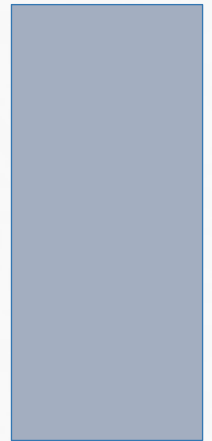




MY LOVED ONE FAILED TO PLAN, NOW WHAT?

Presented by

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TOPICS OF DISCUSSION

- **During Life**
 - Powers of Attorney & Advanced Directives
 - Guardianship & Conservatorship
 - Representative Payee
 - Joint Accounts
 - Long-Term Care Planning
- **After Death**
 - Intestate Succession in Virginia
 - Effects of Titling



ESTATE PLANNING

- Estate Planning more than “death planning.”
- Estate Planning is an integrated plan that includes legal and financial planning.
- Estate Planning is more than just drafting of documents; it is a group of tools used to create a tailored plan.
- Estate Planning is taking control of your life and making decisions with regard to who will be in control when you are no longer able.

CAN YOUR LOVED ONE STILL PLAN?

- Presumption of capacity
- Assessed outside of the presence of family and agent
- “Nature and Consequences”
- Document capacity by use of witnesses and memorandum
- Obtain physician’s opinion when in doubt



GRANT OF AUTHORITY - FINANCIAL

Power of Attorney

- Capacity required
- Written instrument
- Fiduciary relationship between principle and agent
- No Bond, Accountings may be Waived
- Terms:
 - General v. Specific
 - Immediate v. Springing
- Other state recognition

Conservator of Estate

- Incapacitated
- Court order
- Fiduciary relationship between guardian and ward
- Accountings and Bond Required
- Terms:
 - Limited v. General
 - Immediate v. Standby
- Other state recognition

PROCESS FOR GUARDIANSHIP & CONSERVATORSHIP

- Petition to appoint Guardian and/or Conservator
- Circuit Court appoints Guardian ad Litem
- Notice to Respondent and Family
- Report of Guardian ad Litem
- Hearing on Petition
- Court appoints Guardian and/or Conservator
- Qualification

REQUIREMENTS FOR GUARDIANSHIPS & CONSERVATORSHIPS

- **Guardian**
 - File annual report with Department of Social Services
- **Conservator**
 - Same Fiduciary Duties as agent under DPOA
 - File annual accountings with Commissioner of Accounts
- **Qualification**
 - Felony
 - Bankruptcy
- **Bond – Surety or Non-Surety**
- May require court permission for some particular acts

DEFAULT FOR MEDICAL DECISIONS

- Medical POA
- Guardian
- Spouse
- Child
- Parent
- Sibling
- Other blood relative
- Any other adult exhibiting care and concern and familiar with patient's religious beliefs, basic values, and preferences
 - Does not include ability to withdraw life-prolonging measures

GRANT OF AUTHORITY - MEDICAL

Advance Medical Directive

- Written Instrument
 - Living Will
 - Medical Power of Attorney

Guardian of Person

- Court Order
- Covers: Residence, Medical, Education, Employment
- Reporting Requirements

REPRESENTATIVE PAYEE

- Person appointed to act on behalf of another with respect to the SSA.
- SSA usually does not accept DPOA.
- Proposed Representative Payee must apply in person at SSA office.
- www.ssa.gov has handbook for Representative Payees.



JOINT OWNERSHIP

- **Management of Financial Assets**
- **With or Without Right of Survivorship**
- **Principal and Agent**
 - Owner acts as Principal for their own assets
 - Joint Owner acts as Agent for the other's assets
- **Fiduciary Relationship**

LONG-TERM CARE PLANNING

- **Planning for Periods of Chronic Illness**
- **Long-Term Care Insurance**
 - TRICARE, Medicare, and other traditional insurances are for acute care
- **Asset Protection Planning**
 - **Public Benefits**
 - Medicaid – 5-year look-back period
 - Veteran's Affairs – No current look-back period
- **Authority to Plan?**

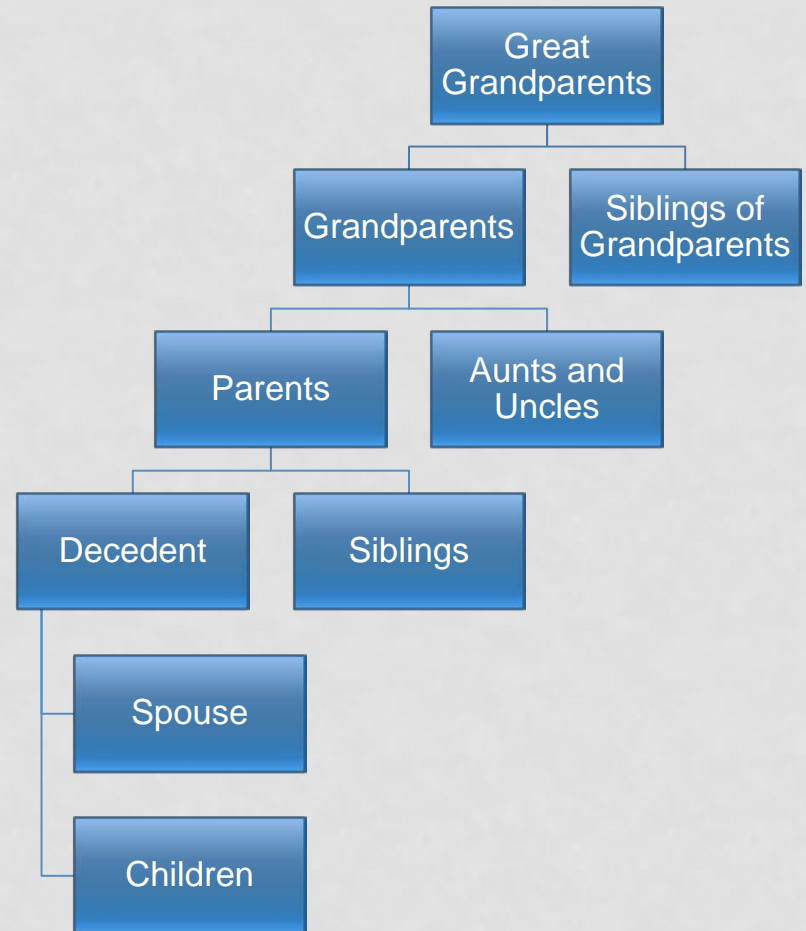
PLANNING FOR DEATH

- Will disposes of Property at Death
- Default: Intestate Succession in State of Domicile
 - May not be acceptable



INTESTATE SUCCESSION

- **Surviving Spouse**
 - 100% v 1/3
- **Children**
- **Parents**
- **Siblings**
- **1/2 to Paternal Kindred, 1/2 to Maternal Kindred**
 - Grandparents
 - Aunts and Uncles
 - Great Grandparents
 - Siblings of Great Grandparents
 - Will fall to other side if no lineal ancestors
- **Commonwealth of Virginia**



EFFECTS OF TITLING

- **With or Without Survivorship**
- **Consequences:**
 - Avoidance of Probate
 - Does not Coincide with Plan – Could Lead to Disinheritance

- Estate Planning
- Asset Protection Planning
- Long-term Care Planning
- Life Care Planning
- Veterans Benefits
- Financial Planning & Advice regarding Investments, Insurance, Annuities & Reverse Mortgages



- Tax Planning
- Guardianships & Conservatorships
- Estate & Trust Administration
- Special Needs Planning
- Care Management Srvcs.
- Business Planning & Succession Planning

LEGAL POWER FOR SENIORS

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