

MICHIGAN LEAGUE FOR NURSING GERIATRIC WORKSHOP
ELDER CARE: EDUCATING FUTURE CAREGIVERS
MAY 19, 2016

LEGAL ISSUES IN ELDER CARE

OUTLINE

- Estate Planning
- Trusts
- What to do with the house
- How Estate Planning Impacts Medicaid
- Vulnerable Adult / Elder Abuse

ESTATE PLANNING DOCUMENTS

WILL

DESIGNATION OF A PATIENT ADVOCATE/MEDICAL POWER OF ATTORNEY

DURABLE POWER OF ATTORNEY FOR FINANCES

ESTATE PLANNING DOCUMENTS

OF THESE THREE DOCUMENTS, TWO OPERATE DURING THE LIFE OF THE INDIVIDUAL

DURABLE POWER OF ATTORNEY FOR FINANCES

DESIGNATION OF A PATIENT ADVOCATE

ONE OPERATES AFTER DEATH

WILL

DURABLE POWER OF ATTORNEY -- FINANCES

WHAT IS A DURABLE POWER OF ATTORNEY?

A DOCUMENT IN WHICH ONE INDIVIDUAL (THE PRINCIPAL) APPOINTS ANOTHER PERSON (THE AGENT) TO PERFORM A SPECIFIC ACTIVITY FOR THE PRINCIPAL.

DURABLE POWER OF ATTORNEY -- FINANCES

WHAT MAKES THE DOCUMENT DURABLE?

DURABLE POWER OF ATTORNEY -- FINANCES

THE POWER OF ATTORNEY CAN BE

GENERAL: GIVING THE AGENT POWER OVER ALL OF THE PRINCIPAL'S FINANCIAL AFFAIRS AND ASSETS

LIMITED: GIVING THE AGENT ACCESS OR POWER OVER ONLY CERTAIN ASSETS

SPECIFIC: FOR A SPECIFIC TASK: "SELL MY CAR"

DURABLE POWER OF ATTORNEY -- FINANCES

CHOICE OF AGENT:

ABOVE ALL: BE ABLE TO TRUST THE AGENT WITHOUT RESERVATION

AGENT SHOULD BE ABLE TO MANAGE THEIR OWN MONEY

AGENT SHOULD NOT HAVE PROBLEMS SUCH AS GAMBLING, DRINKING, ETC

*** THIS DOCUMENT HAS THE POTENTIAL FOR INCREDIBLE ABUSE***

SO IF THE PRINCIPAL IS UNSURE, BETTER NOT TO DO ONE AT ALL

DURABLE POWER OF ATTORNEY -- FINANCES

EFFECTIVE DATE OF THE DOCUMENT

PRESENTLY EFFECTIVE: ALLOWS THE PRINCIPAL TO OBSERVE THE AGENT WHILE THE PRINCIPAL IS STILL COMPETENT

EFFECTIVE ON INCAPACITY: BANKS AND OTHER INSTITUTIONS WHO ACCEPT THESE DOCUMENTS MAY WANT REPEATED DOCUMENTATION THAT THE PRINCIPAL IS INCAPACITATED

DURABLE POWER OF ATTORNEY -- FINANCES

ALTERNATIVES TO A DURABLE POWER OF ATTORNEY

CONSERVATOR: COURT APPOINTED AND ANSWERABLE TO THE COURT

PUTTING SOMEONE'S NAME ON YOUR ACCOUNT – NOT A GOOD IDEA!

CO-OWNER

CAN DESTROY ESTATE PLAN

LIABILITY

DESIGNATION OF A PATIENT ADVOCATE

KNOWN BY DIFFERENT NAMES

DESIGNATION OF A PATIENT ADVOCATE

HEALTH CARE POWER OF ATTORNEY

MEDICAL POWER OF ATTORNEY

DESIGNATION OF A PATIENT ADVOCATE

PRINCIPAL APPOINTS ANOTHER PERSON (AGENT) TO MAKE HEALTH DECISIONS FOR THEM WHEN THEY ARE UNABLE TO DO SO

THIS IS DIFFERENT THAN A LIVING WILL WHICH IS BASICALLY AN EXPRESSION OF THE PRINCIPAL'S WISHES

IT IS IMPORTANT TO REMEMBER, THE PRINCIPAL MAKES THEIR OWN DECISIONS FOR AS LONG AS THEY ARE ABLE TO DO SO

DESIGNATION OF A PATIENT ADVOCATE

WHO IS A GOOD CHOICE FOR AN AGENT ?

