


Ten Important Planning Actions to Do Now



### TEN IMPORTANT PLANNING ACTIONS TO DO NOW

Williams Allen Casey LPA  
LifeDesign™ Legal Services

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### 1. SHARE THE PLAN

○ Objectives

- Provide foundational education
- Reduce “crisis learning”
- Set appropriate expectations with the family and the helpers
- Clearly define family member roles
- Communicate your wishes

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### 1. SHARE THE PLAN

○ Resources

- Family Meetings
- What’s the plan?
- Attend Annual Client Meetings with helpers
- What to Do™ Workshop
- Trust Protections and Inheritance Mistakes Workshop

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Ten Important Planning Actions to Do Now

1. SHARE THE PLAN

- Family Meetings
  - Self-directed
  - Law Firm Facilitated
- One on One Meetings
- You determine the content and the amount of detail
- Consider the solution that is right for you and your family



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2. REVIEW AND UPDATE CHECKLISTS

- Documents provide power but little guidance on how to use that power
- Health Care Instructions & Instructions for Final Arrangements (Revised in 2021)
- In your blue book
- Clarifies what your wishes are
- Increases likelihood your wishes will be followed
- Eliminates “Remember when Uncle Joe died”



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2. REVIEW AND UPDATE CHECKLISTS

- Eliminates “Woulda – Coulda – Shoulda”
- Provides comfort to family they are making the right decisions
- Can be persuasive with medical professionals
- Your views on health care and final arrangements will change over time



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Ten Important Planning Actions to Do Now

2. REVIEW AND UPDATE CHECKLISTS

- Checklists available at front desk
- Should be witnessed and a copy returned to the firm for DocuBank®
- Review with your health care agents prior to signing
- Consider reviewing with your pastor or other spiritual advisor

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3. INTRODUCE HELPERS TO HELPERS

- Introduce your successor trustees to your financial advisor and CPA
- Consider an “A-Team” meeting
  - Review your financial goals
- Where to spend from first
- Process for reviewing finances on a regular basis

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4. GET A PREPAID FUNERAL PLAN

- Increased likelihood your wishes will be followed
- Reduces emotion based spending
- Reduces arguments amongst family
- Provides immediate source of funds to pay final expenses
- Not a countable resource for Medicaid

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Ten Important Planning Actions to Do Now

5. MAKE A SPECIAL STUFF LIST

- Memorandum for Distribution of Tangible Personal Property
- Special Stuff vs Junk
- Start by asking family if there is anything special they want
- Document the story if applicable
- Be creative



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5. MAKE A SPECIAL STUFF LIST

- Avoid naming more than one person to receive an item
- Name in-laws cautiously
- Consider shipping issues
- Create a “for now” list not a “forever list”
- Worksheets at the front desk
- Return them to the firm for drafting



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6. CONSOLIDATE UNNECESSARY ACCOUNTS

- Do you have “Accounts by Default?”
- Is the reason an account was created still valid?
- Each account adds extra work for successor trustees
- Issue is compounded if the accounts are IRAs



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Ten Important Planning Actions to Do Now

6. CONSOLIDATE UNNECESSARY ACCOUNTS

- Consider what is life like for your successor trustees
- What do you want them focusing on in a medical crisis?
- Let the law firm know if you close an account and we will remove it from your asset list



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7. DECLUTTER

- Take an honest assessment of what your feelings are about stuff & junk
- Packrat vs Minimalist?
- Ask yourself why are you keeping this and what will your family do with it if you get sick or after you die?
- Have reasonable expectations about the value of junk



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7. DECLUTTER

- One of the most emotionally difficult aspects of winding down an estate is dealing with the stuff and junk
- Two separate issues!
- Stuff of value
  - Document the fair value
  - AND how to find who would buy it



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Ten Important Planning Actions to Do Now

7. DECLUTTER

- Junk
  - Not worth what you paid for it!
  - Consider donating it to a good cause
- Documents
  - Consider scanning and shredding
  - Tax documents – IRS recommends 7 years
  - Capital Gains tax records - as long as you hold the asset
  - Gifted assets – your entire life

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8. DOCUBANK®

- Explain what the service is to your helpers and family and how it works
- Where you keep your DocuBank® card
- Consider making a copy of your DocuBank® card and give it to your helpers
- Set a clear expectation for the need to be your advocate – do NOT expect the hospital to know what it is!

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8. DOCUBANK®

- Update Allergies and Medications
- Test the service with your helpers
- Spouses have each other’s member and pins on both cards
- Provide a copy of your health insurance cards to your helpers
- Make a list of physicians, their specialties, and phone numbers and give to helpers

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Ten Important Planning Actions to Do Now

9. CLIENT CARE ASSESSMENT

- Schedule a Client Care Assessment with Peter
- Establishes a baseline and a watch list
- Consider what your spouse would need help with if you could not fill your role
- Consider what you would need help with if your spouse could not fill their role



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10. COUNSELING REVIEW MEETING

- Update the law firm on the family, loved ones and the helpers
- Tell me about the family:
  - Special concerns you have for someone?
  - How they get a long
  - How to work with them in a crisis
  - Will spouses be a positive influence
  - Level of sophistication
  - How they handle stressful situations
  - Where are the geographically



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10. COUNSELING REVIEW MEETING

- More than 10 years since your design or if you have had significant family changes
- By phone, in-person, or zoom
- Scheduling after update season
- Call the firm or let a team member know if you want to be contacted



