Your Estate Plan:

Taking care of your future, family and assets

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YOU NEED AN ESTATE PLAN. HERE'S WHY.

Think of your estate plan as a gift — a gift to your loved ones after you die. Of course, none of us want to think about our mortality. But the fact is, we will one day die. If don't make plans for that eventuality, you run the risk that your loved ones may not receive all that you would hope. Why is that? Florida has a method for handling the estates of people who do not have a will. In most cases, you will not care for this "one size fits all" plan. You can do better — for yourself and your intended beneficiaries. And I will show you how. But first, here are some definitions that you need to understand before we delve any deeper:

- An "estate" is simply everything a person owns. For example: bank accounts, stock, real estate, motor vehicles, jewelry, household furniture, retirement plans, and life insurance.
- An "estate plan" is the means by which the estate is passed to the next generation. This can be accomplished through a variety of means. For instance, most retirement plans and life insurance policies pass to named beneficiaries. Also, property that is jointly owned passes to the surviving joint owner, such as a spouse. Property held in an individual's sole name with no beneficiary designation is distributed by a will.

If you don't have a plan yet, you're not alone. Sixty percent of adults in the United States do not have an estate plan! One reason: Many people feel their estate is too small for it to be worthwhile. But this could not be further from the truth because estate plans include extremely important plans for your money and health while you are still alive. These advance directives aid you while you are still alive. Without something like this in place, you could be looking at an expensive guardianship. Additionally, some people feel that joint ownership should suffice. However, this type of estate plan does not give you the flexibility that a will provides.

If you do not have an estate plan, your estate will be distributed under the rules of "intestacy." These rules direct your estate to your nearest relatives, whether that is your spouse, your

children, or your nieces and nephews. While this may work for some people, it will not work for most people -- especially those with blended and extended families.

Another benefit: An estate plan will likely save your relatives a ton of cash! A well-drafted estate plan permits you to save as much as possible in taxes, court costs and attorneys' fees.

An estate plan consists of four important planning instruments: a durable power of attorney, a designation of health care surrogate, a living will, and the will. Let's explore each.

DURABLE POWER OF ATTORNEY

Some consider a durable power of attorney to be even more important than a will. What is it? A power of attorney allows you to appoint another person – your "attorney-in-fact" – to step in and manage your financial affairs if and when you ever become incapacitated. Giving someone the potential power to manage your affairs can be frightening. This is why it is important for you to appoint someone you trust. This person must use your finances as you would for your benefit. Giving someone a power of attorney does not limit your own rights in any way. It simply gives the other person the power to act when or where you cannot act. If you do not have someone you trust to appoint, you may consider a geriatric care manager. This is a professional who can fulfill the role of being your attorney-in-fact when you have no one else you can trust.

On October 1, 2011, Florida completely revised the power of attorney statute. As a result, the nomenclature in the power of attorney is drastically different. Therefore, if you have a power of attorney drafted before that date, I strongly recommend you have it updated. While the new statute does not void older power of attorneys, financial institutions and the like will be looking for the new statutory language. In order to avoid acceptance problems, it is generally recommended that you update your power of attorney.

It is vital that you do not use a power of attorney form that you purchase from an office supply store. These do not work. A power of attorney is a very complex document that should be prepared after consulting with an attorney. For example, under the new power of attorney statute, it is not acceptable to say in the document that your attorney-in-fact can do whatever you can do. All the actions that you wish to bestow upon your attorney-in-fact must be specifically outlined. As such, a good power of attorney will be very detailed as to all of the actions that the attorney-in-fact can perform.

If you do not have a power of attorney, you may need a guardianship. This process — which you want to avoid — takes time, costs money, and involves court supervision throughout the lifetime of the guardianship. Avoid this. Get a power of attorney.

HEALTH CARE SURROGATE

Whenever you see a doctor or dentist for treatment you generally must give what is called "informed consent.". Under common law, it is recognized that a third party — even a doctor — cannot touch you without your permission. Therefore, most medical providers require you to give that consent in writing. If you are incapacitated, it is impossible for you to give this consent. By executing a "designation of health care surrogate," you ensure that you have someone to represent you in providing informed consent so that you can obtain the medical care you need.

Also, due to the Health Insurance Portability and Accountability Act (HIPAA) doctors, hospitals and other healthcare providers may no longer freely discuss a patient's status or health with spouses or other family members – unless the providers have signed consent forms from the patient. A good designation of health care surrogate will have that consent built in.

