

ESTATE PLANNING: A GUIDE FOR LAW ENFORCEMENT

As we navigate our way through our careers, there comes a time when we can clearly visualize retirement. For most of us, the vision is the same: retirement should be the point in life when things get easier. We envision our mortgages substantially paid down or completely paid off, our kids out of college and beginning their adult lives, and our pension income providing adequate means to maintain our lifestyles. Hopefully good planning and consistent efforts to save have provided a hearty balance in Deferred Compensation, allowing for increased income to offset the future effects of inflation on our pension.

We look down the road and know that Social Security and Medicare will also provide for high quality of life and management of health care costs. Maybe you have visualized a second career, or plan to travel extensively. Perhaps you wish to move to a warmer climate (in a pension/income tax friendly state) to escape the cold New York winters. Your vision is yours, and you deserve to make it a reality. While you can't possibly plan for every conceivable life event that might impact the next phase of life after your service with the State Police, there are a few common pitfalls that can be avoided. Today, I want to shed light on some items, all of which fall under the heading of "Estate Planning", that will help you confidently prepare for retirement and other important transitions in your life.

CARING FOR OUR ELDERS

As we approach retirement age and anticipate newfound freedom, many of us find ourselves observing the struggles of our parents and in-laws as they age. At some point, our elder family members might turn to us for help, and should you be the "point-person" in that process, good pre-planning, or a lack thereof, can be the game-changer in the time, effort and effectiveness of the assistance you can provide.

A common mistake is to wait for a crisis to occur, at which point it may be too late to avoid unpleasant consequences. I urge you to be proactive. Ask yourself, "What would happen if Mom or Dad (or anyone for whom you might feel responsible) became incapacitated and I had to take over?" There are many questions that need to be answered, and several legal documents that should be considered while the elder family member is healthy, competent, and able to participate in the planning process. There are three distinct phases that should be considered: the period of independence, the period of dependence, and ultimately, death. Proactive planning for the transitions between and after each of these periods should be designed to reduce confusion, expense, unnecessary taxation or delays and to see to it that the wishes of the elder is met regarding extended care and the use or distribution of assets.

IMPORTANT QUESTIONS YOU NEED TO ASK

- Have you been appointed as agent under a financial **Power of Attorney (POA)** so that you can have access to checking accounts and would you be able to easily pay bills and taxes on behalf of your relative?
- Do you know the family attorney and accountant, the location of safe deposit boxes, and what company maintains brokerage, savings and retirement accounts?
- What insurance coverage does your relative have? How are the policies kept in force? How are the insurance benefits accessed?
- Is there a Last Will and Testament (Will)? Is it up to date? Who is named as the Executor, and is that person still up to the task? (Note: an outdated Will may have an Executor who is no longer capable or willing to complete the time-sensitive responsibilities this role requires)
- Is there a living will/health care proxy that clearly states what medical measures your relative would want taken in an extreme circumstance, and allow his or her designee to make decisions once they cannot? Be aware of existing laws regulating the dissemination of health related information. The **Health Insurance Portability and Accountability Act (HIPAA)** is a federal law that protects every patient's health care privacy and restricts a health care provider's disclosure of protected information. In addition to the health care proxy, it's a good idea to have a "HIPAA release," identifying what medical information can be disclosed, who can make the disclosure, and to whom the disclosure can be made.
- Is the POA up to date? Are the features of the POA consistent with the situation at hand? If your elderly relative was incapacitated, it can be very difficult to access accounts to pay bills, manage or dispose of property, request an IRA distribution, or make long term care decisions without a correctly prepared durable POA document. The importance of a Power of Attorney cannot be overstated. A gift rider to a POA would allow for a distribution of assets in an otherwise "frozen" estate, should there be an extended period of disability/dependence.
- If there is a trust, is it still viable or necessary? What purpose would a new trust serve with regards to avoiding probate, removing assets from the estate, limiting against long term care exposure, protecting against creditors/claims, or minimizing estate taxes? Naturally, these answers depend on your family's financial situation and whether or not there are insurance policies or other funding mechanisms in place to cover your family's exposure to these risks.
- Are beneficiary designations up to date? Is it possible that death, divorce or other circumstances have not been reflected in current beneficiary selections?

THE PLANNING PROCESS

The estate/transitional planning process begins with a family meeting. While it can be difficult to bring these items to the forefront for discussion, it is critically important to be prepared – and often, elderly relatives often experience tremendous peace of mind knowing that family members are working to ensure long-term financial stability and protection of their hard-earned assets. Sometimes, however, pushback occurs, typically when elders feel that their children are trying to "take over" or are going to "put them out in a home". This is a highly emotional situation, and treading lightly while keeping the primary purposes in mind is of utmost importance. Various "what if" scenarios lead to obvious questions of who will be empowered to keep things running if the elderly relative cannot do so.

