

The Oklahoma Insurance Department

Presents...

Legal Issues For Seniors

Overview

An important part of your overall long-term care plans should include a fair amount of estate planning. Within that, you should carefully consider which family members or friends you trust to leave your estate to and to take care of you later in life.

Alternatively, if you are a single individual, and your family is out of state for example, then you should start considering how you want to live later in life. That includes determining if you want to stay in an assisted living center, retirement community or perhaps stay in your home with the help of a caregiver.

Overview Cont'd

In order to ensure that your family members follow your wishes in regard to your living arrangements later in life, please tell them of what you want and don't be afraid to put it in writing. A detailed, written plan can be beneficial to both your own interests and your other family members.

Wills

A common type of estate plan that you should strongly consider creating is a will.

Definition: a will is a legal document that disposes of your estate, meaning all of the property (both real and personal) that you currently own or come to own, upon your death.

Wills Cont'd

Creating a will is important for several reasons:

- 1) it allows you to leave your property to your family members in the exact way that you want to
- 2) it prevents your surviving family members from potentially fighting over who gets what and
- 3) it gives you the peace of mind that all of your property is accounted for in a legally-binding document

Intestate Succession

It should be noted that if you do not create a will during your lifetime, then the Oklahoma statutes specify how your real and personal property will be distributed upon your death through a process called “intestate succession.”

Intestate Succession Cont'd

Generally-speaking, under this intestate process the court will apply and use the OK intestate succession statutes to determine who will get what part of your estate and how much he or she will receive from that part.

Intestate Succession Cont'd

The distribution process seeks to achieve a fair, proportionate divvying up of the property that you leave behind upon your death, but it is not perfect since it is impossible for the court to take account of what your intent may or may not have been. For example, this means that the probate court would have no way of knowing that you wanted to leave a particular piece of property, such as a vintage car or real estate, or a specific share of your estate to a friend instead of to a living child, grandchild or sibling. Under intestate succession, your estate is distributed according to a neutral formula provided for by law and rigidly applied. Essentially, the law provides that if you have a surviving spouse and surviving children, the spouse will get $\frac{1}{2}$ of the estate and the children will get $\frac{1}{2}$ divided equally among them.

For this reason, it is so important that you create some type of will instrument that embodies your intent and represents the exact way that you want your estate to be handled when you die.

Trusts

If you have assets or funds that you would like to leave to someone, perhaps a child or grandchild, but want to have discretion over how those assets are spent/used then you should also consider setting up a trust. If that option interests you, then please contact a private attorney to inquire about how to create a discretionary trust instrument.

Attorney Services

If you do not have a personal attorney or lack the funds to afford an estate planning attorney, then please contact the three law schools in the state of Oklahoma and ask them if and when they will be hosting free wills clinics. Additionally, contact the Oklahoma Bar Association and inquire about any community wills preparation clinics that may be coming up and/or if they can direct you to an attorney or firm that will provide a will preparation at no cost to you.

The law schools in the state of OK are: Oklahoma City University School of Law, the University of Oklahoma College of Law and the University of Tulsa College of Law.

Long-Term Care Planning Tips

Creating a well-rounded plan now to ensure that your legal affairs are properly managed later in life can provide you and your family with the valuable peace of mind that your exact wishes will be followed in the event that you become incapacitated.

Advance Directive

There are several legal instruments that you can use to provide a solid foundation for your long-term care plan:

Advance Directive- under the Oklahoma Advance Directive Act, individuals have the right to decide and control some aspects of their medical care and treatment, including the right to decline treatment or to direct that it be withdrawn (even if death ensues).

Protected Rights

It is important to note, that the U.S. Supreme Court has stated that a competent person has a Constitutional right under the Due Process clause to refuse unwanted medical treatment. So, if someone tries to tell you that you don't have this right, that person is not correct.

Advance Directive Cont'd

There are essentially three types of advance directives that I have ranked in order of importance, although all three should be considered for implementation as part of your overall long-term care plan:

Advance Directive Cont'd

- 1) Living Will- a document directing your doctor to withhold or withdraw certain types of life sustaining procedures that may prolong the dying process if you become terminally injured, ill or otherwise incapacitated.
- 2) Durable power of attorney for health care- names someone to make health care decisions for you if you are unable, in the judgment of one or more physicians, to make health care decisions. By law, a durable power of attorney only becomes effective when your attending physician and another physician both determine that you are no longer able to make decisions regarding your medical treatment.
- 3) Do-not-resuscitate (DNR)- a written order that allows you to choose to what extent medical personnel may go to resuscitate you in the event of terminal condition.

Power of Attorney (POA)

In regard to the power of attorney, it is important to note that there is another type of power of attorney that you should strongly consider creating: a durable power of attorney.

A plain, durable power of attorney (or POA) is a document that gives someone that you trust the ability to implement financial decisions that you have chosen on your behalf either immediately or if and when you become incapacitated or disabled.

POA Cont'd

Within this, it is important to mention that such a POA gives the person you have named the ability to sell or buy investments for you, as you designate, and/or to pay bills and take care of any financial transactions.

Additionally, a POA can be invaluable in regard to the management and distribution of retirement accounts in your name, such as 401(k) and IRA plans, because even spouses can't implement any transactions in regard to retirement plans without a POA.

If you decide to create a POA, make sure to check with each and every institution where your money and/or investments are held to make sure that it will accept the durable POA or alternatively if the institution requires that you have a POA in place.

POA Cont'd

As with a medical power of attorney, it is incredibly important that you select a person that you can trust to serve as your POA because that person will have the actual legal authority to act on your behalf when you become incapacitated, disabled or are otherwise absent for an extended period of time (such as in a coma).

An important aside, a POA can be revoked at any time that you so choose after it has been created.

Other Useful Information

If you believe that you have been treated unfairly or otherwise have been harmed by a caregiver, family member or other individual or have some type of civil legal issue and need representation then you should contact Legal Aid Services of Oklahoma.

Legal Aid of Oklahoma is a non-profit law firm serving low income and elderly citizens of the state of OK who have civil legal issues. Legal Aid can help with issues such as divorce, child custody, debt collections, social security disability, wills creation, Medicare/Medicaid, domestic violence, and veteran's benefits to name a few.

Legal Aid Cont'd

Most importantly to you, Legal Aid of Oklahoma helps Senior Citizens in every county of Oklahoma by providing free legal advice, counseling and community education. So long as you are 60 years of age or older, then you qualify for the services offered by Legal Aid.

Contact Legal Aid of Oklahoma by visiting its website at:
<http://www.legalaidok.org> or by calling 1-888-534-5243



Oklahoma Insurance Department Info.

If you have an insurance-related problems or questions and believe that the Oklahoma Insurance Department (OID) can assist you, please feel free to call 800-522-0071 and/or visit our website at www.ok.gov/oid

For lots of useful consumer information regarding a variety of insurance issues, please check out OID's consumer assistance page at www.ok.gov/oid/Consumers/index.html



Questions