

21st Century Estate Planning and Elder Law



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Tax Smart. Business Savvy. Trust Worthy.

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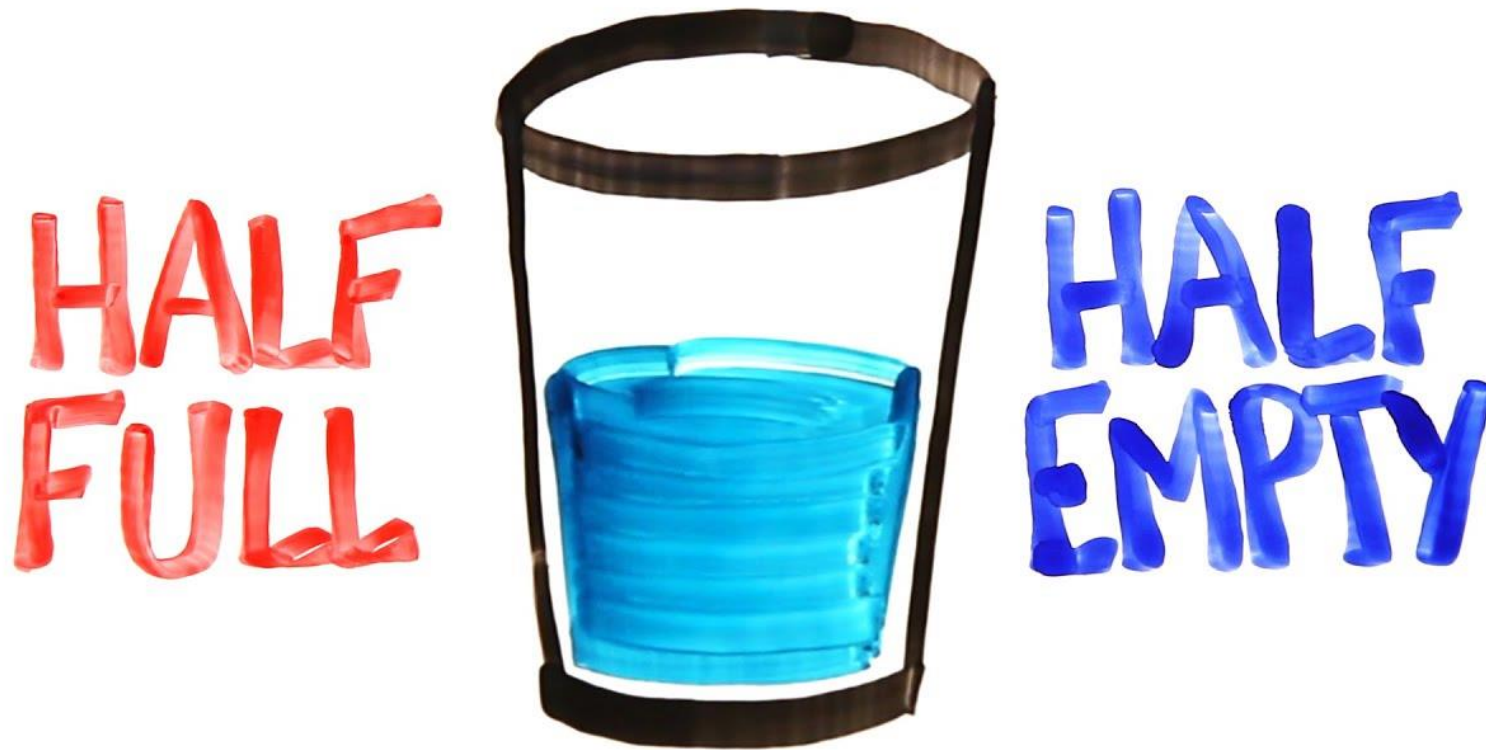
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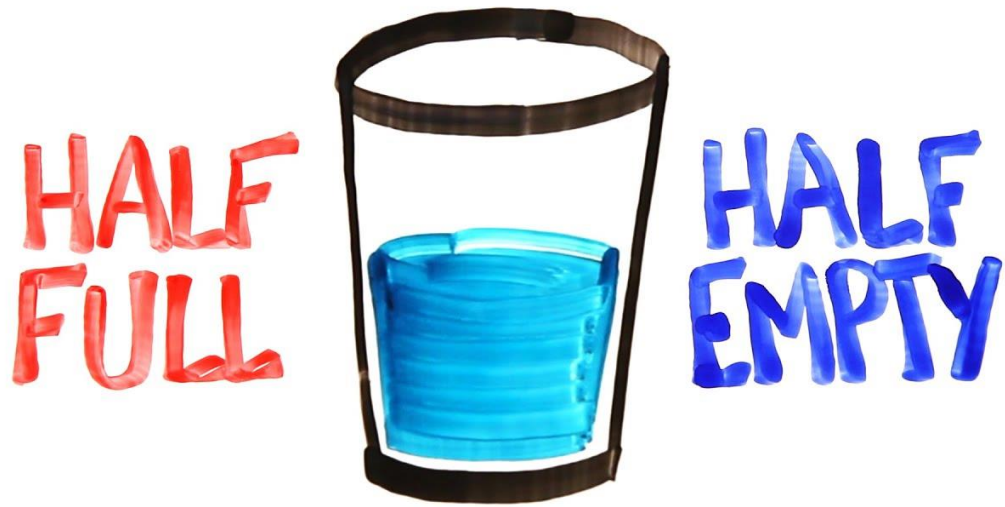
Purpose of Estate Planning & Elder Law?

