Topic
Better Living

Subtopic
Personal Development

Getting Your Legal House in Order

Course Guidebook

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Sally Balch Hurme, JD

Elder Law Expert

Sally Balch Hurme is an elder law expert and author who has led the national conversation on many of the legal issues of concern to older persons and their families. She received her BA in Political Science from Newcomb College of Tulane University and her JD from the American University Washington College of Law.

Sally Hurme started her legal career as a partner in a private law firm. She served older clients as a legal services attorney and also served as a city magistrate in Alexandria, Virginia. She spent three years as an attorney adviser with the Office of Intelligence Policy and Review at the US Department of Justice, where she worked on counterterrorism and counterespionage cases. She then returned to elder law advocacy as an assistant staff attorney with the American Bar Association Commission on Law and Aging, writing a groundbreaking report on guardianship monitoring. Next, she moved to AARP, where she worked for almost 25 years. She also taught as an adjunct professor at the American University Washington College of Law and The George Washington University Law School.

For the past three decades, Sally Hurme's volunteer commitment has focused on the rights of adults with diminished capacity and the reform of guardianship policy and procedures. She has served multiple terms on the boards of the National Guardianship Association and the Center for Guardianship Certification, where she has been instrumental in developing standards for guardians and criteria to improve professional competency. As chair of the

National Guardianship Network, she led the planning for the 2014 World Congress on Adult Guardianship.

Sally Hurme advised the Uniform Law Commission in drafting the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act and revising the Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act. As a member of a US State Department delegation, she helped draft the Hague International Convention on the Protection of Adults. In 2008, she was honored by the National College of Probate Judges with the Treat Award for Excellence.

Because of her wealth of knowledge on elder law issues, Sally Hurme is quoted frequently in national media, including *The Wall Street Journal*, *USA TODAY*, *The New York Times*, *Money*, *Kiplinger's Retirement Report*, CNN.com, NPR, and Fox Business Network. She is in high demand as a speaker, having given more than 100 presentations on elder law topics in 45 states. She has lectured on elder abuse and guardianship in Australia, the Czech Republic, Germany, Great Britain, Italy, Japan, Moldova, the Netherlands, South Korea, and Spain.

Sally Hurme has written more than 20 law review articles on elder law topics, and she is the author of the award-winning series of Checklist books about elder law for consumers published by the American Bar Association and AARP. This series includes *Checklist for My Family: A Guide to My History, Financial Plans, and Final Wishes*; *Checklist for Family Caregivers: A Guide to Making It Manageable*; *Checklist for Family Survivors: A Guide to Practical and Legal Matters When Someone You Love Dies*; and *Get the Most Out of Retirement: Checklist for Happiness, Health, Purpose, and Financial Security*.

Sally Hurme is a long-term member of the National Academy of Elder Law Attorneys, the American Bar Association, and the Virginia and District of Columbia bars. She lives in Bridgewater, Virginia, and enjoys kayaking on the Shenandoah River with her grandchildren.

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Getting Your Legal House in Order

Your legal house has two important rooms: the today room and the tomorrow room. In the today room are all the fundamental legal issues that you need to pay attention to today. In the tomorrow room are all the legal topics that may not seem as immediately important. However, there is a wide-open door that connects both rooms. The legal messes in the today room can easily spill over into the tomorrow room. The door to the tomorrow room can't be kept shut in the hopes those issues never have to be addressed.

This course covers topics like what you can do to avoid credit card debt and identity theft. It also covers what you can or can't do with your home, whether you rent or own a house, co-op, or condominium. Additionally, lectures look at topics such as reverse mortgages, student loan debt, and insurance coverage.

Topics examined later in the course include medical coverage through Medicare and Medicaid as well as financial security through retirement accounts. The course also provides a detailed look at estate planning and essential legal documents. Closing topics include caregiving responsibilities, guardianship, and medical advance directives.

The course's goal is to help you put plans in place for tomorrow. That way, you can stay in control over your health and finances, rather than letting life's events determine your future.

1

Get Your Legal Life Together Now!

Getting your legal house in order can be a challenge. As with any challenge, you need to be motivated to accomplish anything. Therefore, this lecture focuses on some of the reasons it's so important to establish control over your present everyday legal life and some of the benefits of doing so. It also goes over some important documents.

PLANNING

- A critical aspect to getting your legal house in order is planning—that is, anticipating events in the future and taking the necessary steps to prepare for them. With proper planning, you can:

    1. Make a better decision about where you're going to live next by knowing your options and the legal ramifications of each.

    2. Decide in advance whether you want such medical treatments as cancer chemotherapy or cardiopulmonary resuscitation, should you need them when you can no longer choose for yourself.

    3. Pick the right people to make decisions for you to handle decisions that you couldn't make ahead of time.

    4. Ensure that what you own goes to the people whom you want to receive it after you pass on.

FIRST STEPS

- The first step in organizing your legal house is locating what you can put your hands on. Take an inventory of your legal life, compiling a list of where the key documents and other items are stored. Keep that list where you can find it again when you need it. You might save it in a folder on your computer or store it in the cloud.

- Once you've determined what you have and where it is, you can figure out what else you need. Below are some of the essential items that could be part of your legal life.

  1. Information about you. This may include your birth certificate, passport, citizenship papers, and Social Security card.

  2. Information about your family. This may include a marriage license, divorce decree, prenuptial and postnuptial agreements, domestic relations orders, and birth certificates or adoption papers for your children.

  3. Information about finances. This includes information on checking and savings accounts, brokerage accounts, credit cards, student loans, debts, individual retirement accounts, pension plans, and tax returns from the previous seven years. It can also include information on military separation and the DD214 service record.

  4. Information about property, including how it's titled. This can cover deeds, leases, mortgages, lines of credit, reverse mortgages, major home improvements, timeshare information, car titles, and digital assets.

  5. Information about insurance, including agent contact information. Types of insurance to stay up to speed on include, auto, homeowner's, life, group or individual health insurance, vision and dental insurance, and long-term care insurance. This may also include Medicare, Medicare Supplemental, or Part D drug coverage.

  6. Information about future plans. This may cover your will, trust, financial power of attorney, advance directive or health care power of attorney, cemetery deed, uniform donor card, and funeral plan.

FINDING THE DOCUMENTS

- Some items on the list are documents that are already in existence; you may just need to obtain them if you haven't done so already. Once you have them, put them in a central place where you can find them.

- Most births, deaths, and marriages are reported to the proper local authorities to maintain lasting records. Each state has its own method of maintaining these records. Birth and marriage certificates can usually be obtained from the county clerk, registrar, or recorder of the county in which the birth or marriage took place.

- You can obtain divorce-related documents from the clerk of the court that granted the divorce or annulment. When you write the court, give the names of the parties, the case number (if you know it), and the date of the divorce was granted. Use the same process to get any adoption records.

- You can obtain replacement copies of citizen or naturalization documents from the US Citizenship and Immigration Services, part of the Department of Homeland Security. You will need to download a copy of form N-565 from www.uscis.gov/n-565.

- You can obtain a copy of a military service record from the website of the National Archives: archives.gov/veterans/military-service-records. You will need to include in your request the complete name you used while in the service, service number, Social Security number, branch of service, dates of service, and date and place of birth. If you need military medical records, you

can request those through the National Archives as well as their eVetRecs portal.

FINDING AN ATTORNEY

- Having a good attorney will be critical for a number of essential steps toward putting your legal affairs in order. When thinking about hiring a lawyer for any type of legal service or advice, you have to answer two related questions: What do you want the lawyer to do, and who is most qualified to perform that service for you?

- Of key importance is finding a lawyer who has experience in that area of the law and practices in the proper jurisdiction. For instance, a criminal defense attorney may not be the best choice if you need someone to create a special needs trust. An experienced lawyer in Michigan may not be sufficiently familiar with Texas law to answer a Texas contract question. You'll want to find a lawyer who is licensed to practice in the state where you live and concentrates a substantial part of her practice on helping clients like you.

- The best way to find a lawyer is to ask for recommendations from friends and family members who have recently used a lawyer on a similar matter. Another way is to contact the local or state bar association's lawyer referral service. The American Bar Association has a directory of lawyer referral services available in each state. Other lists to check are the elder law attorneys who are members of the National Academy of Elder Law Attorneys or the American College of Trust and Estate Counsel.

- You'll want to interview several lawyers to learn of their expertise, talk about what you want the lawyer to do for you, and find out how the lawyer will charge for those services. Lawyers can charge an hourly rate or a set fee for providing specific services. Some ask for a lump-sum retainer before

beginning any work. They then draw down disbursements from the up-front amount as work is accomplished.

- A lawyer may not be able to calculate the total fee until gaining a better understanding of the problems that might develop. You should, however, expect a detailed and frequent statement of services so you can keep tabs on the lawyer's work.

- Be sure you and the lawyer have the same expectations about what services are to be provided. In every case, get a signed letter of engagement that sets out in detail what the lawyer is going to do for you.

SUGGESTED READING AND RESOURCES

Hurme*, Checklist for My Family*.

Kondo, *The Life-Changing Magic of Tidying Up*.

QUESTIONS TO CONSIDER

1. Who do you consider to be the most organized person you know? What do you like or dislike about their efforts? What techniques do you want to emulate?

2. What room or place in your home is the most organized? What does it take to keep it that way?

2

Reducing Debt by Reading the Fine Print

Debt can limit your choices today and endanger your future. One of best ways to get your legal house in order is to free yourself from debt. This lecture explores some of the issues around debt, focusing on credit card debt and how to control it, mortgage debt and its impact on older consumers, and the massive amount of student loan debt that impacts all generations.

CREDIT CARD DEBT

- The American Bankers Association has a name for people who carry credit card balances—even large ones—but pay them off in full each month: It calls them transactors. These people make up about a third of account holders. They stand in stark contrast to revolvers, who carry a balance and often pay high interest rates. Four out of ten cardholders carried a balance each month in 2018. If you are among the 30 percent of people who make a habit to pay off credit card balances each month, keep doing what you are doing.

- Good credit card management and credit score improvement boil down to two simple maxims: make payments on time and don't buy things you can't afford. However, that is easier said than done for many Americans.

> The closer you are to considering retirement, the more important it is to get credit card balances as low as possible.

- If you are a revolver, the single biggest step you can take to improve your credit score beyond paying your bills on time is to pay down your credit card balances. The amount of debt you hold compared to your credit card maximums—which is called credit utilization—is a major factor in determining your credit score. Your credit score determines the interest rates lenders will offer.

- As for the best way to pay down your credit card balance, debt counselors suggest two strategies. Assuming you have multiple cards, the first strategy is to pay the minimum on each card and use any extra cash to pay off the card with the highest interest rate. Because interest is the real budget killer, this method reduces the amount of interest building up.

- The other method is to focus on paying off the card with the smallest balance. This approach will pay down the total debt more quickly and give a sense of satisfaction and accomplishment. The path you decide on may take some number crunching, but regardless of the path, once the debt goes down, it is important to not let the balances grow back up.

- Be careful taking out new credit. You might be struggling to make ends meet, but if you are tempted to open a new credit card account, do so judiciously. Getting a new card will give you more available credit, which improves your credit-to-debt ratio. However, you will need restraint to not draw down on that credit to a point where you can't make the monthly payments. Maxing out on one card and then getting another simply aggravates your financial situation.

MORTGAGE DEBT

- For most homeowners, maintaining the home is your biggest expense. Not only is there the mortgage to pay, but upkeep, property taxes, insurance, and other housing expenses take a big bite out of budgets.

- If your income is going to be reduced in retirement and you want to stay in your home, you may want to think about paying off or reducing your mortgage. For some, owning their home free and clear allows them to more easily handle monthly expenses on a lower income. If you aren't able to handle the expenses even without the mortgage, then downsizing to a more manageable home may be your best bet.

- Because there are tax and estate planning implications, it's important to talk with your financial advisor about the best strategy for your circumstances. A key question you have to answer is where the money is going to come from—or not go to—if you want to either accelerate the payments on your mortgage or even pay it off in full. Will you be better off investing available funds for growth or using those funds to reduce your mortgage debt?

- There is a lot debate among financial planners about the right strategy because there are so many factors to consider. On one hand, you'll need to take into account the current market value of your home, the likelihood of its appreciation, your mortgage interest rate, the balance and years remaining on the loan, and how long you plan to remain in your home.

- On the other side of the equation, considerations include: What is your income tax rate, your assumption on what would be your rate of investment return, and your expectations on inflation? If you are in a low tax bracket and have a high mortgage interest rate, the calculation may tip toward using available resources to reduce monthly expenses by paying your mortgage off or down.

- If you need liquidity as a cash cushion for unexpected expenses, you may not want to tie your funds up in your home. Investing may give you a better rate of turn than your home's rate of appreciation. All in all, there is no simple answer. Competent financial advice can help.

STUDENT LOANS

- People 50 and older account for 20 percent of the total student loan debt, a fivefold increase since 2004. Some are still struggling to pay for their own education, never digging out from under loans taken out decades ago to pay for college. Almost three-fourths of older borrowers took on this debt to help finance their child's or grandchild's education.

- They had to, because most private student loan lenders require the student to have a cosigner. Nevertheless, cosigning means the parent or grandparent is just as responsible as the student for paying off the loan. If the student doesn't make the payments, the lender is going to look to the cosigner. Additionally, if the student misses payments, it will negatively affect the cosigner's credit score.

- Taking on this debt raises serious retirement security risks for parents and grandparents. Consumers entering retirement with student loan debt may face significant financial challenges. Unlike the younger cosigners, who should be seeing income grow as they go to work once they are out of school, older borrowers typically experience income decline as they age.

- Older borrowers who have federal student loans can also face challenges. The federal government can garnish a borrower's wages and can take a portion of tax refunds and even Social Security benefits when a federal student loan is not repaid.

- Anyone struggling to make monthly payments on a federal student loan has the right to apply for a repayment plan. If you experience a drop in your income, you can ask the student loan servicer to lower payments. The Department of Education has various plans to help struggling borrowers of any generation.

- One example that may help parent co-signers is an income-driven repayment (IDR) that sets monthly payments based on the parent's income. Keep in mind that you need to apply for an IDR before you get into a default. Once you get behind, it will be very difficult for you to be eligible. If this sounds like something you are interested in, enroll online at studentloans.gov or contact your servicer.

- Another option to explore is to figure out if you can be released as a co-signer. After the loan has been paid down over some years, and it looks like the primary borrower is going to be able to continue to pay down the loan, cosigners can sometimes be released from their legal obligation.

- It can be hard, though, to get an answer from loan servicers about the circumstances that would let you get out from under the loan as the student's parent or grandparent. The Consumer Financial Protection Bureau has sample letters that borrowers can use to get information about their private lender's release policy.

SUGGESTED READING AND RESOURCES

For more information about mortgage debt, read what the Consumer Financial Protection Bureau (CFPB) has to say at **https://files.consumerfinance.gov/f/201405_cfpb_snapshot_older-consumers-mortgage-debt.pdf**.

You can find more details on student loan debt from the CFPB at **https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_OA-Student-Loan-Snapshot.pdf**.

The CFPB also has a useful student loan tool at **https://www.consumerfinance.gov/paying-for-college/repay-student-debt/**.