In general, a healthcare surrogate only takes effect when a physician determines that you are unable to communicate your wishes concerning treatment. Florida now allows a healthcare surrogate to become effective immediately, which is very

helpful. If you later become able to express your own wishes, the medical professionals will listen to you and the healthcare surrogate will have no effect.

Because the agent will have the authority to make medical decisions in the event you are unable to make such decisions yourself, the agent should be a family member or friend whom you trust to follow your wishes. Before executing a healthcare surrogate, you should talk to the person you want to name as the agent about your wishes concerning medical decisions, especially life-sustaining treatment.

Once the healthcare surrogate is drawn up, your agent should keep the original document or at least have access to it if you keep it. You should have a copy and your physician should also keep a copy with your medical records.

LIVING WILL

Hospitals and doctors have only one goal — to keep you alive no matter your quality of life. If you would like to avoid being on life support when a return to normal life is hopeless, you need to draw up a living will. Living wills are documents that give instructions to withdraw life-sustaining treatment if you become terminally ill or are in a persistent vegetative state and unable to communicate your own instructions.

A living will is not necessarily a substitute for a healthcare surrogate. It simply dictates the withdrawal of life support in instances of terminal illness, end-stage condition, or a vegetative state. Two medical doctors must make a medical diagnosis of one of these conditions. Therefore, EMS or other emergency personnel cannot honor a living will because they cannot make a medical diagnosis. Only when you are stabilized and in the hospital can a living will take effect. The doctor will then sign a Do Not Resuscitate (DNR) order which will then be honored by all medical staff, including emergency personnel.

A good living will should give you options that you can select in end-of-life treatment. For instance, do you wish to have hydration? In my living will, I list three methods of hydration and you

can select which method, if any, you want. Resuscitation of your heart, the use of a ventilator, and tube feeding are also laid out for you to select or not select, whichever you choose.

WILLS

When an individual dies and there is no will, that person is said to have died “intestate.” When this happens, the person’s probate property is distributed according to the state’s intestate laws. It is possible property will not be distributed as the person had wanted. This is usually the case. This same situation may occur with a will that has not been drafted by an attorney. More often than not, people are turning to Internet programs to draft wills and this can lead to disastrous consequences. Drafting wills is not something that a layperson should undertake.

A will has three essential functions:

- to name a personal representative who will see to it that your estate is distributed according to the terms of your will;
- to spell out who is to inherit how much of your estate; and
- to name a guardian for your minor children.

In the will, the personal representative will be given extra powers and no bond will be required, both of which reduce the cost of probate considerably. In naming your beneficiaries, you can include or exclude anyone and also have a provision for those individuals’ survivors to be included if those individuals should die before you. If there are minor children, a trust is essential for their proper care. Otherwise, all assets awarded to your child will be given to him or her when he or she reaches age 18.

A will enables you to:

- exercise your right to determine which assets will be distributed to whom, as well as how and when;
- name your personal representative to serve without bond, thus saving your estate money;
- recommend guardians for your children;
- designate the source from which estate settlement costs are to be paid;
- make provisions for the distribution of property in the event both spouses died at the same time;
- make special bequest to individuals, churches, educational institutions and charities;
- create a testamentary trust for minors to protect them by providing professional asset management; and
- create special needs trust for beneficiaries who might be receiving governmental aid thus allowing them to continue receiving such aid.

A will must be written and witnessed in a special manner provided by law. Florida does not recognize handwritten wills executed without any witnesses. A will can be amended or entirely revoked at any time before the maker's death as long as the maker is competent. Remarriage, relocation, birth of a child, a new job, and major revisions in the tax law are all reasons to update your will.

To assist your attorney in properly preparing your will you need to have the following information:

- the name of a personal representative and a contingent personal representative;
- your primary beneficiary or beneficiaries;
- your secondary beneficiary or beneficiaries;

- if there are minor children, a guardian and a contingent guardian; and
- if there are minor children, a trustee and a contingent trustee as well as a contingent beneficiary for the testamentary trust.