- Reflect & Protect
- Values & Valuables
- Health & Wealth
- Self (Body)
- Estate (Property)

What is Estate Planning?



What is Estate Planning?



- Optimist – Half Full
- Pessimist – Half Empty
- IRS – Half Ours

What is Estate Planning?

20th Century Estate Planning

- Die owing the Undertaker
- Leave enough to your Children so they can do something, but not enough so they can do nothing
- Protect the Family Business, Farm, Nest Egg

Difficult to Pay Estate Tax within 9 Months of Death

- Tax Avoidance
- Tax Deferral
- Tax Evasion (Not Recommended)

What is Estate Planning?

21st Century Estate Planning

- People are Living Longer
- Costs of Medical Care is Increasing
 - More treatment options available
 - More help is needed as you age
 - Less assistance from family members
- Protection of Family Business, Farm or Nest Egg only important for Very Wealthy

What is Elder Law?

Answer depends on:

- Whom you ask (No general agreement among lawyers)
- Where you ask (East Coast, West Coast, AZ, FL vs. OK)
- Can include Elder Abuse either physically or financial

Reece's Answer:

- Estate Planning 2.0 (Supercharged Estate Planning)

OR

- How the Estate Plan is **FUNDED!**

What is Elder Law?

Funding Options can include:

- Medicare
- Medicaid
- Veterans Benefits
- Social Security Disability (before retirement)

- Supplemental Needs Trust (aka Special Needs Trust)
- Traditional Revocable Living Trust with SNT provisions

What is Estate Planning & Elder Law?

- Taking care of your **SELF** (Body)
- Taking care of your **ESTATE** (Property)
- Discovering how to **PAY** for all this care

Lessons from OK Governor's Office

- Let someone else do the work
- Let someone else pay for it

Why Should CPAs Care?

- Person may only meet 3-4 lawyers during their lifetime - usually during stressful or unpleasant circumstances
- *Please - no Thanos jokes about using the Infinity Stones to snap your fingers and make half the lawyers disappear*
- CPAs are **THE** Trusted Financial Advisor for many people
 - Better understanding of the numbers than **MANY** lawyers
 - Given a glimpse into the checkbook
 - Aware of retirement resources
 - Aware of insurance (health, life, property)

Why Should CPAs Care?

- Since 1995, the number of people age 65 & over filing bankruptcy has tripled
- One of the fastest growing segments of people filing bankruptcy are widows
- One-half of 65 year-olds do not have **ANY** retirement funds
- 10,000 people per day turn 65 years old
aka **the Silver Tsunami**
- A growing number of people do not have any family or friends to take care of them as they age
aka **Elder Orphans**

Why Should CPAs Care?

- You may know **WHAT** you are doing
- But do you know **WHY** you are doing it?