Experian's annual State of Credit report paints a clear picture of what Americans are doing with their debt at **https://www.experian.com/blogs/ask-experian/state-of-credit/**.

If you are interested in numbers, you can check out the Federal Reserve's charts on consumer credit at **https://www.federalreserve.gov/releases/g19/current/**.

For information on older student loan borrowers and Social Security offsets, see the Government Accountability Office's document "Social Security

Offsets: Improvements to Program Design Could Better Assist Older Student Loan Borrowers With Obtaining Permitted Relief." It is available at **https://www.gao.gov/assets/690/681722.pdf**.

For details on older Americans in bankruptcy, read Thorne et al.'s document "Graying of U.S. Bankruptcy: Fallout from Life in a Risk Society." It is available at **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226574**.

QUESTIONS TO CONSIDER

1. What policies should be put in place to address the dramatic level of student loan debt?

2. How concerned are you that your personal debt is dangerously high for your retirement security?

3. How would you balance the debt versus invest equation?

3

Protecting Yourself from Identity Theft

People of all ages can be victims of identity theft. Identity thieves go after anyone they can ensnare. This lecture talks about the multiple ways thieves try to get information. Knowing how they operate can make it easier to protect yourself.

NUMBERS

- Today, your identity comes in many, many different formats. It could be your thumbprint, your retina scan, or data about your face that's recognizable by a computer. It is also linked to many numbers: your Social Security number, credit card number, bank account routing number, passport number, birth date, street address, and so on. In fact, people routinely create numbers to identify themselves: personal identification numbers, or PINS.

- These numbers are what the thieves want. Their livelihood depends on collecting one or more of these numbers that identify you. Thieves have multiple ways to get your information. The most blatant is just to cleverly ask you for it.

- By telephone, they pretend to be your bank, saying something is wrong with your account. They tell you that you need to verify your account number. Of course, it isn't your bank calling.

- Perhaps cleverer, some thieves pretend to be the IRS. No one wants or expects to get a call from the IRS, and no one wants to be in trouble with it. The thieves are literally banking on the fact that you'll do whatever it takes to clear up the problem.

- Theft by phone is still ubiquitous, but thieves also love the internet. They might use a lookalike URL that's just a bit different from a real URL for a website you trust. They may create an enticing ad or have you fill out an online form. Hackers can secretly install malware on your computer if you

download files or software, open email attachments, or click on popup ads.

- Unfortunately, thieves also employ a host of other ways to try to get your data. Criminals could try to shoulder surf—that is, they watch in crowded places as you punch in your credit card number or listen as you repeat your credit card number over your phone. They might install a hidden camera or record your keystrokes when you use public Wi-Fi.

- In addition to shoulder surfing, there is also dumpster diving. That is when thieves sort through your trash to find identifying information.

USES OF THE DATA

- Once they have assumed your identity, thieves have multiple ways to enrich themselves while creating havoc with your credit. With enough bits of your data, they can make false applications for loans, mortgages, and credit cards. They can also withdraw money from your bank account and make online charges using your credit card.

- Additionally, they can get a cell phone, cable service, and utilities charged to you. Some try to obtain a fake Social Security card or passport, and identity thieves can even get health care or hospital treatment in your name.

PRACTICING SECURITY

- There are many things you can do to practice safe security. Because the thieves lurk all around us, no one action is enough. When you are out in public, be alert to who might be watching what you do or listening in to what you are saying. For instance, when you are riding on the subway, don't check your bank account.

- Don't carry your Social Security or Medicare card around with you. Keep it safe at home, and only take it out if you are going to the doctor or pharmacist.

- Invest in a shredder and use it constantly. Watch what you put in your trash. Anything with any information about you should go in the shredder. That includes bank statements, credit card statements, brokerage statements, and junk mail with preapproved credit card applications including temporary credit cards.

- Having your phone fall into the wrong hands can be an ongoing nightmare. One safeguard is to be on a network that can instantly shut down a number once you tell them it's been lost or stolen. To further guard against someone getting information off your phone, use a PIN or touch ID with your fingerprint or facial recognition.

DIGITAL SECURITY MEASURES

- When searching on the internet, make sure you don't get fooled by look-alike URLs. Make it a habit to look at all parts of the URL before clicking on it. It might be a misspelling. Also look at the beginning of the link. Does the link start with https, which indicates it is a secure site?

- Cyberthieves also lurk behind contest forms, coupons, and gift vouchers you might see online. You can be sure that they'll tell you that the personal information you give will not be shared. Don't believe them.

- When looking for an organization via a web search engine, you may have to scroll down 5 or 6 entries to find the official site. If you carelessly click on the first one listed, it could be a site designed to catch you.

- Social media networks also pose serious privacy risks. Review your social media profiles and pay close attention to the way

each profile lets you protect sensitive personal details. Some social media sites let you restrict access to certain friends, family members, and colleagues. Take advantage of any enhanced privacy options on social media sites like blocking messages from strangers.

- To protect your computer, create strong passwords. The stronger your passwords are, the harder it will be for a thief to guess them. Strong passwords have at least 12 characters that include special characters such as symbols, numbers, and random capital letters. Be creative, like using an exclamation mark for an L. Do not use common passwords, like your child's name or birthday. Do not use the same password for all your sites. Additionally, you should get the latest antivirus and anti-spyware software, and make sure you regularly update it.

MEDICAL IDENTITY THEFT

- Medical identity theft occurs when someone gets your medical insurance policy number or Medicare number. Most often, it happens within the medical bill system as an inside job.

- To prevent this from happening to you, don't carry your Medicare or insurance card. Don't give out your health insurance number to anyone other than the provider you use. Be wary if someone offers you so-called free medical services but needs your medical ID.

- Keep paper and electronic copies of your medical and health insurance records in a safe place. Shred outdated health insurance forms, prescriptions, and physician statements. Don't throw pill bottles into the recycling bin before you obliterate the prescription labels.

- You also need to pay attention to the explanations of benefits (or EOB) that you get from your insurance company or Medicare summary notices. Review them to make sure

you received the services for each claim listed. Compare the statement you received from the doctor with the insurance statement. Do the dates and services match?

- If you see something that doesn't look right, contact the medical provider. It could be a coding error, but it might be fraud. If you can't get an answer about your billing question, contact the insurance company or Medicare.

- All insurance plans have fraud contact information. If you are on Medicare, report the questionable charges to Medicare by calling 1-800-MEDICARE. You can also contact your local Senior Medicare Patrol for assistance, by calling 1-877-808-2468 or visiting www.SMPResource.org. Senior Medicare Patrols are trained volunteers whose job is to help Medicare recipients work out billing issues.

BEING AWARE OF IDENTITY THEFT

- Here are some examples from the Federal Trade Commission of how you might become aware of identity theft:

    1. You see withdrawals from your bank account that you can't explain. That's because someone has made an electronic transfer using your routing number. Watch for even small withdrawals, such as $1.29. That could be a test to see if they can get away with a bigger heist later on.

    2. A charge appears on your credit card statement that you can't identify. Follow the instructions on your credit card statement about how to challenge a bill.

    3. Debt collectors call you about debts that aren't yours.

    4. The IRS notifies you that more than one tax return was filed in your name or that you have income from an employer you don't work for. One older adult was audited

by the IRS because it turned out that 80 people were using her social security number.

5. You find unfamiliar accounts or charges on your credit report.

FLAGGING A CREDIT REPORT

- One way to stop a possible future creditor from issuing credit to someone else using your identity is to flag your credit report. You have two options, each of which has different requirements and outcomes.

- An initial fraud alert is the first and easiest step. You might want to place an alert if your wallet is stolen, your Social Security number or bank account information has been compromised, or you've been exposed to a data breach. You get it by calling one of the three credit reporting bureaus: TransUnion, Experian, or Equifax. You can find their numbers online.

- Whichever company you call must tell the other companies to also place an alert. The alert will last for a year. An alert makes it harder for a thief to open new credit in your name because any company wanting to issue credit must contact you to make sure you are the one seeking credit.

- A more permanent option is to freeze your credit report. A credit freeze locks down your credit by blocking credit issuers from seeing your report. If they can't see your account, they may not extend credit. To freeze your credit, you need to contact all three of the credit reporting companies. The easiest way to do that is online, although you can do it by mail or phone.

OTHER SERVICES

- There are also companies that offer so-called identity theft protection services. According to AARP, consumers worldwide spent almost $7 billion in 2017 on identity theft protection services. However, a study that same year by the Government Accountability Office indicated that these services have both benefits and limitations, and their effectiveness in mitigating identity theft is unclear.

- These services monitor activity on your credit reports and alert you if new accounts are opened, a legal judgement is filed in your name, or your personal information changes. They may also monitor various databases for activity using your personal information such as arrest records, payday loan applications, or change of address requests.

- In addition, they may offer recovery services that walk you through the process to regain your own identity, write letters

to creditors and debt collectors, and guide you through the documents you need to review. Most also sell insurance that would cover the out-of-pocket costs you would incur as you regain your identity.

- Before paying for these services, do your comparison shopping among the companies to make sure you know what each one offers. They are very competitive and offer a range of options and prices. You can also monitor your credit reports for free at annualcreditreport.com.

SUGGESTED READING AND RESOURCES

Federal Trade Commission, IdentityTheft.gov. (This website has important information on recovering from identity theft.)

Shadel, "Is My Identity on the Dark Web?"

QUESTIONS TO CONSIDER

1. What cybersecurity steps are most important for you to take?
2. Does the seemingly inevitability of massive data breaches make you think there is nothing you can do to protect your identity?

4

Knowing Your Property Rights

The list of restrictions and hassles that can disturb the peace and quiet of a home goes on and on. Before panic or outrage set in, it's important to understand your rights and responsibilities. This lecture serves as a home-inspection tour—not of the four walls of your property, but of the four corners of the various legal documents that affect your use of it.

IMPORTANT DOCUMENTS: BUYING

- If you're buying a home, you will encounter several documents: the deed, which is the legal document that sets out what the owner is selling; the promissory note, which sets out the terms of how much money the purchaser is borrowing and how the purchaser intends to pay it back; and the mortgage, which is sometimes called a deed of trust. That legal document sets out what is going to happen if the borrower fails to pay back the loan. Depending on the state, other documents may include a termite inspection certificate, a lead paint and/or asbestos certificate, and a home inspection report.

- The all-important deed should explain everything that you are purchasing and set out any limitations or restrictions. You'll want to watch out for any restrictive covenants, which might restrict your use of the property.

- Another factor is easements, which typically give someone other than the owner the right to do something on or with your property. They come in many sizes and shapes. For instance, a utility company may have an easement to string overhead wires or bury underground cables.

- Another type of easement might be when a neighbor needs to go over a part of your property to get to their home. The easiest place to find out about any easements is probably going to be in the survey made when you purchased your home.

- Additionally, you may want your real estate agent to do a title check to examine prior deeds. The seller's deed should list them. Some other places to check would be the tax assessor's office, the Department of Public Works, or the county clerk's office.

If you purchase an old house in an historical district, there may be very strict requirements on what you can do to the exterior of your property.

IMPORTANT DOCUMENTS: RENTING

- If you are a renter, the legal document that you must pay attention to is the lease. It is most likely a standard form prepared by the landlord's attorney. It will likely favor the landlord to the extent allowed by local landlord and tenant laws. It should cover all sorts of situations, like what changes—if any—you can make to the apartment.

- Part of the lease will be an inspection report—another important legal document. To avoid headaches and get your damage deposit back, make sure it is very thorough.

- The lease will also set out how long you can live in the apartment. Common setups include month-to-month leases and yearly leases. A yearly lease locks you into a commitment to pay all 12 months of rent, even if you decide you want to move. There might be some exceptions in the agreement.

- You also need to check what happens at the end of lease term. What do you need to do if you want to stay or if you want to go? How many days' notice do you need to give to the landlord?

- Pets are another consideration. The landlord can prohibit all pets, or charge a pet fee, or assess a fee to cover any

damages your pet might cause. If you are planning on having a pet, find out if the pet fee is refundable if there is no damage. Service animals are allowed in any event.

- The lease will also tell you what happens if you are late on your rent. What is the late fee? Is there a grace period? Some states regulate how much of a late penalty can be imposed. If there is nothing in the lease about late fees, the landlord can't charge you.

- Finally, pay attention to what happens if you have a dispute with the landlord. How difficult circumstances—such as broken appliances or pest infestations—are resolved should be set out in the lease. If you don't like what it says, either negotiate with the landlord or find someplace else to live.

CONDOMINIUMS

- In the simplest terms, a condominium is an apartment that you own, instead of rent, along with other space that you share with others. It doesn't have to be in an apartment building, though most are.

- As a condo owner, you own the apartment and all the permanent fixtures in it, such as the dishwasher, washer, dryer, and ceiling fans. Along with all the other condominium owners, you jointly own the land on which the building stands and the common areas of the building. You also jointly own the exercise room, swimming pool, or tennis courts.

- Every state has passed laws that permit condominium ownership and lay out general guidelines for governance. Although the laws differ in detail, all of them provide that the unit owners belong to a homeowners' association (HOA). The unit owners then elect a board of directors to manage the property.

- Two very important documents for condo owners are the master deed or declaration of condominium ownership and the HOA bylaws. The declaration sets out what the HOA can do and how it is organized. The bylaws are where you are going to find the rules about how you can or can't use your unit and the common property.

- They can be quite explicit. You should study the declaration and bylaws before you purchase a unit. You'll become even more familiar with them after your purchase. They may set out rules on pets, decorations, vehicle parking, what you can install on your balcony, and even what colors of curtains and window blinds are allowed.

- In addition to what you must pay the bank on your mortgage, you will have more costs to consider. The HOA is going to set a monthly fee to pay for the repair, maintenance, insurance, and taxes on the common areas of the condominium. It also covers water, sewage, trash removal, and the upkeep of the common areas. On top of the monthly fee, the HOA may levy an assessment on your unit to pay for extraordinary expenses. For example, a high-rise condominium may need to replace an elevator.

COOPERATIVES

- A cooperative is very similar to a condominium, except the unit owners do not own their apartments. They own shares in the cooperative association that gives them the right to occupy a particular unit. Like condominiums, cooperatives are creatures of state law. Although the laws vary, cooperatives are usually organized and operated in similar ways.

- Cooperatives are governed by a master declaration and bylaws adopted by the governing board. Cooperative members pay a monthly maintenance charge that is set by the co-op board each year. The charge is often based on the unit's square footage. The larger the unit, the higher the fee.

In addition, the governing board can levy an assessment on each unit to pay for unusual expenses.

- A common feature of co-op ownership is the right of the cooperative association to control the sale of its shares. It can refuse to permit the sale of its shares—that is, your unit—to anyone for any reason (except for illegal discriminatory reasons).

SHORT-TERM RENTALS

- This lecture closes by focusing on a particular kind of restriction on what you can do with your home: restrictions on short-term rentals. If you're a renter, your lease will likely set out three different scenarios: whether you can sublet your place while you are away, whether you can bring in a roommate to share the rent, and whether you can be a short-term host to a stranger who pays you to live in part of your apartment for less than a month. Whatever your lease says, you need to take it seriously. Violation of its terms may set the stage for an eviction.

