FOX | O'NEILL | SHANNON s.c.

THE E.P. EXPRESS

FOS's Estate Planning Newsletter

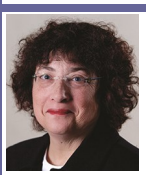
An ounce of prevention. . . .

Volume 5, Issue 1

Spring, 2017

Editor: Diane Slomowitz

CHECK ALL THE BOXES FOR ESTATE PLANNING PROTECTION



By Diane Slomowitz

One would think that I, above most, would have my estate plan in shape.

I'm not an estate planner by specialty, but I have worked on several cases involving estate planning and probate issues.

Even if I don't draft wills and trusts myself, I know that most people need them, and that they should be updated as the years pass on by.

After all, I am this newsletter's editor.

Well, I do have an estate plan.

But, truth be told, I haven't substantively updated it since my now 24-year-old son was a toddler. I really should give it another look.

After all, my designated personal representative/trustee wasn't young when I created my first estate plan, and he's 20 years older now.

Maybe it's time for "new blood" to administer and oversee my assets.

Similarly, my charitable interests have changed (I say "matured") over the decades. My estate plan needs to reflect those changes.

Older may not always be wiser, but it is often different.

If I die relatively young, can my son really handle an inheritance at 35, much less 30? Should I keep his funds in trust for him until he's older (60, anyone)?

Is it really fair to burden my folks, now in their 90s, with making medical deci-

Continued on page 3

YOU'RE LIVING TOGETHER? AT YOUR AGE?

Cohabitation. Living together. Romantic renters. Very, very close roommates.

Whatever you call it, it's for young people, right? Wrong.

The fastest-growing demographic of unmarried couples living together is **seniors**, according to reports.*

Older adult couples may spurn marriage for specific financial reasons.

For example, a divorced person remarrying before age 60 may lose social security income from the prior marriage.

Also, unmarried couples are not responsible for each other's medical expenses, which greatly increase with age.

And maintenance ends on remarriage under most divorce judgments.

Continued on page 2

WHERE'S THE WILL? WHAT DO WE DO NOW?

Good citizen and FOS client that you are, you've dutifully created your estate plan, leaving the original plan documents with your FOS attorney for safekeeping, and advising your family of their location.

Gold medal for you. But what about those who shove their original documents in a drawer, or under their bed, without telling anyone where to find them when the time comes?

Track and field Olympian Florence Griffith Joyner had a will, but didn't tell anyone where it was before she died.

This led to a court battle between Joyner's husband and mother for control of the estate. The court eventually prohibited both from administering Joyner's assets.*

In the whirlwind of family notifications, and funeral preparations, the last thing a grieving family member wants to think about is finding an original will or trust.

But what if the original can't be found?

Wisconsin law allows the court to "take proof" of the existence, validity and contents of a will which is lost, destroyed by accident or without the testator's consent, or otherwise missing.

Absent the originals, however, there are no guarantees, especially if you can't even lay your hands on a copy. The court is not required to find either that a will is missing or that it has any specific provisions.

The best way to prove a missing will is

Continued on page 2

POWERS OF ATTORNEY IN SPECIAL RELATIONSHIPS

In some relationships it is obvious that durable or health care powers of attorney are important.

Between spouses. From elderly parent to caregiving child. From unmarried adult to trusted confidant. And, as this newsletter emphasizes, from "just turned 18" adult to his or her parents.

In other relationships, however, formally appointing one person as another's agent for financial or health care matters may not even be on anyone's radar.

Even if it should be.

Take, for example, an intellectually disabled but still high-functioning (within the disability) 17-year-old son.

Once the son turns 18, and even with his disability, the law may view him as a legal adult, with all the rights and obligations that involves.

Maybe the son can't handle adult-level finances, even though he can understand basic documents, hold a job, attend classes, or even live on his own (with supervision).

In this type of situation, a durable power of attorney shows its mettle.

With that document, the son can agree for his parent(s) to act as his agent, on his behalf, in financial matters. The agent parent(s) can deposit his paycheck, pay his bills, handle his monthly accounts, and invest any extra.

