

The Costly Mistake of DIY PLANNING for Your Future

We see it every day. Either at seminars or in our law offices, we meet with individuals who have questions and need guidance on Elder Law and/or Estate Planning issues. On the Elder Law side, many of these meetings are precipitated by a spouse or parent becoming ill or incapacitated. It is often a stressful time and it can be difficult to make decisions to ensure that a loved one is taken care of and his/her finances are planned properly. For Estate Planning, people typically meet with us to proactively plan for their future by having us prepare a Will and/or Trust, as well as Power of Attorney.

In each of these instances, the planning involved can be quite extensive. The laws regarding Estate and Elder Law issues are very complex and are constantly evolving. Consequently, it is important to know you are getting advice from an attorney who deals with these issues on a daily basis. Equally as important is finding an attorney and law firm you can trust. This is paramount in the areas of Elder Care Law and Estate Planning, as these particular areas of law present unique opportunities for inexperienced and/or unscrupulous professionals to take advantage of people at an extremely vulnerable time.

When meeting with clients, we hear many stories of mistrust, misinformation and concern over the expense of our services. Combine these worries with today's instant access to information on the internet, and many people have started to believe that the forms and information they can download from web pages can take the place of in-depth advice and planning that an experienced Elder and Estate Law attorney can offer. Unfortunately, what we tend to see time and time again in this era of DIY Estate and Elder Law Planning is an individual or family meeting with us to see if we can remedy a DIY document or planning issue that has resulted in unintended consequences. In some instances, these unintended consequences may be able to be repaired. However, in other cases, it may be too late to remedy costly mistakes that have been made.

In order to get a closer look at some "unintended consequences," I am sharing a couple of real-life examples of where people can get into trouble. The first concerns a Durable Financial Power of Attorney (POA). A Durable Financial POA allows for an Agent, **CHOSEN BY YOU**, to act in your stead with regard to any and all financial matters. And while you may find a "form" POA to download from the internet, the complex laws regarding specific notice requirements and powers enumerated in this document may result in you creating a DIY Financial POA that is either incomplete or invalid. Furthermore, it may not be until your Agent actually **NEEDS** to use the POA, that he/she discovers the problem. At this point, it may be impossible to execute a new POA if you are deemed

to be incompetent and the "unintended consequence" may likely be an expensive guardianship proceeding where a guardian will be **CHOSEN AND APPOINTED BY THE COURT AND NOT BY YOU**.

Another common mistake that people make is gifting their home to a child to "save on inheritance taxes" and/or "prevent it from going to a nursing home." In this particular scenario, the "unintended consequence" of misinformation can be two-fold. The first may be an unintended tax consequence for the recipient, who will acquire the same tax basis as the parents if the house conveyed is not his/her primary residence. Consequently, when the child turns around and sells the house, he/she will end up paying a 15 - 20% capital gains tax, as opposed to the Pennsylvania inheritance tax rate of 4.5%. Additionally, if either or both parents need to qualify for help in paying for nursing home care, the timing of this gift may present a real problem when it comes to applying for Medicaid.

This is only a small sample of problems we hear about every day, problems that could be avoided by consulting with an Elder and Estate Law attorney to properly plan for your future!



NURSING HOME WORRIES?

Are you worried about losing your home or life savings to the cost of a nursing home?

Are you concerned about how to pay for your loved one's expensive nursing home care without going broke?

Are you a veteran and are interested in possibly receiving \$2,100 per month?

Are you the spouse of a veteran and are interested in possibly receiving \$1,149 per month?

In Pennsylvania, the average cost of a nursing home is over \$110,677 per year, \$9,223 a month.

What's at risk? Only everything you own.



This **Industry Insight** was written by Carrie Conboy. Carrie Conboy is an attorney at Zacharia Brown and provides assistance and counsel to individuals and families regarding Estate and Elder Care Planning issues. Zacharia Brown is one of the oldest, most established elder law firms in Western Pennsylvania. The practice includes life care planning for seniors, elder law, Medicaid and veterans benefits eligibility, nursing home asset protection, care review and advocacy, and estate planning and administration. Contact information: www.PittsburghElderLaw.com, 412.751.5670, 4500 Walnut Street, McKeesport, PA 15132.



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