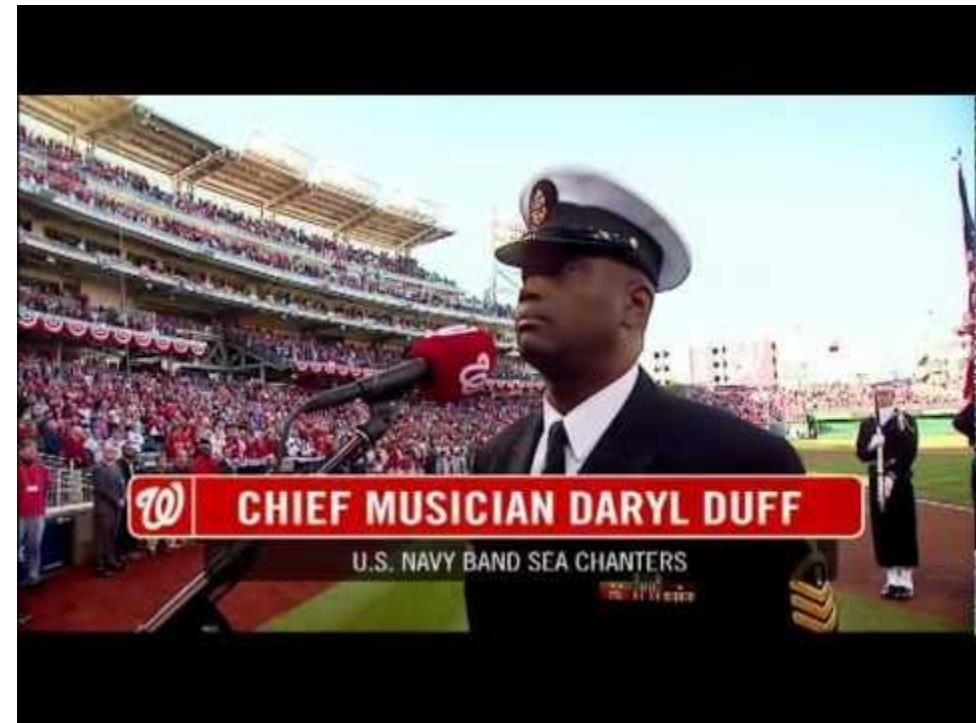
- Do you ever feel like a **FIREFIGHTER** with a moonlighting job as a **JANITOR**?

- If you know your **WHY**, then your **WHAT** is more impactful because you are walking in or towards your **PURPOSE**

MICHAEL  **JR.**

Chief Musician E. Daryl Duff

- US Navy Band & Sea Chanters
- Sings the National Anthem
<https://youtu.be/5paOdhni3yg>



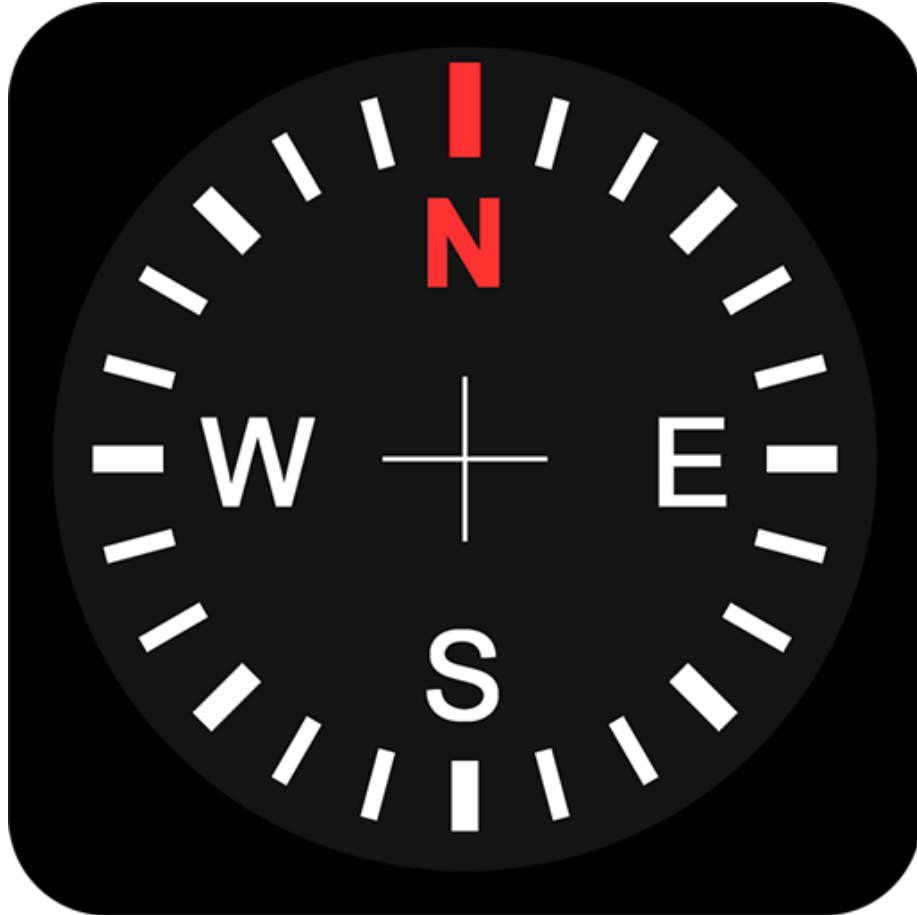
Why Should CPAs Care?



