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SPECIAL REPORT: Elder Law: Asset Protection Planning Explained

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ELDER LAW: ASSET PROTECTION PLANNING EXPLAINED

INTRODUCTION

Thank you for contacting Hook Law Center for information to assist you in protecting your assets.

We, the attorneys, would like to explain the process by which we are able to assist you. Most of our clients are interested in protecting their assets from the costs of long-term care. Some clients have other objectives as well. We hope this information is useful in making the process easier for you. Feel free to pass this information to your family, friends, or neighbors.

Most of our clients are interested in protecting their assets from the cost of long-term care, particularly nursing home care. It is very important for a married couple that the spouse remaining at home is able to live the remaining years of his or her life in dignity. It is usually important to our clients that they are able to preserve a modest inheritance to pass along to their children.

At the initial interview we:

- Assist you in identifying your goals and objectives
- Review the strategies that are available to help you achieve these goals
- Help you achieve your goals by preparing a specially-designed Asset Protection Plan tailored to your assets and your objectives

Studies have shown that senior citizens have three priorities. They want to:

- Preserve their independence
- Remain in their own home
- Be able to pass a modest inheritance to their children

At our initial meeting we discuss your personal goals as well as the three listed above. Not all of these goals are attainable but we help plan if they are, and discuss alternatives if they are not. If asset protection is the route we decide to pursue, then these strategies are then put into an Asset Protection Plan for your review and guidance.

ASSET PROTECTION PLAN

The Asset Protection Plan is broken down into a number of sections:

Background: We repeat back to you what you've told us about your health, income, assets, and expenses. This is important because the entire plan is based on this information. If your information is different, the plan will be different. We want to be sure that we understand your situation completely.

Objectives: Why are we doing the planning? Most people are interested in protecting their assets for themselves, if they need them for their spouse who will be remaining in the community, and ultimately for the benefit of their children. In addition, some people have specific goals relating to their home or to federal and state income taxes, or federal and estate gift taxes. The plan must be customized to achieve your specific goals on the basis of your specific income, assets, expenses, and health.

Applicable Law: We discuss the Medicaid law, tax law, and, where appropriate, the law relating to federal and state Veterans' Administration.

Strategy: For a single individual there are a number of strategies available and these strategies almost double for a married couple. We walk you through each of these strategies and discuss them with you to determine which ones appeal to you and would work for you and which ones are inappropriate. If possible, we compare strategies and give alternatives.

Assumptions: Our clients are often unable to give us all of the information which we would need to make a perfect plan. For example, many people do not know what day they will enter a nursing home, what nursing home they will enter, how much it will cost, when and how often the nursing home will raise its rates, how much will be covered by Medicare, and how much private pay money is required by the nursing home as a condition of admission. The plan is based on assumptions and is usually very accurate. However, as these variables become known, the plan is revised from time-to-time. In addition, the law changes frequently and the plan may need to be revised periodically to be sure that it complies with current law.

Additional Considerations: This section is an attempt to answer the common questions which people have and avoid the ordinary pitfalls.

Action Plan: This is a summary of the steps which need to be taken to implement the plan.

Implementation: Our office assists you to the extent possible in seeing that this is done. For example, if:

- Real estate needs to be transferred to a spouse or child, our office will prepare the deed and record it for you.
- You need to deal with insurance companies, our office will obtain all the necessary forms for your signature.
- The plan calls for the purchase of an annuity, our office will assist you in dealing with the insurance company to be sure that a policy is furnished which will meet the Medicaid requirements.

File the Application: The final phase of the process for the Medicaid long-term care assistance. Every item

on the application must be documented and explained. We will assist you in preparing and filing the application. We will also be available to answer questions that the Department of Social Services may have about the application.

Our general rule is that we will file the Medicaid Application. Many think they can file the application themselves and they are denied. Not because of eligibility but because it is not presented in a way that makes sense to eligibility workers. We have people who do this every day, and it is easier for them to complete the paperwork than it is for you since they've developed expertise in that area.

Public benefits' planning is extremely complex. Even our finest judges are often baffled. One justice referred to Medicaid as unintelligible to the uninitiated. Our job is to guide you through the Medicaid maze so that you can protect the maximum amount of assets with the least amount of effort on your part.

YOUR ASSETS

If we are to assist you in protecting your assets, we do need to know what your assets are:

Will: With respect to your Will, if there are a husband and wife, they usually have Reciprocal Wills leaving everything to each other. If the husband is going into a nursing home, the wife's Will would leave everything to him. His Will would leave everything to her. It is usually appropriate to leave his Will alone, but necessary to change her Will so that if she dies first, it doesn't leave everything to the spouse in the nursing home.

Living Wills: Living Wills should be checked to see that there are appropriate standards spelling out what types of treatment you do and don't want if you are in a situation where you are either brain dead or terminal and two physicians and a family member agree that there is no hope of your recovery.

Powers of Attorney: Your Powers of Attorney should be reviewed for adequacy. The types of things that are often missing are the right to make gifts, the right to do banking in accordance with the Virginia Durable Power of Attorney Act, and a reference to real estate if real estate is to be sold. Many title companies require that the street address or a tax block and lot be included in the Power of Attorney to sell real estate.