Everyone who has minor children should have a will in place that provides for the minor children utilizing a testamentary trust. This allows the trustee to use the money for the child's benefit even beyond the age of 18, such as for secondary education. This is vital since bad things often happen when you mix a large distribution of cash and an 18-year-old person. Also, the parents need to designate a guardian for the minor children. This is also done in a separate form entitled Designation of Guardian of the Minor. Without this designation, the judge, who is a stranger to you, will decide who gets to raise your children. Proper planning avoids this potential catastrophe.

TRUSTS

Trusts can be very complex. Therefore, the following is a very basic discussion that will address four of the most common types of trusts used in estate planning.

LIVING REVOCABLE TRUSTS. This type of trust gives the grantor complete control over the trust. He or she may amend, revoke or terminate the trust at any time. As such, the grantor is able to reap the benefits of the trust arrangement while maintaining control prior to death. These types of trust are good for asset management, probate avoidance, tax planning if you have a large estate, and disability planning. While not as popular as they have been in the past, some positive aspects of these trust are:

- assets transferred into a revocable living trust do not go through probate;
- it provides more privacy because the probate process is a public proceeding;
- it allows your successor trustee to manage your assets if you become incapacitated;

- trusts are harder to contest than a will; and
- If you own property in another state, you can avoid a costly probate proceeding in that state by transferring the property to a living trust.

Nonetheless, such trusts are not for everyone. Some other considerations are as follows:

- creation of a trust is more expensive;
- the trust provides no protection from creditors;
- transferring assets into the trust can be a cumbersome process;
- the estate tax is no longer an issue for most people and, therefore, such a trust does not save on taxes; and
- tax returns must be filed for the trust after the settlor dies.

IRREVOCABLE TRUSTS. An irrevocable trust cannot be changed or amended by the grantor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the grantor may set up a trust under which he or she will receive income earned on the trust property, but the trust bars access to the trust principal. This type of trust is a popular tool for Medicaid planning.

TESTAMENTARY TRUSTS. A testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the decedent is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is part of the will, it can be very useful in accomplishing other estate planning goals. For instance, when providing for minor children, a testamentary trust is usually used in order to keep the money from the control of the minor until they reach an age of your choosing.

SUPPLEMENTAL NEEDS TRUSTS. The purpose of a supplemental needs trust is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend.

The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets and still be eligible for benefits such as Supplemental Security Income, Medicaid and low-income housing. A supplemental needs trust can be created by the donor during life or be part of a will if certain criteria are met. (See page 20)

THE PROBATE PROCESS

Probate is the process by which a deceased person's property (the "estate") is passed to his or her heirs. Strictly speaking, probate only includes property owned by the deceased in his or her individual name — not joint property, living trusts, life insurance or retirement accounts that pass automatically at death. While the legal process, supervised by the probate court, usually takes about 6 to 8 months, substantial distributions from the estate can be made in the interim.

A formal administration includes the following steps:

1. Filing the will and petition at the probate court in order to be appointed personal representative. In the absence of a will, next of kin must petition the court to be appointed personal representative.

2. Marshalling or collecting assets. This means that you have to find out everything the deceased owned. You need to file a list, known as an inventory, with the probate court it's generally best to consolidate all the estate funds to the extent possible. Bills and bequest should be paid from a single checking account, either one you establish or one set up by your attorney, so that you can keep track of all expenditures. The account needs to be a new account in the name of the estate, and you will need a new tax identification number to be provided by the IRS.

3. Paying bills and taxes. A federal estate tax generally must be filed at the estate exceeds $13 million in value. Therefore, most people only have to file the decedent's regular 1040 return for the year in which they died if there was any earned income or interest earned. A qualified certified public accountant can assist you in making this filing.

4. Distributing property to the heirs. Generally, the personal representative does not pay out all the estate assets until the period runs out for creditors to make claims, which is three months from the date of the first publication of the notice to creditors. Once the creditors have been paid and this claim has run, the estate can be distributed if the estate assets have been marshalled.

5. Filing a final account. The personal representative must file an account with the probate court listing any income to the estates of the date of death and all expenses and estate distributions. Once the court approves this file account or all beneficiaries have file waivers, the personal representative can distribute whatever is left in the closing reserve and finish his or her work.

SHOULD YOU AVOID PROBATE?

The short answer is yes. However, be wary of attorneys selling methods to avoid probate because probate is not the horror story painted by many attorneys and friends. Probate process can actually be beneficial because it allows the orderly payment of claims and has court supervision, which can help ensure your estate is passed on properly as you direct.