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# What to When a Loved One is Ill



## WHAT TO WHEN A LOVED ONE IS ILL

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## OBJECTIVES

- Gain a better understanding of:
  - What to do at the right time
  - What NOT to do
  - What to expect
  - Where to go for help



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## THE REVOCABLE LIVING TRUST

- The “hub” of the estate plan
- Written for the “Helpers” but can be overwhelming
- Opted for less “legalese” and more “plain English”
- Contains many personalized provisions
- “Sweater in a suitcase” provisions



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# What to When a Loved One is Ill

## DISABILITY

- Can refer to either *physical* or *mental* disability (sometimes *both*)
- Focus in this session is on *mental* disability
- Two types
  - Formal
  - Informal



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## MENTAL DISABILITY

- Mental disabilities may require changing trustee
  - Stroke
  - Dementia or Alzheimer's
  - Coma
- Depends on whether the Trustmaker is jeopardizing their finances



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## DETERMINING "FORMAL" DISABILITY

"Disability" in your trust documents refers to a mental disability, not a physical disability

### Article 4, Section 2:

"I shall be deemed disabled during any period when, in the opinion of my Disability Panel, I am incapacitated or disabled because of illness, age, or any other cause which results in my inability to effectively manage my property or financial affairs."



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# What to When a Loved One is Ill

## DETERMINING “FORMAL” DISABILITY

### Disability Panel Members:

- These helpers participate in the decision as to whether the Trustmaker is capable of managing his or her property and financial affairs
- Do I have enough marbles?
- There is no financial and no medical decision making authority in this role!

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## DETERMINING “FORMAL” DISABILITY

- If Panel Members make a determination of formal disability:
  - I’ve lost too many marbles
  - Trustmaker ceases to serve as Trustee
  - People in financial world are “formally” notified
  - Disability Trustees (think Power of Attorney) assume responsibility of managing assets

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## “INFORMAL” DISABILITY

- Second type of disability – Informal Disability
- Involves adding the people named as Disability Trustees before a “Formal” Disability is reached
- I still have most of my marbles...but I seem to have less of them each time I check
- Private process
- Goal is to provide guided transition of financial control

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## What to When a Loved One is Ill

### **"INFORMAL" DISABILITY**

- You cannot have "Informal Disability" (i.e. private process) without proactive planning first
- Co-Trustees must be in place and trained in advance of an Informal Disability
- Law Firm provides a number of Disability Support Programs

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### **PHYSICAL DISABILITY**

- We attempt to accommodate Physical Disabilities
  - Large print handouts
  - Microphones
- Sometimes clients are not able to come to update programs or annual client meetings
  - Don't drive anymore
  - Vision, hearing, or other impairments prevent full participation

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### **SPECIAL DELIVERY PROGRAM™**

- We have a program for that – Special Delivery!
- Name a "Scout" to attend workshops and other meetings on your behalf
- Review and share information with you in person
- Usually a family member or successor trustee
- Law Firm trains the Scout
- Call and schedule a Family Meeting for more information

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## What to When a Loved One is Ill

### DISABILITY SUPPORT PROGRAM™

- Provides assistance with implementing “Informal” or “Formal” Disability
- Includes Legal Assistance
  - Applying for VA, Medicaid, Social Security or other Disability Benefits
  - Securing Long Term Care Insurance Proceeds
  - Changing trustees

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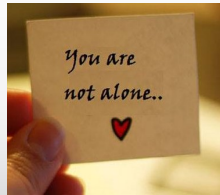
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### DISABILITY SUPPORT PROGRAM™

- Includes Counseling Assistance
  - Support for client and/or family
  - Grief counseling
- Call and schedule a Family Meeting for more information



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### CLIENT CARE PROGRAM™

- Client Care Program™ can be:
  - For a specific purpose and then ends
  - Provide ongoing levels of support based on client needs

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## What to When a Loved One is Ill

### CLIENT CARE PROGRAM™

- **Goal** is to empower clients and their helpers:
  - Manage care needs related to illness and aging
  - Navigate the emotional challenges of life's transitions
  - Conduct family meetings
  - Provide support counseling to beneficiaries as they work through the grieving process

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### CLIENT CARE PROGRAM™

- **Services include:**
  - Identifying needs and service providers to assist with activities of daily living
  - Monitoring changing client needs and communicating with family
  - Ensuring a loved one is receiving appropriate care
  - Applying for financial assistance
  - Serving as a resource and advocate for families

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### FOR ANY TYPE OF DISABILITY SUPPORT

#### 1. **STOP! CALL THE LAW FIRM!**

- If unavailable, always leave a voice message!
- Schedule a Family Meeting



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# What to When a Loved One is Ill

## FOR ANY TYPE OF DISABILITY SUPPORT

2. **Do NOT go "Direct"** (i.e. Do not attempt to present a power of attorney, add names to an account, pretend to be a parent, etc.)
3. Law Firm will assist in determining the right first step
4. Identify and locate all assets
5. Asset Detail Report is located in Blue Book (updated each year)



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## HEALTH CARE ISSUES

- **Health Care Power of Attorney**
  - Someone else makes medical decisions for a patient
  - Only when patient cannot communicate
  - Often incorrectly called Living Will
- **HIPAA Release**
  - Provides advance consent for a physician to talk with a Health Care Power of Attorney Agent (i.e. Helper)