- If you own a condo, the condo association controls whether you can be a short-term host. HOAs may look askance at having strange people coming and going. Condo boards may be able to fine, sue, or foreclose on owners who violate community rules, or they may perhaps require the owner to turn over to the association any rents received.

- The Federal Housing Administration (FHA), the predominant mortgage lender in the US, also has a say in what condo owners can do with their units. The FHA restricts how many renters a condominium can have.

- If you own your home and want to rent it out short-term, the legal documents you need to consider are not in your deed, but rather in local zoning laws and your insurance policies. Many municipalities impose strict requirements on short-

term rentals out of concern for changes in neighborhood characteristics, squeeze on rental housing for locals, and loss of hotel taxes. Depending on where you live, you may be required to have a business license or permit, to be on the premises if you are renting for less than 30 days, and to pay city and state hotel or transient occupancy taxes. Additionally, if you use the company Airbnb, then Airbnb makes you responsible for knowing and complying with all local laws.

- Your homeowner's insurance or umbrella liability insurance also may govern your ability to rent. Your typical homeowner's insurance may not cover liability for commercial purposes. Check to make sure that your personal property and belongings that may be stolen or damaged by a paying guest are covered. If you don't tell your insurer that you are hosting, you may have your policy cancelled or the claim denied.

- You probably should have business or commercial insurance on top of your homeowner's policy, even if you rent out your place once or twice a year. Some insurers now have special policies for homestay, bed and breakfast, home sharing, or rental dwellings. Be straightforward with your insurance agent to get the coverage you need and understand all exclusions.

- Airbnb does provide host protection insurance, but that policy has numerous disclaimers that make you, rather than Airbnb, responsible. This is an insurance policy that you pay for, just like other insurance, and it has various limitations.

SUGGESTED READING AND RESOURCES

Airbnb has a list of city regulations available at **www.airbnb.com/help/article/1376/responsible-hosting-in-the-united-states**.

QUESTIONS TO CONSIDER

1. Are we becoming too litigious?

2. What restrictions are you aware of on your right to use your own property as you wish?

3. What are some of the reasons neighborhoods, apartment complexes, or condominium associations want to have strict control over their occupants or owners?

5

Deciding Whether a Timeshare Is for You

This lecture first explores the details of the various types of timeshares. Then, it looks at the upfront and ongoing costs so that you can crunch the numbers to make sure you're making a wise financial decision.

BACKGROUND ON TIMESHARES

- The first thing to know about timeshares is that they aren't a viable way of growing your money over time. They don't appreciate the way other property can, so if appreciation is your goal, look elsewhere.

- Nevertheless, timeshares are hugely popular. According to the American Resort Development Association, the industry trade group, the US timeshare industry witnessed its eighth year of consecutive growth in 2018.

- There are two main types of timeshares. Unit timeshares involve vacationers purchasing a specific unit at a specific resort for a specific time, typically for a week. You own the unit, but 51 others also have an equal interest in that same unit. You and the other unit owners together own the resort property. You share in the use and maintenance of the common grounds.

- In this setup, you'll pay a purchase price plus annual maintenance fees. There will be a homeowners' association that elects officers, manages expenses for the upkeep of the property, and likely hires a management company.

- The other main type is an interval plan, sometimes called a vacation club. Under this arrangement, you buy a right to use space in the resort for some set time determined by your contract. A variation of the interval plan is the points-based system. Technically, you get an undivided real property interest in a timeshare unit and an annual allotment of points that you spend when you use an interval at any available unit within the resort's affiliated properties.

COSTS OF A TIMESHARE

- Timeshares are not for everyone, but millions of Americans still make use of them. This lecture now turns to the costs and fine print in timeshare agreements so you can judge whether they fit your lifestyle and budget.

- The costs include the following:

  - The entry fee, which you pay in one lump sum or finance. If you finance, you'll have financing costs. The resort most likely will offer you financing, but consider the interest rate.

  - Maintenance fees, which averaged $1,000 a year in 2018. Because they are bound to increase every year, you need to know if there is a cap on how quickly or how much they can rise. You'll need to pay the annual fee even if you don't use your unit or interval.

  - Property taxes may be a separate cost on unit-type plans where you have a timeshare deed. Additionally, you may have additional closing costs or broker commissions. You may also face special assessments on top of the annual maintenance fees for major repairs or renovations.

  - Don't forget the travel costs to get to your unit.

- All of those costs should be totaled and compared to what you would pay for a similar vacation for that length of time at a similar hotel. Think about how much you spent on your last vacation and if the timeshare arrangement would supplement or replace it.

NEGOTIATING

- If the budget works out for you, experts recommend other considerations. The timeshare industry is very competitive. A better deal might be available nearby. Before signing up

for one plan, do some investigating. Talk to current owners to get their experience. If you can break loose from the sales representative, talk with a resident in the elevator or by the pool.

- You might also want to talk to a local real estate agency about the reputation of the resort. Check out the developer and management company with the state attorney general and local consumer protection agency for any complaints.
- Ask for a copy of the current maintenance budget. Look at where the money is being spent, how much is going into repairs and maintenance, and what is scheduled to be replaced or renovated.
- Take your time to read the sales agreement in private, away from the sales office. You don't have to sign it right away, and you can walk out of the room with a copy, no matter what the sales representative says. You might even have an attorney read it over. You must make sure that everything the sales representative promised is written into the contract.
- You can negotiate the price for a better deal. Patience can bring significant reductions in the initial offering.
- A key element to look for in the contract is your ability to get out of it if you change your mind soon after you seal the deal. Your right of recession—basically, the right to a cooling-off period—is governed by state law if it is not specified in the contract. If you have buyer's remorse and want out of the contract—and you're within the timeframe—send a letter to the resort. Use certified mail with a return receipt to be able to prove that you did so within the deadline.
- Another way to research a timeshare is by renting a unit directly from an owner at a potential resort to try it out. If you like it, buy from an owner who wants out.

SELLING A TIMESHARE

- Unfortunately, getting rid of a timeshare is fraught with difficulties. Be resigned to the fact that you'll get less money back than you've paid in. A timeshare is not an appreciating investment, so don't expect to recoup your purchase price.

- Additionally, be aware that there are many reselling scams. The internet is full of claims by resellers advertising their selling prowess. Be wary of such resellers.

- Before resorting to a reselling agency, there are some steps you can take to get rid of your timeshare. First, talk with your resort to find out if it will take back your timeshare.

- You should find out if the resort will take a deedback. With a deedback, you give up any equity in intervals or points you have built up, but you also get rid of your maintenance fees or special assessments.

- If the resort won't agree to a deedback, you are out of luck because you can't relinquish a claim to an unwilling party. The resort has no obligation to accept your offer.

- Another option to explore with your resort is this: Will it rent out your unit and apply the rent to your management fee? Alternatively, can you rent it on your own? Keep in mind that if it is in an exchange—an arrangement that allows you to trade your interval or points to use someone else's timeshare—you can't rent it.

- Before listing your timeshare with any reseller, be sure to check for complaints about the company with the state attorney general or consumer protection agency. Search the agency's name online for consumer comments. Verify with the state real estate commission that the agency is licensed to sell real estate or timeshare interests in the state where your timeshare is located. The American Resort Development

Association website lists licensed brokers who adhere to a code of ethics.

- Find out the resell details and get them in writing. Ascertain how your unit will be advertised, how frequently you will receive progress reports, how long the listing agreement will be in effect, and if you can sell or rent the unit yourself. Also find out about commissions and other costs, if you can get out of the listing agreement, and if there is a cooling-off period.

- Keep in mind that if you can't find a buyer, you cannot abandon the timeshare and its annual costs without serious damage to your credit score.

CONCLUSION

- Before you buy a timeshare, think carefully about how useful it will be to you a decade from now. Be strategic about the resort's location: Is it within a reasonable distance? Does it have activities you'll want to do every year?

- Additionally, be strategic about the week you pick. Make sure it will remain workable for you and your family for many years. Also ask yourself: Will it be attractive to others if you want to rent it out?

- Take your time to comparison shop among different resorts and the various exchanges. There are many options and details to consider, and a better deal may come if you patiently negotiate. Consider a direct sale from an owner who wants to exit, but ensure that it's what you want, not just a bargain to grab. Finally, be sure to read reviews of the property carefully, whether you are thinking about buying or making an exchange for a different unit.

SUGGESTED READING AND RESOURCES

The American Resort Development Association's code of ethics is available at www.arda.org/ethics/.

The Federal Trade Commission has a consumer alert on timeshare scams at www.consumer.ftc.gov/articles/0073-timeshares-and-vacation-plans.

RedWeek claims to be the largest marketplace for listings of timeshares for rent or sale. You can learn more at www.redweek.com/timeshare-rentals.

The Timeshare Users Group has great owner forums, rankings and reviews of resorts, and listings of rentals and sales. You can find its website at tug2.net/.

QUESTIONS TO CONSIDER

1. What about your lifestyle and family circumstances makes a timeshare attractive?

2. How much do you normally spend annually on travel for either business or vacations?

6

Choosing the Insurance You Need

You can get insurance for just about any potential risk, loss, expense, injury, disability, damage, or liability. The primary things people insure are their lives, income, health, homes, personal property, and vehicles. This lecture tackles some of the obvious issues with understanding insurance.

EARLY STEPS

- The first and most practical step you can take is to figure out what insurance you already have. Locate all of your policies. You may be surprised at how much coverage you do have.

- For each policy, have in one place a ready reference of the policy number and how to contact the insurer in case you or your family need to make any type of claim. Tell your family members what policies you have and where they are located.

- Some life insurance companies may require your heirs to hand over your original life insurance policy before they can collect any proceeds. If your heirs don't know about the policy, they can't collect, and the premiums you've paid will enrich the company and not your family.

ANNUITIES

- Your most valuable asset may be your ability to provide income to cover life's necessities for you and your family. That is what annuities cover. Annuities are designed to provide a reliable stream of income after a set date or event.

- Annuities may be fixed, variable, or indexed, with immediate or deferred payments. A fixed-income annuity generally means that the insurance company makes a guaranteed amount of payments for the duration of the contract. With a variable annuity, the amount you receive fluctuates depending on the success of the investments the company makes with your money.

- The return on an indexed annuity is based on a portfolio of investments that mirror one of several stock market indexes. With an immediate annuity, your payments start immediately; with a deferred annuity, payments—or disbursements—start at some time in the future.

- Payouts may be made for a set number of years, or during your lifetime, or for the lifetime of a spouse or other beneficiary. You can also obtain, at additional cost, extra benefits, such as a guaranteed minimum death benefit or a guaranteed minimum withdrawal benefit.

- Annuities are very complex investment options and there is some pretty high-pressure marketing going on out there. Study any marketing promotions very carefully, and do your homework.

LIFE INSURANCE

- The primary purpose of life insurance is to ease a beneficiary's financial loss that would result from the policyholder's death. Life insurance is a way to make sure that your family has cash to pay for your final expenses, such as for your funeral or your final medical bills. It could also provide cash for any estate taxes or unpaid debts as well as financial support to your spouse and dependent children after your death.

- Today's life insurance market has multiple options for you to choose from. A short list of options includes how much coverage to purchase, the amount of the premiums, how the policy is invested, any guarantees on returns, and how and when the policy proceeds are paid out to your beneficiaries.

- A widely purchased form of life insurance is *whole life insurance*. This type of insurance pays money (the so-called face value) to your beneficiary at the time of your death. You pay a premium each year to keep the insurance in force. The premium is determined by your age at the time you purchase

the policy. The younger you are, the smaller the premium.

- *Term life insurance,* on the other hand, provides insurance coverage only for a specified length of time. The annual premium for term insurance is cheaper than the annual premium for whole life, but if you do not die during the policy's term, your beneficiaries receive nothing for your investment.

- While you are employed, your employer may provide you with group term insurance. Typically, this type of insurance is intended to replace some of your family's income should something happen to you while employed. You may be given the option to continue that coverage at the time you retire, if you want to make the premium payments on your own.

Some exclusions may keep your family from collecting on your life insurance policy. For instance, the policy's contestability clause allows the insurance company to void the policy if it discovers that you made a fraudulent application and died within two years of the application.

DISABILITY INSURANCE

- Disability insurance is intended to provide you and your family with financial stability if you are no longer able to work because of an accident, injury, or illness. Some employers, unions, and professional associations provide group disability insurance for their employees or members.

- Policies can vary in the amount of your income that it will replace, how long you can receive the payments, and what types of disabilities you need to have before you can receive the benefits. It's important to know what your policy

considers a disability. For instance, how disabled do you have to be before you can make a claim?

- For most people, the disability coverage you get through your employer may be enough. Depending on where you work, your employer may pay all or part of your premium or arrange for you to purchase through a group policy. For others, extra coverage through an association policy or individual policy can be important.

HOMEOWNER'S INSURANCE

- If you have a mortgage, your lender will insist that you have homeowner's insurance, at least for the amount of your mortgage. It is an important piece of protection for what is likely your biggest asset: your home.

- Determining what your policy actually contains will take a close reading of the terms of your policy. Policies differ, but a typical one will likely provide coverage for damages to the house and structures such as a garage, personal property, living expenses if you need to vacate the house, some personal liability for those injured on the property, and medical payments to others.

- There will also be limits and exclusions. For example, check your policy for what happens if your home is damaged by water from a leak or if it suffers damage from an event like a fire, tornado, hurricane, or river flood.

- A key factor is whether you have cash value coverage or replacement coverage. For example, if you have insured your home for $500,000 in cash value coverage, do not assume that you will receive $500,000. That is the limit, or the maximum amount they will pay. What they will pay is the depreciated value at the time of the loss.

- Replacement coverage will cover the cost to replace the house or item with the same material and quality as the original. However, replacement coverage is pricey.

MISCELLANEOUS CONSIDERATIONS

- You can also obtain insurance coverage for all the things you have inside your home. Your personal property includes appliances, clothes, furniture, electronics, kitchenware, hobby equipment, jewelry, paintings, and so on. If you think the coverage in your existing homeowner's policy might not be enough to replace your household contents, you might want to think about getting specific coverage for your most valuable items.

- Another component you can add is an umbrella liability policy. This is extra coverage for any claims against you that are either excluded from your home and auto coverage or would be over those policy limits.

- You will not be covered if an injury is caused by your negligence or some illegality. It also won't cover your business, and it won't cover lawsuits that are based on contracts. But it does cover other kinds of things you might be sued for, such as libel or slander, and it covers your legal fees.

SUGGESTED READING AND RESOURCES

The Financial Industry Regulator Authority (FINRA) has investor alerts on variable and equity-indexed annuities at **finra.org/investors/protect-your-money**.

FINRA's investor alert on life settlements is available at **finra.org/investors/alerts/seniors-beware-what-you-should-know-about-life-settlements**.

The National Association of Insurance Commissioners has consumer tools at **www.naic.org/index_consumer.htm**.

QUESTIONS TO CONSIDER

1. Have you balanced how much risk you are willing to take with the cost of protection for each type of insurance policy you have?

2. Have you recently compared the cost and terms of the coverage you have against other similar coverage packages?

7

Figuring Out Your Retirement Finances

When do you picture yourself retiring? Whether it's a long way off or just around the corner, you should give your retirement some serious thought. Your financial life in retirement will differ in some important ways from your life in the working world. You'll want to be ready for it.