Spousal Special Needs Trust: We often need to prepare Trusts for you. One of the strategies is for one spouse to place assets in a trust for the benefit of the other spouse.

Written Care Agreement: If a child will be caring for a parent, it is possible for the parent to pay the child for that care effectively transferring assets from the parent to the child without a penalty. This must be done pursuant to a Written Care Agreement.

WHAT ASSETS CAN YOU PROTECT?

This varies from client-to-client depending on your total assets. As a general rule, the earlier you begin the planning process, the more assets you will be able to protect. Remember that time works against you!

Many people have heard that you must do Asset Protection planning three to five years prior to entering a nursing home. This is not true. However, there are penalties for certain types of planning done within three to five years prior to applying for Medicaid. The penalties are periods of ineligibility for Medicaid. We are very careful to comply fully with the law. That is why this is somewhat time sensitive.

I urge you-don't delay in this process! The earlier you start the more assets you will be able to protect. Remember, why are you doing the planning? You are protecting the assets primarily for your own benefit and the benefit of your spouse, if you have one, and, also for the benefit of your children. In those situations where there is a spouse who will be remaining at home, it is often critical that this planning is done in order to enable that spouse to live at his or her current standard of living.

WHAT TO BRING TO YOUR INITIAL MEETING

At the initial interview, which usually lasts around two hours, we will need to review several types of personal information concerning your estate. Please bring the following documents with you to your initial meeting:

- Intake form which we will send you with our initial letter confirming your appointment. Please fill this in as best as you can. If you find it overwhelming, bring us the statements and we will be happy to fill them in with you. The more information you give us, the better the plan we will be able to give you.
- All bank statements, statements from brokerage firms, mutual funds, etc. All of this is important to help us protect those assets for you.
- Current addresses of your children and those persons whom you would want to be your healthcare representatives or be your agent under your Power of Attorney.
- Current addresses with ZIP codes are very helpful.
- Copies of your existing documents-your Wills, Living Wills, Powers of Attorney, Banking Powers of Attorney, etc. We will review these for you. If they are adequate, we will leave them alone.
- It is important that all the decision makers be present at the initial meeting so that work can be begun immediately. If you would like to bring some family members with you to the appointment, you are welcome to do so, but this is not required.

As you will learn at that meeting, time is your enemy. The longer you delay in designing and implementing an Asset Protection Plan, the fewer assets you will be able to protect.

OUR GOALS

Our goal in serving you is to give you not only the best legal advice, but also excellent client service. We try very hard never to keep you waiting. We try to return our phone calls promptly, and as work as a team so that there

is always someone available to help you when you need it.

We strive very hard to deliver consistently high quality service to you. All of the people who work in our office are committed to this goal. They are all caring people, and they understand the problems you are facing. This is critical to us in the attorney-client relationship. As a result of high quality legal advice and service, most of our clients are referred to us from our previous clients.

We can help you achieve your goals. We are able to help almost everyone who comes into our office. Please give us the opportunity to assist you and the information that we need to do a good job.

OUR FEES

We charge a consultation fee, because the attorneys in the firm are involved in the cutting edge of Elder Law every day. We participate in the formulation of legislation, and we advocate for the rights of seniors on a national and state level. A lot of people are curious as to how the system works. If we had two or three curious people come in every day who weren't seriously interested in having any work done, we would soon be out of business. The consultation fee is designed so that only people who are serious about proceeding with Asset Protection Planning will make appointments and keep them. The entire consultation fee is applied to the account of any work which you have done.

At the end of the initial meeting we will know what is involved, and we are able to quote you a flat fee for our services. This fee is all inclusive and, except for any recording or filing fees which are usually nominal, is the only fee which you will pay.

CONCLUSION

Elder Law is our occupation and also our avocation. We love what we do, and we love the clients with whom we work. In speaking with groups of attorneys entering the field of Elder Law throughout the country, I often tell them what a wonderful group of people our clients and their families are. It is very rewarding to be able to help our clients. Unlike Estate Planning where the rewards are many years off, in Long-term Care Planning the rewards are often immediate.

Please remember that Elder Law is a changing field. Your friends and family who have done this planning may have been operating under different regulations. Many of the rumors you have heard regarding nursing homes and Medicaid are not true. Therefore, it is very important to consult an Elder Law attorney to discuss your particular situation.

We look forward to meeting with you. All of the knowledge in the world will not help you if, when you need the planning, the plan is not in place. Time is your enemy. Advance planning is your friend.

ABOUT THIS HANDOUT

This guide is provided as a courtesy to help you recognize potential asset protection planning issues. It is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent elder law attorney. While every precaution has been taken to make

this explanation accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this explanation.

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Hook Law Center focuses its practice on estate and tax planning, planning for long-term care and aging, retirement and investment advice, trust and estate administration and probate, guardianships for those unable to make sound decisions, and the unique situations associated with special needs.

Learn more about the Hook Law Center at www.HookLawCenter.com.