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**Guide to
Estate Planning
&
Medicaid Planning for Long Term Care**



INTRODUCTION

Bolhouse, Vander Hulst, Risko & Baar, P.C. is a full-service law firm located in the Grandville State Bank Building in downtown Grandville. We have attorneys who specialize in probate, estate planning and Medicaid planning and are ready to assist you in these areas.

WHAT IS PROBATE AND ESTATE PLANNING?

Probate performs two basic functions. First, it transfers property from a deceased person to that person's heirs if there is no Will, or to the beneficiaries of that person's Will if there is a Will. Second, probate serves to insure that the deceased person's creditors are all paid in a timely fashion. Probate involves a number of steps and will generally take a minimum of five months to complete.

In Michigan, there are three types of probate: supervised, formal and informal. In supervised probate, a judge supervises every aspect of the probate process. Supervised probate can become expensive because a court hearing is necessary in order to obtain the probate judge's approval for most decisions.

In formal and informal probate, the personal representative administers the estate with no direct supervision by the probate judge. In formal and informal probate all interested parties are provided with sufficient information to "police" the personal representative's activities. The difference between formal and informal probate is that the judge signs the required documentation in formal probate and the probate registrar signs the required documentation in informal probate.

Estate planning is a means used to plan for the disposition of property at death. An estate plan can utilize the probate process or avoid it. Estate planning also involves providing direction to family members in the event one becomes disabled.

There are various "tools" used in estate planning. Whether your estate plan will be very complicated or relatively simple will depend on your specific circumstances. However, your estate plan will typically include one or more of the following "tools."

WILLS

A common misconception is that a Will avoids the probate process. This is not true. A Will is your instructions to the probate court, your personal representative, and your family as to how you want your property distributed. If you do not have a Will and have not done any other estate planning, state law determines how your property will be distributed.

Some advantages a Will has over state law:

1. **YOU DECIDE** how your property will be distributed.
2. **YOU DECIDE** who will act as your personal representative

JOINTLY OWNED PROPERTY

Many individuals choose to own assets jointly with one or more of their children to avoid the probate process. While owning assets jointly does avoid probate, there are many risks involved in joint ownership that most people do not understand.

1. Any joint owner generally has a legal right to withdraw all the money from joint bank accounts.
2. A creditor of any joint owner will have a right to at least some of the money in joint bank accounts, regardless of who deposited the money into the account.
3. A creditor of any joint owner can “attach” the joint owner’s interest in jointly owned real estate causing difficulties if the property is ever sold.
4. Jointly owned real estate can only be sold if all of the joint owners, and possibly their spouses, agree. If even one of several joint owners refuses to consent to the sale of real estate, the property cannot be sold.
5. If a joint owner goes through a divorce, issues of who owns the property and what their ownership interest is will have to be determined.

Because of these risks, an estate plan that consists solely of joint ownership is seldom the best estate plan.

TRUSTS

A Trust is a contract whereby one individual, the “Grantor,” gives property to another individual, the “Trustee,” who agrees to manage and distribute the property for the benefit of a “Beneficiary” as specified in the Trust Agreement.

The most common type of Trust is a Revocable Trust, which means the Grantor can change or revoke the Trust at any time. Also, the same person can be the Grantor, the Trustee, and the Beneficiary. Trusts have several advantages over Wills including:

1. Avoiding the probate process (this is especially advantageous for those who own real property in more than one state);
2. Maintaining privacy regarding your assets;
3. Delaying distribution of your estate for a period of time after your death;
4. Providing for minor or disabled children or grandchildren;
5. Providing management of your assets if you become incapacitated; and
6. Minimizing estate taxes.

Trusts are by far the most flexible “tool” used in estate planning. However, Trusts are also more complex to draft and operate and, consequently, more expensive than Wills. Again, the complexity of the Trust and the number of trusts necessary to achieve your estate planning goals will depend on your specific circumstances.

PLANNING FOR INCAPACITY

As with estate planning, if you fail to plan for your possible incapacity, state law provides procedures and requirements to allow others to act on your behalf. If you ever become unable to take care of yourself and/or handle your own finances, your family would have to petition the probate court to have a guardian and/or conservator appointed to you.