Some methods of avoiding probate are as follows:

1. Revocable living trust. The nice thing about a revocable living trust is that it can avoid probate if all of your estate assets are titled in the name of the trust. Most people fail to retitle their assets and, therefore, the probate process may still be required. The drawback to the RLT is that they are very expensive, do not avoid creditors, and require tax returns to be filed at the time of death. Also, transferring all your assets to the trust can be a cumbersome process.

2. Joint ownership or beneficial designation. One of the cheapest ways to pass an asset on at your death is to make sure that person is listed as a beneficiary on the asset or is joint owner. It is much better to utilize beneficial designation rather than joint ownership. Be careful before adding a child or significant other as a joint owner as that has various legal and tax ramifications. Please discuss these ramifications with your attorney prior to

adding anybody as a joint tenant. Joint tenancy passes the property to the surviving joint tenants and as such, creates a legal title in the name of the joint owner at the time it is title in joint tenancy. This title may not subsequently be changed without the consent of the joint owner and may be considered a gift and subject to gift taxes.

3. Life estate deed. When dealing with real estate, you can list a beneficiary on property by using a life estate deed. This deed allows the owner to keep full rights in the property for long as he or she lives. Upon the owner's death the property automatically goes to the person(s) listed in the deed. The owner gets the full tax exemption and protection from creditors and still reserves the right to change the beneficial designation at a later date. The only downside to this type of deed is that you want to make sure person you are deeding the property to does not have any judgment liens against him or her.

LONG-TERM CARE PLANNING

One of the greatest fears of older Americans is that they may end up in a nursing home. This not only means a significant loss of personal autonomy but also a tremendous financial price. Therefore, it is essential that you carefully plan for your future. Careful planning, whether in advance or in response to an unanticipated need for care, can help protect your estate, whether for your spouse or for your children. This can be done by purchasing long-term care insurance or by making sure you receive the benefits to which you are entitled under the Medicare and Medicaid programs. Veterans may also seek benefits from the U.S. Department of Veterans Affairs.

There are several alternatives to nursing home care. They are as follows:

Staying home. Because most people prefer to stay in their own homes, most care is provided at home, whether by family or hired help. This has many consequences, some of which may be quite unexpected. To begin with, family members will shoulder most of the burden of caring for the elderly at home. Being the primary caretaker for someone who requires assistance with activities of daily living, such as walking, eating and

toileting, can be a consuming and exhausting task. One important consideration when one family member has the sole responsibility of caring for a parent or other older relative is a question of equity with other family members. For example, is the child being fairly compensated for her work? If the older person is living with a child, does the elder help pay for the house? If the care is taking place in the elder's home, should the child have an ownership interest in the house?

Getting outside help. Public and private agencies offer a variety of home care services that may be available, including:

- home healthcare, either part-time or 24 hour care;
- personal-care and homemaking services, such as shopping, cooking and cleaning;
- services delivered to the home, such as meals programs, transportation and home repair; and
- adult day care centers that offer more intensive services than senior centers.

Home healthcare providers. There are many private home healthcare agencies around the nation. You want to look for home healthcare agencies that are accredited from private accrediting organizations. The three major accrediting groups for home care agencies are the Community Health Accreditation Program (www.chapinc.org); the Joint Commission on Accreditation of Healthcare Organizations (www.jcaho.org); and the National Association for Home Care (www.nahc.org).

Private geriatric care managers. Private geriatric care managers usually have a background in either social work, nursing, or psychology, and they are experts in (i) helping older persons and their families assess what the best care and living arrangement is for a senior who needs assistance and (ii) carrying out that plan. These care managers evaluate an older person's needs, review the options available, and monitor care. Their services can be invaluable. Finding the right care for an aging parent may be a once in a lifetime burden for the children, but it is what geriatric care managers do every day.

They have the experience and knowledge of local resources that cannot be duplicated. Geriatric care managers can be especially important when children live far from their parents. The geriatric care manager can act as a surrogate parent, making visits to home or to a nursing facility, and reporting back to family members.