401(K) PLANS)

- Many employers offer 401(k) retirement plans that put off the need to pay taxes on both the contributions you and your employer make plus the plan's earnings until you withdraw funds from the plan, usually after retirement. These 401(k) plans are called defined-contribution plans. You have made a specific dollar contribution with each paycheck to a personal plan account. The plan invests your contributions (and the employer's, if any) in mutual funds or other investments that you selected from the plan's menu of investment choices.

- The plan account is credited with any returns on your investments. Unlike fixed pension payments, the amount you are going to receive depends on the performance of the investments, which may be positive or negative. You, instead of your employer, bear the investment risk.

- You may have several options for how you receive withdrawals from your 401(k). You'll need to check with your plan manager or human

Pieces of Advice

Here are some broad pieces of retirement advice: Hire a financial advisor, if you don't have one already, and put away as much money as you can, preferably in a variety of tax-advantaged retirement accounts.

Another piece of advice is this: If you have been counting on Social Security to cover your monthly expenses in retirement, the amount you receive probably won't do the job.

relations department for your choices with your specific plan. Also check with your financial adviser for any tax consequences for the option you choose.

IRAS

- Individual retirement accounts or IRAs are another popular kind of retirement savings vehicle. Your contributions to a *traditional* IRA may be wholly or partially tax deductible or nondeductible depending on whether you are also covered by a qualified pension plan or a 401(k), your tax filing status, and income level.

- With a traditional IRA, you can put off having to pay taxes on earnings from your contributions until you start to withdraw funds. However, if you withdraw money from your IRA before you are age 59 ½, you'll have to pay a 10 percent penalty in addition to any income taxes due on the amount that you withdraw. If you have a Roth IRA, on the other hand, you were required to pay taxes on the funds in it when you set up the account, so your withdrawals will be tax-free.

- Other types of tax-deferred plans can help you defer taxes until you have reached a point in your life where your earnings have likely begun to decline and you are in a lower income tax bracket. A Simple IRA is similar to a 401(k) plan, but with lower contribution limits and less costly administration.

- Another tax-deferred retirement for self-employed people is a simplified employee pension plan, or SEP, which is a type of IRA. Another plan type is the SARSEP, which is an SEP set up before 1997 that includes a salary-reduction arrangement.

WITHDRAWALS AND PENSIONS

- If you haven't made any withdrawals from your IRA-type savings by the time you reach 70 ½, the IRS will force you to start taking money out and paying taxes. These withdrawals

are called required minimum distributions or RMDs. The RMD rules apply to all employer-sponsored retirement plans, including profit-sharing plans, 401(k) plans, 403(b) plans, and 457(b) plans. The RMD rules also apply to traditional IRAs and IRA-based plans such as SEPs, SIMPLE IRAs, and SARSEPs.

- You can start taking withdrawals from your retirement accounts without penalty at any time after age 59 ½, and you can withdraw more than the required minimum amount. You don't have to take an RMD out of each account if you have more than one account.

- While many employers no longer offer pensions, if you worked for any company or organization that offered you a pension, be sure to take advantage of that benefit. You should check with all past employers—public and private—to determine if you were vested in any of the plans and if any payments are available.

SOCIAL SECURITY

- Because you have been paying into the Social Security system for all of your working life, you need to understand how Social Security works to take full advantage of the benefits available to you. The rules can be complicated and often change.

- Before you can receive monthly cash benefits, you must be credited for a certain amount of work under Social Security. For most benefits, you must have at least 10 years of Social Security–covered employment. The number of credits you must establish depends on your age and the type of benefit you or your family are applying for: retirement, survivor, or disability benefits. You can find details on the specific requirements at ssa.gov or at any Social Security local office.

- The size of the Social Security retirement benefit you'll receive depends on several factors: the age at which you (and your spouse, if you are married) begin receiving benefits; whether the payments are based on your work record or your spouse's; whether you change from receiving benefits based on your spouse's record to benefits based on your earnings record; and whether your marital status changed over the years. You can go online to ssa.gov/myaccount to find out how much you have paid to Social Security each year and see an estimate of how much you will receive.

RECEIVING SOCIAL SECURITY BENEFITS

- You can start receiving retirement checks as early as age 62 and disability checks at any age. However, you will receive up to 30 percent less per month if you begin benefits before full retirement age.

- If you were born between 1943 and 1954, your full retirement age is 66. It rises by two-month intervals for each subsequent birth year until 1960. For people born in 1960 or later, it's 67. If you wait until age 70 to take Social Security retirement benefits, you receive an additional amount: up to 30 percent more, depending on how many months after your full retirement age you start receiving benefits. Once you reach 70, there is no reason to delay.

- If you are married, you and your spouse need to know how to get the highest benefits for both of you during retirement and after the death of one of you. How much a spouse receives depends on both spouses' work history, the age each start benefits, and their respective full retirement ages.

- A married person can receive either spousal benefits—which are based on the other spouse's earnings record (if that spouse is already receiving Social Security)—or retirement benefits, which are based on the first person's work record. The spouse receives whichever offers the higher benefit. A

surviving spouse can receive survivor benefits based on the earnings record of the deceased spouse.

- There is an important difference between the spousal benefit and the survivor benefit. The spousal benefit amount is half of the benefit the higher-earning spouse would receive at full retirement age, regardless of when the higher-earning spouse decided to begin benefits. After the higher-earning spouse dies, the surviving spouse's benefit is equal to the amount the higher-earning spouse was receiving. If the higher-earning spouse began taking retirement benefits before full retirement age, the surviving spouse will receive a significant reduction in the amount of benefits.

- If the lower-earning spouse retires first, he or she can only get benefits based on his or her own earnings history. Once the higher-earning spouse retires, the lower-earning spouse can shift to the spousal benefit if it results in a higher amount.

The age at which the lower-earning spouse begins benefits will determine the amount of the spousal benefit.

OTHER CONSIDERATIONS

- The amount of taxes you pay on Social Security benefits depends on a rather confusing formula. As of 2019, if you're married, file a joint tax return, and your combined income falls below $32,000 your Social Security benefit is not taxed at the federal level. Combined income is not joint income, however.

- There is a special IRS definition for combined income: It is half of your Social Security benefit plus your adjusted gross income plus any nontaxable interest. You'll pay taxes on up to half of your Social Security benefits if your combined income is between $32,000 and $44,000, and 85 percent of your benefit is taxed if your combined income exceeds $44,000. Calculating the exact amount of your taxable income can be complicated, so this course recommends that you look up and use the IRS worksheet.

- Most states do not levy an income tax on Social Security benefits, including retirement havens like Arizona, the Carolinas, and Florida. However, about a dozen states do tax Social Security benefits, including Connecticut, Kansas, Utah, and Vermont.

- If you are receiving or are eligible to receive retirement or disability benefits, there is a long list of others in your family who can also receive them. They are eligible if they fit any of the following descriptions:

  - Unmarried children under 18 (or 19 if a full-time elementary or secondary school student).

  - Unmarried children 18 or over who were severely disabled before age 22 and who continue to be disabled.

   - A wife or husband 62 or older who has been married to the worker for at least one year.
   - A wife or husband under 62 if she or he is caring for a child who is under 16 (or disabled) and who is receiving a benefit under the worker's earnings.

- If you have been divorced and were married for at least 10 years, have been divorced for at least two years, and you are unmarried, you can start to receive benefits at age 62, even if your divorced spouse is not receiving Social Security. However, your former spouse must be at least 62 and eligible to receive Social Security. You must not be eligible for an equal or higher benefit on your—or anyone else's—Social Security record.

SUGGESTED READING AND RESOURCES

The AARP has an online tool to help you decide the best time to take Social Security at **aarp.org/SocialSecurityBenefits**. The Consumer Financial Protection Bureau has a similar tool at **consumerfinance.gov/retirement**.

Another useful resource is the AARP's book *Social Security For Dummies*, written by Jonathan Peterson.

The Consumer Financial Protection Bureau also has a helpful document titled "Pension Lump-Sum Payouts and Your Retirement Security." It is available at **files.consumerfinance.gov/f/201601_cfpb_pension-lump-sum-payouts-and-your-retirement-security.pdf**.

The Social Security Administration has a benefit-planning tool. It shows details on how your benefit amount changes based on when you start your benefits, and it is available at **ssa.gov/pubs/ageincrease.htm**.

QUESTIONS TO CONSIDER

1. What are you doing to augment your resources for retirement?

2. How diversified are your retirement savings?

3. How would you rate your financial literacy on retirement finances?

4. What do you plan to do to increase your financial literacy?

8

Making the Most of Medicare and Medicaid

Today, Medicare is a program that almost all older Americans come to rely on for access to health care and financial security. It is primarily for people who are age 65 and over. Over time, however, three other groups have been added: younger people with disabilities who receive Social Security Disability Insurance, people with permanent kidney failure requiring dialysis or transplant, and people with amyotrophic lateral sclerosis (ALS). This lecture provides an overview of what you need to know about Medicare and how it currently works. In particular, the lecture looks at the alphabet of component parts of Medicare: parts A, B, C, and D.

MEDICARE PART A

- The several parts of the Medicare program provide different benefits with very different cost considerations. Those costs are adjusted every year, invariably upward. This lecture references 2019 figures. Part A helps pay for inpatient hospital care, as well as preventive screenings, hospice care, and some home health care and a very limited amount of skilled nursing care. Most people don't pay premiums for Part A coverage because they have already been paid for through payroll taxes.

- You are automatically signed up for Part A if at age 65 you are receiving Social Security or Railroad Retirement benefits. If you are still working at age 65, there's no reason to not start Part A coverage: You have been paying for it all your working years.

- Part A doesn't cover 100 percent of inpatient hospital care, at least not for longer stays. You will be responsible for the first $1,364 in costs for each benefit period. That's your deductible. A benefit period begins the day you go into a hospital or skilled nursing facility and ends when you have been out for 60 days in a row.

- For those first 60 days in a hospital Medicare pays 100 percent of your hospitalization costs. If you go back into the hospital after being out 60 days, then a new benefit period starts, and you have to pay the deductible once again, but you also get 60 days with Medicare paying 100 percent. If you are unfortunate enough to need to stay in the hospital for more than 60 continuous days, you must begin to pay a portion of the bill, called coinsurance.

MEDICARE PART B

- Medicare Part B helps pay for part of the costs for doctor visits, some home health care, medical equipment, preventive services, outpatient hospital care, rehabilitative therapy, laboratory tests, X-rays, mental health services, and ambulance services.

- Unlike Part A, which you've already paid for through wage withholding, you pay monthly premiums for Part B coverage. If you are on Social Security, the Part B premium is automatically deducted from your monthly Social Security benefit.

- If you are not receiving Social Security, you can sign up for Medicare Easy Pay to have the Part B premiums automatically deducted from a bank account. You may want to hold off on starting Part B if you have other health insurance. There is no need to pay the Part B premium if you don't need that coverage. If your employer or retiree coverage ends, you have eight months to sign up for Part B.

- Part B only pays 80 percent of hospitalization costs, and you pay 20 percent of each claim. However, it's not 20 percent of what the provider bills; it's 20 percent of the "reasonable and customary amount" Medicare allows. For example, the doctor may charge $2,000, but Medicare allows $1,000. It pays the provider $800 and you pay $200. That's all the

doctor gets paid, which is why some doctors won't treat Medicare patients.

MEDICARE PART C

- Medicare Part C is now known as Medicare Advantage. Medicare Advantage plans are offered by private companies approved by Medicare. Purchasing Medicare Advantage coverage is a popular option, with 34 percent of Medicare beneficiaries adding this option. These policies pay for the same services as Parts A and B and may offer other benefits.

- Most Medicare Advantage plans are HMOs, or health maintenance organizations. This means that participants can go only to doctors, specialists, and hospitals that are on the plan's list of network providers. Some are PPOs, or preferred provider organizations, where you can choose an out-of-network provider but at a higher out-of-pocket cost.

> **Employer-Based Insurance**
>
> Retirement doesn't necessarily mean the end of your employer-based insurance. Three out of 10 people continue to receive coverage through their former employer's health plan after they retire.

MEDICARE PART D

- Medicare Part D helps pay for prescription drugs. Like Medicare Advantage plans, Part D drug coverage is optional and offered through private insurance companies approved by Medicare. People already on Medicare Parts A and B can choose from many drug plans offered by many companies. The benefits and costs vary among insurance companies and each company's several plans.

- Your first opportunity to elect to purchase Part D drug coverage is when you become newly eligible for Medicare. If you wait too long, there will be a late enrollment penalty. Participants can switch to a different prescription drug plan or sign up for a Part D plan during the annual Medicare open enrollment period (which is October through December).

- Finding out how much your drugs are going to cost you is a challenge. Each plan has a formulary, which lists the drugs it covers. Most plans use a tiered system to determine what your copay is going to be. Before picking a drug plan, first check the formulary to make sure your drugs are included. Then, compare the listed copay with other plans.

MEDIGAP INSURANCE

- As with most other insurance plans, Medicare has annual deductibles, coinsurance, and copayments. It doesn't pay for all types of health care costs. To cover the gaps in Medicare, Medicare supplemental insurance, called Medigap insurance, is available.

- Medigap insurance covers some of the costs that Medicare does not pay. Medigap is private insurance offered by Medicare-approved insurance companies. They include up to 10 standardized plans. Each standard plan offers a different set of benefits, fills different gaps in Medicare coverage, and varies in price.

SUGGESTED READING AND RESOURCES

The Center for Medicare and Medicaid Services (CMS) is the official go-to resource for all things Medicare: https://www.medicare.gov.

You can apply for Medicare on the Social Security Administration website at **https://www.ssa.gov/benefits/medicare/**.

Patricia Barry's book *Medicare for Dummies* covers the intricacies of Medicare.

9

Weighing the Benefits of Reverse Mortgages

Depending on circumstances and needs, a reverse mortgage may allow a person to stay financially secure in his or her home without having to worry about monthly debt payments. However, reverse mortgages are more complicated than they seem. This lecture explores their ins and outs, and it discusses when a reverse mortgage might be the right—or a very wrong—solution.

THE BASICS

- A reverse mortgage is a special type of home equity loan. Like other home equity loans, the amount you can borrow is determined by the house's value. A bank provides the loan, which is secured by a lien on the house. You, not the bank, keep title to the home. A reverse mortgage loan is unique in that you don't have to pay back the loan until you sell the house or pass away.

- A reverse mortgage can provide some extra money to meet daily living expenses. It might provide the money for in-home care so a person can be cared for at home. It could avoid or delay any need for the person to move to assisted living or a nursing home.

- After the borrower dies, the entire loan—principal and accrued interest—must be paid back. This usually means that the home must be sold.

- With a reverse mortgage, the principal grows over time. It becomes larger because compound interest on the amount borrowed continues to increase the longer the loan is in place.

- Almost all reverse mortgages are Federal Housing Administration Home Equity Conversion Mortgages, or HECMs. These are regulated by the US Department of Housing and Urban Development, or HUD. An HECM is insured by the federal government and is available only through an FHA-approved lender.