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BEQUESTS AND ESTATE PLAN GIFTS

A bequest is a gift from your estate—a transfer of cash, securities, or other property made through your estate plans. You can make a bequest to the FBINAA Charitable Foundation by including language in your will or living trust leaving a portion of your estate to the foundation, or by designating the FBINAA Charitable Foundation as a beneficiary of your retirement account or life insurance policy.

Remembering the FBINAA Charitable Foundation with a bequest from your estate will help sustain and strengthen our ability to provide disaster relief, fund college scholarships and assist members and their families in times of need. Some of the advantages of creating a bequest include:

- A bequest costs nothing now, yet gives you the satisfaction of knowing you have provided for those in need in the future
- You retain control of and use of your assets during your lifetime
- You may modify your bequest if your circumstances change
- Gifts to the FBINAA Charitable Foundation from your estate are exempt from federal estate taxes
- If you let the FBINAA Charitable Foundation know of your plans, we will be able to thank you now and recognize you as a sustaining member of the FBINAA Charitable Foundation

For details on the Foundation's programs, visit fbinaafoundation.org

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The family meetings serve as a “discovery” process to determine what estate planning has already been done, and which of the above questions have not been adequately addressed or might need to be reviewed. During the discovery phase, you should expect to learn about cash flow, sources of income (e.g. pensions, savings, retirement accounts, social security), as well as debts that need to be paid. Understanding the mechanics of how funds come in and out of the household accounts is key to the success of this phase.

Following the initial assessment of household finances, you will also need to conduct an insurance review. Understand aspects of any policies in force for health care, long term care, whole, universal, or term life insurance. Be sure to review policy cash values, beneficiaries, and have a plan to pay premiums if parents are indisposed. A policy which is unknowingly allowed to lapse may negate years of premium payments causing an anticipated benefit to be uncollectible.

You must also become aware of where critical documents are located. Bank statements, brokerage statements, titles, deeds, and estate documents need to be easily retrievable. If there is a safe deposit box, gaining access by having your name added to the official bank records, and securing keys for the box can save significant time and legal wrangling during a crisis. If applicable, develop a list of relevant Internet account usernames and passwords and keep this list up to date. This may be an opportunity to discuss online security with seniors, specifically the various methods by which the elderly can be tricked into providing personally identifying information in both telephone based and email based scams.

A thorough discovery process, combined with taking necessary steps to have legal access to act on a loved one's behalf, will clearly help mitigate stress and hardship during transition periods. Knowing where things are and how they operate will help prevent late payments and associated penalties, canceled insurance policies, lost or unclaimed assets, or other unintended consequences when a relative becomes incapacitated.

The primary purpose of family estate planning is to protect a person's wishes for what happens to them and what happens to their assets during illness and at the time of death. A secondary purpose would certainly be to minimize unnecessary complications you could experience once he or she is no longer capable of managing such affairs.

COMPREHENSIVE ASSET REVIEW

An important step in this process is to create a comprehensive asset review, and to develop an understanding of how the assets are titled, and how they would pass upon the death of the owner. In some cases, the retitling of assets so that they transfer outside of the probate process (i.e.; through “transfer on death” provisions and the designation of beneficiaries, or through a living trust) can provide tax efficiency and substantially reduce expenses.

Be cautious if you are considering the possibility of placing highly appreciated assets in joint ownership or irrevocable trusts as certain tax advantages may be lost if this is done incorrectly. In all such situations, legal and tax advisors should be consulted when considering such steps. There are great advantages to avoiding probate issues

when everything has been done correctly. Having assets accurately designated and in a form that passes to the intended beneficiary directly instead of through probate (via a will) saves time, reduces the likelihood of potential legal challenges, avoids the public aspects of probate, and reduces or eliminates court costs.

These are certainly complicated issues – several of which could easily be standalone topics for a series of articles on estate planning. However, hopefully this piece provides you with a broad overview of many issues commonly faced by our generation. We can all better enjoy our retirement years, and more effortlessly live out what we have visualized for ourselves, if we take some time now to plan accordingly. Due to the complexity and unique nature of every family situation, however, it is important to consult with legal, financial, and tax professionals when conducting estate and transitional family planning. 

About the Author: Henry deVries retired in 2011 as a New York State Police Captain to begin a second career as a Financial Advisor, and earned the Certified Financial Planner™ designation. He is a graduate of the FBI National Academy Session #186. He can be contacted by email at Henry.devries@tranquilitywm.com or at 845.276.4898.

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