

7 Point Legal Checklist for Adult Children Coping With Aging Parents

First, talk to your parents to see what planning, if any, is already in place. I know this is a topic nobody likes to talk about, but you must keep in mind how important it is – and what a time-consuming and expense mess you’ll be left with if you don’t! Use your attorney as your excuse. Go to Mom or Dad and say “My attorney told me I had to talk to you about your estate plan.” It is important to act now while Mom or Dad still have the capacity to execute legal documents—later on may be too late! No one knows when incapacity will strike so you must ACT NOW!

Second, while you’re having this talk, find out where the originals of the documents are located. I can’t tell you how many people come into the office and say “I think Mom or Dad had a Will, but I’m not sure and I don’t know where it is” or they will have a copy of the Will made 15 years ago which has been changed 3 times since. The current, original documents are necessary for legal purposes. This will save a lot of time and money trying to find the documents or starting with the wrong ones and later finding newer ones.

Third, make sure the plan is up to date. The beauty of an estate plan is that it can be changed – as long as the person has the requisite mental capacity – at any time to reflect the person’s wishes. But if Mom or Dad want to make changes, please be sure to see an attorney so that the changes are legal and binding. Often people will write right on their will or trust to change shares or cross out names, etc. **DO NOT WRITE ON THE DOCUMENTS!** At best this often leads to confusion about what Mom or Dad really wanted; at worst it can invalidate the document destroying the plan or lead to an expensive and time consuming fight between the heirs to have the Probate Court determine what the document means.

Fourth, while reviewing the plan, also make sure that any beneficiary designations are up to date. Certain types of assets have beneficiary designations – you name someone to receive the asset at your death. Common types of assets that have this are life insurance, pay-on-death or transfer-on-death accounts, and many types of retirement benefits. If these are not up to date, the assets may go to the wrong person. For example, if there has been a divorce and the ex-spouse is named as beneficiary on the life insurance, guess who gets the money. The ex-spouse. Or the beneficiary named may be deceased. It’s not uncommon for Mom to name Dad as beneficiary. Well Dad’s been dead these last few years and when Mom dies there are no other named beneficiaries – guess where the money goes: to Probate Court so the Probate Court can pass the money to the children – just what Mom could have done without the time and expense of probate by taking a few minutes to review and update the designation. Make sure the named beneficiary is the person desired as beneficiary, the named beneficiary is still alive, and there are alternate beneficiaries named, just in case the first-named beneficiary should predecease.

Fifth, make sure the plan includes a Durable General Power Of Attorney and a Patient Advocate Designation (also known as a Durable Power Of Attorney For Health Care).

This will protect Mom or Dad when incapacity strikes and avoid guardianship proceedings, otherwise known as “living probate”. A Durable General Power Of Attorney costs \$100; a Patient Advocate Designation costs \$100 – these generally are not major expenses we are talking about – especially when compared to the cost in both time (4 weeks or longer) and money (\$1,000 or more) of probate proceedings. Make sure both documents name alternates to serve in case the first choice can’t act for some reason.

Sixth, make sure that the plan includes some way to transfer the assets after death. This can be joint ownership, a will, or a trust. Joint ownership or a trust will avoid probate, a will does not. If you need documents prepared or changed, please see an attorney. Sure, it will cost some money, but you know the documents will be valid and in the long run you’ll save time and money. Please do not run out to the office supply store or computer store and buy fill in the blank forms or a computer program. A probate judge once told me that more than half the time such home made documents fail because of an error in preparation or signing. And at the point you find this out, it’s usually too late to correct the problem.

Seventh, and last, try to find out what assets Mom or Dad has. This may be difficult as older folks sometimes don’t like to tell what they’ve got or what they’re worth. But if you are going to administer their estate after they’re gone in an efficient and cost-effective manner you need to know what’s there – and equally important – what’s not there. Family members will frequently have vague recollections about assets that they think exist: “Didn’t Mom have an account at Merrill-Lynch?” “I thought Dad had a vacant lot up North?” It takes time and costs money to try to track these rumors down – and frequently it turns out that the asset had been sold or transferred years ago – so the time and money is out the window, the effort wasted. Find out what there is now while the absolute best source for information is still here – Mom or Dad.

Following these steps is a great first step towards planning any estate. And that is not an easy first step for many people. After all, none of us likes to think about our own mortality, or even the chance of becoming incapacitated. Which is exactly why so many families are caught off guard and unprepared when incapacity or death strikes. Do not wait until it is too late for you, your family, your parents – set up an estate plan now while you and they are able to act. An estate plan is one of the most thoughtful and considerate gifts you can give to those you love. Because, remember – with estate planning, you do not get a second chance!

This Report provides only a general description of the matters discussed. You must consult legal counsel to obtain individualized legal advice regarding further details and the specifics of your particular situation. We are glad to answer your questions or discuss your situation with you in detail.

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