

Aging Well Discussion Group
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Planning for Legal Needs to Age Well

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Mike Lonich has 40 years' experience as a lawyer. He joined the law firm Lonich, Patton, Ehrlich & Policastri in 1994 and works to provide Estate Planning for people, both clients and their caregivers, in an organized way so when the time comes and things happen, the correct documents are in place to seamlessly and respectively benefit both.

The Estate Plan should have all the correct documents to provide care, the first being your Health Care Directive.

- Kaiser Permanente has a booklet you can fill out and take back to be entered into your file.
- If you are not with Kaiser Permanente, there is the California Statutory Advance Health Care Directive Form that allows you to provide the same things: where you want to live, the level of medical care you do or don't want, clarify your end of life choices and who will act as your Health Care Agent for medical decisions if you are unable to do it yourself.
- More detailed directions can be written into your Health Care Directive than the standard form has pre-printed. You can authorize your Health Care Agent to get all your medical information.
- You can identify a Health Care Agent and a back-up Health Care Agent to succeed the first one should they be unavailable.

The Estate Plan should also have your Durable Power of Attorney.

- Provides the caregiver the ability to handle finances like the day-to-day bills or pay the facility you are living in if you become unable to do it. There have been big changes in the last few years. In the past, your lawyer would meet the Bank's Trust Officer and when needed, your lawyer could call or email that bank officer to get trust arrangements and finances taken care of. Now, the oversight has gone out to the corporate level. There is no personal connection, so it has become necessary to make your Power of Attorney much more specific to get the same things done.
- Your Durable Power of Attorney details must match the information contained in the Trust.
- You may have your Durable Power of Attorney set up with your spouse as your Agent and vice versa but it is good to add a Successor Agent (who is younger) to ensure it can be brought into use whenever it is needed with no conflict.
- It is important to only list successor Agents in succession order. It has come to pass in recent years that banks won't honor two co-Agents on a Durable Power of Attorney.

The Health Care Directive, the Durable Power of Attorney and the Trust are the best tools to control the administration of your assets as you age and life circumstances change.

Trusts

- An effective trust should be organized, specific and thorough.
 - Assets should be titled in the trust and be updated regularly.
 - Assets should include all banking accounts and safe deposit boxes.
 - Beneficiaries should be identified and kept up to date reflecting family changes such as Divorces and deaths.
- The simplest and most straightforward kind of trust is the Survivors Trust. It is a revocable living trust that allows the surviving spouse to retain control over the trust assets, make changes or even revoke the trust if he/she needs to in the future

When is it time to add a Co-trustee or a successor trustee to your Trust?

- Earlier is better.
 - Adding a Co-trustee is not stepping down from controlling your assets. Rather it makes ready a partner to come along side, able to step in if needed with no delay. A Co-trustee serves at the same time as the initial trustee. If there is a sudden change in the initial trustee's circumstances, the trust can continue through the Co-trustee.
 - A Successor trustee only can step in after the initial trustee is incapacitated or dead.
- Having an alternate trustee identified on the trust prevents the estate from going into Probate which is slow, public and to be avoided.
- The laws surrounding Probate are different in every state. One should consult an attorney who is familiar with the Probate Code in the state you or your loved one lives in to generate the correct documents.
- A Co-trustee is there to help manage. Transparency as the Co-trustee with siblings or anyone affected by the trust is important. One way to do this on the death of the trustor, is for the co-trustee or executor to share the monthly bank statements regularly with all involved.

What is the status of the A/B Trusts that were commonplace before 2013?

- The Federal Tax Portability Act of 2013 changed the IRS rules. Portability of estate & gift tax allows a surviving spouse to inherit any unused portion of their deceased spouses' tax estate and gift tax exemption.
- The A/B Trust was the tool previously used to preserve the assets of the first spouse to pass away but it is no longer needed. The new tax exemption of \$ 12.9 Mil - \$ 25. Mil and the new portability should be enough to remove any worry about exemptions.
- Irrevocable B Trusts were created when a spouse passed away. Using the survivors' social security number, the B trust entitled the surviving spouse access to its assets and income. A yearly tax return for a B trust is required. When the second spouse passes away an EIN# is needed to identify the B trust.

What about checking accounts?

- Keep large accounts in the Trust but it is useful to have a smaller, joint account with right of survivorship with a caregiver outside the Trust. It can be the account that your Social Security Check is automatically deposited into, so it is regularly funded. This can be used when loved one is incapacitated in the hospital or long-term health care facility.
- Keep this small account in a separate banking institution so as not to affect your other accounts within the same bank. When a bank is notified of the death of an account holder, all accounts are frozen, but the joint account remains accessible by the Co-owner. The death certificate is the key to unfreeze the other non-joint accounts, but this can take 4-5 weeks to obtain.
- Be aware of who is listed as your successor to a joint bank account you are managing for a loved one. If you, as the co-owner had something happen, your back up would need to step in. Age is worth considering. If all are the same generation it could result in no one being able to take over. Best to list someone from the generation behind you.

Is the pink POLST form a Health Care Directive?

- No. The POLST form (Physicians Orders for Life Sustaining Treatment) is a completely different instrument. You fill it out with your preferences, discuss it with your doctor and then it must be signed by both yourself and your doctor to be valid. Many don't know this about the form. It allows you to set parameters around your emergency medical care, things like "Do not resuscitate" and "CPR to be used or not" and the level of medical intervention you want.