- There are some private lenders who offer reverse mortgages that are not HECMs. This means they are not federally insured or regulated. Be wary of these.

ELIGIBILITY CONSIDERATIONS

- To be eligible for an HECM, the borrower must be age 62 or older. (In the case of a married couple taking out the loan, the youngest spouse must be at least 62.) The house must be the borrower's primary residence, and the borrower must continue to live in the house. A good rule of thumb is that you should expect to be able to live in your home for at least five more years.

- The next consideration is how much money a borrower can get from a reverse mortgage. That depends on the house's

value, the borrower's age, interest rates, and the type of reverse mortgage: fixed rate or adjustable.

- To make sure that people will be able to pay back reverse mortgages, HUD has established detailed loan eligibility requirements. Keep in mind that HUD is insuring these loans to protect the banks against default, so the government wants to make sure that the borrower is not going to fall into bankruptcy.

- A potential borrower must show that he or she has the financial ability to pay property taxes, mortgage insurance, homeowner's insurance, and possibly flood insurance during the life of the reverse mortgage. In some cases, the borrower might be required to use some of the reverse mortgage proceeds to set up an account that will guarantee the payment of those amounts.

- There are also fees associated with reverse mortgages that make them an expensive way to borrow. These include lending fees, real estate closing costs, the cost of a counseling session, and upfront mortgage insurance.

- On top of the initial fees are ongoing monthly servicing fees. Servicing, according to HUD, includes sending account statements, disbursing loan proceeds, and making certain that borrowers keep up with loan requirements such as paying real estate taxes and homeowner's insurance premiums.

LONG-TERM CONSEQUENCES

- Before deciding on a reverse mortgage, it is necessary to think about the long-term consequences of taking out this type of loan. A problem could arise if the borrower wishes to move: The loan must be paid in full if the home is no longer where the borrower lives.

- As long as the borrower obtains a guaranteed HECM loan, the borrower doesn't have to worry about making up the difference if the house sells for less than the amount borrowed. This is what the mortgage insurance is for. HECM loans are non-recourse, which means the government will pay the bank the difference if the sale of the house doesn't cover the loan amount. The borrower's liability is capped at the market value of the home at the time of its sale or the borrower's death.

- Another consideration is what happens to the house and the debt when the borrower dies. The borrower's heirs have several options, depending on whether they want to keep the house and whether the loan amount due is more or less than the home's value

- If they don't want to keep the house and the amount due on the loan is less than they can get in the open market, they can sell it, pay off the loan, and keep the difference. If they don't want the home, they can allow the bank to foreclose on the home. They won't be responsible for the debt. There are no deficiency judgements with reverse mortgages.

- If they want to keep the house and there is sufficient equity in the home, they can pay off the loan, perhaps by refinancing the amount of the debt with another lender. If this is the plan, they must tell the loan servicers as soon as possible. They may have up to a year to close the deal with new financing, but the interest and insurance payments must continue until the loan is fully paid off. They'll need to work on refinancing quickly.

- If there is more debt than value, but they want to keep the home, they can pay off the loan by coming up with 95 percent of HUD's appraised value minus closing costs and the realtor's commission.

- Another option applies if one spouse survives the other but was not on the reverse mortgage. Under the old rules, the non-borrowing spouse would lose the home because it would need to be sold to pay the debt. Under current rules, the non-borrowing spouse can remain living there as long as the non-borrowing spouse pays the property taxes and homeowner's insurance, with some extra conditions.

- The non-borrowing spouse would have to be married to the borrowing spouse at the time the mortgage was taken out, remain married for the rest of the borrowing spouse's life, and still occupy the house. The marriage must be disclosed at the time the mortgage is taken out, and the non-borrowing spouse has to be named in the loan documents. If these requirements are met, the non-borrowing spouse has 90 days to establish legal ownership after the borrowing spouse's death. If that is done, the non-borrowing spouse would not have to repay the mortgage until the non-borrowing spouse dies.

SUGGESTED READING AND RESOURCES

Consumer Financial Protection Bureau, "What Is a Reverse Mortgage?" Available at **https://www.consumerfinance.gov/ask-cfpb/what-is-a-reverse-mortgage-en-224/**.

Federal Trade Commission, "Reverse Mortgages." Available at **https://www.consumer.ftc.gov/articles/0192-reverse-mortgages**.

Housing and Urban Development, "Home Equity Conversion Mortgages for Seniors." Available at **https://www.hud.gov/program_offices/housing/sfh/hecm/hecmhome**.

QUESTIONS TO CONSIDER

1. What would you recommend to a family member who was interested in taking out a reverse mortgage?

2. What would you list as the most important safeguards built in to HECM regulations?

3. What regulations do you think are unnecessary from the point of view of the consumer?

4. What regulations do you think are unnecessary from the point of view of the lender?

10

Comparing Retirement Communities

This lecture begins by looking at active-living communities. Then, it moves to age-restricted developments and continuing-care retirement communities. Finally, the lecture looks at assisted living and skilled nursing options.

ACTIVE-LIVING AND AGE-RESTRICTED COMMUNITIES

- They go by many different names, but active-living communities are options for those who want to live independently and have a vigorous lifestyle, perhaps downsizing to a smaller new home. Each of these communities or developments has its own unique characteristics, but many of them are like a resort, with a golf course, swimming pool, or other leisure activities.

- Most developers build them with smaller, one- to two-bedroom homes on one level. If the homes are on multiple levels or floors, they come with elevators. There may be lovely landscaping with walking or bike paths. Most of the developments provide security patrols and shuttle services around the community and to offsite stores, restaurants, and other attractions.

- Active-living communities and age-restricted developments are not necessarily the same, although they share many characteristics. An age-restricted community makes sure that all residents are above a certain age. Active-living communities may or may not be age restricted.

- Age-restricted communities may look and feel like an active adult community, but there's one important legal difference. They can legally restrict who can live there based on age.

- The Fair Housing Act provides two ways for apartment houses, small communities, and even entire towns to legally restrict who can live there. Developers can pick which section of the law they want to follow. They can restrict residency to those solely age 62 or older, or they can use the

lower minimum age of 55 if 80 percent of the residents are older than 55.

- Whether it is in an active-living or age-restricted community, you probably have your choice of whether you rent or buy your new home. Renting may be a good first choice because it is less of a commitment than buying. If you later decide that this lifestyle is not for you, move out when your lease expires.

CONTINUING-CARE RETIREMENT COMMUNITIES

- An alternative to an active-living or age-restricted community is a continuing-care retirement community (CCRC). There, you move from independent living to higher levels of services and care as your medical needs change, all while staying within the same campus or residential community.

- Most CCRCs have at least three levels of housing: independent living for those who don't need any personal care assistance, assisted living for those who need some help with activities of daily living, and skilled nursing care for those who need ongoing medical care.

- CCRCs are the most expensive of the living options explored in this lecture, requiring a hefty entrance fee as well as monthly charges. As you investigate various CCRCs, you'll probably find that there are three basic types of contracts. The contract you sign determines what you pay for at the start and what you pay for later.

- The life-care or extended contract is the most expensive upfront option. For a large initial payment, you get unlimited assisted living, medical treatment, and skilled nursing care without additional charges down the road.

- You could also negotiate a modified contract that offers a set of paid-for services for a set length of time. When that

time is expired, you can obtain other services, but for higher monthly fees.

- With a fee-for-service contract, your initial enrollment fee may be lower, but you will pay for assisted living and skilled nursing at their then market rates, when or if you need them. The contracts for CCRCs can be very complicated and the fee structures are intricate. Be certain that you talk with a lawyer or a financial adviser before you sign a CCRC contract.

ASSISTED LIVING FACILITIES

- Assisted living facilities are a choice for those who can't or don't want to live on their own but don't need nursing care. Most offer a combination of housing, meals, personal care, social activities, and 24-hour supervision. Typically, you'll eat meals in a common dining area, get basic housekeeping, and receive help with activities of daily living, such as bathing, dressing, and grooming.

- Depending on state regulations, the facility may be able to help with your medications and give you basic nursing care, but it cannot provide more involved skilled medical care. Facility sizes range from small homes with just a few people to high-rise apartment-style buildings for hundreds of residents. Residents might share a room, have a single room, or have a suite of rooms with a kichenette.

- Keep in mind that assisted living residences are not regulated by the federal government. Each state decides how they're licensed. Make sure any residence you are considering is appropriately licensed. Check, too, with the state licensing agency and long-term care ombudsman's office to see if any complaints have been filed against the facilities on your list.

- If you are considering an assisted living facility, you'll want to understand all the provisions in the contract. Have a lawyer review the contract before you sign. Because not all assisted

living facilities are the same, not all admissions contracts are the same. It's a good idea to read and compare the contract terms for several facilities before making a choice.

- Be wary of facilities that say the contract is standard, it's what everyone signs, or it can't be changed. Watch for contract terms that require you to submit any disputes to arbitration, cutting off your legal right to litigate any serious issues.

SKILLED NURSING FACILITIES

- The final housing choice this lecture discusses is often not much of a choice: a skilled nursing facility, more often called a nursing home or SNF. The need for skilled nursing care may arise suddenly, with little time available for comparison shopping. In some areas, available beds are limited. However rushed and emotional the decision to move to a nursing home may be, take the time to carefully review the contract before signing it. Admissions contracts are complex, so have a lawyer go over it with you.

- As the prospective resident, you should sign the contract, unless you have a guardian or have given authority to an agent with powers of attorney to sign contracts on your behalf. Family members should sign the contract as the responsible party or guarantor only if they understand they are personally responsible for paying the nursing facility expenses. (This is also the case for a contract for an assisted living facility.)

- Look at what is included in the facility's basic daily or monthly rate. It will usually cover room and meals, housekeeping, linens, general nursing care, medical records services, recreation, and personal care. There should be a schedule of extra charges for physician's services, medications, physical therapy, diagnostic services, and personal services such as laundry, beauticians, and barbers.

- Some contract provisions to watch out for and avoid include restrictions on applying for Medicaid, limits on visiting hours, and requirements that a family member guarantee payment. Other troublesome provisions sometimes buried in the fine print require residents to make a deposit if they are eligible for Medicaid, to consent in advance to all medical care, or to agree to arbitrate any disputes with the facility.

- Additionally, make sure you understand how long the facility will keep your unit available if you have an extended hospital stay. This is called the bed-hold policy. These provisions, and more, are regulated by federal and state laws.

SUGGESTED READING AND RESOURCES

Genworth publishes an annual survey of average national and regional prices for in-home care to nursing care: **https://www.genworth.com/aging-and-you/finances/cost-of-care.html**.

Two sites with locator tools that list various types of senior residential communities are **caring.com** and **whereyoulivematters.org**.

11

Drafting Your Estate Plan

This lecture covers what a will does, why you may not need one, what happens to your property if you die without one, and why you might want to have a will after all. The lecture also takes a look at what you should think about including in your will if you do need one.

> State laws differ. This is an excellent reason why you need to rely on a lawyer who knows your state's laws.

THE PURPOSE OF A WILL

- A will is one of the various ways—but definitely not the only way—to determine who gets what after you die. Its primary purpose is to determine the distribution of property that you have not already designated for distribution in some other way.

- A will is just one part of your estate plan. Almost any time you sign a document that deals with your money or property, you are determining what happens to that money or property after you are gone.

- For instance, when you sign the deed to any real estate, you are putting in writing your intention for distribution of that piece of real estate at your death. You can own it in your own name, and then it will automatically pass to your estate when you die. You can also own it jointly with right of survivorship. Your joint owner will automatically own all the property at your death. You can also put your property into a trust.

- Many accounts and investments give you the opportunity to designate a beneficiary. The same applies to your life insurance and any pension plans. You are determining who gets what on your death when you designate in writing a beneficiary.

- Each of those legal documents is part of your estate plan. Even if you don't have a will per se, you have indicated in writing as to how those assets should be distributed on your

death. If you do have a will, anything that you have in joint ownership or with a named beneficiary will be taken care of outside of your will.

- You can use joint ownership of property, beneficiary designations for retirement accounts, and the like to simplify your estate plan. However, you need to be aware of the fact that these documents take precedence over what you say in your will.

FOREGOING A WILL

- This lecture now turns to what happens if you never get around to writing a will. Everything you own at your death is going to go to someone, somehow. The estate-planning documents will make those assets automatically go to someone else. Those are known as your non-probate assets, because they will avoid probate—the legal process by which the sole property of a deceased person is distributed, whether the person has a will or not.

- Any assets that don't automatically go to someone pass to your estate as probate property. State laws take care of determining who gets anything else that passes into your estate if you don't have a will. These laws are the laws of intestacy or descent and distribution.

- Your state legislature has devised a default plan that tries to interpret what an ordinary person would want done with their property. This is where it becomes complicated and very state-specific in the details.

- In general terms, the legislatures presume that you want to take care of your spouse, and if there is no spouse, then your children. If there are no children, then your parents, and then your siblings. This goes on until the most closely related, surviving blood relative is found.

- These very detailed laws, written to apply to the general situation, can produce some bizarre results that may seem very unfair to your survivors. However, the laws may work well for some people.

REASONS FOR A WILL

- Preparing a will is how you take control of special circumstances such as arrangements for minor children, family members with different needs, blended families, nontraditional family arrangements, and a desire to have some money go to other than family members.

- If you have minor children, you will want to designate whom you want to raise your children if both parents are deceased. You'll also need to determine who is to manage their money, as minors are considered legally unable to do so on their own. You would nominate a guardian or guardians with instructions as to how you want your kids raised.

- You should also create a testamentary trust that will be funded after your death and name a trustee with directions as to how you want the trustee to spend the children's money. If you have more than one minor child, you need to determine if you want separate trusts for each child or a single pool of money to be shared among the children for their expenses.

- If you don't make provisions for who is to take care of your minor children on the death of both parents, the courts will have to figure out who would be best to be your children's guardian. The courts will give instructions to the guardian about care and money responsibilities, but those choices and instructions may not match what you would want. Stay in control by making the decisions via your will.

- You may have family members to whom you want to pass on more money or less money than to others. The same goes

for real estate and other types of property. Without a will, the state scheme presumes that you want all of your probate assets put into one pot and that all those who have the same familial relationship receive equal amounts—that is, if you have three surviving adult children who would inherit, each gets a third of each asset.

SPECIAL CIRCUMSTANCES

- Other special circumstances may call for a will. Blended families with children from different spouses most likely should have a will that sets out how assets are to be distributed.

- Single people, whether widowed or never married, should use a will to direct where they want their probate assets to go. They can also use other estate-planning documents to name beneficiaries or surviving owners.

- Those who want to leave property to domestic partners or close personal friends, especially those who live in states that don't recognize gay marriage or common-law spouses, definitely need a will. You must use a will to designate specific bequests of money to nonfamily members; to a charity, a university, a religious organization; or another entity that you want to honor with a contribution.

- Another consideration is tangible personal property, which can include items such as furniture, collectables, books, sports equipment, jewelry, and so on. One way to signal your intent for these items is to make a general gift of your personal possessions and household furnishings without listing specific items. Alternatively, you can make specific bequests of personal property. A letter of instruction is a helpful legal document here.

