



When Your Aging Parents Need Estate Planning

By Michael Kemmy

Emily and Brad are a married couple in their late 40s with a couple of teenage children. Emily's parents, Joe and Sarah, are in their 70s and have three adult children, Emily and two sons. Emily is the oldest, and she lives in the same town as her parents. Her brothers both live out of town. Joe and Sarah have always been independent and have not shared their financial information with their children. Recently, Joe has missed paying a few bills — something uncharacteristic of him — and he has started showing other signs of dementia. Sarah is in fair health, but Joe has always handled their finances.

Emily has become concerned about her parents' future as she realizes she will be the one taking care of them when they can no longer care for themselves. She suspects that, if they have wills and powers of attorney, they were done many years ago. She is worried about what would happen to her mother if her father has to go into a nursing home. She's not sure what to do, but one of her friends suggested that she talk to an attorney.

All Too Familiar



This is an all-too-familiar scenario in my position as a practitioner of elder law. I can't tell you how many times a month I get a desperate phone call from an adult child saying "Dad has dementia, and I need a power of attorney." Usually the dementia has progressed to the point that Dad no longer has the mental competence to sign a power of attorney, a will, or any other legal document.

At that point, it's too late for a power of attorney to be the solution to Dad's failing capacity. He may need a legal guardian, which involves a costly and public court proceeding. Given Dad's dementia, this client needs to act soon if he is going to be able to make an effective plan to address his parents' needs and concerns.

Of course, it doesn't have to be this way. With estate and financial planning — as with many problems that arise in life — there are two options: advance planning and crisis planning. It should come as no surprise that your parents will likely achieve a better outcome for themselves with advance planning.

If you are concerned about the state of your parents' estate planning — or simply want to get ahead of the curve — one of the most important roles you have could be helping them understand that they should seek professional advice.

Starting the Conversation

As people age, their financial situations change, as do their goals, preferences, and outlooks.

Too often, however, they do not update their financial or estate plans to match the current situation. So, even if your parents are hesitant to discuss the details of their financial and estate plans with you, you can suggest that they talk confidentially with financial and legal professionals who can guide them through the process of updating their documents.

Be wary of listening to advice given by well-meaning friends and relatives. Planning for elders is very fact specific, so what may have worked for someone else may not be right for your parents. You should also be aware that laws in these cases vary widely from state to state. A professional will ask questions and bring up issues that you or your parents may not have thought about — or perhaps were uncomfortable discussing — but that need to be addressed.

Gather Information

Your parents should gather the pertinent legal and financial information their planners will need to create a plan that's right for them. Ask them if they want you to help them put this information together. They will need to identify and locate their existing estate planning documents, if they have any. They will need a list of their assets, including values and how each asset is titled (his, hers, or joint). Each parent should also itemize the source and amount of his or her monthly income.

Your parents should also gather medical information, such as current medications, names of doctors and other healthcare providers, and health insurance information. This information will be important in the future to you and your siblings, as well as any other caretakers or legal professionals.

Estate and Asset Protection Planning

Ordinary estate planning is important for everyone. It's even more important for the elderly. These are five essential estate planning documents that each of your parents should have. They are:

- **Last will and testament.** Very simply, a will is a legal document that directs how your property will be distributed after you die. In your will, you designate a person you trust to manage the distribution of your assets. You can also create a trust in your will for the benefit of your spouse or children. If you do not have a will, the state will determine how your estate is distributed.
- **Durable power of attorney.** A durable power of attorney gives someone else the authority to act on your behalf and make legal and financial decisions should you become incapacitated.
- **Healthcare power of attorney.** This document, also known as a *healthcare proxy*, enables you to designate a person to make medical decisions on your behalf in the event you become unable to make them yourself.
- **Living will.** A living will, sometimes called an advance *healthcare directive*, specifies your wishes for end-of-life care in writing. It can address such issues as whether you want to be resuscitated if your breathing or heartbeat stops, or whether you want to be kept alive through artificial respiration or feeding.
- **HIPAA authorization.** A federal law called the Health Insurance Portability and Accountability Act (HIPAA) sets strict rules on who can look at your medical records or receive your medical and health information. A HIPAA authorization allows you to name a person to receive your medical information from your healthcare providers or your health insurance company.

These basic documents will allow your parents to state how they want their assets to be distributed upon death, who will be in charge of administering their estates, who will make financial and medical decisions for them when they are not able to make their own decisions, and what their end-of-life medical choices are.

Beyond estate planning, depending on your parents' wishes and their financial situation, asset protection planning may be appropriate for them. An elder law attorney can give them advice and make suggestions for protecting their assets in the event one or both of them need to go to a nursing home. Without advance planning, your parents may have to pay their own way in the nursing home until their assets are nearly exhausted. At that point, they could apply for Medicaid benefits.

While there is some protection for a spouse who is still living at home, life could become very difficult for that parent if most of their other assets were used up. This can be a sensitive and scary topic to discuss with them because no one wants to go to a nursing home. However, because our population is aging and we are living longer, more people do, in fact, end up living in nursing homes. Asset protection planning can't change that, but it may be able to make life more bearable for the parent



living at home. Remember, advance planning is much more effective than crisis planning.

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