Legal Issues in Later Life

Some decisions people make or do not make can impact their financial future or that of their loved ones. This publication is designed to help you think about some possible legal issues in later life.

Putting adult children on your accounts?

Sometimes parents consider putting adult children on their bank or other financial accounts, but may not think about the ramifications of this action. If an account co-owner is sued, responsible for an accident, owes back taxes or other legal debt, the account can be seized. The same would be true for certain other types of assets.

If your goal is to have money transfer to your children or someone else special outside of probate upon your death, you can add their name as POD—Payable On Death. The beneficiary will not have access to the funds during your lifetime. If your goal is to have a designated person write checks when you are not available to do so, you could name a co-signer on the account or you could name someone as a power of attorney for finance.

Remember you are giving access to your money to someone else; ask yourself, can I trust this person? Discuss the consequences of these and other legal options with your attorney to learn more about the potential consequences.
Do you have a “failsafe” on insurance policies?
If you do not remember to pay the premium, do you have someone to back you up? You can name someone to be contacted if you do not pay your premium so the coverage does not lapse due to a person’s illness or declining cognitive capacity.

How is your property titled?
Joint tenancy . . . tenants in common . . . sole owner are - the most common ways for people to title the property they own.

In joint tenancy with right of survivorship, parties own an undivided equal interest in the property. Upon death an owner’s interest dies with them.

Examples
- If you owned a bucket of water with me from which we both can drink and I die, your right to drink from the bucket continues. My right to drink from the bucket ends upon my death. During my life decisions about bucket of water are made jointly.

- A farmer and his son purchase a farm and structure it as Joint Tenancy. When the young son dies in an accident his ownership of the property dies with him and the father is the sole owner. The son’s young family has nothing. If the property was Tenancy in Common the son can leave his interest in the property to his wife and children. Dad would be a co-owner with the deceased’s wife. If she decides to sell he is faced with buying her out or joining with new co-owners.
Tenants in common own an undivided interest in the property. The percentage of a farm, business or other property need not be equal shares. It could be 50%-50%, 75%-25% or another split of ownership. Sometimes there are 2, 3, 4 or more owners, each with their own percentage. They can sell or gift their share to whomever they wish.

Proprietor – the individual owns 100% of a property and can sell or gift as they like.

Transferring your home or other assets?
Sometimes people want to transfer property to adult children during their lifetime for various reasons. This might include adding their children’s names to their house deed or transferring the house out of their name during their lifetime. Some people do this without realizing potential gift tax implications and the possible loss of step up in basis – a tax benefit – when property is passed after death. Another concern is if there is liability. All named on the title can be held responsible. Please consult with your attorney before changing property ownership.

What legal documents may I need?
- A will or trust provides that your wishes will be carried out after your death. Review these documents every 3 to 5 years or when major life events occur in your family: births, deaths, marriages, adoptions, sale of assets, purchase of assets or appreciation in the value of assets, etc. Changes may be made as you see fit. Ask your attorney also to draw up a power of attorney for health care, an advance directive, an out of hospital do not resuscitate order. You may also want a limited durable power for financial decisions.
- A power of attorney for health care can make health care decisions on your behalf. A “living will” (which describes your wishes to medical personnel surrounding life-sustaining procedures) should be added to help both medical personnel and your power of attorney understand your wishes. You can find out more and download forms by visiting The Iowa State Bar Association website: www.iowabar.org/
- A power of attorney or “attorney-in-fact” for finance is a document prepared by a licensed attorney that allows the person you name to act on your behalf in one or more matters. These can be general powers, limited powers, or durable powers. The general power allows the named person to handle all your financial affairs. They can buy or sell property and manage your accounts, in effect they can do anything you can do. This requires a great deal of trust in the person selected. Sometimes we hear sad stories of people who overstep their role and leave the person without funds. You can at any time cancel a power of attorney.

Tax implications
- If someone owns a property at death, that property is eligible for a step up in basis upon their death thus reducing the capital gains tax due. Say a person owned an empty lot for which they paid $500 20 years ago and it was worth $5,000 upon their death, the lot is now valued at $5,000 for taxes. If it is sold for $6,000 the estate or heirs will only be liable for capital gains taxes on the $1,000 gain.
- There is no capital gain on the sale of a primary residence if the gain is less than $250,000 for a sole owner or $500,000 for a couple filling jointly.
Powers of Attorney

• General Powers – authorizes the attorney-in-fact to act on your behalf in all personal financial transactions and affairs. It may terminate upon your disability or incapacity and ceases upon your death. (1)

• Limited Powers – authorizes the attorney-in-fact to act on your behalf only in the matters specifically designated in the written document. Say, sign checks for a limited amount of money or sell a specific piece of real estate. It terminates upon your death. (1)

• Durable Powers – continue to be effective even if you become disabled or incapacitated. A durable power of attorney can be made effective upon the occurrence of a future event, say a doctors diagnoses. It terminates upon your death. (1)

(1) To learn more visit with your attorney or download the Handbook for Older Iowans from the Young Lawyers Division of the Iowa State Bar Association: http://c.ymcdn.com/sites/www.iowabar.org/resource/resmgr/docs/older_iowan_handbook.pdf

The purpose of this publication is to help you begin to think about some of the possible questions or situations you could encounter in later life. Not all will affect everyone. Like any new adventure, later life will bring both exciting experiences and challenges. We cannot anticipate all of them or the cost of each, but we do know that people who plan are more prepared for the future than those who do not! What’s in your retirement picture? Do you want to make changes? If so, what can you do today to affect your future?

NOTE: This information is provided as an educational service and is not intended as, nor should it be considered legal advice but provides general information.