- One other key part of a will is the naming of the executor, who is the person you want to take care of the details of wrapping

up your estate. Executors should have good financial skills, attention to detail, patience, and a dose of diplomacy.

- Finally, keep in mind that your estate-planning documents are living documents that need ongoing review and possible revision. Any time you have a change in circumstance, you need to revisit your plan.

SUGGESTED READING AND RESOURCES

Hurme, *Checklist for My Family*.

QUESTIONS TO CONSIDER

1. What is the best way to manage both your wishes and family members' expectations?

2. What should you do now to make the management of your estate less complicated?

3. What emotional obstacles do you fear or face in talking about your estate plans with others?

12

Understanding and Using Trusts

A trust is an arrangement in which property is given to someone to manage for the benefit of someone else. Every trust involves three parties: the trustor, trustee, and beneficiary. The trustor might also be called the grantor or the settlor or the donor. For the purposes of this lecture, consider yourself that person—that is, the trustor creating the trust.

The trustee is the person or entity you select to manage the property in the trust. You, the trustor, give instructions to your trustee as to how you want the trustee to manage that property. The beneficiary or beneficiaries are the people or entities you want to receive the benefit of the trust property. Depending on the circumstances, trusts can help you ensure that someone you trust will be making decisions about managing your property when you can't and what happens to your property after you die.

LIVING TRUSTS

- There are many different kinds of trusts for different purposes. A living trust is the kind that most people are familiar with, and it is created while you are living. This is distinguished from a testamentary trust, which you create in your will and which comes into effect after you die.

- In a living trust, you can be all three parties: You set up the trust as the trustor, name yourself as the trustee, and make yourself the trust's beneficiary.

- To understand living trusts, it can be helpful to visualize three sequential time segments. This lecture will call them plans A, B, and C:

  - Plan A is for the period in life when you want to stay in control.

  - Plan B is for when you get to a point where you need some help.

- Plan C is for after you are gone.

- Plan A is probably how you want to set up your trust for your current needs right away. You, as trustor, determine what titled property is appropriate for you to place in the trust. Additionally, you, as trustor, must fund the trust. This means you must transfer title of the asset or property from yourself to the trust. You must get ownership out of your name and into the name of the trust for the whole purpose of the trust scheme to take effect.

- You, as trustee, manage whatever property you have put in trust just as you would if it were not in trust. You can also take property out of the trust or add other assets. You enjoy its full use just as if the property were not in a trust. At this stage in Plan A, the fact the deed says the trust is the owner doesn't make any difference in how you use the property. You also pay taxes on any income generated by the trust.

- Plan B addresses who is to be the trustee when you no longer want the hassle of managing the property or if you should become unable to manage the trust while you are still alive. To plan for this eventuality, you need to name a successor trustee. This is the person who has the skillsets to take over the management of the trust according to the instructions you set out in the trust document as the trustor. You'll most likely remain the primary beneficiary, so you can continue to receive any distributions from the trust for as long as you live.

- You also need to set out in the document the circumstances under which the successor succeeds you. You need to be very clear how this happens. If you don't think through when and how the successor trustee is going to be authorized to act, you create unnecessary complications.

- Plan C addresses who is to become the beneficiary or beneficiaries of the trust after your death. This is where a

living trust becomes like a will. A living trust is in effect both before and after your death, while your will only comes into effect after your death.

SELECTING ASSETS

- Not everything you own belongs in a trust. As trustor, you need to be selective about which assets are appropriate for trust management. Among trust-appropriate assets are real estate—especially out-of-state real estate—and brokerage accounts.

- Start with an inventory of your major assets. For each asset, ask whether there is a good reason why it should be in trust. Will it make management or distribution easier or more complicated?

- One asset class that doesn't belong in your trust is made up of any qualified retirement accounts, such as your 401(k) or IRA. You have to transfer ownership of any property from your name to the trust. If you were to transfer ownership of your 401(k) to the trust, you would be withdrawing all assets, and the entire sum would be immediately taxable.

KEY PROVISIONS

- There are several key provisions in a trust document. You want to name your successor trustee and your secondary beneficiaries. (You are the primary beneficiary, until your death.)

- You give instructions to the trustee about how you want the trust assets managed up until distribution. You'll have boilerplate instructions about paying taxes and debts, how to amend the trust, whether the trustee can mortgage or sell property, and other management details. You'll also want to name an alternative trustee in case your successor trustee becomes unable to serve.

- The bulk of the instructions will be your distribution scheme. How you divide up your trust property depends on what property is in the trust and who you want to get it. As with a will, you can distribute the assets in kind, by specific amount, or by percentage. You can also convert the property to cash or hold the principle and distribute only income for some number of years.

TRUSTS AND WILLS

- Because trust distribution is somewhat similar to will distribution, many people wonder if they need both. The answer is that it depends on what you have and what you want to do with it. Many don't need either a will or a trust: If they own everything jointly with a spouse or in retirement accounts, they don't need to worry about avoiding probate because they have no probate property.

- However, if you want uneven distribution among your family members, or if you want to make gifts to friends, charities or nonprofits, you need a will. The more creative or out of the ordinary you want to be with your distribution scheme, the greater likelihood you should be considering a trust as well as a will.

- If you need a trust, you also need a will, sometimes called a pour-over will. A pour-over will gathers up any loose ends and undesignated property and puts those matters into the trust for ease of administration

- A trust is a better choice than a will for the distribution of out-of-state property after you die. Here are some other specific situations in which a trust might be a better way to distribute your assets than a will:

    - If you have a beneficiary with specific needs, such as medical benefits, you will want to put assets into a special needs trust.

- If you have a beneficiary who will not be in a position to receive a lump-sum distribution, you may want the trustee to exercise discretion as to how much at a time and for what reasons distributions to that beneficiary should be made.

- If you have a family business to be managed to continue to support your family, a trust may be an important part of your business succession plan.

SPECIALIZED TRUSTS

- As long as you stay within the parameters of established trust and tax laws, you can create a trust to cover a wide range of family circumstances, tax issues, and estate-planning needs. However, be sure you are working with a lawyer who has experience in personalizing trusts and is not offering a one-size-fits-all package deal.

- One very special kind of trust that you might be interested in is a special needs or supplemental needs trust (SNT). For example, these come into play if you want to give or leave money to a family member who is receiving benefits through Medicaid or receives Supplemental Security Income (SSI).

- Because these are so-called needs-based programs, beneficiaries must have very limited income and assets below $2,000. If they were to receive an inheritance of $5,000, for instance, they would lose their benefits until that money was spent on their needs.

- By putting money into a specifically structured trust, your family member can keep his or her benefits and still have money for extra items or special care not covered by the benefits. This works because of the key trust concept that the beneficiary doesn't own the money. The trust does.

- This way to not lose public benefits works, however, only if some very exacting requirements are followed in setting up and using an SNT. The federal government and some state governments want to make sure that the money is appropriately spent if they are going to ignore the extra funds while keeping the person eligible for government benefits. SNTs are very tricky, so talk with your lawyer and a financial advisor if there is someone in your family who would benefit.

- There are many other ways trusts can be crafted to fit special circumstances. One of those is a QTIP, or qualified terminable interest property trust. It might be created when there has been a second marriage and the trustor wants to make certain that children from the first marriage aren't disinherited by the second spouse. The trustor would direct the trustee to make sure that the surviving spouse has income for life, but on death, the trustor's children by the first marriage will receive whatever is left in the trust.

SUGGESTED READING AND RESOURCES

Takacs, "You are a Trustee of a Special Needs Trust." Available at **http://www.tn-elderlaw.com/resources/you-are-a-trustee-of-a-special-needs-trust**.

QUESTIONS TO CONSIDER

1. What plans, expectations, or wishes do you have for how your business affairs will be managed if you become unable to do so yourself?

2. Is equal distribution equitable?

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Controlling Who Gets Your Property

The manner in which you own your property has huge implications, both now and in the future. How you own it controls what type of legal interest you have in the asset, what you can and can't do with it, and what will happen to it later.

BACKGROUND

- The technical reason for the conditions or restrictions is that the interests or rights that go along with the various types of ownership are deeply imbedded in common law legal theory on property rights. The theory is rooted in the ancient history of property.

- A bundle of rights make up property ownership, and the rights in the bundle can be held together or separated. Those rights are to possess, to use, and to dispose—or get rid of—your interests.

- Take, for example, all the ways you can own your home. You can own it in your name or jointly with others. You can keep the right to live in your home for as long as you live, even after giving or selling ownership to someone else. You can own the space where you live but not the building. You could own the right to have access to a specific space for a limited time. Alternatively, you can put your home into a trust, which would then own it.

- Additionally, there are multiple ways you can own real estate with someone else. The two main ways to own real estate are as joint owners with right of survivorship or as tenants in common. Joint owners with right of survivorship have equal ownership and rights to the property. There can be more than two. The most typical joint owners are spouses. They both can occupy it and use it.

- When one of the joint owners dies, the surviving spouse automatically continues to own the property with the rights

to possess, use, and dispose. This surviving spouse becomes the sole owner of the property.

- Common owners have the same rights to possess, use, and dispose of the property as joint owners, but with special twists. The right to dispose is separated from the ownership bundle. Tenants in common can sell, give away, or leave their ownership interest by will to whomever they please. They have a separate right to dispose of the property. However, in reality, not many people want to buy a common tenant's ownership.

- Another key difference between ownership in common and joint ownership is what happens to the share of ownership when a common owner dies. Unlike joint ownership with right of survivorship, the surviving owner or owners does not inherit any greater interest or share in the property. The common owner's share passes to his or her estate because he or she retains the right to dispose.

LIFE ESTATES

- A life estate is an excellent illustration of how the rights to possess and use can be separated from the right to dispose. By creating a life estate, you can transfer some of the ownership interests in your home to another person but keep the right of possession and use. Only upon your death does the other person automatically get the other interest of ownership—the right to possess.

- Here's an example: Sam and Belinda own their home as joint owners with right of survivorship. They want to remain in their home until the last spouse dies, but once they are both gone, they want their child Florence to get the house. Sam and Belinda can create a joint life estate naming Florence as the remainder owner.

- They can live at home as life tenants until the last spouse dies. As life tenants, Sam and Belinda are responsible for the taxes,

insurance, and routine maintenance of the property. Sam and Belinda cannot leave the house to anyone else in their wills. Florence cannot take possession and full ownership—which is called unity of title—until both parents die.

ADDING A CHILD'S NAME TO A DEED

- If you are thinking of putting your child's name on a deed, be careful. Once done, it can't be undone unless the child agrees to let his or her name be taken off the deed. Keep in mind that joint owners must agree on how to dispose of joint property.

- If you have more than one child, be sure to explain to the other children why you are doing it. If you don't explain why while you are alive, at your death, the other children may protest and try to get a court to revoke the joint ownership.

- Putting a child's name on a deed can have an unexpected consequence because that action is legally a gift to the child. The value of the gift is equal to the child's ownership interest in the house. If the child and one parent become joint co-owners, the parent has given half the value of the house to the child.

- If later, the parent applies for certain governmental benefits, that gift may disqualify the parent for those benefits. This is a particularly important consideration if the parent later needs to apply for Medicaid to help pay for the cost of a nursing home or other long-term care.

- Medicaid eligibility rules frequently change and vary from state to state. Check with an elder law attorney experienced with your state's Medicaid rules before adding your child to the deed to your house or making any gift.

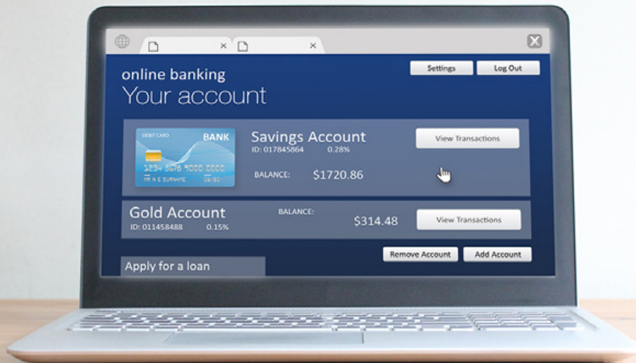
- There are other factors to keep in mind as well. For instance, if the child later declares bankruptcy, the house will be

included as an asset in the bankruptcy. Putting a child's name on the deed may also limit your ability to apply for a reverse mortgage. There are also tax considerations that may dampen the child's interest in being gifted co-ownership of your home. For all these reasons, you need to do some serious thinking before putting your child on the deed of your home.

BANK ACCOUNTS

- This lecture closes with a look at bank accounts, including the ways you can own them and the interplay of the rights to possess, use, and dispose. You can own a bank account in your own name. Obviously, you can put money in, take money out, and close the account—that is, you can possess, use, and dispose.

- You can own a bank account jointly with someone else. Both of you can make deposits, write checks, and have full use. This means any money deposited belongs to both owners. If so inclined, one can take all the money. Theoretically, both need to agree to close the account, but if the money is gone in the account through theft or exploitation, that right has few teeth.



- There are legal steps that can be taken to recover the money from a thieving joint owner, but it is a steep legal hill to climb because of the status of joint ownership. Also, keep in mind that a joint account is joint with right of survivorship. This means that upon the death of one owner, the survivor automatically becomes the sole owner of any money in the account.

- Another kind of bank account gives a right to use to someone else without survivorship. It's called an agency or convenience account. To open it, you create a contract with the bank that permits someone else to have access to the money you own. The other property right to dispose—to decide to close the account or to determine who inherits—remain with you. On your death, the money remains with your estate.

- Yet another kind of account, a payable on death account, does not give anyone else an ownership or right to possess, use, or dispose. This is the type of account you can create if you want the balance to automatically go to a beneficiary. Until your death, you remain sole owner. You can add or subtract money, and even close the account.

SUGGESTED READING AND RESOURCES

Hurme, *Checklist for My Family*.

QUESTIONS TO CONSIDER

1. When was the last time you took an inventory of what you owned and how you own it?

2. Consider how all of the other documents you have signed, such as deeds and beneficiary designations, change or support your overall estate plan.

14

Separating Probate Facts from Fiction

This lecture takes a look at probate. Probate is the court-monitored procedure that determines the validity of any will, confirms who will be in charge of settling the affairs of the decedent, and identifies the persons who are entitled to receive distributions of assets. This procedure also inventories the probate assets, settles claims against the estate, and approves the distribution of assets to the proper parties.

BACKGROUND AND DEFINITIONS

- In essence, during probate, the court serves as a referee to sort out family disagreements, if there are any, over the intent of the decedent. If necessary, the court will figure out—applying the state statute—how probate property is to be distributed when there is no will.

- The following definitions are helpful for understanding the probate process.

    - An **heir** is someone who is related by blood to the decedent and therefore potentially entitled to some portion of the decedent's estate.

    - A **beneficiary** is someone the decedent has named as being entitled to receive a portion of her estate, whether or not that person is related by blood.

    - A **testator** is the person who has died with a will. In some archaic statutes, a **testatrix** is a female testator.

    - The **probate court** is a division or branch of the local county or municipal civil court.

    - The **executor** is the person the testator nominates to settle the probate estate.

    - An **administrator** is the person the court names to settle the probate estate of someone without a will. Some states

might use the term **personal representative** to refer to an executor or an administrator.

