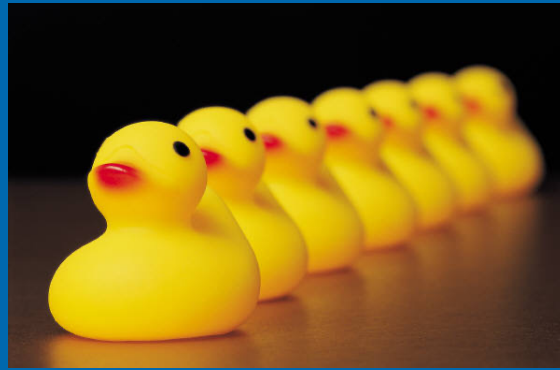




GETTING YOUR DUCKS IN A ROW

Estate Planning in Today's World

LEGAL AND FINANCIAL
LIFE CARE PLANNING

Techniques to Plan for Disability and Death

- Property management
- Health care
- Legal Techniques to Plan Death Event
 - Living wills/Natural Death Declarations
 - Anatomical gifts
 - Disposition of body
 - Assisted suicide (Hot topic in law and ethics)



Advance Directives

- Written instruments with directions for property or health care management in the event a person is unable to speak for him- or herself
- Constitutional right
- E.g., living will, advanced medical directive, power of attorney, health-care proxy



Who Needs this Planning?

- Every adult needs this planning
 - Life Happens. Be prepared
- Populations in Urgent Need include:
 - Older Adults
 - Adults with medical conditions they know will render them disabled at some point
 - Disabled adults (though informal planning may no longer be possible)



Incapacity Is Likely at Some Time During Your Life

Create Advance Directives
To Retain Control



Decisions: Who Will Make Them?

- ◆ Financial: pay your bills, invest your money, apply for benefits
 - ◆ Personal: where you live, who you socialize with, church, burial arrangements
 - ◆ Medical: choice of doctors, treatment, health care facility
- 
- A stylized silhouette of a mountain range in a darker shade of teal, located in the bottom right corner of the slide.

Choose Your Decision Maker

For financial matters --

- ◆ Durable Power of Attorney for Financial Affairs
- ◆ Living Trust

For health care --

- ◆ Medical Power of Attorney
 - ◆ Living Will
 - ◆ HIPAA Authorization
- 
- A stylized, dark teal silhouette of a mountain range is positioned in the bottom right corner of the slide, partially overlapping the text area.

Power of Attorney

- ◆ Formal method of creating agency relationship authorizing one person (attorney-in-fact or agent) to act for another (principal)

Key Terms: Principal, Agent or attorney-in-fact

FORM OF THE POA

- ◆ Written Document
- ◆ Signed by the Principal
signature, mark, at direction of
- ◆ Does not need to be notarized but highly recommended
required for land transactions
- ◆ Agent does not have to sign
- ◆ Does not have to be recorded at Court
except for deeds by agent
- ◆ Best to include the magic words
survives Principal's incapacity

Terms of the POA

◆ UPAA

- Numerous explicit provisions
- Presumed durable unless specifically provides otherwise
- Specific grants required for some powers

Compensation Methods

- ◆ Hourly rate
 - ◆ Professional fee schedule
 - ◆ Percentage of income from Principal's property
- 

Can you trust your Agent?

- ◆ Fiduciary Responsibility
 - Duty of Loyalty*
 - Exercise reasonable skill and care*
 - No self-dealing*
- ◆ No power of attorney “police”
- ◆ Court ordered accounting

Living Trust

- ◆ The most versatile and complex estate planning and management tool
 - Can Manage during your lifetime while you have capacity
 - Can Manage during your lifetime when you don't have capacity
 - Can Manage and Distribute your estate after your death

Trust Features

- ◆ Grantor can amend or revoke
- ◆ Assets titled in the name of the trustee
- ◆ Easy transfer of control to successor trustee
- ◆ Avoids probate
- ◆ No court supervision
- ◆ Private
- ◆ Much More expensive than POA

Medical Decision Making

- ◆ Natural Death Act Declaration
 - ◆ Living Will
 - ◆ Medical Power of Attorney (MPOA)
 - ◆ Advance Medical Directive – can combine all three
- 
- A stylized, dark teal silhouette of a mountain range is positioned in the bottom right corner of the slide, partially overlapping the text area.