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## HEALTH CARE ISSUES

- **Living Will**
  - No "heroics" in terminal situations
  - Takes the burden off a loved one
  - Not all clients have a Living Will
- **Anatomical Gifts (Organ and Tissue Donation)**
  - Department of Motor Vehicles maintains the Organ Donation Registry
  - Can be updated online or at the DMV

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# What to When a Loved One is Ill

## HEALTH CARE ISSUES

- **Directives Regarding Health Care Decisions**
  - Provides guidance to "helpers"
  - Located in the blue LifeDesign™ (Blue) Portfolio
  - Important to review and update regularly



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## HEALTH CARE ISSUES

- Provide copies of Health Care POA, HIPAA Release & Living Will to medical providers
- Follow Instructions in Health Care Checklists
- Coordinate with Disability Trustees
- Check for Long Term Care Insurance Policies and Disability Insurance Policies (law firm will assist)

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## FINANCIAL ISSUES

- Trustees will be responsible for:
  - Paying all bills
  - Dealing with health insurance companies
  - Securing the home and other valuables
  - Filing tax returns
  - Monitoring investments and making investment decisions

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# What to When a Loved One is Ill

## FINANCIAL ISSUES

- Trustees will be responsible for:
  - Selecting (and contracting with) long term care, physical therapy, and other types of facilities
  - Reimbursing health care agents for out of pocket expenses
  - Maintaining detailed records of expenditures and in-flows
  - Selling assets if appropriate

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## FINANCIAL ISSUES

- Trustee work tends to be time intensive initially
- Eventually systems and procedures will be put in place to automate the process
- Law firm will guide trustees through the process and can often assist with many of the tasks

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## WHAT TO DO WHEN A LOVED ONE IS ILL

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## After a Disability



### AFTER A DISABILITY

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### WHAT HAPPENS NEXT?

- Disabilities can be swift, certain and severe, or they can develop gradually and become progressively more debilitating over time
- After an initial diagnosis or disabling event what happens next is based on the unique circumstances
- Discharge to Rehabilitation Center
- Discharge to home for home therapy



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### DISCHARGE TO REHABILITATION CENTER

- Common after a stroke, broken hip, cardiac event, major surgery
- Rehabilitation Centers can be nursing homes that provide rehabilitation services or a dedicated rehabilitation facility
- Patient challenges of Nursing Home stigma
- Often very little advance notice is given by the hospital that a discharge is forthcoming (i.e. 1-2 days)



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## After a Disability

### DISCHARGE TO REHABILITATION CENTER

- A hospital social worker will typically be assigned to provide guidance
- They will provide lists but not recommendations
- Their service ends at discharge
- Client Care™ can be initiated at that time



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### DISCHARGE TO REHABILITATION CENTER

- Need to determine:
  - What facilities have open beds
  - The extent of therapy that will be provided and the frequency
  - COVID staffing ratios
  - COVID incidents
  - COVID visitor policies
  - Costs and sources of payment



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### DISCHARGE TO REHABILITATION CENTER

- Do an onsite visit:
  - Is it clean?
  - Does it pass the smell test?
  - Get a tour
  - Meet with an admissions representative
  - Ask to see the therapy center
  - Ask for PT credentials
- Check online reviews



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## After a Disability

### DISCHARGE TO HOME

- Is the home environment suitable and safe based on the client's physical needs
- Look at the home through a new lens
- What are the obstacles and the solutions
- Client Care™ can provide home evaluations
- Consider extent of available support resources
- Assistance with activities of daily living (i.e. getting dressed, bathing, using the bathroom, etc.)

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### DISCHARGE TO HOME

- Home Health Aid Services
- Two types:
  - Professional: bonded and insured, backgrounds checked, level of training, formal supervision, formal case plan, minimum hours per week, more expensive
  - Independent Contractors: rarely insured, questionable training, no supervision, no formal case plan, no weekly hours requirement BUT less expensive

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### DISCHARGE TO HOME

- LifeAlert or similar service
- Don't rely on a cell phone
- Contact fire department for an emergency lockbox
- Talk with neighbors – may provide assistance with taking out garbage, cutting grass, keeping an eye out

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## After a Disability

### DISCHARGE TO HOME

- “Sanitize” the home prior to home health aids
  - Jewelry, credit cards, financial statements, medications, cash, firearms, collectibles
  - Make a list of what was removed
- Consider the use of cameras (with permission and notice)



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### HOW TO SAY IT TO SENIORS

- When having discussions about change
  - Not driving
  - Not going into the basement
  - Using a walker or cane
  - Taking new medication
  - Discontinuing alcohol
  - Dietary changes
  - Home health aids
  - Spending money to modify the house to their needs



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### HOW TO SAY IT TO SENIORS

- Expect irrational resistance
- Cannot emphasize enough the importance of understanding the client’s concerns
- Lots of changes all at once – usually not accustomed to change
- No control over situation
- Consistent losses
- Be intentional to provide appropriate opportunities of independence



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## After a Disability

### DON'T OVERLOOK FAMILY DYNAMICS

- Recognize (and accept) the truth of the current situation when it comes to family
- Don't underestimate the influence of a spouse on a family member
- Recognize that emotions will be "at extremes" for everyone
- Be sensitive to tone
- Be realistic with expectations of help from family

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### DON'T OVERLOOK FAMILY DYNAMICS

- Communication is critical
- Most relationship breakdowns occur over ineffective (or lack of) communication
- Select a family messenger – not a person of a few words!
- Weekly zoom call, regular family meetings, email distribution lists, etc.
- Avoid social media posts