- **Intestacy** is when the decedent—a person who has died—does not have a valid will.

- A **bequest** is a specific gift in a will. It could be a dollar amount, percentage, or item of real or personal property.

- **Probate property** is all or part of what is known as the **probate estate**, which in turn is a specific subset of your overall estate.

- An estate is not the same thing as a probate estate. Your probate estate is only those things that will be distributed according to your will or, if you don't have a will, anything that will be distributed according to your state's law of intestacy.

- Determining what's in your probate estate is a process of elimination. For instance, any property you have deeded into a trust is in your trust estate; it's not in your probate estate. The same goes for other assets that are to be distributed according to the terms of written documents other than your will. Because they are not governed by your will, they are not probate property.

Two Myths

Many people believe they can avoid probate if they don't have a will. This is a myth. If you don't have a will and you have probate property, the probate court is going to be involved.

Another related myth is that if you don't have a will, the state will take all your property. This is also incorrect. The court will instead apply the state's law of intestacy, or law of descent and distribution. This law—unique in detail in every state—determines who is to receive what when there is no will.

- If you have a will, and you have no probate property, there is no need to involve the court in the probate process. If you don't have a will, and you do have probate property, your estate will be distributed according the state's law of intestacy.

THE PROCESS

- This lecture now turns to how the process works if you have a will and probate property. The first step of probate is for your family to find your will. Where to keep your will is a common question. There is no simple answer, but the most important factor is that someone you trust knows where the original is located. It needs to be the original signed document—not a copy.

- Once the will has been located, it needs to be filed with the probate court—which in some states is called the surrogate's court—in the county that was the decedent's legal residence. If there is real estate in more than one state, there will need to be additional probate—called ancillary probate—in every state where real property is located. This is why out-of-state real estate should be held in a trust.

- The next matter before the court is whether the will someone wants to probate is valid. This is where matters can become nasty and expensive. Disappointed heirs or beneficiaries will try to find any crack, deviation, or defect in the will. The purpose of probate is to sort out these claims.

If you are leaving different amounts to your children, or making large bequests to friends or charities, or doing anything else your heirs might not expect or understand, tell them now. Family communication is much more important than any legal document.

- The next step of probate is for the court to give the executor the power to settle the estate. Ordinarily, the court will appoint the person you name in your will as your executor. However, there might be some reason the person you nominate is unable to take on the responsibilities. Additionally, you should notify your executor ahead of time so that the appointment isn't a surprise.

THE EXECUTOR'S DUTIES

- Once appointed, the executor has a long list of things to do. While a complete list depends on the state and the complexity of your probate estate, the basic tasks are the following:

  - Get multiple copies (with a raised seal) of the death certificate from the funeral home or local health department.

  - Secure any property, collecting keys or changing locks if necessary.

  - Notify Social Security of the death and return the last benefit payment.

  - Inventory all probate assets to determine the value on the date of death, getting appraisals as necessary.

  - Post a surety bond based on the value of the estate, if the court orders it.

  - Publish legal notices of the opening of probate.

  - Keep insurance up to date, such has homeowner's or car insurance, until the property passes out of the estate.

  - Identify all outstanding debts and pay them as is appropriate. Pay the mortgage to keep the bank from foreclosing and demanding payment in full. If there's not

enough money to pay all debts, a state law will set out the priority to pay them off.

- Work with financial institutions to close out accounts.
- Engage a lawyer, financial advisor, tax preparer, appraiser, real estate agent, and any other necessary professionals. For instance, California requires a court-appointed appraiser and Florida requires an attorney in most cases.
- Open an estate bank account to deposit any estate moneys coming in and pay the estate expenses. Get an Employer Identification Number from the IRS before opening this account.
- Find and notify all heirs and beneficiaries. In some states, this needs to be done before the will is admitted into probate.
- Record documents to sell or transfer real estate, according to the terms of the will.
- Prepare the final income tax return and any estate tax returns.
- File the inventory with the court for approval, petition for permission to distribute, and then file a final accounting of what you did with the estate.

- To make life easier for your executor, have all this information readily available: contact information for all your relatives and beneficiaries; records for all bank or investment accounts, life insurance policies, debts, mortgages, credit cards, deeds, and car titles; and a listing with photographs and receipts of personal property. Your executor is going to need to know your Social Security number, if you have prepaid funeral plans or a cemetery deed, safe deposit box location, and military discharge (DD214) information.

- Only after all of the bills and taxes are paid and the court approves all of the documentation can the executor distribute the remaining assets according to the terms of the will. Some states allow partial distributions before all the claims have come in, but the executor needs to hold back enough reserves to cover any anticipated debts or expenses. If a later claim comes in within the state's deadline, the executor may be personally liable to the creditor if the executor has already paid out all of the funds.

CONCLUSION

- Understanding the terms of the will and figuring out who gets what probate property can be fraught with interpretive landmines. Over the centuries that wills have been administered by the courts, many peculiar rules of interpretation have developed.

- The court is typically reluctant to read between the lines. Instead, it will take your written words literally.

- A perpetual question about probate is the cost. There are many costs involved, and they vary from location to location on top of evolving over time. Here are some methods that can help avoid a costly probate process:

    - Make sure someone knows where your will is located.

    - Destroy any prior wills or mark "VOID" on all of their pages.

    - Select an executor who is going to be up to the task, and make sure he or she agrees to take on the responsibilities of the job.

    - Take steps now to make sure there are no questions about where you intend to have your legal residence.

- Explain your estate plan to everyone involved so they have appropriate expectations.

- Organize all information about your debts and assets. Keep it up to date to save time and expense in the settling of your estate.

SUGGESTED READING AND RESOURCES

Hurme, *Checklist for Family Survivors*.

———, *Checklist for My Family*.

Palermo, *Crash Course in Estate Planning*. (The chapter on probate is particularly relevant to this lecture.)

The National Center for State Courts has a link to all the many probate courts at **ncsc.org/topics/special-jurisdiction/probate-courts/state-links.aspx**.

The state laws on small estate administration are available at **smallestates.uslegal.com/sitemap/**.

There is state-specific executor compensation calculator at **estateexec.com/Docs/Compensation**.

QUESTIONS TO CONSIDER

1. What research about your state's laws do you need to do to understand the steps you can take now to simplify the settling of your estate?

2. Who is the best person for you to nominate as your executor?

3. What goals do you want to accomplish through your estate plan?

15

Conveying Your Personal Wishes in Writing

The process of dividing up your property after you pass away can lead to nasty disputes among those who are hoping to receive it. This lecture explores two easy steps you can take to head off family feuds regarding property division. These are steps that needn't involve a lawyer, and they involve the drafting of two letters of instruction: one for your final wishes and one for your personal property. The lecture concludes with a look at ethical wills.

YOUR FINAL WISHES

- You can relieve your loved ones of the burden of knowing what you would want after your death by preparing a letter of instruction. Within the first hours after you die, several critical, irreversible decisions must be made. For instance, do you want to be an organ donor? Have you made arrangements for a whole-body donation to a medical school or research facility? If so, your family needs to know whom to contact about your death.

- Whether you plan to donate your body or not, another consideration is what you ultimately want to be done with it. This involves decisions on your place of burial and embalmment. Alternatively, if you wish to be cremated, there are decisions to be made as well. Yet another decision is the type of funeral, memorial service, or celebration of life you prefer.

- There are definite advantages to preplanning your funeral with a funeral home because of all the options. Most will walk you through a checklist of decisions that you can make now so your family doesn't have to later. You can select ahead of time the type of casket, grave liner, or urn and decide all the other details about your funeral or memorial service. You'll also get price lists for each of the services involved.

- Preplanning with a funeral home does not necessarily mean you need pay for those costs now. Most funeral homes offer what is known as a preneed contract. With a preneed

contract, you lock in the prices for any of the goods and services you have selected. That means if the cost goes up by the time you die, your family won't have to pay the difference. You don't need to use a preneed contract to preplan your funeral, however, and there have been some historical problems with them.

- If you are concerned about not burdening your family with the cost of your funeral, there are other ways to set aside money for those expenses. In lieu of a preneed contract, you could buy final expense insurance, establish a payable-on-death savings account, or designate a certificate of deposit or life insurance policy that you want used to cover your expenses.

- Doing this planning can be very difficult. But as hard as it might be for you, think about how hard it will be on your family to figure this all out while they are grieving your death. A letter of instruction about your final wishes is a great gift to your family.

YOUR PERSONAL PROPERTY

- The distribution of personal property can be one of the most vexing and contentious aspects of settling an estate, but it doesn't have to be that way if you prepare another letter of instruction. This letter of instruction isn't related to high-value things like your home or brokerage account that you are going to mention in your will. It also isn't necessarily about low-value items like the junk in the garage, clothes in the closet, or pots and pans in the kitchen (though someone will have to handle the dispersion of those items).

- However, for example, it may be that you want your grandson to receive your woodworking tools instead of having them sold at a yard sale. If so, say so in your letter of instruction. The same goes for items like jewelry, collectibles, scrapbooks, and other cherished objects.

Documenting Your Items

Before you start your letter of instruction—and even if you don't get around to one—it's a great idea to inventory your personal stuff. An easy way to do this is by taking photos of your belongings with the camera on your phone. These photos have multiple uses. They can help jog your memory as to what you want to mention in your letter of instruction. Additionally, they provide excellent documentation of what you own if you need to file a claim on your homeowner's insurance policy. The pictures will also be very helpful to your executor, who will need to file an inventory of your assets when your will is probated. You can also take a photo or scan any appraisals or receipts for those very special items, so you and your executor have a readily accessible digital record of value.

- Like your letter of instruction about your final wishes, this letter of instruction is an informal document. It might also be called a personal property memorandum. It can be attached to your will, but it's not an official part of it. Think of it as a supplement to your will that explains how you want specific personal possessions distributed.

- This type of letter of instruction clarifies any special requests you want your family to carry out after your death. You can easily change it as your circumstances of wishes change. Simply sign it and date it so your family knows it is the latest version.

- Another topic you can cover in your letter of instruction is what you want your family to do with the items that you haven't specifically mentioned. You could also suggest a system of distribution to avoid hurt feelings.

ETHICAL WILLS

- Another meaningful gift you can leave to your family is an ethical will. This shouldn't be confused with either your last will and testament or your living will. It isn't a legal document at all, but it can be something cherished for generations to come.

- An ethical will is a personal legacy statement in which you share your values, blessings, and advice. This is not a new idea. It's an ancient tradition to pass on personal values, beliefs, or blessings to future generations. Initially, ethical wills were transmitted orally. Over time, they evolved into written documents. You may also want to make a video or audio recording of your ethical will as a cherished legacy for later generations.

- You might pass on some of your life's lessons, relay hopes and dreams for future generations, or extend forgiveness to friends or family members. Preparing an ethical will is an opportunity for you to put down on paper what you hold dear.

SUGGESTED READING AND RESOURCES

Federal Trade Commission, "The FTC Funeral Rule." Available at https://www.consumer.ftc.gov/articles/0300-ftc-funeral-rule. Explains consumers' rights under the Funeral Rule.

Hurme, *Checklist for My Family*, chapter 10. This chapter details the decisions you need to make about your final wishes with checklists of what you need to consider.

Stum, *Who Gets Grandma's Yellow Pie Plate? Workbook*.

16

Creating a Financial Power of Attorney

Every adult should have at least two powers of attorney, one for financial matters and one for medical matters. This lecture focuses on powers of attorney for financial matters. It looks at why having a financial power of attorney is so important and how to set one up.

> *A power of attorney gives written authorization to someone to represent you or act on your behalf. In it, you give your powers to make decisions to someone else.*

BACKGROUND ON POWERS OF ATTORNEY

- Someone with a power of attorney is not a Power of Attorney, nor is that person necessarily a lawyer. The power of attorney is a piece of paper. The agent has powers of attorney.

- With a financial power of attorney, you can set a timeframe when the power starts and stops. For example, you can authorize your friend to check your mail and pay bills while you are on vacation from July 1 to August 15. The friend can't do anything until July 1. When August 15 comes, the friend can do no more.

- One of the primary reasons people sign powers of attorney is to have someone handle their business affairs when they become unable to do so. State legislatures have passed statutes that say it's OK if the principal puts into the power of attorney her specific intent that the agent's powers continue even after the principal's incapacity. When the principal dies, however, the powers die as well.

- There are also springing powers that determine when the powers start or go into effect. They spring into action at some future date or event after the document is signed. The springing event must be specifically described: How and when the springing event has sprung are critical considerations.

PROVIDING INSTRUCTIONS

- The key purpose of agency is to provide instructions. Powers are flexible to fit your circumstances and your needs. You can be sweepingly general, as in saying, "Fred can do anything that I could do." You can itemize, giving a long list of powers with detailed instructions as to how you want your agent to act.

- Some states have made it relatively easy to pick and choose what powers you might want to delegate. They do this by providing form powers with check-off boxes that refer to pages of statutory authority.

- Some states use an opt-out form. With these, you need to cross out the powers you don't want your agent to have. Other states might have an opt-in form in which you select the powers you want your agent to have. With those forms, you must check the box next to the power for it to be delegated to your agent.

SELECTING AN AGENT

- The most important decision you need to make is whom to select as agent, especially if you are expecting that your agent will carry out your wishes when you are unable to do so. The necessity of planning for incapacity by creating a durable power of attorney must be tempered with the risk of an inability to fire or supervise the agent.

- Your agent has to be trustworthy. No matter how clear your instructions are about what you want your agent to do, you are going to have to rely on the agent's willingness to do so in good faith and honesty.

- Consider the necessary skills. The best person to be your financial agent should be someone detail oriented, good with numbers, and comfortable talking with financial advisors, bankers, real estate agents, and the other professionals

you currently do business with. They don't need to be a professional accountant, but if they have financial troubles, consider staying away.

- You also need to talk with the agent about your expectations. Talk about possible scenarios in detail. Additionally, tell the agent that you picked him or her because you believe you can trust the agent to honor and appreciate the agent's fiduciary responsibilities. Those fiduciary duties are loyalty, faithfulness, avoidance of conflicts of interest, and appreciation of the limits of authority.

PROTECTION FROM ABUSE

- Though it is important to have an agent you trust, you may need to build in protections. Powers of attorney can and have been severely abused. In the wrong hands, a power of attorney gives a wayward agent the legal authority to drain your bank account, sell your home and pocket the money, and cash in your life insurance.

- The Uniform Power of Attorney Act has important statutory protections to combat abuse. It's been enacted by 27 states as of 2019, with four more states considering it. It's meant to provide for greater uniformity among state laws and preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decision making.

- It's also intended to deter the use of the power of attorney as a tool for financial abuse. A key protection is giving statutory authority to "interested parties" to request an accounting. Without such a provision, it is very difficult for someone to force an agent to account to anyone other than the principal. This is because a power of attorney is a contract between two people, and under contract law, outsiders to the contract can't interfere.

- Even if your state hasn't adopted the uniform act, you can put into your contract a requirement that the agent accounts to the person you choose. It could be your attorney, financial advisor, or a sibling. That way, you allow someone to look over the books when you can't.

BEING AN AGENT

- This lecture closes with a look at what it will be like if you serve as an agent for someone else. It is an honor, but it's also a large responsibility. Being an agent for someone else is not easy.

