



Estate Planning and Private Care Contracts

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Who needs an estate plan?

- Anyone who owns property can benefit from an estate plan
- Planning for the future allows you to direct how and to whom your property will be distributed after your death

Goals for Estate Planning

1. How can I distribute my assets according to my wishes?
2. How can I guarantee that my surviving spouse is cared for?
3. How can I provide protection and guidance for my minor children?
4. How can I minimize costs, taxes, and time of settling an estate?
5. How can I ensure that my assets are properly managed and communicate my medical wishes if I become incapacitated?

Getting Started

Identify your heirs and beneficiaries

Make a list of your assets

Choose your agents

Explore contingencies

Ask questions

Intestate Administration

Rules of Distribution

If the decedent left a surviving spouse and children, some of whom are not the children of the surviving spouse, the spouse receives:

- a. One-half in value of all real estate
- b. All personal property in the hands of the decedent as head of household
- c. One-half of all other personal property

Rights of a surviving spouse

- Election to take against the Will
 - The surviving spouse must be given notice to elect under or against the Will
 - The surviving spouse can elect to take against the provisions of a deceased spouse's Will
 - There is a presumption that the surviving spouse will take under the terms of the Will

Share of Surviving Spouse

- If the surviving spouse elects to take against the terms of the Will, the surviving spouse receives:
 - One-third value in all real estate
 - All personal property that, at the time of death, was in the hands of the decedent as head of household
 - One-third of all other property

Last Will and Testament

- In writing
- **Signed** by the Testator
- **Witnessed** by two disinterested parties
- Should contain a **self-proving affidavit**

Will Contests

- Testamentary Capacity
- Undue Influence

Powers of Attorney

- Health Care Power of Attorney
- Advance Medical Directive (Living Will)
- Durable Financial Power of Attorney

Your agent (“attorney-in-fact”) is your decision-maker

Health Care Power of Attorney

Directs another person to make medical decisions if you cannot

- **Final Disposition Act Designation**

- Designate someone to make decisions about your funeral arrangements and disposition of remains

- **Advance Medical Directive (Living Will)**

- Makes your wishes known concerning end-of-life care

Durable Financial Power of Attorney

- Designates someone to make financial decisions
- Allows agent to access **information**
- Durable permits the agent's abilities to survive incapacity

Guardianships

- Legal entity that gives someone else control over the Ward's person:
 - Living arrangements
 - Medical treatment
 - Educational or vocational services

Conservatorships

- Legal entity that gives someone else control over the Ward's assets:
 - Collect income and pay bills
 - Manage or sell real estate
 - Apply for state benefits

Caregiver agreement considerations

- Should I create and formalize a caregiver agreement?
- What is the criteria for a caregiver agreement?
- What kind of care is generally provided for in-home services?
- What types of expenses are associated with using caregiver services?

Caregiver Agreements

- **SCOPE**
- **SERVICES TO BE PERFORMED BY CAREGIVER**
 - Financial Needs
 - Medical Needs
 - Personal Care Needs
 - Transportation
 - Companionship
- **COMPENSATION**

Transfer of Assets Exclusion

- 5 year look back of transfers from date of medical assistance application
- Transfer of home to child does **not** fall under transfer of assets if transferor's child:
 - **Resided** in transferor's home for at least 2 years before transferor entered long term facility AND
 - Provided **care** to the transferor which allowed transferor to remain in home

Iowa Code 249F.1(b) (2013)

Transition to higher care concerns

- Where am I going to live when I am older and have medical needs?
- Can I afford a continuing care home, such as an assisted living facility or a long-term nursing facility?
- Are there any programs to help defray the costs of higher level of care facilities?

MEDICAID (TITLE XIX)

- Health program for individuals with low income and few resources
 - Provides medical and dental coverage
 - Covers cost of housing the individual in a residential care facility
- In Iowa, the Department of Human Services (DHS) manages the Medicaid program

Medicaid Eligibility

- Applicant must need care for **30 or more consecutive days**
- Applicant must have a monthly income of no more than three times the Supplemental Security (SSI) program's maximum benefit payment (\$710)
 - The monthly income limit for a person to qualify for Medicaid is **\$2,130** in 2013
- Applicant must have less than **\$2,000** in countable resources

Income Exemptions

- **Community Spouse**

- The community spouse can keep part of the applicant's income if the community spouse's income is less than \$2,898 per month in 2013

- **No Community Spouse**

- If the applicant has no community spouse, then all income from all sources is included in the calculation

Resource Exemptions

- Principal Residence
- One Vehicle
- Personal Possessions
- Pre-paid Funeral Plan
- Life Insurance

Resource Inclusions

- Cash
- Investments
- Personal Property
- Real Estate
- Nursing Home Accounts
- Vehicles
- Burial Contracts
- Food and Shelter Payments
- Trusts

COMPLAINTS IN DES MOINES

Des Moines Register

Buyer beware when looking at continuing care homes

- Uncertain entrance fee refund
- Upfront operational costs and prepayment of services
- High monthly charges

<http://www.desmoinesregister.com/article/20130804/NEWS03/308040060/Reader-s-Watchdog-Buyer-beware-when-looking-continuing-care-homes>

SENIOR HOUSING CONTRACTS

Des Moines Register

New complaints about senior housing contracts

- Lack of marketing efforts in selling membership
- No entrance fee refund until sale of membership
- Difficulty in transferring (risk loss of entrance fee refund)
- <http://www.desmoinesregister.com/article/20130811/NEWS03/308110084/Reader-s-Watchdog-New-complaints-about-senior-housing-contracts>

Continuing Care Home Contracts Concerns

- **Entrance** ("buy-in") fee refunds
- Monthly **charges**
- Month-to-month **payments** vs. Lump sum payment
- Unfair treatment in **transferring ownership** if resident has to move to a more restrictive level of care
- **Termination** of membership agreements (failure to actively market the membership)