Assisted living facilities. These facilities provide room, board, and 24-hour supervision. There are various levels of care that are offered by ALFs. Housing is often in small apartments and there is generally a cafeteria and recreational options. A premium is placed on retaining as much independence and living as possible, and the care is usually individualized based upon the needs of the person. These facilities also now include a section set apart from the general population for those who need higher services. This is generally called “memory care.” Medicaid programs may now provide some funding for the services. However, there is a long waiting list and it is very important that you apply for this funding at the appropriate time; otherwise, it could be years before you are approved for aid. This fact proves the need to speak to a qualified elder law attorney earlier rather than later.

Continuing care retirement communities (“CCRCs”). CCRCs guarantee a lifelong place to live. They offer the entire residential continuum – from independent housing to assisted living to round-the-clock nursing services – under one roof. Such settings allow seniors to age in place. Residents pay an entry fee and an adjustable monthly rent in return for the guarantee of care for the rest of their life. CCRCs are so diverse in their offerings and personality that no two are alike. The downside of CCRC is the cost, which can be more than those with low or moderate income and assets can afford. Entry fees run from $100,000 to more than $500,000, with monthly charges ranging from $200-$4,000. One CCRC in Tampa recently failed, and many people lost thousands of dollars. Deciding on a CCRC is a once-in-a-lifetime choice, and it is a decision that should be made carefully.

Medicare. Medicare is an entitlement program that covers people over the age of 65 and those with disabilities. Do not look to Medicare to cover much, if any, nursing home care. Medicare Part A covers only up to 100 days of care in a "skilled nursing" facility per spell of illness. The care in a skilled nursing facility must follow a stay of at least three days in the hospital. In addition, the definition of "skilled nursing" and the other conditions for obtaining this coverage are quite stringent, meaning that few nursing home residents receive the full 100 days of coverage. As result, Medicare pays for only about 10% of nursing home care in the United States.

Medicaid. Medicaid, on the other hand, is basically a health-care program for the poor. In order to be eligible for Medicaid benefits, you need to have very few, if any, assets. That income and asset list will be laid out below. The most significant difference in the realm of long-term care planning is that Medicaid covers nursing home care, while Medicare, for the most part, does not. So the goal sometimes becomes how an individual can become eligible for Medicaid coverage when they have excess income or assets. This is what will be discussed below in further detail.

Qualifying for Medicaid. Since Medicaid is not strictly an entitlement program, you have to qualify for these benefits. The government will look both at your income and your assets in making a determination as to whether or not qualify for this program. For 2024, an individual's monthly income must be less than $2,829.00. As for countable assets, they include just about anything you can own. See the summary of key asset limits and types below:

Asset Type	Single Confined	Community Spouse	Joint Confined
Countable Asset	$2,000	$ 154,140	$3,000
Non-Countable: Cash Value Life Insurance	$2,500	$2,500	$2,500 each

Non-Countable: Designated Burial Accounts	$2,500	$2,500	$2,500
Irrevocable Prepaid Funeral	**15K**	**15K**	**15K**
Burial Plots or Spaces Intended for Family Use	Unlimited	Unlimited	Unlimited
One Automobile	Unlimited Value	Unlimited Value	Unlimited Value
Home: Must state an intent to return	Up to $713,000 of equity (as of 2024)	Up to $713,000 of equity (as of 2024) Intent to Return NA	Up to $ 713,000 of equity (as of 2024)

Assets can be labeled as “countable,” “non-countable” and “exempt.” The latter two categories do not affect your application for Medicaid.

Exempt Assets. Exempt assets are not subject to attachment by the state of Florida for repayment after the death of an applicant or spouse, and the value of such assets will not be counted when determining eligibility for Medicaid. Some examples of exempt assets may include:

- ***Homestead*** -- the home of the applicant or “community spouse” is considered exempt as long as the community spouse continues to reside in the home, or the applicant expresses an “intent to return.” It is important to note that the “intent to return” does not need to be based on the applicant’s actual ability to return home. As of 2024, an exempt limit of $713,000 in equity in the home would apply and excess equity above $713,000 would be considered countable assets.

- ***Vehicle*** -- an applicant is allowed to exempt one motor vehicle, regardless of its age and/or value.

- ***Personal property*** -- an applicant's personal property is exempt as long as it does not include items of unusual value, such as expensive jewelry, art, or other collectibles.

- ***Life insurance*** -- an applicant and spouse are each allowed to own cash value life insurance policies with a cumulative face amount of $2,500 or less. Term life insurance policies are a non-countable asset because these policies do not accumulate cash value.

