

Legal Issues You Should Worry About

by Attorney Michael Hooker

It is impossible for me to advise you in one pithy legal column on all the legal and financial issues you should worry about. I will try, however, having reviewed several years' worth of past columns of mine.

Estate planning: You need the three basic documents: Will, Power of Attorney and Health Care Proxy. The Power of Attorney is often more important than the Will. It gives power over your finances in the event you are disabled. Same with HCP's except they deal with health care decisions. Avoids the family having to file burdensome guardianships or Conservatorships.

Avoiding Probate of Wills (cost and delay): Can be achieved by setting up Revocable and Irrevocable Trusts. Also, transferring your house by deed to a Trust or more of your children while reserving a life estate. Other probate avoidance options include adding a child's name to your bank account, annuity beneficiary designations, life insurance and transfer on death provisions of stock/brokerage accounts. These are all methods by which your money gets to your heirs without probating your Will.

Asset Protection: If you and/or your spouse are frail and concerned that at some point your savings may be depleted by a long term nursing home stay then you need to do one or more of the following:

1. Transfer your assets now and get the 5 year ineligibility for Medicaid period started. Transfer to whom? Directly to your child(ren) or to an Irrevocable Trust? Directly avoids legal costs and sophistication of Trusts but it exposes those transferred assets in the event one of the children divorces, goes bankrupt etc.
2. Buy long term care insurance. Expensive but often worthwhile. It is the wave of the future as the Federal and State governments go broke and cut back on health care
3. Move in with your children
4. Pay your children under strict caregiver contract provisions (tax withholding, workers compensation etc.) for your care if gifting/five year is impractical. Some colleagues refer to this as "disguised gifting".

Community Resources: The federal government does not pay for care to come into your home other than the Aid and Attendants program for veterans. Don't hold your breath on getting this funding. There are huge backlogs and financial need criteria. Medicaid does pay for some care attendants but is asset and income based. Eligibility criteria vary dramatically from program to program. Reverse mortgages are great for those who are house rich but cash poor. They are expensive but can keep an elder from having to go to a nursing home.

Inheritance Taxes: You only have to concern yourself with these if you have a million dollars or more in assets. Consult an estate planning attorney if that is the case.