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1001 Craig Road, Suite 224, St. Louis, Missouri 63146
314-567-9292

107 Southpointe Drive, Suite 2, Edwardsville, Illinois 62025
618-659-9292

GOOD INTENTIONS, BAD RESULTS: The Trouble with "Sweetheart Wills"

Most married people who have planned their estates have what are sometimes known as "sweetheart wills." The structure is simple and easy to recognize: when the first of us dies, everything should go to the other one, and when the second one dies, it should all go to our children.

Many married people reading this are probably thinking, "That's exactly what our wills say, and that's exactly what we want."

So what's the problem? Well, as the saying goes, sometimes life gets in the way.

Imagine having wills that read as follows: after the first of us dies, we want to risk everything we have, and if the one who lives longer winds up needing nursing home care, it's okay if our children wind up with little or nothing.

Guess what: that's exactly what your "sweetheart wills" really say, unless you each have a good long-term care insurance policy that protects you against that risk.

If you're thinking "Not me, I'll never end up in a nursing home," think again. Recent studies are very consistent in showing that, if you live past age 65, there's about a 45% chance that you will eventually need long-term care.

The more you think about it, the less surprising that statistic becomes. People are living longer. Medical problems that used to kill people aren't necessarily a death warrant these days. The list of cancer survivors grows every year. People who have suffered major heart attacks have

bypass surgery. The list goes on and on. For married people, the risk that any needed long-term care would have to be provided in a nursing home increases after the first spouse dies. The reason is easy to understand. The most logical home caregiver is no longer there. Adult children often have too many other responsibilities to take on the burden of caring for an aging parent.

The extent of the financial risk should not be underestimated. The single most likely financial outcome when a person enters a nursing home is that he or she starts out paying privately, then ends up going broke and going on Medicaid. People really do spend their entire life savings.

Incidentally, the same problem arises when a married couple owns most of their assets in joint tenancy, as most married couples do. When the first one dies, everything belongs to the other one, and it's all up for grabs if that one then later needs long-term care.

It used to be that the main question an estate plan addressed was, "What will happen when you die?" But now, it's just as important to ask, "What will happen if you live?" In other words, if you die broke, your estate plan won't matter.

So the question is raised: is there anything a married couple can do to avoid the risk of losing everything they have to the cost of long-term care?

Fortunately, the answer is "yes." A couple can effectively avoid that risk through a process we

call "Medicaid estate planning."

Here, basically, is how it works. Each spouse owns a share of the couple's assets separately. Each has estate planning documents (generally, both a will and a living trust) that provide as follows: if I die first, I want my estate to be available for my spouse's benefit, but in a way that will protect it from having to be spent for nursing home costs. Then when the second of us dies, the rest will go to our children.

That result is accomplished by providing for your spouse through a trust that can be used to pay any expenses if your spouse is living at home, but only pays for things Medicaid doesn't cover if your spouse goes into a nursing home and applies for Medicaid. If it is set up correctly, the assets of the trust do not have to be "spent down" for the surviving spouse to qualify for Medicaid.

There is room for flexibility, within that basic structure, to best address each couple's individual circumstances. Depending on the couple's ages and the extent of their assets, they may want part of the estate to be distributed to children when the first spouse dies. That might particularly be the case in a second marriage situation, when the spouses each have their children from their prior marriages.

This planning is not intended as a substitute for long-term care insurance, which can also protect against the risk of one spouse needing long-term care (in any setting, not just a nursing home) while both are alive, and can also safeguard the separate assets of a surviving spouse. But many older people can't get long-term care insurance, and many others can't afford it. In addition, this planning can be used in conjunction with long-term care insurance to maximize its effectiveness and help make it more affordable for more people.

Unlike the planning used to avoid or minimize estate taxes (a concern that not many people face now that the estate tax exemption has been increased to \$2 million), this planning is decidedly not "just for rich people." It's for anyone whose assets may be at risk if the need for

nursing home care arises - in other words, *everyone*.

Does this planning cost more than "sweetheart wills"? Yes, it does – but in most cases, the cost is less than what a couple in their 70's would pay for a year of coverage under a decent long-term care insurance policy.

Is it worth the extra expense?

For a lot of couples, "Medicaid estate planning" will spell the difference between whether they are or are not able to leave an inheritance to their children or other loved ones. If that's of any importance to you, then yes, it's definitely worth it.

Hospice Newsletter Has Arrived

The Coulson Law Group has a new newsletter for 2007 - *Hospice Care and Planning*. It addresses the interrelated medical, emotional, legal and other challenges faced by Hospice families. We welcome contributions from guest columnists.

To be added to our mailing list for *Hospice Care and Planning* or if you would like to be a guest columnist, please contact our Director of Community Education and Outreach, Beth Frame, at (314) 567-9292 or (618) 659-9292, or email to beth@coulsonlawgroup.com, to be included in our distribution.

To view past issues of our *Medicaid Planning Today* or our new *Hospice Care and Planning*, visit our website at www.qualifyformedicaid.com and click on the Newsletter Archives tab or call our office at 314-567-9292 and we will send the issues to you.

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