A “guardian” is a person appointed by the probate court to take care of and make decisions about your person. After appointment, the guardian must make annual reports to the probate court on your condition.

A “conservator” is a person appointed by the probate court to manage your assets. Again, after appointment the conservator must make an annual accounting to the probate court of the money received and distributed by the conservator.

The appointment of a guardian and/or conservator requires a proceeding in the probate court which can be time consuming and costly. Fortunately, through the use of a General Durable Power of Attorney and a Patient Advocate Designation, the entire guardianship/conservatorship process can be avoided. However, this preplanning must occur before the incapacity begins.

Any assets that are in your Trust would be managed by the successor Trustee if you become incapacitated. However, with a General Durable Power of Attorney, you can give another person authority the Trustee would not have, such as the authority to do your personal tax returns, to apply for governmental benefits, and to maintain insurance policies. If your estate plan does not include a Trust, the person to whom you give a General Durable Power of Attorney could also invest and manage all of your assets.

In a Patient Advocate Designation, you appoint another person to make your health care decisions in the event you cannot make them yourself. A Patient Advocate Designation can also include your desire regarding life-sustaining medical treatment.

A properly executed General Durable Power of Attorney and Patient Advocate Designation allow you to choose who will make decisions about your care and manage your financial affairs if you cannot. A General Durable Power of Attorney and Patient Advocate Designation also maintain the privacy of your personal and financial affairs.

PARENTAL APPOINTMENT OF GUARDIAN AND CONSERVATOR

The most important estate planning tool for those with minor children is a Parental Appointment of Guardian and Conservator. As a parent, you have the ability to designate who you would want to care for your minor children if you and your spouse cannot. You can make your wishes known through your Will. However, the Will must be probated to make your wishes known. You can also make your wishes known through a Parental Appointment of Guardian and Conservator. A Parental Appointment of Guardian and Conservator simply informs all concerned of your choice of the people you want to care for your minor children if you cannot.

MEDICAID PLANNING FOR NURSING HOME CARE

Many people are concerned that their estate will be severely depleted if they or their spouse need nursing home care. This is a very real issue and one that involves a very complex and rapidly changing area of the law.

Understanding the basic rules of qualifying for Medicaid Long Term Care Assistance is vital in order to cope with the financial realities of a relative's long-term care. The following rules are updated for 2008.

- There are different rules for single people and those who are married. In addition, if both spouses of a married couple are in the nursing home, they are both subject to the rules of a single person, with each spouse qualifying separately.
- Single people are permitted \$2,000.00 in assets and \$60.00 a month in income. The remainder of non-exempt assets must be spent down until the asset threshold is reached. The additional income will be used to pay the cost of long-term care, even after qualification for Medicaid.
- The spouse who stays at home is entitled to keep 1/2 of the couple's non-exempt assets, with a minimum protected amount of \$20,880.00 and a maximum of \$104,400.00. This protected amount is known as the Community Spouse Resource Allowance or CSRA. In certain circumstances, even more can be put aside for the spouse who stays in the home.
- Exempt assets in Michigan include a home with less than \$500,000.00 in equity value, one automobile, a burial space, a pre-paid funeral contract, up to \$1,500.00 in face value of life insurance, wedding and engagement rings, and household goods.
- Assets that are not exempt include bank accounts, stocks, bonds, retirement accounts (IRAs, 401ks, etc) and anything else of value.
- Giving away assets now results in a period of ineligibility that will not begin to run until one is otherwise qualified for Medicaid. In other words, one must be completely out of non-exempt assets before the period of ineligibility will begin to be served. This makes it extremely difficult to preserve assets when there has been no previous planning for a person who is now or will soon be in long-term care.

While it has become more and more difficult to try to preserve your estate if you and your spouse need nursing home care, there are still a number of options to consider to preserve your estate. Beginning to plan at the right time is very important in this area, and you should talk to an attorney about the current state of the law and your options if this is a concern for you.

CONCLUSION

We hope this information has answered some of your questions regarding the probate process and estate planning. If you have any further questions or desire to begin your estate planning, please complete the Confidential Estate Planning Information Form and contact us for an appointment.