DON'T FORGET THE SPOUSE, BUT NOT NECESSARILY THE
SPOUSE

SOMEONE WHO WILL FOLLOW YOUR DIRECTIONS!

DESIGNATION OF A PATIENT ADVOCATE

WHAT CAN ONE PUT IN A POWER OF ATTORNEY FOR HEALTH CARE?

DESIGNATION OF AN AGENT

WHAT YOU WANT IF YOU BECOME TERMINALLY ILL

IF YOU WANT RESUSCITATION (FULL CODE) IF YOU ARE TERMINALLY ILL

IF YOU WANT A FEEDING TUBE IF YOU ARE TERMINALLY ILL

IF YOU WANT HOSPICE SERVICES (AND WHICH HOSPICE)

WHICH FUNERAL HOME YOU WOULD LIKE CALLED

GUIDANCE ON ALL OTHER ASPECTS OF YOUR CARE

DESIGNATION OF A PATIENT ADVOCATE

WHAT HAPPENS IF YOU DO NOT HAVE A MEDICAL POWER OF ATTORNEY AND AN ADVOCATE?

IF AN INDIVIDUAL CANNOT MAKE DECISIONS DUE TO ACCIDENT OR ILLNESS, A GUARDIANSHIP MAY NEED TO BE SOUGHT

THE COURT WILL THEN APPOINT A LEGAL REPRESENTATIVE FOR THE INDIVIDUAL

WILL

IN A WILL, AN INDIVIDUAL MAY NOMINATE

A PERSONAL REPRESENTATIVE (FORMERLY EXECUTOR)

A GUARDIAN FOR THEIR MINOR CHILD OR CHILDREN

INDIVIDUAL MAY DIRECT THE SETTLEMENT OF THEIR AFFAIRS

WILL

INDIVIDUAL MAY

MAKE SPECIFIC AND GENERAL GIFTS

SENTIMENTAL ITEMS ARE, *BY FAR*, THE MOST IMPORTANT!

THE FALLACY OF THE STICKER METHOD....

DETERMINE HOW THE REMAINDER OF THEIR ESTATE IS DIVIDED

TRUSTS

THE FIRST QUESTION TO ASK IS WHY THE INDIVIDUAL WANTS A TRUST

THERE MAY BE GOOD REASONS FOR HAVING A TRUST

SOME SIMPLY WANT TO AVOID PROBATE

SOME TRUSTS ARE HELPFUL, OTHERS HARMFUL, DEPENDING ON THE SITUATION

TRUSTS

SOMETIMES TRUSTS ARE USEFUL:

TO CONTINUE THE MANAGEMENT OF A BUSINESS

TO GIVE A GIFT TO A YOUNG OR DISABLED CHILD

TO MANAGE MONEY FOR A SPENDTHRIFT CHILD

FOR TAX PURPOSES

TRUSTS

SOMETIMES TRUSTS ARE HARMFUL

MEDICAID

TRUSTS

REASONS NOT TO HAVE A TRUST:

BECAUSE MY FRIEND MABLE HAS ONE

IT SOUNDS IMPRESSIVE

IT SOUNDS SOLID

THINGS OF WHICH TO BE AWARE....

EACH OF THESE DOCUMENTS HAS REQUIREMENTS FOR SIGNING

THERE ARE MANY ON-LINE FORMS THAT MAY BE MORE HARMFUL THAN HELPFUL

LEGAL ZOOM HAS BECOME KNOWN AS THE CONTINUING EMPLOYMENT OPPORTUNITY FOR LAWYERS

LANGUAGE IS IMPORTANT – EG HEIRS vs DESCENDENTS

THINGS OF WHICH TO BE AWARE....

SOMETIMES PEOPLE WANT TO INCLUDE STEP-CHILDREN WHEN THEY REFER TO “CHILDREN”.

THE LAW DOES NOT ASSUME THEY ARE INCLUDED UNLESS YOU STATE SO

SECOND MARRIAGES POSE POTENTIAL CHALLENGES – SEEK ADVICE!

WHAT TO DO WITH THE HOUSE

SHOULD I PUT MY CHILD'S NAME ON THE DEED TO THE HOUSE?

WHAT IF I JUST DO NOTHING?

WHAT IS A "LADY BIRD DEED"?

