

GROWING OLDER—Plan Now For the Future

By Jawn J. Bauer

AANR Legal Counsel

What Aging Parents and Adult Children May Do

As our life-span continues to grow through medical advances and better health it becomes essential to consider actions that aging parents and their adult children may each take to help preserve the assets of the aging parent and protect the quality of life. This article is not meant as individualized legal advice since most states have different provisions for estate planning and asset preservation. The article may help you consider options to investigate for your future planning.

General Power of Attorney

Provided the parent feels comfortable with the decision-making ability of the child and is competent, they may wish to execute a General Power of Attorney. This allows a child to act on behalf of a parent. This is a powerful instrument in that it will give the child, or whoever is assigned the General Power of Attorney, the ability to act on the parent's behalf for whatever purposes are stated. As a result of the power that this instrument gives the person who holds it, it is essential that a parent have complete trust in the child and the child's decision-making process with regards to the parent's assets. A Power of Attorney can also be executed that does not become ineffective if a parent were to become mentally incompetent as a result of age, injury, and/or disease. A Power of Attorney can only be executed by someone who is legally competent to do so. A Power of Attorney is extinguished at the time of the death of the person who assigns that power.



The Power of Attorney can be a useful tool for helping a parent take care of day-to-day affairs.

Joint Ownership

With married couples, joint ownership is common. It means that upon the death of one spouse, the remaining spouse would take the asset as his/her sole property.

Aging parents often will seek to deed their property to themselves and their child. This can be done with different forms of joint ownership.

Joint ownership with rights of survivorship means that as a child you would own a one-half undivided interest in the property. Upon the parents' death, you would receive the property solely as yours.

Other forms of joint ownership include tenants in common which provides for an undivided one-half interest that would be the child, and the other one-half undivided interest would be the parents. One should be careful in making these types of transfers, prior to fully understanding the tax implications and costs associated with the ownership of the real estate.

Life Estate

Parents may consider making a transfer of their real estate to their children during their lifetime subject to a "Life Estate." A Life Estate is an interest in real property that allows the person who has the Life Estate the right to possess the designated property for the term of their life. This mechanism of transfer of ownership of assets also has tax and control issues. Who will pay taxes, insurance, and mortgage payments?

Planned Giving

Parents who are mentally capable and have sufficient assets may consider the planned giving of their assets to reduce the overall size of their estate, prior to their death. Internal Revenue Service provisions provide for gifts, tax free, by donors on a yearly basis. (See your tax advisor for current limitations.)

There are ways to structure charitable gifts to maximize tax benefits such as gifts to the AANR Education Foundation, a 501(c)3 corporation. In addition, the Uniform Gift to Minors Act is legislation that allows transfer of income from parents to children and grandchildren for education, etc., with tax benefits for both.

Living Will

This document provides for the wishes of the parent with regards to medical care that might artificially prolong their life through the use of extraordinary life saving measures. If a person suffers from a terminal disease or condition, this document will express, in advance, their wishes with regards to the artificial prolonging of life. It can be a less stressful event for a family to terminate a life support system for a parent if this document has been signed and the parent has indicated his/her wishes in advance.

Execution of a Will

A Will is a document that directs how your assets are to be distributed upon your death. For many people a Will is a cost effective way to manage their estate. However, those who are married and have larger estates may wish to consult a tax advisor and an estate attorney to draft a more complex estate plan that can provide tax savings, etc.

Living Trusts

A Living Trust is a legal entity that is established to manage assets. It directs how those assets are to be distributed upon death. A Living Trust is more complex than a Will. It requires more attention, as assets must be transferred into the Trust from your current individual or joint ownership. The advantages of a Living Trust include more flexibility for transfers, confidentiality, (since the Living Trust does not need to be probated through a Court of public record), and the saving of probate fees.

Durable Power of Attorney for Health Care Purposes

A parent should consider executing a Durable Power of Attorney for Healthcare Purposes to name an individual who can make healthcare decisions for them in the event of their mental or physical incapacity. Often times a parent will want to designate their child to make these decisions.

Guardianship

If a parent becomes physically and/or mentally impaired to such a degree that he or she is unable to manage his or her own affairs, a child may seek legal Guardianship through a Court. This is a formal legal process which appoints a person as Guardian over the person and estate of the incapacitated person. The Guardian must report to the Court regularly and preserve and protect the assets of the person protected.

There is expense associated with Guardianships as a result of legal fees and Court costs.

Reverse Mortgages and Other Income Transferring Tools

A relatively new trend in the ownership of real property is the reverse mortgage. This is a process whereby the person owning real estate is provided with a monthly income which is reflective of the amount of equity they have in the property. Instead of a person paying a monthly mortgage payment, they are paid a monthly sum which is added to the indebtedness owed on the real estate. One should be wary before establishing a reverse mortgage. It takes a unique situation with adequate equity in real estate to set up such a plan.

Insurance

There are numerous options that parents and children may use with regards to insurance to fund future income. There are disability insurance programs, long term care insurance programs, life insurance, and health insurance. If affordable, parents and children alike may wish to protect assets by participating in a program of insurance with any of the above. These can help protect and preserve assets of the parent. Life Insurance can provide a sum of money that can pass to the children upon the parents' death outside of the estate of the parent and without taxation.

This article has been a brief summary of how one may be able to preserve assets and help insure the quality of life in those later years. One should always seek legal and tax advice before using any of these tools for financial planning and asset preservation. Here's to a long life of healthy and wealthy nudism!