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### EXPECT CHANGE

- Support systems may work well initially but expect they will breakdown when circumstances change
- We are here to help

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## Being a Caregiver



### BEING A CAREGIVER

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### SO NOW YOU ARE A CAREGIVER

- It rarely happens with much advance notice
- It can happen in an instant or gradually over time
- It can be a spouse, child, parent, in-law, sibling
- Issues faced will, to a large extent, vary based on the familial relationship

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### SO NOW YOU ARE A CAREGIVER

- Common for Caregivers to feel:
  - Overwhelmed with an avalanche of information
  - Confused due to changing or conflicting instructions
  - Afraid of what happens if I don't do a good enough job
  - Resistant to giving up control and accept help from others

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## Being a Caregiver

### SO NOW YOU ARE A CAREGIVER

- Common for Caregivers to feel:
  - Exhausted from not only providing care but also dealing with all other aspects of life and taking on responsibilities normally handled by the disabled spouse
  - Grief due to the situation or prognosis
  - Loss of control
- Of course these emotions all happen at the same time

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### HAVE A CARE PLAN

- Identify what needs the loved one has and document those in writing
  - Needs help with steps, going to bathroom, medication
- Becomes a baseline
- Enables you to measure progression of care needs
  - Now needs help getting dressed, walking, etc.
- As care needs evolve, most Caregivers don't realize the toll on their own mental and physical health

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### HAVE A CARE PLAN

- Know when it's time to have rotating Caregivers
- Caregivers should schedule dedicated time for them to have "me time" outside the care environment
- Do not feel guilty for taking personal time
- "Me Time" should be protected by the family – no calls, texts, etc.

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## Being a Caregiver

### HAVE A CARE PLAN

- Over time, maintaining objectivity will become increasingly more difficult for the Caregiver
- Impacts Caregiver decision making process
  - I always went up on a ladder and cleaned the gutters
  - I can take the dog for a walk in the snow and ice
- Caregivers must recognize unnecessary risks need to be eliminated

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### HAVE A CARE PLAN

- Need to have a backup plan if the Caregiver becomes sick or can no longer provide care
- Prayer is not a plan – together both are an awesome combination!
- Accept help when offered
- Ask for help when it is not!

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### TRANSITIONING OUT OF CAREGIVING

- Often is the most difficult part of caregiving
- Loved one may have died or had to transition to skilled nursing
- Happens abruptly with little time to adjust to new normal
- Huge amounts of “empty time”
- Family needs to shift focus on providing care for the Caregiver as well

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## Being a Caregiver

### TRANSITIONING OUT OF CAREGIVING

- Caregiver needs support from family and friends
- May need professional counseling
- Grief, lamenting, and depression are common
- Often the Caregiver does not want to burden the family with their issues
- Client Care™ Coordinator can be a great source of support



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### BEING A CAREGIVER

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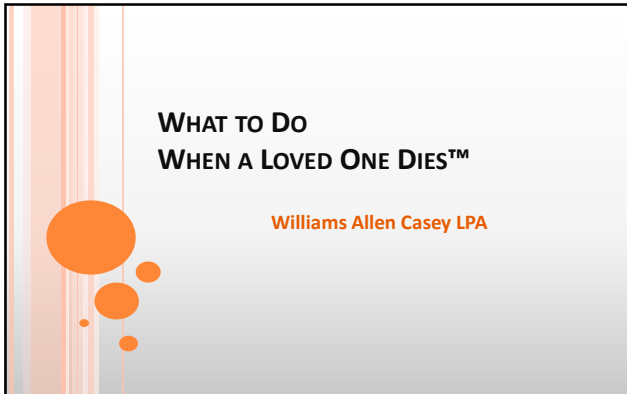
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# What to Do When a Loved One Dies™



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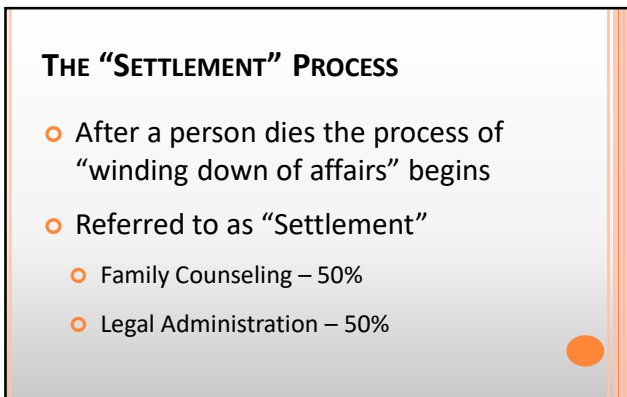
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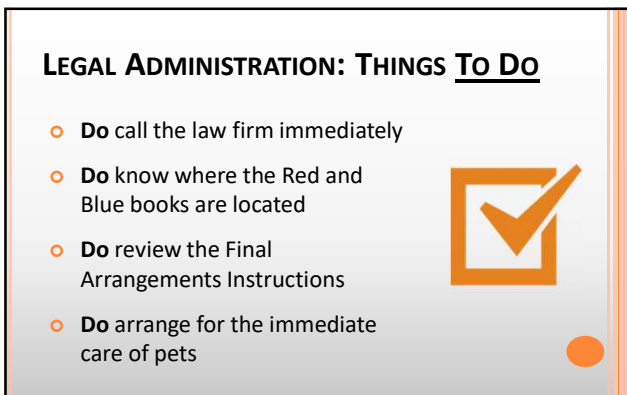
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# What to Do When a Loved One Dies™

