

Financial Planning

THE VIEW FROM LOWRY HILL

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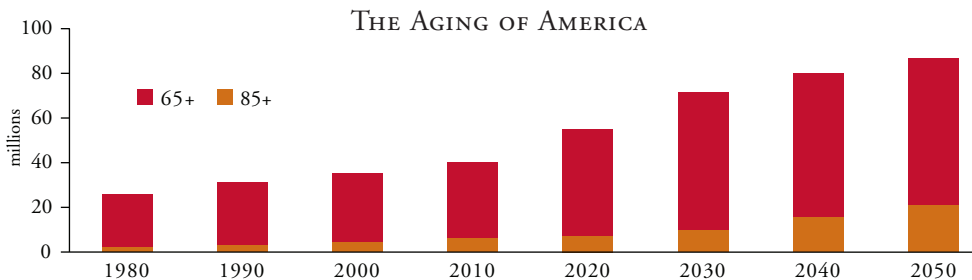
PREPARING FOR THE GOLDEN YEARS: LEGAL CONSIDERATIONS OF THE AGING PROCESS

People rarely—if ever—anticipate becoming sick, disabled or unable to take care of themselves. Yet the likelihood of some or all of these challenges occurring undoubtedly increases as we navigate the aging process. Consequently, we need to prepare for future uncertainties. Planning, organizing and making as many decisions as possible before issues arise can help lessen the stress of caring for an older family member, or addressing your own disability or incapacity.

In this issue of *Financial Planning: The View From Lowry Hill*, we explore some of the financial and legal issues surrounding the inevitable aging process and hopefully provide some guidance for addressing them.

INTRODUCTION

Until a loved one becomes ill or a personal crisis occurs, many individuals and families find it difficult to discuss financial affairs, outline health care wishes or “get around to” putting their legal documents in order. Understandably, it can be stressful and disheartening for you or a loved one to give up (or even think about giving up) a sense of independence and control, whether temporary or permanent. Despite these anxieties, there are strong reasons to plan ahead. Planning ensures that you or your loved one’s intentions are clear, and preferences are carried out. Importantly, disagreements among family members also can be reduced, and options can be openly and thoroughly explored. Waiting to address these matters until a stressful situation arises (e.g., receiving a terminal illness diagnosis or becoming incapacitated) will only increase the pressure placed on a person facing such challenges, as well as his or her loved ones. In the case of declining mental capacity, personal decision-making options decrease significantly (and at times, quickly) as other parties beyond the family—social workers, court-appointed guardians or conservators, physicians and lawyers—become involved. From many angles, it is better to understand the financial and legal issues well ahead of time and then take the necessary steps to get your and/or a loved one’s affairs in order.



Source: U.S. Census Bureau

A STARTING POINT

Regardless of their generation, many people feel uncomfortable talking about finances and typically don’t revel in facing their own mortality. However, such conversations are even more unnerving in the midst of a crisis. For that reason alone, initiating the conversation now is best. Following are some recommendations for facilitating that conversation:

- ◆ *Pick a time and place that is not stressful (and realize that it may take several meetings).*
- ◆ *Acknowledge that discussing finances, relaying health care wishes, estate planning and drafting documents that ultimately give someone else a “say” in these areas can be an extremely emotional experience.*
- ◆ *Try to remain open to suggestions by others.*
- ◆ *In discussions with a loved one, picture yourself in the other person’s shoes and imagine how you would feel from his or her vantage point.*
- ◆ *Strongly consider involving an expert. He or she will provide options, vast knowledge, experience and the ability to raise tough topics in a sensitive manner.*

PERSONAL RECORDS

To facilitate the planning process, an individual (or a family assisting a loved one) should gather and organize information related to one's personal history. Examples include the individual's full legal name, legal residence or other residences, social security number, names of children and their spouses, birth date, marriage certificates, list of employers and dates of employment, organization memberships, names of advisors and religious affiliations. Preferences or prearrangements for a funeral, burial or cremation should also be noted. Finally, the profile should include names, addresses and phone numbers for the individual's doctors, pharmacists, therapists or other medical providers; pertinent medical records; and health insurance, Medicaid or Medicare information.

FINANCIAL RECORDS

A personal inventory should also include all financial records. Information detailing income sources, bank accounts, investment accounts, retirement accounts, business interests, insurance policies, deeds and other valuables should be documented. Some of this information may be stored in a safe deposit box or locked safe. It is important to provide a trusted friend or family member the location of these documents along with the location of a safe deposit key or lock combination.

Tip: Lead by example. If you are trying to assist your parents in putting together their legal affairs, do it for yourself first. Doing so will help you understand the emotions involved in making what may be difficult decisions.