The agent(s) can also monitor the son's credit, including to ensure the son hasn't been swayed by those never-ending credit card offers or roped into a financial scam.

And, while we're at it, a health care power of attorney from the son to his parent(s) will let the agent parent(s) make medical decisions on the son's behalf if the need arises.

Or consider a military family, where the wife will be deployed overseas.

Financial issues may arise during her deployment, some of which may require the wife's signature.

Tax returns must be filed. A mortgage may be refinanced on favorable terms. College financial aid packets for a child may come due.

Continued on page 3

You're Living Together, continued from page 2

If one cohabitating partner wants the other to receive any assets —bank accounts, real estate, stock, or a cherished figurine—on death, the partner must memorialize that intent in a will, trust, or other estate planning document.

Otherwise, the partner's "natural" family, including children or siblings, could receive all of the partner's assets.

The same logic applies to health care matters.

If one partner becomes ill, the other partner may not be able to participate in the ill partner's medical decisions, consult with the ill partner's doctor, or even see his or her loved one.

To prevent this, each partner should execute a health care power of attorney appointing the other to act on the partner's behalf on medical matters.

Even burial/funeral arrangements will be legally made by the "natural" family unless action is taken. To give that power to cohabiting partners, each should sign a formal Authorization for Final Disposition.

*http://www.nolo.com/legal-encyclopedia/free-books/living-together-book/chapter2-8.html

Where's The Will?, Continued from page 1

through a fully signed copy. If you only have an unsigned copy, evidence of its execution from its witnesses and notary will be crucial.

The situation is much trickier when no will can be found at all.

The court has to determine both whether a will was properly executed and, if so, what that will provided.

The practical burden here is higher, because the evidence, if any, will likely be limited and circumstantial.

Hopefully, for example, the drafting lawyer has correspondence regarding, or even versions of, the will in his or her computer system.

Or an uninterested person remembers talking with the deceased about the execution and content of his will.

Or documents were created or acts taken consistent with an executed will.

If all of this weren't enough, proof will also be required that the supposed will is the latest one, which was not later amended or revoked.

Two simple acts can prevent the mess that comes from a missing will.

First, don't let the will go missing. Have a trusted person keep your original estate planning documents for safekeeping.

Second, while you are very much alive, periodically advise your family where the documents are located.

And remind them to create estate plans of their own.

*https://morristrust.com/celebrity-estate-planning-flubs/

The E.P. Express— *An ounce of prevention. . .*

Volume 5, Issue 1

IS YOUR ESTATE PLAN PREPARED FOR SUCCESSIVE DEATHS?

The deaths of Debbie Reynolds and her daughter Carrie Fisher were great losses for entertainment fans.

This duo will always epitomize movies —"Singing in the Rain," "When Harry Met Sally"— Hollywood memorabilia —Reynolds' costume collection was unparalleled— and mother/daughter tugs of war— "Postcards From the Edge."

The double whammy, of course, was that mother Reynolds died within days of daughter Carrie.

It has long been known that, when one spouse of a long marriage dies, the other spouse frequently soon follows.

That these long-wed couples tend to be elderly may account for some of these tragedies.

And then there is what has been labeled "death by heartbreak."

This phenomena involves the loss, at any age, of someone intensely loved by another—a friend, partner, sibling, or, as in Reynolds' case, a child.

That powerful loss may play a role in the survivor's successive death. What does any of this have to do with estate planning?

Most wills or trusts take into consideration the possibility of simultaneous or successive deaths through a "survival" provision.

Under such provision, if a beneficiary dies within, say, 30 or 60 days after the person creating the will or trust (the "grantor"), the beneficiary is treated as if he or she died *before* the grantor.

Then, the grantor's assets are distributed, under the will or trust's directives, to the beneficiary who is "next in line."

Another will/trust provision addresses the rare possibility that both spouses die simultaneously, such as in a car crash. In this provision, which works best when both spouse's dispositive schemes are the same, the spouses designate one of them as "surviving" the other for estate distribution purposes.

This designation avoids the confusion of determining which spouses died first, and so which spouse can legally "inherit" from the other.