Why Should CPAs Care?



Estate Planning & Elder Law Directions



- **E** = ESTATE (Property)
- **S** = SELF (Body)
- **W** = Wills, Trusts, POAs & other financial documents
- **N** = “Nots” (Do NOT keep me plugged into the machines aka “Living Will”, Do NOT Resuscitate & other health care documents)

E = ESTATE (Property)

Primarily concerned with 2 time periods

- BEFORE date of death (DOD)
 - Assistance is IMMEDIATE
 - Assistance is SPRINGING – Triggered by an event
- AFTER date of death (DOD)
 - With Court supervision
 - Without Court supervision

S = SELF (Body)

Primarily concerned with 2 levels of care

- Maintenance Care
 - Schedule appointments
 - Check on lab work
 - Refill prescriptions
- Hospice Care
- Tension between Federal & State law

W = Wills, Trusts, POAs, Etc.

Basic Documents to Manage Your ESTATE Include:

- Wills (Simple, Pour-Over)
- Trusts (Revocable, Irrevocable, Supplemental/Special Needs, Gun, & other special purpose)
 - Assignment of Personal Property
 - Quick Claim Deed (QCD) for real estate
 - Personal Property Memorandum
 - Memorandum of Trust

W = Wills, Trusts, POAs, Etc.

Basic Documents to Manage Your ESTATE Include:

- Power-of-Attorney (Statutory or Non-Statutory)
 - General vs. Specific
 - Durable
- Transfer-on-Death Deed
- Pay-on-Death (POD) accounts – typically banks
- Transfer-on-Death (TOD) accounts – other than banks
- Retirements Accounts (IRA, 401K, etc.)
Primary & contingent beneficiaries