MEDICAID AND SENIORS

MEDICAID IS NEEDED TO PAY FOR LONG TERM CARE FOR MANY

THERE ARE COMPLEX RULES FOR ELIGIBILITY FOR MEDICAID

BASICALLY, ONE MAY HAVE A HOUSE, PERSONAL PROPERTY, ONE CAR
AND \$2000.00 IN LIQUID ASSETS

IF THERE IS A BUSINESS LIKE A FARM, THEY MAY HAVE EQUIPMENT

MEDICAID AND SENIORS

THERE ARE MANY RULES TO QUALIFY

ONE CANNOT GIVE AWAY ASSETS TO QUALIFY: DIVESTMENT

FIVE YEAR LOOK BACK-PERIOD FOR DIVESTMENT

IF ONE SELLS THE HOUSE, THE PROCEEDS MUST BE USED FOR THE SENIOR'S CARE – IT CANNOT BE GIFTED

MEDICAID AND SENIORS

PUTTING THE HOUSE IN A TRUST COUNTS AGAINST THE SENIOR BECAUSE THEY ARE NO LONGER THE OWNER – THE TRUST IS

SELLING THE HOUSE ON A LAND CONTRACT ALSO WORKS AGAINST THE SENIOR – THE VALUE OF THE LAND CONTRACT AND THE MONTHLY PAYMENTS ALL COUNT AGAINST THE SENIOR – A DOUBLE WHAMMY!!

A REVERSE MORTGAGE ALSO COUNTS AGAINST THE SENIOR

MEDICAID AND SENIORS

MEDICAID WILL FILE A CLAIM AGAINST THE PROBATE ESTATE TO RECOVER THE COSTS OF CARE FOR THE SENIOR

THERE ARE ALLOWANCES FOR A COMMUNITY SPOUSE AND/OR DISABLED CHILD

A CLAIM CANNOT BE FILED IF THERE IS NO PROBATE ESTATE

THE HOUSE IS THE MAIN ISSUE HERE – THE LADY BIRD DEED IS A WONDERFUL SOLUTION

VULNERABLE ADULT ABUSE

THERE ARE TWO SETS OF STATUTES THAT ADDRESS VULNERABLE ADULTS

THE MICHIGAN PENAL CODE

SOCIAL WELFARE ACT

VULNERABLE ADULT ABUSE

THE MICHIGAN PENAL CODE

VULNERABLE ADULT IS ONE OR MORE OF THE FOLLOWING:

- i) AN INDIVIDUAL 18 YEARS OR OLDER WHO, BECAUSE OF AGE, DEVELOPMENTAL DISABILITY, MENTAL ILLNESS OR PHYSICAL DISABILITY REQUIRES SUPERVISION OR PERSONAL CARE OR LACKS THE PERSONAL AND SOCIAL SKILLS REQUIRED TO LIVE INDEPENDENTLY;

Continued.....

VULNERABLE ADULT ABUSE

ii) AN ADULT AS DEFINED IN THE ADULT FOSTER CARE FACILITY LICENSING ACT;

ii) AN ADULT AS DEFINED IN THE SOCIAL WELFARE ACT

VULNERABLE ADULT ABUSE

MICHIGAN PENAL CODE

VULNERABLE ADULT ABUSE IN THE FIRST DEGREE:

A CAREGIVER IS GUILTY OF VULNERABLE ADULT ABUSE IN THE FIRST DEGREE IF THE CAREGIVER INTENTIONALLY CAUSES SERIOUS PHYSICAL OR MENTAL HARM TO A VULNERABLE ADULT .

THIS FELONY IS PUNISHABLE BY IMPRISONMENT OF NOT MORE THAN 15 YEARS AND A FINE OF NOT MORE THAN \$10,000.00 OR BOTH.

VULNERABLE ADULT ABUSE

MICHIGAN PENAL CODE

VULNERABLE ADULT ABUSE IN THE SECOND DEGREE:

A CAREGIVER OR OTHER PERSON WITH AUTHORITY OVER THE VULNERABLE ADULT IS GUILTY OF VULNERABLE ADULT ABUSE IN THE SECOND DEGREE IF THE RECKLESS ACT OR RECKLESS FAILURE TO ACT OF THE CAREGIVER OR OTHER PERSON CAUSES PHYSICAL HARM OR SERIOUS MENTAL HARM TO A VULNERABLE ADULT .

THIS FELONY IS PUNISHABLE BY IMPRISONMENT OF NOT MORE THAN 4 YEARS AND A FINE OF NOT MORE THAN \$5,000.00 OR BOTH.

VULNERABLE ADULT ABUSE

MICHIGAN PENAL CODE

VULNERABLE ADULT ABUSE IN THE THIRD DEGREE:

A CAREGIVER IS GUILTY OF VULNERABLE ADULT ABUSE IN THE THIRD DEGREE IF THE CAREGIVER INTENTIONALLY CAUSES PHYSICAL HARM TO A VULNERABLE ADULT .