## LEGAL ADMINISTRATION: THINGS To Do

- Do secure the house
- Do schedule a settlement conference with the law firm within two weeks
- Do make a list of questions



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## THINGS NOT To Do

- Do **NOT** “go direct” – resist the temptation
- Do **NOT** rollover IRA’s, 401(k)’s, or other Qualified Retirement Plans
- Do **NOT** race to the bank and close accounts
- Do **NOT** drive the deceased person’s automobile (unless absolutely necessary)



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## THINGS NOT To Do

- Do **NOT** remove any household furnishings
- Do **NOT** pay any bills – ask for a 2-4 week extension on funeral expenses
- Do **NOT** use the deceased person’s credit cards
- Do **NOT** use any Powers of Attorney – they are VOID on the death of the “Principal”



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# What to Do When a Loved One Dies™

## SETTLEMENT CONFERENCE AGENDA

- We will send you a list of documents to bring
- Bring a written list of questions
- Ethical guidelines require we only meet with the Successor Trustee(s) and Named Beneficiaries



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## SETTLEMENT CONFERENCE AGENDA

- Family counseling assessment
- Overview of the plan
- Review of the settlement process
- Discuss possible planning opportunities
- Delegate tasks – who is doing what?
- Establish time tables
- Address fees and sign engagement letter



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## OVERVIEW OF THE TRUST

### Three Main Time Periods

- Alive and healthy
- Disability
- Death



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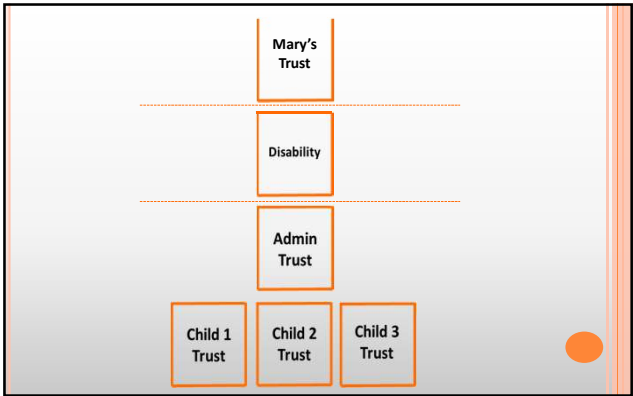
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# What to Do When a Loved One Dies™



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## ADMINISTRATION PROCESS

- Inventory: Build an inventory of assets
- Valuations: Secure valuations of all assets
- Claim Forms: Settle life insurance, annuities, qualified retirement plans
- Debts & Expenses: Identify, negotiate, and pay legally enforceable debts and expenses
- Accounting: Track income and expenses from the "estate"



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## ADMINISTRATION PROCESS

- Income Taxes: Prepare Income Tax returns (Form 1040 and 1041)
- Estate Taxes: Prepare Estate Tax returns (Form 706)
- Inform and Educate: Educate beneficiaries about the process and keep them updated
- Use of "List Serves" through email
- Periodic phone conferences
- Distribution: Asset transfer process



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## What to Do When a Loved One Dies™

### ADMINISTRATION PROCESS

- Time Expectations:
- 4-12 Months
- May vary based on month of death
- 12+ Months for large estates
- Periodic meetings in person or by telephone



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### TRUSTEES

- Article 15 for Married Clients and Article 12 for Single Clients names the Trustees
- May be the same people as the Disability Trustees
- Usually a trusted family member or loved one as opposed to a bank or trust company

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### DISTRIBUTION OF ASSETS

#### Three Types of Distributions

- "Special Stuff" List
- Specific Distributions (Article 7)
- Percentage Distributions (Article 9 for single clients or Article 12 for married clients)



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# What to Do When a Loved One Dies™

## DISTRIBUTION OF ASSETS

### Special Stuff List

- List of special items to be distributed before any other assets
- Typically these items have sentimental value or are family heirlooms

### Specific Distributions

- Can be used for distributing specific sums of cash, investment accounts, automobiles, etc.

### Percentage Distributions

- All remaining trust assets divided amongst the beneficiaries in Article 12/9



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## PERCENTAGE DISTRIBUTIONS

- Gross Estate vs. Net Estate
- Increased need for inventory and valuations
- Trustees have duties to beneficiaries!
- No self-dealing
- No co-mingling
- Fiduciary safe investment models

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## PERCENTAGE DISTRIBUTIONS

- Family members may be less concerned about a "to the penny" accounting
- Provides spirit of transparency and full disclosure
- Lack of information can cause suspicions and conspiracy theories to run rampant
- Trustees have a duty to keep beneficiaries "reasonably

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# What to Do When a Loved One Dies™

## PERCENTAGE DISTRIBUTIONS

- Charitable beneficiaries receiving percentage distributions also have trustees that have a duty to the charity
- Must exercise “due diligence” to ensure the charity is receiving what it is entitled to
- Accounting must be accurate
- Consider a specific dollar amount to charities as opposed to a percentage



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## TRUST PROTECTIONS FOR BENEFICIARIES

- Catastrophic Illness Protection
- Catastrophic Creditor Protection
- Divorce Protection
- Bloodline Protection
- Remarriage Protection
- Wealth Reception™ Protection
- Federal Estate Tax Protection