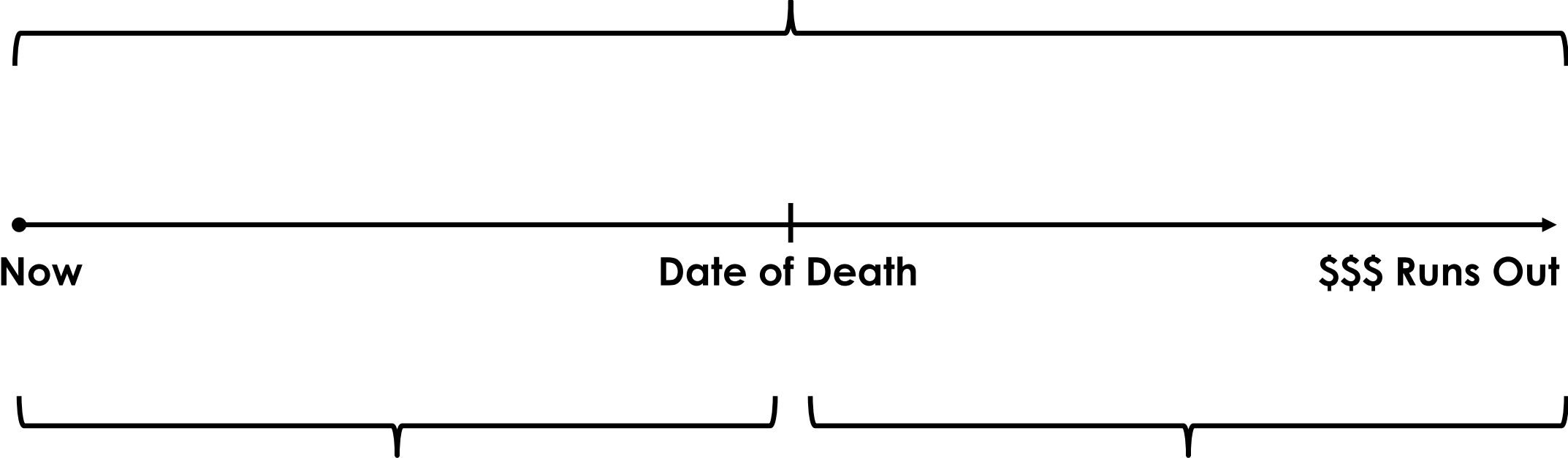
N = Not's

Basic Documents to Manage Your SELF Include:

- Do not leave me plugged into the machines
aka “Living Will”
 - Statutory – Oklahoma Advance Directive for Health Care
 - Non-Statutory (broader in scope)
- Do-Not-Resuscitate (Misunderstood; limited in scope i.e. cardiac arrest; not commonly used or recommended)
- HIPAA Authorization (Federal law)

E = Estate

W = Wills, Trusts, POAs, Etc.



E = Estate

W = Wills, Trusts, POAs, Etc.

From NOW to DATE OF DEATH – Recommend POAs

- Principal – the “maker” of the document
- Agent or “Attorney-in-Fact” – the substitute signer
 - Financially responsible
 - Time available to actively manage estate of Principal
 - Not in financial distress
- Geographic proximity of Agent – not as important due to email, smartphones, online banking, etc.

E = Estate

W = Wills, Trusts, POAs, Etc.

From NOW to DATE OF DEATH – Recommend POAs

- Must be DURABLE
- Now (immediate) vs. Later (springing – what is the trigger?)
- Does the ASSET require “PAPERWORK”?
 - Real estate – Deeds
 - Bank accounts – Signature cards
 - Motor vehicles – Titles
- All POAs automatically REVOKED by death of Principal
- Is this “**STATUTORY FORGERY**”?

E = Estate

W = Wills, Trusts, POAs, Etc.

Informal Solutions Can End in Disaster

- Child's name on bank account
 - IRS can levy the bank account
- Child's name on deed to homestead
 - Asset may not be exempt from bankruptcy creditors
- Medicaid & VA "look-back" periods
 - Inclusion of asset may delay receipt of benefits
- Lack of POA may require more expensive Guardianship
 - Sign income tax returns? Bankruptcy petitions?

E = Estate

W = Wills, Trusts, POAs, Etc.

From **DATE OF DEATH** to **\$\$\$ Runs Out** – Recommend Will

- Testator (Male) and Testatrix (Female)
Owner of the Estate
- Executor (Male), Executrix (Female), Administrator, or
Personal Representative
 - May be nominated in the Will, But appointed by the Court
 - Geographically close
 - Time available to administer
 - Respected by other HEIRS (**Trick question:** Who are your HEIRS?)

E = Estate

W = Wills, Trusts, POAs, Etc.

From **DATE OF DEATH** to **\$\$\$ Runs Out** – **Recommend Will**

- 2015 Survey – 64% of people do not have a Will
- Prince - \$200 million estate
2 years after death and still no payout to his HEIRS
- Aretha Franklin - \$80 million estate
Clarence (son) has special needs

E = Estate

W = Wills, Trusts, POAs, Etc.

Basic Probate Process

- Marshal all the assets (identify, secure, protect, insure, value, etc.) ← 1st Problem with Estate of Prince
- Pay the King (Federal and State taxes)
- Pay the Friends of the King (Creditors)
- Leftovers are distributed to the HEIRS ← 2nd Problem
- Probate process resembles a “mini” bankruptcy
- If “Intestate” (no will), then use the State’s formula
- Is this “**COURT-MONITORED FORGERY**”?

E = Estate

W = Wills, Trusts, POAs, Etc.

