



Seven Answers for Peace of Mind

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1. Do you know what would happen to your assets if you died unexpectedly?

If you haven't reviewed your assets to consider how they are titled (joint or individual) or who you have named as the account beneficiary (on your life insurance, for example) you may be surprised to find out how your property would be distributed upon your death. Your Last Will and Testament only represents part of the picture. Many assets have built-in transfer mechanisms such as rights of survivorship or beneficiary designations. Assets titled in your name alone will transfer according to the terms of your Will or via intestacy if you do not have one. Estate Planning requires a review of your assets, not just the signing of a Last Will and Testament.

Just because you have a Will doesn't mean that you're all set. Your Last Will and Testament only controls the assets you own "by yourself" at the time of your death. If you have accounts that have been set-up so that you own them jointly with someone else, they may pass to the joint-owner by right-of-survivorship. Many assets, like IRAs, annuities and life insurance, require that you list someone as a "beneficiary". A beneficiary is entitled to this asset when you die. All of your assets should be reviewed when you create a Will so that your estate distribution is coordinated. If you make changes to the ownership (title) or type of assets you have, the distribution of your estate may change dramatically.

Your Will is only the "outline" of your intentions for the distribution of your wealth when you die. The real issues that you may be concerned about may involve the management and use of those assets during the rest of your life. Most likely, you will not die with the exact asset structure that you have in place when you sign your Will. Furthermore, your Executor will not have any authority to act until you have died. A lot can (and probably will) happen to you and your money before that time. Signing your Will should be the first step in creating a plan that outlines your financial future, as best as can be determined, by involving your family and professional advisors. After these steps have been taken, you might be closer to being "all set".

If you would like to avoid probate, you need to know that your Will controls the transfer of assets owned in your name alone, as well as those assets that do not have a built-in transfer mechanism such as rights of survivorship or beneficiary designations. For those assets, your Will determines the distribution. Probate is the necessary process of "proving" the validity of your Will and governs the procedures used by your Executor to complete the collection and distribution of those assets that pass by the terms of your Will. The Court becomes involved because you are no longer here to speak for yourself. In short, the Court wants to ensure that your directions are followed. If you want to avoid probate, there are many other ways to ensure the proper distribution of your assets after you die. These alternatives should be explained to you by your Estate Planning team.

2. Is someone in your family prepared to manage your affairs if you became mentally or physically disabled?

In this case, the first thing to do is complete a Statutory Durable Power of Attorney. This document allows you to designate the person who will be able to handle your financial matters, and it remains effective should you become disabled. The person you select should be someone

that you trust and who is able and willing to step-in and help you when needed. The new New York State Durable Power of Attorney form requires your agent to sign and acknowledge his or her responsibilities before they can act on your behalf. Prior to signing, it is a good idea to review your financial situation with your agent.

To be able to effectively manage your affairs according to your wishes, your agent needs to be informed about what you own, where it is and what you would like to have happen with your assets. The time you sign a new Power of Attorney should be the time that you review your current financial situation with your agent and discuss your financial plans and concerns.

Forms available online or from stores usually contain only "general" powers. A general power of attorney form may not provide your agent with sufficient authority for the agent to take some important financial steps on your behalf, such as making gifts, establishing trusts, engaging in disability planning or tax planning. An experienced attorney will know how to incorporate the provisions you need into the document. The document should consider the problems most often faced by older people and will include appropriate provisions that can be helpful in the management of your affairs.

3. You say you don't want to be a burden to your children, but what have you done about it?

The truth is, you have to open up and give your children a sense of what you want to have happen, regarding the challenges you can foresee as you age. This way, together, you can discuss the alternatives that you see for handling potential situations and the resources that you have to meet the expected needs. This discussion can be fostered with the assistance of an Elder Law Attorney. Planning should be done now, while everyone is thinking clearly and can cooperate in formulating a plan for your future. Most people have completed only pieces of the solution. By working with the guidance of professionals, your family can develop a plan for aging that everyone can agree upon and live with.

Maybe your children all get along and therefore you feel there is no need to bother with any planning. You may be right. But do they know about the charities you want to support, what to do with the family home, and which accounts are intended for special purposes that you haven't explained? Do they all agree on who will provide your care if you need help in the future and where you want to be cared for? Do you have one child that knows everything and the others are in-the-dark?