- Making wise decisions for yourself is hard enough, whether they are about investments, budgeting limited resources, or deciding to sell a house. Making such decisions for a loved one is even harder.

- Don't presume to know what the person you're representing would want. Get to know the person even better than you know him or her now. You must talk in detail with your principal so you can understand his or her mindset. Go over the documents line by line together. Talk about what-if scenarios.

- As a financial agent, you must engrave the fact that it's not your money onto your thinking. You have a duty to be loyal to the directions and intentions of your principal, not to act on your own preferences. The money is certainly not yours to spend on your own needs. It's also not a pot of money you can borrow from, even if you intend to pay it back.

- When you are signing any document, make sure it is clear that you are signing as an agent for the principal. Don't sign just your name, as that could make you personally liable. Don't sign the principal's name, because that is forgery. Sign as, "[Your Name], agent for [Principal's Name]. You might also sign with your name followed by "attorney-in-fact," depending on the laws of your state.

SUGGESTED READING AND RESOURCES

The American Bar Association's document "Five Safeguards to Consider Adding to Any Power of Attorney for Finances" is a helpful resource available at **https://www.americanbar.org/content/dam/aba/administrative/law_aging/2018-fundraising-tipsheet-final.pdf**. This document provides recommendations for protections to include in a power of attorney.

The Consumer Financial Protection Bureau has published a series of guides for people designated in a power of attorney. Some states have state-specific guides. The website is: **www.consumerfinance.gov/consumer-tools/managing-someone-elses-money/power-attorney-guides/**.

QUESTIONS TO CONSIDER

1. If you have a financial power of attorney, when was the last time you reviewed it? Does it continue to meet your needs?

2. If you have a health-care power of attorney, have you had extensive conversations with your agent about your quality of life?

3. If you don't have a financial power of attorney, what is the barrier to creating one?

4. If you don't have a health-care power of attorney, what is the barrier to creating one?

5. If you have been named as someone's agent, have you had solid conversations about what the principal wants you to do?

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Caregiving by Contract or Court Order

Depending on the situation, it is possible to be compensated monetarily for caring for a family member who needs special help. This lecture looks at how you can be paid for some of the care you give to a parent or other loved one and about the legalities of the ultimate caregiving responsibility: becoming a court-appointed guardian.

FAMILY CAREGIVING AGREEMENTS

- For some families, if funds are available, it's important to compensate family members for the significant amount of time, effort, and money they spend providing care. This is especially important if a family member has to stop working or reduce hours worked to free up time to be a caregiver.

- A family caregiving agreement that pays a family member for providing care may be a possible solution. But it has to be done like any other employment agreement to avoid a multitude of possible pitfalls.

- Besides the relief of having a reliable, at-the-ready substitute caregiver, paying a family member for caregiving services can also be used to spend down resources if the care recipient needs to reduce them to become eligible for Medicaid. However, you need to do it correctly. Someone who wants to become eligible for Medicaid can have no more than $2,000 in resources at the time of application.

- To get to the limit, the potential applicant must spend any extra resources. Medicaid will look back five years to make sure the applicant can document how he or she spent the money and didn't give any of it away. If any money was given away for less than fair market value, Medicaid considers it a gift and will impose a transfer penalty by barring the applicant from Medicaid benefits for a proportionate period of time.

- Generally, that calculation works in this manner: Divide the amount of the gift by how much you would have to pay

for one month of nursing home care to get the number of months the penalty period will last. For example, if you gave away a total of $25,000 in the past five years when a month in a nursing home would cost $5,000, you would not be eligible for Medicaid assistance for five months even if you would otherwise be eligible.

- Giving money to a family caregiver is no solution if you haven't established a contract for services; it's considered a transfer for less than fair market value. However, with a contract, you can use your money on caregiving. As long as you put any agreement to pay a family member in writing, the family member provides actual services, and his or her payment is at a reasonable fair market value rate, it won't be counted as a gift under Medicaid rules.

- Some long-term care insurance policies pay benefits to compensate family caregivers, but they too require a formal, reasonable caregiving contract. To be effective for long-term care insurance purposes, the agreement must be in writing, it must be signed, it must set out the specific services the caregiver will take care of, and it must provide for reasonable compensation.

MAKING A DECISION AND SETTING TERMS

- It's crucial that other family members be involved in the discussions of whether, who, and how to compensate a family member. Consulting with them and putting the agreement in writing can clear up other family members' possible resentment or concern.

- How much to pay is up to the family members to decide. To make sure the rate is reasonable, find out how much a home health-care agency would charge to provide similar services. Also note that the agreement must be for future services; it can't cover services already given.

- Here are some terms to include in a family caregiving agreement:

  - Services that are to be given, in as much detail as possible.

  - Expenses to be reimbursed.

  - The caregiver's availability, including days off, sick leave, and a backup plan if the caregiver can't show up.

  - When the agreement will be reviewed. Keep in mind that circumstances for the care recipient or the family caregiver may change, making the agreement unworkable. Any changes need to be in writing.

- There are tax consequences with a formal employment contract. If you set the hours and responsibilities for the caregiver, determine the particulars of the job, and direct the caregiver's activities, the IRS is most likely to consider that you are directly employing the family caregiver as an employee rather than as an independent contractor.

- In contrast, if you hire the caregiver through a third party such as an employment agency or private provider, the caregiver is likely to be classified as an independent contractor. Consult with a tax attorney if you have any questions about whether your caregiver is an employee or an independent contractor. You should also do research to understand the tax withholding and reporting requirements for whichever setup your caregiver operates under.

- You don't need to have a lawyer draft your family caregiving agreement. If you are using the agreement for Medicaid planning purposes, though, you should consult with one. You may also want to involve an outside professional to avoid family friction over how your assets are being used.

GUARDIANSHIP

- Another huge challenge that some people face with is obtaining court approval to become an ailing relative's legal guardian. With good planning, guardianship usually can be avoided. Financial and medical powers of attorney, and perhaps a living trust, should be all the legal tools needed to make decisions and manage resources for those who can't do so on their own.

- However, powers of attorney and living trusts need to be set up while the person has the capacity to do so. If there has been no advance planning to put these options in place before the person loses capacity, it is too late to rely on them. In those situations, going the court route to become the guardian can provide the caregiver with essential legal decision-making authority.

Differing Terminology

The laws relevant to guardianship are state-specific. Even the terminology used can be different from state to state. Some states use the term conservator rather than guardian. Louisiana uses the term tutor.

- Before making the leap to petitioning for guardianship, consider the following questions:

  - Does the person you care for really need a guardian?

  - What can you do to help support the person in making decisions on his or her own?

  - Are there others in the person's circle of friends, family, or professional advisers who can work with the person, give advice, or coach the person in reaching safe decisions?

- What alternatives to guardianship are available, such as powers of attorney for financial and medical decisions? Other alternatives might be asking the Social Security Administration to appoint you as a representative payee to receive his benefit payment or, if the person is a veteran, ask the Veterans Administration to appoint you as a federal fiduciary. With either of these appointments, you have authority to use the benefit to pay for basic needs.

- If alternatives are available, why have they not been used or why have they failed to work?

- What are the specific areas of decision making in which your loved one has such a deficit that the right to make that decision needs to be taken away by the court?

OBTAINING GUARDIANSHIP

- The procedural details to obtain guardianship vary from state to state, so you'll need to consult with an elder law attorney to find out the process in your state. In general, if you believe a loved one needs a guardian, you should file a petition with the local district or probate court setting out the reasons why a guardianship is necessary. A medical, mental, or functional assessment must accompany the petition, and the process will unfold from there.

- If a court has appointed you as a guardian for your loved one, you are legally responsible for following the court's order and state guardianship laws. Depending on the order, you may have responsibilities to make decisions for your loved one about personal matters, such as where to live or what medical treatment to receive. If you are appointed as guardian of property, you are responsible for managing the individual's assets, paying bills, making investments, and filing taxes.

- As a guardian over financial matters, you have fiduciary duties. This means you must act only on behalf of the

individual under guardianship, manage the money wisely, keep your money separate, and keep good records so you can report to the court how you have been managing the money. Ask your lawyer if you have any questions about what you can or cannot do.

- While the court order tells you what you can do, most guardians receive little guidance about how to make those decisions. A good place to start is the **National Guardianship Association's *Standards of Practice***. These standards have been developed by experienced guardians from around the country. You'll find step-by-step guidance on what you need to consider as you go about making decisions on behalf of someone else.
- The decisions you need to make for someone else may not be the decisions you'd make for yourself. You must ignore your own interests and resist pressure from others, because it is your duty to do what is best for your loved one. You should also involve your loved one in the decisions as much as possible.
- Managing someone else's money is never easy. Keep in mind the cardinal rule for guardians of property: It's not your money.
- You can receive payment for time you spend serving as guardian, but only if the court permits you to do so and has approved the amount. You'll need to keep detailed records of what you did, when you did it, how much time it took, and why you did it so that you can document your fee request to the court.

SUGGESTED READING AND RESOURCES

Hurme, *Checklist for Family Caregivers*.

National Guardianship Association, *Fundamentals of Guardianship*.

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Preparing Medical Advance Directives

There can be medical situations in which you cannot communicate your wishes and give your consent. Outside of an emergency, someone has to provide that consent. Your family and health-care providers want to respect your treatment preferences, but they need to know ahead of time how to make the decisions you want them to make. You do this through advance care planning.

There are three essential steps: You think about what treatments and health care you do or do not want, you communicate your thoughts to those you want to make decisions on your behalf, and you put those wishes down on paper in the appropriate legal forms. Those legal forms are generically called advance directives.

BACKGROUND ON ADVANCE DIRECTIVES

- An advance directive is a legally accepted way for you to let your family and health-care providers understand the types of care you want if you can't tell them yourself. Importantly, an advance directive also lets them know whom you authorize to speak for you and give consent.

- A living will is an important part of an advance directive, but only a part. It's the part in which you state your preferences. Typically, in your living will, you outline the treatments you would or would not want if you are unable to communicate and if your death is imminent, or if you're permanently unconscious, in a vegetative state, or at the end stage of a chronic condition such as Alzheimer's disease.

- There are some critical limitations to a standalone living will because of the way most state laws are written. In most states, the living-will law limits the circumstances under which a living will can go into effect.

HEALTH-CARE AGENTS

- However, with some minor variations, every state's laws now allow you to select a spokesperson—called a health-care agent, proxy, or surrogate—by signing an advance directive known as a health-care power of attorney. This agent comes in and out of the decision-making process only when you need that assistance.

- There are three components to a health-care power of attorney:

  1. You identify in writing the person you want to be your agent in making health-care decisions for you.

  2. You set down any guidance or instructions you want your agent and your health-care team to follow. You can, if you desire to, give your agent broad authority to make any health-care decisions you specify. You are not limited to life-prolonging treatments.

  3. You give your agent the authority to obtain necessary information from your health-care providers to make the decisions you would want to be made. To be on the safe side, it's good to include language specifying that you want your agent to have access to all your medical records to get around any HIPAA privacy regulations. (HIPAA refers to the Health Insurance Portability and Accountability Act of 1996.)

> Your health-care agent should be someone who knows you and understands your wishes about medical treatments. It should be someone who knows you well enough to make the right decision in situations you might not have anticipated.

PREPARING AN ADVANCE DIRECTIVE

- The first step in preparing an advance directive is to consider what you may want for medical care in the future. For many, this is not a simple step. It can be hard to foresee what your medical needs or problems might be at some unknown point in the future.

- While you are in this preliminary stage, you may want to talk with your family, doctor, spiritual advisers, or others who might be helpful in talking through serious medical issues and what brings quality to your life.

- You should also take the time to talk with your health-care agent. To act effectively on your behalf, your agent really needs to understand what is important to you for your quality of life and the kind of medical care you would or would not want to have, especially in unforeseen situations.

- The next step is actually preparing your advance directive. Although some people still have separate living wills and powers of attorney, you can combine your wishes regarding your medical care and who will be your health-care agent into a single document, and you don't need a lawyer to draft it. Free online forms are readily available. Most hospitals, area agencies on aging, bar associations, and medical societies also provide free forms. If you need help, many elder-law attorneys will help you prepare your advance directive as part of a package of estate and advance-care planning.

- You will want multiple copies of your advance directive. Make sure your agent has a signed copy or two. You will also need copies for your primary doctor, health clinic, specialists, and local hospital.

DNR ORDERS

- Another matter is what happens if you don't want extreme measures taken to prolong your life in the event of a medical crisis. If your heart or breathing stops, hospital staff will perform CPR (cardiopulmonary resuscitation) on you.

- Survivability for CPR in older persons is extremely low. Some people would rather die naturally than subject themselves and their family to the physical trauma and expense of it all. But emergency room personnel are bound by duty to perform CPR on you in these circumstances, even if you have an advance directive that says you don't want it.

- This is the kind of situation for which the do-not-resuscitate order, or DNR, was created. A DNR isn't something that you or your lawyer write; it's a medical order. Your doctor will issue one if, and only if, you consent to it. Quite simply, it is a doctor's order that tells medical staff not to resuscitate you.

- But what if you are not in or near a hospital when the medical crisis occurs? For example, if someone calls 911 and emergency responders find you not breathing or with your heart stopped, it is their legal duty to attempt to revive you.

- State legislatures have responded to this predicament by creating out-of-hospital, pre-hospital, or durable DNRs. These medical orders allow emergency responders to not attempt to resuscitate when they otherwise would be required by law to do so.

- This typically works in the following manner: The person who wishes not to be resuscitated asks the primary doctor for an out-of-hospital DNR. The order is entered into an online database, and the patient wears a medical bracelet or necklace that alerts EMS to stop and check the database.

- They are trained to look for the DNR bracelet and to know that they can legally not try to revive the person. It's worth keeping in mind that medical emergencies can be complicated even when the person undergoing the emergency has expressed clear wishes and obtained the necessary paperwork.

POLSTS

- There is another type of medical order that can also be important in certain critical medical situations. A physician order for life-sustaining treatment (POLST) is a special medical order for severely, chronically ill patients. It provides detailed instructions for treatments under a variety of medical circumstances so there will be continuity in care across multiple care environments. This type of order or medical protocol may go by another name in your state.

- A POLST is especially useful for very sick or frail patients who have multiple medical conditions that are being treated by multiple specialists, sometimes in multiple settings. This type of order is issued by your doctor after thoughtful and detailed conversations with you, your health-care agent, and your family about your wishes, care goals, medical conditions, and treatment options.

- It serves as a comprehensive order that covers all the bases about what care should or should not be provided in the very near term. About 20 states have some sort of POLST paradigm in place. Another 20 or so are working on the buy-in with doctors and hospitals, conducting training, or developing protocols or regulations to have statewide coverage.

SUGGESTED READING AND RESOURCES

The American Bar Association Commission on Law and Aging has many resources on advance care planning. To access them, visit: **www.americanbar.org/groups/law_aging/resources/health_care_decision_making/**.

Five Wishes is a widely appreciated tool to help you think though the process of what you want to include in your advance directives. It is available at **fivewishes.org/**.

Read more about the POLST paradigm and see your state's status in adopting POLST at **polst.org/about/**.

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