- ***Prepaid funeral plans and burial plots*** -- a prepaid funeral plan can have unlimited value as long as the plan is a revocable and can include burial plots for any member of the immediate family, as long as the deed specifies that the policy is non-sellable and that it would not be intended for someone outside the immediate family.

- ***Designated burial account*** -- this includes almost any asset in which $2,500 is designated for burial, using a form provided by the Department of children and families.

- ***Individual resource allowance*** -- the resource limit an applicant can have to qualify for Medicaid in Florida is $2,000.

- ***Community spouse resource allowance (CSRA)*** -- the spouse who does not need Medicaid long-term care services is allowed to retain a specific amount of assets. This is called the community spouse resource allowance, or CSRA. In 2024, the amount of this allowance is $154,140.00.

Non-Countable. Non-countable assets are assets not included is countable or exempt when Medicaid eligibility is being determined. Non-countable assets include the following:

- ***Income producing property/assets*** -- this would include rental property parenthesis rented at fair market value or greater); annuitized annuities parenthesis

which must be revocable, non-assignable, and actuarially sound and may need to name the estate as beneficiary or contingent beneficiary);property used in business that is essential for self-support; and business assets essential to self-support.

- ***Real property for sale*** -- real estate not exempt as homestead property can be considered nonaccountable if it is for sale at fair-market value determined by comparative market analysis or a formal appraisal.
- ***Unavailable resources*** -- assets for which the applicant and community spouse have no current means of accessing the equity. Some examples are joint assets as a tenant in common (where one party is not a spouse, the outside party refuses to agree to make the asset available, and the joint status did not occur in the last five years); property for sale (listed for fair market value); and assets in a family limited partnership if assets trans ferred to the partnership were not transferred within the last five years)
- ***Items of negligible value*** -- an example of this would be automobiles over seven years old and not considered a classic or luxury car.

Medicaid Planning. What is your philosophy? Do you want to spend your assets to cover your long-term care or do you want the government to pay for those services? If you prefer the latter, you simply need to make sure you have enough money saved up to afford those services. If you prefer the government to assist you, you need to plan well in advance or engage in crisis Medicaid planning. What are some of the tools that can be used to assist in Medicaid planning? Some of these are as follows:

- ***Permitted transfers*** -- currently, the look-back period for Medicaid eligibility is five years. Any transfers made outside of that five-year period time are not an issue. This is, obviously, the best method for Medicaid planning but few people actually plan that far in advance.
- ***Life estate deed*** -- a life estate deed allows the owner to keep full rights in the property for as long as he or she lives. Upon the owner's death the property automatically goes to the person or persons listed in the deed as

the remaindermen. The owner still gets full homestead tax exemption and protection from creditors. This deed can actually be done within the five-year look-back period as DCF does not consider a life estate deed to be a transfer of assets.

- ***Self settled supplemental needs trust (d)(4)(a)*** -- you *can transfer your assets to a supplemental needs trusts provided you are less than 65 years old and the government is the beneficiary upon your death. This would allow you to have extra cash for your needs while on Medicaid. However, upon your death, the government would be repaid the money owed from this trust.*
- ***Qualified income trust (d)(4)(b)*** -- this trust allows you to transfer your income into a separate bank account so that you can become eligible for Medicaid if your monthly income is in excess of the monthly limit. Some people have monthly income greater than the Medicaid monthly limit but much less than the cost charged by the nursing homes. It is a simple way to become Medicaid eligible if you otherwise would be ineligible due to excess income.
- ***Pooled trust (d)(4)(c)*** -- this trust allows you to transfer your assets into a trust and become immediately eligible for Medicaid. Your money would be pooled with other individuals, and this trust is operated by an independent nonprofit company. You can then make application after the transfer to have money provided to you for travel, specialized medical care and treatment or the like. There is no guarantee that you will be approved for any distributions, and at the time of your death all the money in the pool trust stays with the trust.
- ***Personal services contract*** -- many times a relative is operating as a caregiver for the applicant. Because there is no legal requirement that this relative operate in such a manner, he or she is entitled to be compensated for their services. However, it is crucial that a personal services contract be entered into between the parties to delineate the services and set the hourly rate. In this manner,

the transfer of assets from the applicant to the caregiver can be made without violating the transfer restrictions. The caregiver needs to include this money as income and pay federal income taxes accordingly.