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## BENEFICIARY EDUCATION

- Goal is to empower the beneficiary to keep their inheritance protected in their Inherited Trust
- Must make educated decisions
- Education will come at various times in “Bite Size Chunks”
- Inheritance Request Form
  - Completed by each beneficiary
  - Release trustees from liability to avoid two year statute of limitation
  - Release trustees from liability for not retaining inheritance in trust



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# What to Do When a Loved One Dies™

## BENEFICIARY EDUCATION

- Inherited IRA's create planning challenge
- Unique for each beneficiary based on:
  - Current income (i.e. what income tax bracket are they currently in)
  - Anticipated change in income over next 10 years
  - Future income needs (i.e. children's college education, retirement etc.)
- May require each beneficiary and their CPA meet with law firm to identify correct distribution strategy for them

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## WHAT TO DO WHEN A LOVED ONE DIES™

Williams Allen Casey LPA

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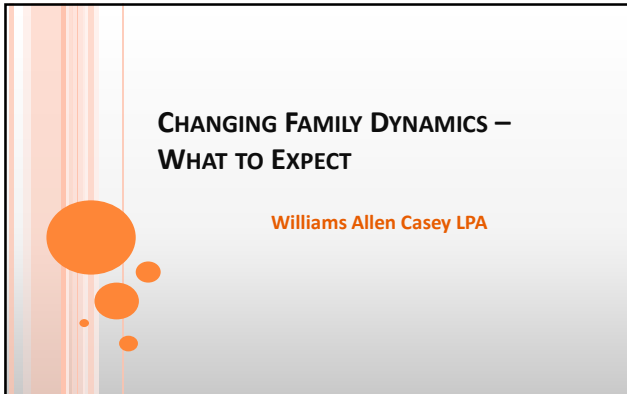
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# Changing Family Dynamics



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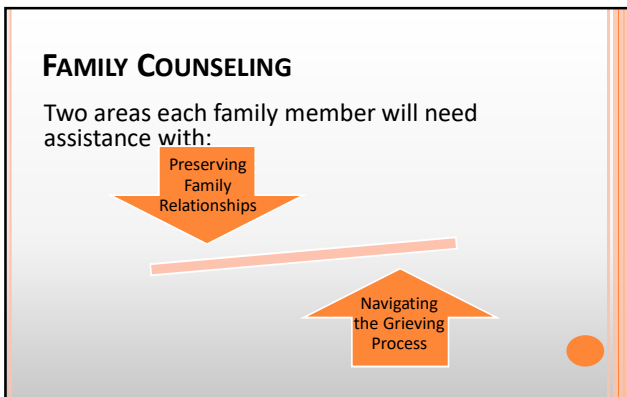
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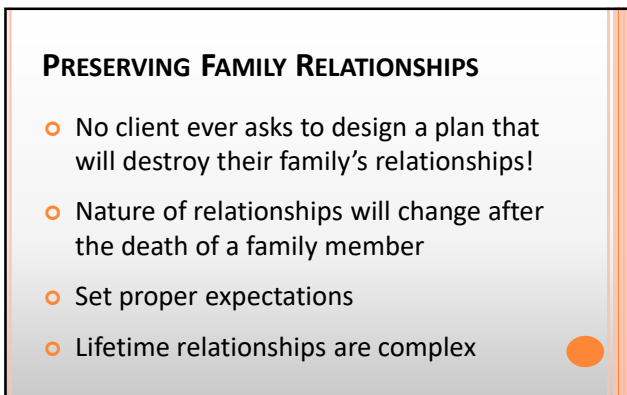
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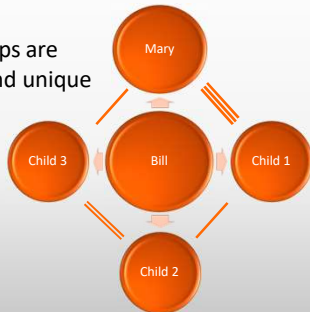
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## Changing Family Dynamics

### PRESERVING FAMILY RELATIONSHIPS

Relationships are personal and unique



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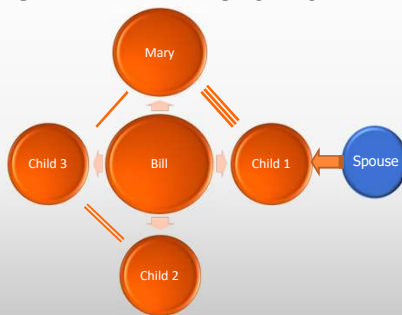
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### PRESERVING FAMILY RELATIONSHIPS

Can be influenced

- Spouse
- Kids
- Friends



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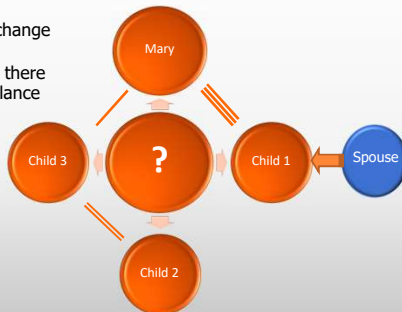
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### PRESERVING FAMILY RELATIONSHIPS

Relationships change when a family member is not there to maintain balance



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# Changing Family Dynamics

## PRESERVING FAMILY RELATIONSHIPS

- Negative changes happen during a grieving process
- Hypersensitivity (due to stress, exhaustion, emotion, etc.)
- Comments and actions
  - Wrong message/action
  - Wrong time or tone
- Peter will be checking in periodically with family members

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## NAVIGATING GRIEVING PROCESS