So, whether you are creating a new estate plan, or reviewing an existing one, your FOS attorney will work closely with you as you consider what type of survival provision, if any, is appropriate for your circumstances.

Source: http://a.abcnews.com/images/Entertainment/GTY_debbie_reynolds_carrie_fisher_ml_160518_16x9_992.jpg

Powers of Attorney, continued from page 2

If both spouses are on the same financial page, and the wife is fully informed (i.e. no fraud or undue influence), a durable power of attorney can be a valuable financial tool.

That document will allow the husband, as the wife's agent, to sign financial and other documents on her behalf while she is half-a-world away.

These are just two examples of the types of special relationships which can benefit from an appropriate financial and/or medical power of attorney.

There are likely as many needs for powers of attorney as there are special relationships.

Your FOS estate planning attorney can advise you whether a power of attorney would help you in your unique circumstances.

Check All The Boxes, continued from page 1

sions for me if I can't? Maybe I should appoint my (adult) son as my health care agent? He certainly could pay me back for all my parental misdeeds.

And what about Jake, or whatever dog is running my life when I die?

I'm going to create a pet trust to ensure that, even after I die, Jake will stay the same spoiled, treat-filled, rug-eating doodle for the rest of his big barky life.

One thing's for sure. I'll keep my original documents, along with other critical documents and account passwords, in a true place of safekeeping. Not in that rickety cabinet where papers go in but never come out.

I'll give copies to my FOS attorneys. And I'll let my trusted compatriots know where to find my original estate planning documents. Plus my majorly important Amazon password (I've got Amazon Prime, after all).

Estate planning is about certainty and security, not excitement.

If I want excitement, I'll send a fake email disinheriting everyone in favor of the Cult of All Cults Cult.

When I die, I want my loved ones to tell funny stories (some inappropriate for a family newsletter). And maybe Google the Cult of All Cults Cult.

Not fight over who was the last one to see "that stupid will."

So go ahead. I'll update my estate plan if you update yours.

FOX O'NEILL SHANNON S.C.

622 N. Water Street
Suite 500
Milwaukee, WI 53202

Phone: 414-273-3939
Fax: 414-273-3947
www.foslaw.com

Fox, O'Neill & Shannon, S.C. provides a wide array of business and personal legal services in areas including corporate services, litigation, estate planning, family law, real estate law, tax planning and employment law. Services are provided to clients throughout Wisconsin and the United States. If you do not want to receive future newsletters from Fox, O'Neill & Shannon, S.C. please send an email to info@foslaw.com or call us at (414) 273-3939.

Postage

Address label

IN THIS ISSUE

ESTATE PLANNING WITH STEP-CHILDREN

For better or worse (pun intended), a first marriage is not necessarily a person's only marriage.

Whether a first marriage ends in death or divorce, second, third and even fourth marriages increasingly occur. With multiple marriages comes the possibility of step-children.

One marrying an older spouse may become a step-parent to teenagers. Toddlers, on the other hand, may be step-children to one marrying a younger spouse.

In any circumstance, both spouses should be aware of their new-found charges' impact on their estate plan. Wisconsin law does not include step-children as a spouse's "children" for inheritance purposes.

So, if one dies without a will, the estate will go to the spouse, if living. That spouse can bequeath these assets however he or she likes, including only to that spouse's natural and adopted children and excluding the deceased spouse's natural and adopted (and the surviving spouse's step-) children.

The estate of one dying without a will, if no spouse survives, will go to any natural (or adopted) children, but not to any step-children.

Standard will provisions similarly may not include stepchildren as "children." Therefore, sums bequeathed to "my children," without more, will not go to step-children.

For step-children to be included in a bequest, the estate planning document must expressly and specifically describe them, including their step-children status.

There is no right or wrong decision here. One step-parent may leave nothing to a step-child, because he or she will be provided for by the natural parents, or the step-child came into the marriage as an adult.

Another step-parent may equally include a step-child who has special needs, came into the marriage at a young age, or developed a special bond with the step-parent.

What is important is that step-parents be aware that their step-parent status may impact their estate planning needs.

And that they consult with a knowledgeable attorney when creating or reviewing their estate plans.