JOINT ACCOUNTS

Establishing a joint checking account is an easy way to maintain control while also having the convenience of someone else signing on your behalf. For example, if you are having trouble paying bills, this person can take over that function for you as your signor. A "convenience" account allows a person access to the funds but provides no ownership interest. This is different from a joint account with rights of survivorship. If an account is joint with rights of survivorship, the joint owner has rights to the proceeds whether or not they contributed anything. Moreover, upon your death, these proceeds automatically pass to that person named on the account. This designation supersedes any contrary language written in a will or trust. Joint accounts can present complications in terms of taxes, eligibility for government benefits and disposition of assets at your death. It is important to discuss and explore the potential legal consequences of a joint account with your financial advisor.

LEGAL DOCUMENTS

Because every family is different, each family's legal documents will be as well. State laws and terminology also vary. Broadly speaking, estate planning documents can be broken down into two categories: documents that communicate the disposition of one's financial, personal and real property, and documents that carry out one's health care wishes when one is no longer able to speak for himself or herself.

WILLS AND TRUSTS

A will is a document that describes how assets are to be distributed upon one's death. A personal representative or executor is the person named in the will that is responsible for carrying out the detailed wishes. A revocable trust is another vehicle (coordinated with a will) that also dictates the disposition of assets during life or after death. The grantor (someone who creates the trust) transfers assets into the trust and then names a trustee to take over the management of the trust assets. Unlike a will, a trust is not subject to probate and generally does not become a matter of public record. If one becomes incapacitated, the trustee simply continues to manage the trust assets in accordance with the terms of the trust. A properly drafted trust agreement should eliminate the need to initiate guardianship or conservatorship proceedings.

Wills and trusts often enable a person to write a list of those individuals targeted to receive certain items of tangible personal property (e.g., jewelry, coins, stamps, silver sets, family heirlooms, or other items of monetary or sentimental value). The battle among beneficiaries regarding who should receive "Mom's jewels" or "Dad's tools" can easily be avoided if people spend the time preparing their tangible personal property lists.

POWER OF ATTORNEY

A power of attorney is a powerful estate planning tool in which there is no third party (i.e., court) oversight. It is a written document in which one person (the "principal") gives another person (the "agent" or "attorney-in-fact") the legal authority to act on the principal's behalf in a variety of situations. Having confidence in the person to whom the power of attorney is given is crucial. The power may be limited to a particular situation (e.g., a specific real estate transaction) or broad in its application. For example, in Minnesota, a power of attorney is effective upon its execution.* However, once one becomes disabled or incapacitated, these powers expire unless they are made "durable." Without a durable power of attorney, a court procedure establishing a guardianship or conservatorship may be required. This can be costly and time-consuming.

* Some states have a "springing" power of attorney which only becomes effective upon the person's incapacity.

HEALTH CARE DOCUMENTS

Two of the most important documents to immediately put in place are a health care power of attorney (sometimes referred to as a health care proxy) and a health care directive (or living will). The health care power of attorney designates an agent to make health care decisions for an individual if he or she is unable to do so. A health care directive/living will is the document that provides the outline of treatment and potential “life-sustaining procedures” or the discontinuance of such procedures (if that is the desire) should one become terminally ill, is in a coma or is no longer able to communicate. These documents work together to ensure wishes regarding medical and end-of-life care are carried out.

Young adults, as well as senior adults, should have a health care power of attorney and directive/living will in place to avoid court appointment of a guardian (e.g., in the event of a car accident). Communicating and documenting your wishes before they are needed is clearly the best approach. This also assures that the person named is willing and able to accept this level of responsibility and is clear on the preferences for care.

LONG-TERM CARE ISSUES

As we age, there is a strong possibility that we will need some type of long-term care. This health care issue is perhaps the most complex and costly. Today, there are many options to consider (e.g., home care, independent living facilities, assisted living homes, nursing homes). Determining the level of future care needed may be difficult. If you are too overwhelmed with this evaluative process, consider hiring a geriatric care manager. He or she can help you determine the level of care needed and offer potential housing and service options. These options may be relatively expensive, making the situation much more difficult when not anticipated. Long-term care insurance—covering medical expenses specifically related to long-term care—can substantially offset many of these expenses. It is important to discuss the pros and cons of these alternatives, as well as their respective expenses, with a qualified financial advisor.

All legal documents (including powers of attorney, wills and trusts) require that the individual has the capacity to understand the significance of the document being signed. This is a key reason for planning ahead. Once mental incapacity occurs, many of these options are severely compromised.

CONCLUSION

As we age, the issues we face are numerous and varied. While they are not quickly and simply addressed, early discussions and proactive planning can alleviate many of the difficulties—while minimizing the associated costs (both financial and emotional). There are a number of resources that can be leveraged. Your financial advisors can also assist with many of these issues and should be consulted on your specific situation. A commitment to purposeful planning now can free you to enjoy the golden years ahead.

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