed, they remain at risk during the pendency of the proceeding. The petitioner may also need to pay the doctor a fee for preparing a report.

For these reasons, if a proceeding to appoint a guardian or conservative can be avoided it should. Guardianship proceedings can be avoided with a little planning. If you know that you may need help in the future with finances and healthcare decisions, and you know somebody you can trust, you can make legal arrangements to appoint another person to be your agent. Your agent can then make those decisions for you when you are unable to do so yourself.

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William J. Kovatch, Jr., Attorney at Law, PLLC provides elder law services. The practice of elder law includes the representation of the elderly and the disabled in connection with:

- estate planning (wills and trusts)
- estate administration
- the application for public benefits such as Medicaid
- advance medical directives
- the creation of powers of attorney
- guardianship
- conservatorship,
- disability planning
- long-term care planning.

William J. Kovatch, Jr. is a member of the National Academy of Elder Law Attorneys, and admitted to practice law in:

- The District of Columbia
- New Jersey
- New York
- Pennsylvania
- Virginia

An important tool in planning for your future care is a power of attorney. With this document, you can appoint an agent who will have the same legal power you have to make decisions regarding your property. The power of attorney can be as broad as you like, or as narrow.

If you have a complicated financial situation, and foresee the need for professional help in managing your assets, you can create a living trust. Through the trust agreement, you appoint a person to manage your property for you. You can even use this legal tool as a substitute for a will to avoid probate.

With respect to decisions for your healthcare, you can make an advance medical directive, where you name a trusted person as your “health care proxy,” and give that person instructions on how you want medical decisions to be made. If you become unable to make the medical decisions for yourself, your health care proxy steps in to make the decisions, based on your guidance. The doctor is legally obligated to abide by your proxy’s decisions.

A little planning now can help ease the burden on you and your family should the need arise later. ■

No Required Distributions from Traditional IRAs for 2009

In December 2008, Congress passed a law that changes the rule for taking required minimum distributions from traditional Individual Retirement Accounts (IRAs). This law allows people to “skip” their required minimum distribution for 2009. The law does not apply to distributions under Roth IRAs, which don’t have any required minimum distributions.

Generally, people who have traditional IRAs must start taking required distributions in the year after they reach 70 ½ years of age. The annual distribution amount is calculated based on the individual’s life expectancy and their IRA account balance as of December 31 of the previous year.

However, because of the economic downturn, many people’s IRA account balances have decreased in value. Since many IRAs consist of stocks and other market investments, some people may not want to liquidate those investments to make the minimum distribution, if those investments may increase in value at a later time. As a result, the U.S. Government will not require people to withdraw any minimum distribution amount for 2009. ■

Upcoming Speaking Engagements

“When Elderly Parents Move In: What You Should Know from a Legal Perspective”

Saturday, February 28, 2009 starting at 10:00am

Bethany Lutheran Church, 2501 Beacon Hill Road, Alexandria, VA 22306

“Estate Planning Basics”

Saturday, April 18, 2009 starting at 10:00am

Bethany Lutheran Church, 2501 Beacon Hill Road, Alexandria, VA 22306

This newsletter is for informational purposes only, and not meant to constitute legal advice. Quality legal advice requires a thorough look at the facts and circumstances surrounding your situation.