
ESTATES AND ELDER LAW REPORTER

Estate Planning: Disability Changes Everything

The following depicts an all-too-frequent situation:

Consulting an attorney several years ago, John and Jane Doc formulated a seemingly sound estate plan that covered such areas as passage of property at death and avoidance of probate and taxes.

Leaving the attorney's office that day, John and Jane felt confident that their estate was in good order and their post-death wishes would one day be carried out, problem-free.

However, after a couple of years, John acquired an incapacitating disability. Shortly thereafter Jane passed away and John was forced into a nursing home. The events here seem harsh; but they only get worse. With Jane gone and John in a nursing home, the entire inheritance that was previously intended for their children would be spent on John's long-term health care.

Scenarios such as this are obviously tragic and no family should ever have to experience such catastrophic events. Typically, however, estate planning attorneys don't consider the effects of disability on an estate plan unless the disability exists at the time the plan is established.

That's why after-acquired disabilities catch most people off guard and often frustrate or totally defeat the goals and objectives of an otherwise sound estate plan. Fortunately, however, there are ways families can prevent these kinds of severe consequences.

Through advanced planning and regular reviews of estate plans, you can help ensure that someone that suffers a disability will receive the necessary care and still may be able to protect significant amounts of assets to pass along to his or her heirs.

The key is not waiting too long to consider the effects of the disability and costs of long term health care on the estate plan. In addition to regular periodic reviews of existing estate plans, as soon as possible after the diagnosis or onset of a disability, Medicaid planning should be considered as a method of reducing the risk of asset depletion from long-term health care costs.

While discussing Medicaid with an attorney, he or she should advise you of your health care and financial options, help to evaluate the benefits and limitations of the public health care system, and inform you of the impact of any plan concerning long-term health care on your family, estate, and your heirs.

Unfortunately, qualifying for Medicaid can be troublesome in many instances because the applicant has too many assets or because of how the assets of the applicant are held. It is sometimes necessary to reposition the assets between non-exempt and exempt assets or between assets and income in order to qualify the applicant for Medicaid.

There are also ways to protect assets from nursing home costs and Medicaid reimbursement through the use of such planning tools as allowable transfers or Special Needs Trusts. Luckily, most states still allow this type of asset protection but it is critical to seek the counsel of someone experienced in this area at the earliest

possible opportunity and, certainly, before acting.

We can only hope that we will never be faced with the situation described above. However, it is only through advanced planning and regular periodic reviews that we can give ourselves the comfort of knowing that, if, in fact, a disability occurs, we will be in the best possible position to continue to provide for the current and future needs of ourselves and our loved ones.

Serious Condition Placing Estates and Families at Risk

A serious condition has gripped significant numbers of people, young and old alike, that is placing estates and families at severe risk of loss, frustration and tragedy.

The condition has been around for centuries and shows no signs of diminishing. The condition causes people to postpone taking action to address serious risks, often until it is too late. The condition is commonly known as "Procrastination."

The Risks:

- Not doing proper planning and **losing many thousands of dollars** because you didn't take advantage of the federal estate tax exemption on the first to die.
- Not appointing a guardian nor leaving assets in trust for your minor children, resulting in **guardianship hearings and frozen assets**.

Not doing proper planning and leaving your estate subject to the **costs, time and delays in distributions of probate**.

Not establishing Powers of Attorney for Health Care and Property, resulting in **guardianship hearings and frozen assets due to incapacity**.

Not doing proper Medicaid planning at the onset of a disabling condition to prevent **depletion of your estate due to nursing home and long term health care costs**.

The most tragic part of all of this is that all of these risks can be avoided through proper planning and action.

Some might think that the cost of addressing these issues (Proactive Costs) by getting your legal affairs in order is too high. However, when compared to the cost of not addressing these issues through timely, appropriate planning (Procrastinator Costs) the Proactive Costs are insignificant.

The Procrastinator Costs can range from several thousand dollars for probate and guardianship proceedings; to from tens of thousands of dollars to hundreds of thousands of dollars paid for avoidable estate taxes and nursing home and long term health care costs.

Those suffering from "Procrastination" almost always insure themselves against the risks of automobile accidents and damage to their homes and yet leave themselves vulnerable to the risks noted above. The peculiar thing about this is that the chances of encountering these risks are much greater than an automobile accident or significant damage to a home. After all, nearly one in every two senior citizens will require some form of long term health care (40-50%) and everyone will eventually die (100%).

However, there is a simple cure for "Procrastination" and the risks associated with it can be avoided or significantly reduced. The cure is "action." So act now and talk to someone with experience in these areas. It's the only insurance you have to protect you and your loved ones against these serious risks.

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