- No right or wrong way to grieve
- “Stages of Grief” are misleading as there is no “standard” process
- People move through the grieving process at different paces, different times, and in different ways
- Will impact ability to make decisions and judgment

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## NAVIGATING GRIEVING PROCESS

- Time does NOT heal all wounds
- No returning to the “old” normal but a “new” normal can be achieved
- Resources are available
- Important to be sensitive to how each family member is progressing through the grieving process
  - Will impact relationships
  - Will impact the Legal Administration process

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## Changing Family Dynamics

### WHEN RELATIONSHIPS ARE STRAINED

- Time is of the essence when relationships have a straining event (i.e. fight, missed expectation, etc.)
- The more time that passes the more entrenched disgruntled family members can become
- Call the firm!
- With no probate court involvement, there is no judge and no opportunity to be heard if a beneficiary feels something is unfair

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### WHEN RELATIONSHIPS ARE STRAINED

- Often a disgruntled family member just wants someone they can talk to who will listen
- The worst choice is usually “independent legal counsel” – usually results in law suits
- Best choice is Client Care™ Coordinator and/or Williams Allen Casey attorney
- We are specifically trained to diffuse these types of situations

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### WHEN RELATIONSHIPS ARE STRAINED

- Our goal is to empower the family to move beyond
  - It's a matter of principal
  - But I'm right
  - It's not fair
- It is important that family members put emotions aside, understand how emotions are affecting their behavior and their relationships
- It's about regaining objectivity
- We are here to help

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## Trust Protections and Inheritance Mistakes Workshop

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Trust Protections and Inheritance Mistakes Workshop

TRADITIONAL INHERITANCE DISTRIBUTIONS

- Most trusts call for outright distribution of assets to the beneficiaries
- Upon the Trustmaker's death, assets are removed from trust and distributed to beneficiaries



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OUTRIGHT DISTRIBUTIONS

- Beneficiaries take title to the inherited assets
  - in their own name, and
  - under their social security number.
- Once the assets are in the name of the individual beneficiary, they become subject to the liabilities of the beneficiary (or their spouse)



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OUTRIGHT DISTRIBUTIONS

Outright Distributions Provide No Protection Against:

- Creditors
- Bankruptcies
- Law Suits
- Failed marriages
- Replacement Spouses
- Nursing Homes



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## Trust Protections and Inheritance Mistakes Workshop



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### OUTRIGHT DISTRIBUTIONS

- Most attorneys like outright distributions
- Transaction based planning – “Volume” based business model emphasizes minimal client time
- Boilerplate documents with little counseling
- Outright distributions are easier to wind down



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### TRADITIONAL PROTECTED TRUST SHARES

- Traditionally, if a Trustmaker wanted to leave assets to a Beneficiary in a protected manner, a Trust Share was created with a bank as the Trustee
- Protects beneficiary from themselves
- Bank Trustee is in total control
- Beneficiary has no control
- **Control vs Protections!**
- Expensive



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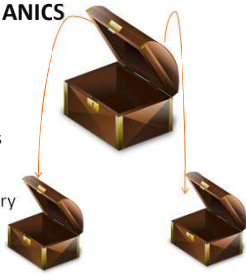
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Trust Protections and Inheritance Mistakes Workshop

TRUST PROTECTIONS MECHANICS

- o Better solution – Inherited Trust!
- o Language to create Inherited Trust already in Trustmaker’s Trust
- o After deceased Trustmaker’s affairs are wound down, assets are transferred to the beneficiaries’ Inherited Trusts – not the beneficiary outright
- o Separate “mini-box” that holds inherited assets for a specific beneficiary



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INHERITED TRUSTS

- o Beneficiary is the sole trustee
- o Beneficiary makes all investment decisions
- o Full access to the assets in the Inherited Trust
- o An Inherited Trust is created by a Trust Protector
- o Trust Protector is “disinterested” third party appointed by the Trustee to make word processing modifications

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INHERITED TRUSTS

- o Separate document that contains ONLY the provisions for that beneficiary
- o No other beneficiary provisions are included
- o No Trustmaker provisions are included
- o Facilitates administration of the trust during beneficiary’s lifetime
- o Enables the beneficiary to remain in control and retain the protections

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Trust Protections and Inheritance  
Mistakes Workshop

INHERITED TRUSTS



Beneficiaries can now “have their cake and eat it too!”

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INHERITED TRUST MECHANICS - TRUSTEESHIP

- Beneficiary is sole-Trustee
  - Investment decisions
  - Administration (i.e. filing tax returns & documenting disbursements)
  - Distributions to beneficiary
- Is there a problem with the beneficiary having such a high degree of access to funds?
- Control vs Protections?

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INHERITED TRUST MECHANICS - TRUSTEESHIP

- What if a bad event happens in beneficiary’s life and they get sued?
- Judge orders the beneficiary/trustee to write check from trust to pay creditors
- Beneficiary has two options – neither are good!



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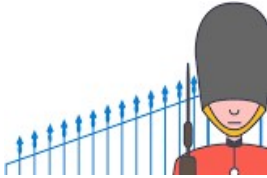
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## Trust Protections and Inheritance Mistakes Workshop

### INHERITED TRUST MECHANICS – DISTRIBUTION PROTECTOR



- We need a gatekeeper, someone to approve or veto distributions out of the trust
- Distribution Protector acts to prevent distributions from going to creditors, ex-spouses, lawsuits, etc.

