

## *TAKE CONTROL TO PROTECT YOUR FAMILY*

For some, procrastination is practiced with such vigor it is raised to an art-form. Creative energy and imagination are directed, and re-directed, to rationalizing why certain tasks are left incomplete. Legacy planning is frequently the target of such procrastination. What the uninformed may not realize is that, with respect to estate planning, procrastination often becomes a synonym for *loss of control*.

With the assistance of Certified Elder Law Attorney, Linda M. Anderson, of Media, PA, we will address some of the fundamentals you need to know to protect your family. Anderson informs us that properly drafted legal documents help us keep control by reflecting *our choices* for transferring our property, while minimizing the tax-consequences. Secondly, we may stay in control through the selection of our decision-maker(s) or advocates – should we be unable to make financial or health care decisions at some future time.

The basic legal documents most of us need are:

1. will – a written document disposing of an individual’s probate property at death
2. durable power-of-attorney – grants power to make decisions concerning an individual’s property even if they become incompetent
3. health care power-of-attorney – grants power to a specific person(s) to make medical decisions on behalf of an incapacitated individual
4. living will – document detailing those health care interventions that a person does or does not want, when no longer capable to make those decisions
5. up-to-date beneficiary designations – primary and contingent

Anderson reports that a major planning faux pas is *inconsistency* between a will and the individual’s beneficiary designations. Annuity, retirement account, and life insurance beneficiary designations supercede instructions in your will. A ‘joint’ account is transferred *as per* the registration, usually JTWROS (Joint Tenants With Rights of Survivorship) or TIC (Tenants in Common.) This registration, too, supercedes the will.

For instance, you may have a beautifully drafted trust component in your will that structures the transfer of retirement account money to your children based on their attained ages. However, if your beneficiary designations do not cite the trust language – but simply list the child(ren) as contingent beneficiary(ies) – an untimely death could result in a windfall, even for your 18 year old.

My office was recently contacted by a major law firm, to confirm the beneficiary designations on a recently deceased client's accounts. Shortly before death, the gentleman had initiated estate planning with his family. He had been reassured by his law firm that his signature on a document stating beneficiary preferences would be adequate to implement his new wishes. This was not correct. Beneficiary designations must be recorded on the forms provided by the custodian of the financial account(s) and must be fully processed before a death occurs.

As a CELA (Certified Elder Law Attorney,) Anderson often counsels clients who face serious illness and require immediate assistance with asset protection planning, or with understanding and financing various care options. Anderson drafts documents with language designed to capture the wishes of each individual client. "One size does *not* fit all."

She emphasizes the importance of customizing with respect to power-of-attorney drafting. For example, appropriate language may set the stage for an advocate to support an elder's wish to remain in his or her own home for as long as possible. It may provide the legal authority for an agent to protect a healthy spouse, while Medicaid is solicited to fund the medical needs of the unhealthy partner. Thirdly, unique planning challenges are often present in families involving a second marriage and children of more than one marriage.

Crucial to this discussion is the understanding that if families do not plan - the Commonwealth of Pennsylvania has a plan all ready for each one of us. The problem is that their plan, and the guardian they might select to make decisions on behalf of our no longer competent loved one, is almost certain to be contrary to our wishes and desires. Summer is a time for families and relaxation - a perfect time to be certain *you* are in control of your family's affairs.

*Joslyn G. Ewart is an educator, financial analyst, and business owner. Her firm, Entrust Financial, LLC®, is the financial partner of a select group of successful individuals and families in the Delaware Valley. Her business column appears on a regular basis in Main Line Life. E-mail: [joslyn@entrustfinancial.com](mailto:joslyn@entrustfinancial.com).*

CRR: 8950

05/2008