- ***Qualified annuity*** -- using a qualified annuity you can transform an otherwise countable asset into a non-countable income stream. There are four requirements to qualify for such an annuity. First, it must be irrevocable. Second, it must be nonassignable. Third, it must be paid out during your life expectancy in equal payments. Fourth, the state must be listed as the beneficiary upon your death.

- ***Real estate for rent or for sale*** -- Medicaid considers real estate a non-countable asset when all property is rented at, or greater than, fair market value. Medicaid applicants can pay the cost of the property taxes, insurance, repairs and other calls from such rental income. The remainder of the income (net rental income) must then be paid to the nursing home if the applicant is single or owns the property with no diversion to the community spouse. Also, real estate for sale is not considered a countable asset.

- ***Spousal refusal*** -- Federal Medicaid law permits the community spouse to keep all of his or her assets by simply refusing to support the institutional spouse as long as the institutional spouse assigns his or her rights to spousal support to the state. Sometimes we couple this with a legal separation agreement so as to confirm the community spouse has no support obligation owed to the institutional spouse.

- ***Reverse half a loaf strategy*** -- with this strategy, the applicant gifts away all countable assets, then pays the cost of the nursing home from the income and gifted assets to meet the private pay portion of cost of the nursing home. Using the strategy, the key is that when a gift, or a part thereof, is returned, the penalty period is reduced by the appropriate amount. In other words, when a gift is returned, Medicaid will treat the amount returned

as if it were never given, thereby appropriately reducing the penalty. This strategy can result in approximately 50 to 60 percent savings of the money transferred.

- ***Spending down*** -- while there is a penalty for giving savings away, there is no limit on how applicants for Medicaid and their spouses may spend their money. You may protect savings by spending them on any items or services that benefit you. They may include:
  - paying off a mortgage or other loan;
  - making repairs to a home;
  - replacing an old automobile;
  - updating home furnishings;
  - paying for more care at home; or
  - buying a new home.
- ***Long-term care insurance (LTCI)*** -- the best option for paying for long-term care is LTCI. Most policies cover a wide range of services, including home health care, assisted living facilities, and nursing home care. The problem many seniors face with LTCI is failing to plan. LTCI issuance is dependent on the health and the age of the individual. Should someone in poor health try to purchase a policy, they would be denied coverage. Also, most people purchase LTCI between the ages 55 and 64. These policies are available in traditional and hybrid policies, which individuals can choose depending on their budget as well as the level of flexibility they desire.

Monthly maintenance needs allowance. When individuals qualify for Medicaid, their income is still subject to paying the nursing home. They are allotted a monthly personal needs allowance in the amount of $160, but the rest must go toward their cost of care. This is the applicant's Medicaid co-pay. If the applicant is married, the spouse may be eligible to receive some of the institutionalized spouse's income. This is where

the monthly maintenance needs allowance (MMNA) comes in. If the community spouse income is less than their MMNA, they are entitled to a portion or all of the institutionalized spouse income. A formula is used to determine how much of the institutionalized spouse's income can be diverted to the community spouse. This amount varies state-by-state.

The Attorney's Role in Estate and Medicaid Planning.

Do you need an attorney for simple estate planning or Medicaid planning? In almost all cases the answer is "yes." Wills and trust are complex documents that, if not prepared correctly, can result in catastrophic results. Remember: You will not be around to correct the problem. With regard to advanced directives, the law in this area is constantly changing and utilizing Internet forms can result in third parties rejecting these documents. Finally, if you have read this handbook, you know Medicaid planning is extremely complex. Someone who attempts to do Medicaid planning on their own can make non-reversible errors that could cost them hundreds of thousands of dollars. In fact, the Florida Supreme Court has ruled than no one can provide Medicaid planning advice except for a licensed member of the Florida Bar. If you are in need of estate planning or Medicaid planning, the sooner you act the better. If you wait, it may be too late to take some steps available to preserve your assets.

I can help you navigate through this complicated area of law. Do not attempt to try to write your own estate plan. If it is invalid, you cannot correct it if you are deceased. Even if you have a small estate, having a qualified attorney draft all the necessary documents is crucial. I have been practicing law for almost 40 years. I charge flat fees to prepare all my estate planning documents so you know exactly the cost in advance. Call me at 813-265-1185 and we can email you an estate planning worksheet so that you can start this process quickly and efficiently.

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