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### INHERITED TRUST MECHANICS – DISTRIBUTION PROTECTOR

- Distribution Protector's sole responsibility is approving or vetoing distributions out of the Trust Share
- Does not take part in decisions relating to investing assets or administrative tasks
- Having a Distribution Protector is the key to maintaining the protections over the Inherited Trust
- Beneficiary selects and appoints the Distribution Protector
- Beneficiary may remove and replace the Distribution Protector

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### INHERITED TRUST MECHANICS – DISTRIBUTION PROTECTOR

- Distribution Protector must be "independent and disinterested"
- Law firm will serve as the Distribution Protector
- Beneficiary makes request for distribution
- Distribution Protector will inquire about purpose of distribution to make sure it is not to pay creditors
- Distribution Protector maintains record of disbursements

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Trust Protections and Inheritance Mistakes Workshop

INHERITED TRUST MECHANICS – DISBURSEMENTS

Four Types of “Disbursements”

- Expenses
- Withdrawals
- Distributions
- Loans

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INHERITED TRUST MECHANICS – DISBURSEMENTS

- Expenses: Costs associated with maintaining the Inherited Trust (i.e. taxes on trust assets, professional fees, bank account fees, etc.)
- Withdrawals: Any income the beneficiary may have demanded be paid to them
  - Ensures income on Inherited Trust assets is taxed at lower individual tax rates
  - Not a common strategy most advisors know about

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INHERITED TRUST MECHANICS – DISBURSEMENTS

- Distributions
  - Funds the beneficiary removes from the trust for their personal purposes
  - May be distributions of income or principal
  - May not be put back into the trust at a later time
  - Funds “disbursed” lose all trust protections

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Trust Protections and Inheritance Mistakes Workshop

INHERITED TRUST MECHANICS – DISBURSEMENTS

- Loans
  - Alternative to distributions
  - Would be required to be paid back to the Inherited Trust
  - Goal is to prevent personal assets (i.e. assets not in the Inherited Trust) from being attached by a creditor or predator
  - Generally no interest requirement
  - Can be repaid on death to reduce federal estate tax from beneficiary's estate

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INHERITED TRUST MECHANICS – DISBURSEMENTS

- All Disbursements must be documented during the lifetime of the Inherited Trust
- Failure to document disbursements results in loss of protections
- Law firm will maintain appropriate documentation as part of Beneficiary Maintenance Program and will serve as Distribution Protector
- Goal is to provide cost effective and nonburdensome process for beneficiary

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PART TWO

Maintaining Trust Protections and Common Mistakes

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Trust Protections and Inheritance Mistakes Workshop

COMMON MISTAKES

- Beneficiaries are spending (or losing) their inheritance at alarmingly fast rates
- Why?
- Not because they are bad people!
- Not because they aren't smart people!
- Three most common causes

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1. OUTDATED LEGAL DOCUMENTS

- Changes in the law, finances or family
- Can result in unnecessary taxes and/or legal fees
- Lack of cost effective process to keep the documents updated

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1. OUTDATED LEGAL DOCUMENTS

- Issue can be eliminated if Trustmaker's keep the trust updated through the formal maintenance program
- Could the law change after the death of the Trustmaker?
- How can a Trustmaker update their trust after they are deceased?

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# Trust Protections and Inheritance Mistakes Workshop

## 1. OUTDATED LEGAL DOCUMENTS

- Trust Protector can be appointed by the beneficiary to update the boilerplate language
- Trust Protector should have solid understanding of the law and language in the trust
- Law Firm can serve as Trust Protector as part of Beneficiary Maintenance Program

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## 2. EMOTION BASED DECISION MAKING

- Grieving process affects judgment
- You don't realize at the time the extent to which your judgment is impaired
- May be a short or long period of time
- Impulse purchases
- Starting a new business
- "Loans" to family members and friends
- Quitting a job
- DIY investing
- Unscrupulous advisors

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## 3. MISSING SKILL SETS

- Lack of experience and/or knowledge about:
  - Managing wealth
  - Common mistakes when inheriting assets
  - Trust protections
  - Interviewing and hiring professionals

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## Trust Protections and Inheritance Mistakes Workshop

### SOLUTIONS

- Have a cooling-off time
- Make no expenditures or investment decisions for one year
- Lean on the law firm team for assistance in making major decisions
- Expect “pressure” from spouses & kids
- Expect a change in family dynamics

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### MISTAKE: REMOVING ASSETS FROM INHERITED TRUST

- The protections available over the Inherited Trust are lost when assets are removed from the Trust.
- One Way Street!
- Bits-n-pieces or Kit-n-kaboodle approach?



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### MISTAKE: CO-MINGLING INHERITED ASSETS WITH MARITAL ASSETS

- Inherited assets protected from divorce under Ohio law.
- What happens when inherited assets are co-mingled in a joint account or a spouse adds funds to the account inherited assets are held in?



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Trust Protections and Inheritance Mistakes Workshop

MISTAKE: TITLING A CAR IN NAME OF INHERITED TRUST

- Cars should not be kept in the Inherited Trust
- In the event of accident, the driver and the vehicle owner will be sued
- What happens if the Inherited Trust owns the vehicle and gets sued as a result of the accident?



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NEXT STEP

- It all makes sense now
- With every step to the car
- Ongoing counseling opportunities are available for loved ones



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EDUCATION DAY  
THANK YOU FOR COMING!

Williams Allen Casey LPA  
LifeDesign™ Legal Services



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