The Right to Die

- ◆ Right-to-die laws
 - U.S. Supreme Court first discussed in 1990 in *Cruzan v. Director, Missouri Department of Health*
 - Court recognized the common law right of a competent individual to refuse medical treatment

Living Will

- ◆ Document expressing a person's wishes concerning medical care in the event of a terminal condition or the inability to communicate; also, called natural death declaration or statement or directive to physicians.
 - ◆ Does not name an agent/attorney-in-fact
- 
- A decorative silhouette of a mountain range in a darker shade of teal, located in the bottom right corner of the slide.

Living Will

Natural Death Declaration

- ◆ Applies when terminally ill and death is imminent or person is in persistent vegetative state
 - ◆ Instructs as to kind of care
 - ◆ No heroic/aggressive measures
 - ◆ No artificial nutrition/hydration
 - ◆ Make me comfortable
 - ◆ No limits on pain medication
 - ◆ But can say bring on the machines
 - ◆ Does not appoint a health care agent
- 
- A stylized, dark teal silhouette of a mountain range is positioned in the bottom right corner of the slide, partially overlapping the text area.

Physician Orders for Life-Sustaining Treatment (POLST)

- ◆ A statement to an individual's physicians specifying in detail the person's wishes concerning medical treatment related to the person's current medical situation
- ◆ Where recognized, allows patient to specify care choices for medical condition in the here and now rather than contemplating choices for a future situation

Medical Power of Attorney

- ◆ Principal appoints Agent
- ◆ Authority to make health care decisions
- ◆ Suggested statutory form
- ◆ Two witnesses not related to Principal by blood or marriage
- ◆ Notarization not required
- ◆ Springing: 2 doctor certifications
- ◆ Used only when PRINCIPAL IS INCAPABLE OF MAKING OR COMMUNICATING HIS/HER DECISION (key difference from Financial POA)

Quality of Life Directions

- ◆ Customize your MPOA to create an Advance Medical Directive including a Living Will
 - ◆ Define quality of life for yourself
 - ◆ Direct what treatment you want and do not want – often contemplates different medical scenarios
 - ◆ Can authorize organ donation
- 
- A decorative graphic in the bottom right corner of the slide, consisting of a dark teal silhouette of a mountain range against a lighter teal background.

Anatomical Gifts

- ◆ Anatomical gift
 - Donation of all or part of a human body that takes place after death
 - Uniform Anatomical Gifts Act
- ◆ Donation of anatomical gift
 - Donation by will
 - Donation by signed document
 - Donation by others

Do Not Resuscitate Order (DNR)

- ◆ Written by attending physician
 - ◆ Patient or authorized representative must consent
 - ◆ Withholds CPR if cardiac or respiratory arrest occurs
 - ◆ Does not withhold other medical interventions
 - ◆ Patient can revoke at anytime
- 
- A decorative graphic in the bottom right corner of the slide, consisting of a dark teal silhouette of a mountain range against a lighter teal background.

Medical Information Sharing

- ◆ HIPAA Release Authorization
(no incapacity required for named agent to use it)
 - Allows you to name one or more persons (agents) to
 - ◆ Receive your medical information
 - ◆ Request your medical information
 - ◆ Access your medical records and information

Involuntary Decision-Making

Who will run your life if you are disabled and did not create a life care plan?

- ◆ Substituted Consent Statute
- ◆ Guardian of the person
- ◆ Conservator of the property

Substituted Consent Statute Virginia Health Care Decisions Act

Who gets to make health care decisions for
you –

court appointed guardian

your spouse

your adult child or children

your parent(s)

your siblings

*any other relative in the descending
order of blood relationship*

Guardian and Conservator Court Proceedings

- ◆ Petition filed in Circuit Court
- ◆ Supported by medical evaluation
- ◆ Guardian *ad Litem* appointed
- ◆ Court hearing
- ◆ Guardian of the person
- ◆ Conservator of the property

Who can be guardian/conservator?

- ◆ No priority for spouse/adult children
 - ◆ Any interested person
 - ◆ Do not have to be a state resident
 - ◆ Out of state guardian/conservator has to appoint in-state resident agent
 - ◆ Feuding families often end up with an attorney
- 
- A stylized silhouette of a mountain range in a darker shade of teal, located in the bottom right corner of the slide.

Post Appointment Requirements

- ◆ Conservator

 - Post bond with surety*

 - Inventory*

 - Accountings: 6 months/annually*

- ◆ Guardian

 - Annual report to Dept. of Family Services*

Limitations of Guardianship

- ◆ Based on state law, if you move you have to start over or transfer through court proceedings
 - ◆ Need court permission to make gifts for estate tax planning or asset preservation
 - ◆ But, do have judicial oversight
- 
- A decorative silhouette of a mountain range in a darker shade of teal, located in the bottom right corner of the slide.

Are your ducks in a row?