THIS MISDEMEANOR IS PUNISHABLE BY IMPRISONMENT OF NOT MORE THAN 2 YEARS AND A FINE OF NOT MORE THAN \$2,500.00 OR BOTH.

VULNERABLE ADULT ABUSE

MICHIGAN PENAL CODE

VULNERABLE ADULT ABUSE IN THE FOURTH DEGREE:

A CAREGIVER OR OTHER PERSON WITH AUTHORITY OVER THE VULNERABLE ADULT IS GUILTY OF VULNERABLE ADULT ABUSE IN THE FOURTH DEGREE IF THE RECKLESS ACT OR RECKLESS FAILURE TO ACT OF THE CAREGIVER OR OTHER PERSON CAUSES PHYSICAL HARM TO A VULNERABLE ADULT .

THIS MISDEMEANOR IS PUNISHABLE BY IMPRISONMENT OF NOT MORE THAN 1 YEAR AND A FINE OF NOT MORE THAN \$1,000.00 OR BOTH.

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT -- DEFINITIONS

ABUSE: HARM OR THREATENED HARM TO AN ADULT'S HEALTH OR WELFARE CAUSED BY ANOTHER PERSON. INCLUDES BUT NOT LIMITED TO NON-ACCIDENTAL PHYSICAL OR MENTAL INJURY, SEXUAL ABUSE OR MALTREATMENT.

EXPLOITATION: THE MISUSE OF AN ADULT'S FUNDS, PROPERTY, OR PERSONAL DIGNITY BY ANOTHER PERSON

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT -- DEFINITIONS

NEGLECT: HARM TO AN ADULT'S HEALTH OR WELFARE CAUSED BY AN INABILITY OF THE ADULT TO RESPOND TO A HARMFUL SITUATION OR BY THE CONDUCT OF A PERSON WHO ASSUMES RESPONSIBILITY FOR A SIGNIFICANT ASPECT OF THE ADULT'S HEALTH OR WELFARE.

INCLUDES: FAILURE TO PROVIDE FOOD, CLOTHING, SHELTER OR MEDICAL CARE

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT -- DEFINITIONS

VULNERABLE: A CONDITION IN WHICH AN ADULT IS UNABLE TO PROTECT HIMSELF OR HERSELF FROM ABUSE, NEGLECT, OR EXPLOITATION BECAUSE OF A MENTAL OR PHYSICAL IMPAIRMENT OR BECAUSE OF ADVANCED AGE.

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT – REPORTING

MANDATORY REPORTERS: PERSON EMPLOYED, LICENSED, REGISTERED, OR CERTIFIED TO PROVIDE HEALTH CARE, EDUCATIONAL, SOCIAL WELFARE, MENTAL HEALTH, OTHER HUMAN SERVICES;

EMPLOYEE OF AN AGENCY THAT PROVIDES ANY OF THE ABOVE SERVICES;

LAW ENFORCEMENT OFFICER OR COUNTY MEDICAL EXAMINER; ANY EMPLOYEE OF THE MEDICAL EXAMINERS' OFFICE

ANY OTHER MANDATORY REPORTER UNDER THE PUBLIC HEALTH CODE

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT – REPORTING

REPORTING IS NOT A VIOLATION OF ANY REQUIRED CONFIDENTIALITY
(EXCEPT ATTORNEY CLIENT PRIVILEGE)

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT – INVESTIGATION

MUST COMMENCE WITHIN 24 HOURS AND INCLUDE MEETING WITH THE SUBJECT OF THE REPORT

MAY INCLUDE MEDICAL, PSYCHOLOGICAL, SOCIAL, FINANCIAL EVALS

MAY MAKE REPORTS AND INVOLVE POLICE AND PROSECUTOR

MAY FILE PETITIONS FOR GUARDIANSHIP AND CONSERVATORSHIP

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT

REPORTING PERSON IMMUNE FROM CIVIL LIABILITY IF DONE IN GOOD FAITH

MAY HAVE TO TESTIFY IF THE VULNERABLE ADULT SUFFERED PERSONAL INJURY OR DEATH

AGENCY GENERALLY CHARGED WITH INVESTIGATION IS ADULT PROTECTIVE SERVICES IN DHHS.

VULNERABLE ADULT ABUSE

SOCIAL WELFARE ACT

IF THE ABUSE/NEGLECT OCCURS IN AN AGENCY UNDER A DIFFERENT ADMINISTRATION (PRISON, MENTAL HOSPITAL) THE INVESTIGATING BODY FOR THAT ADMINISTRATION INVESTIGATES THE ABUSE

LEGAL ISSUES IN ELDER CARE

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?? QUESTIONS ??

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