



Estate Planning

Legal Issues for Families Impacted By
Alzheimer's and Other Intellectual
Disabilities

By Lori K. Murphy, Esq.



Our Firm



- 41 attorney firm in Arlington
- One of Northern Virginia's oldest law firms
- Opposite the Courthouse Metro stop
- Licensed in Virginia, the District of Columbia and Maryland
- No legal advice today

My Experience

- Eleven year practicing attorney licensed in Virginia and DC
- Prepare full estate plans, including special needs trusts
- Administer decedent's estates
- Serve as Conservator/Guardian for 83 y.o.
- Father-in-law and grandmother both died of Alzheimer's Disease

Audience



**The Northern Chapter of
The Virginia Society of
Certified Public Accountants**

- Married
- Single
- Blended Families
- Children
- Caring for Elderly Parents
- Caring for Special Needs Children

Disability

A long-lasting physical, mental, or emotional condition. This condition can make it difficult for a person to do activities such as walking, climbing stairs, dressing, bathing, learning, or remembering. This condition can also impede a person from being able to go outside the home alone or to work at a job or business.

Definition from the US Census Bureau



Incapacity

An impairment by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs/alcohol to the extent the person lacks sufficient understanding to communicate responsible decisions concerning his person.



We are in this Together

United States

- **40.9%** disabled adults over 65 years of age
- **12.9%** disabled adults 21 to 64 years of age
- **6.5%** disabled children ages 5 to 20 years of age

Virginia

- **39.7%** disabled adults over 65 years of age
- **11.5%** disabled adults 21 to 64 years of age
- **6.3%** disabled children ages 5 to 20 years of age

We are in this Together

- 18% of the population have some level of disability. This is 51.2 million people.
- 12% have a severe disability.
- 11% of children ages 6 to 14 have a disability This is about 4 million children.



We are in this Together

Why does this topic matter to you *professionally*?

- In 2007, a study of legal wealth attorneys indicated that 9% of their estate practice dealt with spouses who are terminally ill, 7% for families with special needs.
- In 2008, the figures increased to 18% for spouses that are incapacitated or terminally ill, and 10% for families with special needs.
- Consider the baby boomer population increasing this figures in the future.

Legal Issues to Address

- Management of financial affairs during lifetime
- Management of personal care: medical decisions, residence, nursing care
- Long-term health care: private insurance, Medicare, Medicaid, Supplemental Security Income (SSI)
- Management of affairs after death, including, preserving family assets; and
- Special arrangements for distribution of assets to disabled spouse, child or other family member

- Let's talk about the first legal issues:
 - Management of financial affairs *during* lifetime
 - Management of personal care: medical decisions, residence, nursing care

Managing Assets During Life

Durable Power of Attorney

- What is it?
 - Administrative tasks of your life
 - Protection during incapacity
 - Addresses specific needs:
 - In lieu of conservatorship
 - Pet Care
 - Gifting/Tithing
 - Home care in case of medical need



Managing Assets During Life

Durable Power of Attorney cont'd.

- Who can sign one? No direct definition of capacity required
 - Law Dictionary: mental ability to understand nature/effect of one's acts
- What is the role of the agent?

Managing Assets During Life

Advance Medical Directive

- What is it?
 - Your living will
 - Control end of life medical decisions
 - Name an agent when you cannot speak
 - Subject to HIPAA privacy rules



Managing Assets During Life

Advance Medical Directive cont'd.

- Who can sign one?
 - Capacity: any adult capable of making an informed decision
- What is the role of the agent?

Managing Assets During Life

Revocable Living Trust

- What is it?
 - Efficiently transfers assets
 - Control of assets; seamless transition
 - Allows for beneficiary designations on retirement accounts
 - Plans for incapacity

Managing Assets During Life

Revocable Living Trust cont'd.

- Special Situations
 - Deals with Special Needs/Government Benefits
 - Owns out of state property
 - Owns business interests or shares
- Optional
 - However, avoid probate *and* annual accounting and inventory reporting requirements

Managing Assets During Life

Revocable Living Trust cont'd.

- Who can sign one?
 - An adult of sound mind (i.e. competent to make contracts and perform civil duties)
- Role of Trustee



Supplemental Needs Trusts

- Special needs individual has no ownership in the trust
- No look-back period when individual is under age 65 years old (C.W.)
- No obligation to make payments to special needs beneficiary
- Discretionary payments are for luxury/enrichment items
- Designate heirs of special needs beneficiary as contingent beneficiaries

Other Options for Special Needs

- Community Pooled Trusts (if non-disabled relatives, may not be best trust – C.W.)
- Irrevocable Trusts (Life Insurance)
- Designation of a Representative Payee
- Conservatorship/Guardianship of estate/person

- Let's talk about the next legal issues:
 - Management of affairs after death, including, preserving family assets; and
 - Special arrangements for distribution of assets to disabled spouse, child or other family member

Distribution of Assets upon Death

Last Will and Testament



- What is it?
 - Where assets go after you die
 - Choose an executor
 - Burial preferences
 - Specific bequests
 - Charitable bequests
 - Attached writing for personal property
 - Guardianship for children
 - Short form probate
 - Avoid bond for executor

Distribution of Assets upon Death

Last Will and Testament cont'd.

- Your will is valid even if you move
- Who can sign one?
 - An adult of sound mind (i.e. competent to make contracts and perform civil duties)
- Role of Executor



Distribution of Assets upon Death

Other Tools

- Trusts
- Other Options
 - Joint Tenancy
 - Payable on Death designation (bank, credit union)
 - Transferrable on Death designation (stock, brokerage)

Revocable Living Trusts



"This year I enjoyed a quiet New Year's Eve at home -- I stayed up until midnight and waited for the U.S. estate tax exemption to change to \$3.5 million."

8 | OREGON STATE BAR BULLETIN • JANUARY 2009

Tax planning - \$3.5M exemption now, no estate tax in 2010, and \$1M exemption in 2011

- Let's talk about the next legal issues:
 - Special arrangements for special needs children and incapacitated adults

Planning for Children

- Name guardians
- Protect minors, incapacitated persons and special needs persons
- Do not name children as beneficiaries: otherwise risk of guardianship proceedings



Children with Disabilities, cont'd

- Preservation of child's eligibility for publicly funded, disability-related programs (Medicaid, SSI, HUD rent subsidies, food stamp programs)
- Exclusion of disabled child from beneficiary designations (under Will and other accounts)
- Preparation of a special needs trust to provide for child



Children with Disabilities, cont'd

- Risks if child obtains assets
 - Hard to divest assets since child may lack capacity to make gifts
 - Guardian of funds may be required to manage assets
 - Could impose a period of ineligibility for public benefits

Late Onset Disability

- Costs of care are significant
 - Private pay
 - Long term care policies (talk to CFP)
 - Public assistance (often limited to state institutions)
- Consider a trust to address a later disability as a supplemental trust
- Consider a pooled trust (assets of any age disabled individual, managed by a nonprofit association)

Conclusion

Talk to a professional about your particular situation because every family situation is unique.

We are extremely responsive and if there is something I can't help you with, I will find someone who can.



Getting It Done®

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