4. Are you worried that a serious or prolonged illness will diminish or deplete your assets?

Herein lies the distinction between Estate Planning and Elder Law, as defined by attorneys who may practice in these areas. If you ask for "Estate Planning" services, the attorney may, rightly, focus exclusively on what happens to your assets when you die. They may not be trained in the complicated aspects of asset ownership and gifting that are so important when someone requires long-term care services. The advice that you receive about your "estate" may be absolutely correct,

but entirely in conflict with the necessary planning that should be done in order to prevent the loss of those assets through the expense of a long-term need for care. If you want to be prepared for the potential costs of aging, you should review your plan with an experienced Elder Law attorney who knows the ins-and-outs of various government programs and services that may be available to you if your assets are structured correctly.

Lack of knowledge about government long-term care programs is an impediment to proper long-term care planning. Many people believe they can give away assets immediately prior to the need for care and still qualify for Medicaid. It is possible, but only if done in the "correct way". When people understand the real benefits and limitations of relying on government programs they are likely to be more motivated to plan for the future by making plans in advance. The income and resource limits and rules about asset transfers are constantly changing and can be explained by someone who concentrated their legal practice in this area. Everyone's family and asset structure is different and there are exceptions to every rule. You should not simply rely on the "numbers" you may be given for asset limits, because your situation may be different, for many reasons.

5. Isn't Estate Planning expensive?

You have spent a lifetime building your wealth, by working hard and investing well. Doesn't it make sense to invest several thousand dollars in professional fees now to save potentially hundreds of thousands of dollars in unnecessary taxes, care-costs, or legal fees to protect your financial legacy and preserve family harmony? What kind of price tag do you put on that kind of peace of mind? Everyone knows a tragic stories of thousands or tens of thousands of dollars-lost and families torn-apart when a parent became incapacitated or died. That is what happens when people don't have an estate plan. Do the work now and give your family more money and peace of mind.

There is a difference between hourly billing and value-billing. Some law firms bill on a flat-fee (value) basis for services. This type of compensation is predetermined and avoids the endless stream of invoices that are prevalent at firms that bill by-the-hour. The value-billing attorney will give you an up-front fee for the services they intend to provide. Then you can determine, based on the savings that will result from the plan and the amount of work involved, if it is a mutually agreeable relationship. As an active client, you generally will be billed to maintain contact, have meetings or ask questions while they work on your plan. You will be a client of the firm and if you want, they can be your planners for the rest of your life. When another project or major change to the plan is required, they will establish another agreement for the next phase of services.

6. Why do I need a professional when I can do it myself?

Unfortunately, for most people, eldercare is a do-it-yourself process. This is definitely not the best approach. Using professional care advisors may be the most cost-effective and efficient way to provide help for a loved one. Hiring professional advisers to help with long-term care is no different than using a professional to work with other complex issues. Using the expertise of a long-term care professional is likely to result in dollar savings many times larger than the cost of hiring the expert. The care manager has been there many times while the family is experiencing the

health changes of a loved one for the first time. He or she can guide the family and caregiver through the maze of long-term care issues. Understanding the options with long-term care can be overwhelming to someone who does not have a background in this area.

Many people are unaware of the variety and types of assistance that are now offered and refer to all facilities as "nursing homes". Today's landscape for aging services is extensive and continues to grow. Medicaid offers home care services. Assisted living facilities offer a blend of retirement living and personal care. Continuing Care Communities offer a wide range of housing and care options all in one location. It is only when an individual requires total care or has complicated medical management needs that a skilled or nursing facility becomes necessary.

There are various ways that people pay for long-term care. They include private payment, Medicare reimbursement for some services, military veterans whose resource and income levels are within VA guidelines may be eligible for Aid and Attendance cash benefits, payment by long-term care policies, and also Medicaid.

Coverage is distinct under each of these programs and varies depending on what type of care you may be receiving.

7. Do you feel comfortable discussing all of this with your current attorney?

This could be the most important question you answer. The process of Estate Planning requires you to feel comfortable talking about very private family matters and money issues. Your attorney should be able to ask the right questions to help you determine your goals regarding plans for the rest of your life. Your attorney will be your guide and offer suggestions based on your specific situation using his or her experience and expertise in this specific area of law. With assistance, you can learn how to avoid common mistakes and be educated about techniques that you may not have considered. If you're not sure of your attorney's ability in this area of law or are not comfortable getting really "personal" with him or her, find someone you can trust to guide you. It could make all the difference in the world for you and your family.

Your Estate Planning Team should include an Elder Law Attorney, a Certified Financial Planner, an accountant and, perhaps a Geriatric Care Manager. This group of specialists will help your family explore the best solutions to your specific situation. Without help, families may not choose the best option. Families that are prepared in advance are going to be significantly more successful than families that use a last-minute "do-it-yourself" approach. Using a professional team will save considerably more money than the actual cost of the services they provide.