Probate “GOTCHAs”

- Loss of Privacy – must provide inventory of ESTATE
- Costs involved (legal fees, accounting fees, filing fees, publications, commissions, appraisals, etc.)
- Time involved (creditors' claims, sale of real estate, etc.)
- Surviving spouse can “elect” against the will
- Will cannot supersede or replace a Prenuptial Agreement

E = Estate

W = Wills, Trusts, POAs, Etc.

From NOW to \$\$\$ Runs Out – Recommend Trust

- Trustor, Grantor, Settlor, Trust Maker
Owner of the ESTATE
Ultimate control of trust – can revoke, amend or restate
- Trustee
Manager of the ESTATE
- Beneficiary
Enjoys the ESTATE!!!

The “Bundle of Rights” are separated into 3 parts

E = Estate

W = Wills, Trusts, POAs, Etc.

From NOW to \$\$\$ Runs Out – Recommend Trust

- Successor Trustee
 - Very Critical Decision
 - Disability or Incapacity of Initial Trustee
 - Inconvenient for Initial Trustee
 - Individual(s) or Corporate?
 - Trust Committee?

DANGER!!! Successor Trustee = Special Needs Beneficiary?

E = Estate

W = Wills, Trusts, POAs, Etc.

From NOW to \$\$\$ Runs Out – Recommend Trust

Successor Trustee recommendations:

- Geographic proximity not required
- Financially responsible
- Financially competent – a really nice person?
- Time available to administer
- Respected by Beneficiaries or Trust Committee
- Not currently in financial distress

E = Estate

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From NOW to \$\$\$ Runs Out – Recommend Trust

- Distribution of Income and Principal
 - During lifetime of ESTATE Owner
 - After lifetime of ESTATE Owner
- Health, Education, Maintenance & Support (HEMS)
 - Spouse
 - Children – Age? Addictions (UA)? Needs? Spendthrift?
 - Immediate
 - Stair-step – 1/3 @ age 25 or 5th anniversary, 1/2 @ age 35 or 10th anniversary, All @ age 45 or 15th anniversary

E = Estate

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Trust “**ATTA-BOYS**”

- Maximizes privacy of ESTATE Owner
- Management can be quick and efficient before & after death of ESTATE Owner
- Asset protection for Successor Beneficiaries
- ESTATE Owner can control to whom, when and under what circumstances distributions are made
- Is this “**CONTRACTUAL FORGERY**”?

DANGER!!! 3rd Party oversight is limited

S = Self
N = “Nots”

From NOW to DATE OF DEATH – Recommend OK ADHC, Medical POAs (“Living Will”), and HIPAA Authorization

- HIPAA Authorization – who can receive health info? (Fed)
- Oklahoma Advanced Directive for Health Care
 - Very Common; Easy to Download
 - Limited Scope
 - Terminally Ill, Persistently Unconscious, End-Stage Condition
 - Easily Executed in front of 2 Witnesses (Notary Public not required)
 - 18+ years old
 - Not related (heirs-at-law)
 - Shall not inherit

S = Self
N = “Nots”

From NOW to DATE OF DEATH – Recommend OK ADHC, Medical POAs (“Living Will”), and HIPAA Authorization

- Suffer from Dementia for 14 years? OK ADHC not viable
- Medical POAs or “Living Will” – Super Size Me!!!
- Now (immediate) vs. Later (springing – what is the trigger?)
- Broader Scope
 - Schedule appointments, check on lab work, refill prescriptions
 - Overlaps OK ADHC – can also include hospice care

Check out the WALLET CARDS!

S = Self
N = “Nots”

From NOW to DATE OF DEATH – Recommend OK ADHC, Medical POAs (“Living Will”), and HIPAA Authorization

Health Care Proxy – The “G” List

- Geographically Close
- Gray – can process incomplete information
- Guilt – not blame themselves for “Killing Mama”
- Guts – when the time comes, can they really do it?
- The General – someone that is even-tempered, diplomatic

Committees are NOT recommended!!!

S = Self
N = “Nots”

Health Care Proxy – Tips & Tricks

- Don't keep in the Safe Deposit Box!
- Recommend 3 People
 - Get their Name and Address used on Driver's License
 - Get their mobile telephone number
- OK ADHC and Living Will are the easiest/cheapest forms to update - Keep them current!
- Don't owe them money!
- Don't loan them money!

Morrel Law Reviews.com

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