

# **LEGAL PLANNING & REVIEW PROCESS 2015**

FLORIDAELDER.COM CONSUMER EDUCATION SERIES

YOUR ATTORNEY PRESENTERS:

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# MEET YOUR PRESENTERS

GRADY H. WILLIAMS,  
JR., LL.M., ATTORNEY

- Estate Planning
- IRA & Retirement Planning
- Special Needs Planning
- Probate & Trust Administration
- Asset Protection
- Ancillary Representations

ALISON E. HICKMAN,  
J.D., ATTORNEY

- Estate Planning
- Long Term Care Eligibility Planning
- Asset Preservation
- Probate & Trust Administration
- Incapacity Planning
- Ancillary Representations

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WE ARE SO PLEASED THAT YOU CHOSE TO ATTEND AND LOOK FORWARD TO PRESENTING THIS MATERIAL TO YOU! THE SETTING IS INFORMAL AND RELAXED, SO FEEL FREE TO ASK QUESTIONS AND PARTICIPATE. THANK YOU, AGAIN.

# WHAT IS THE LEGAL PLANNING & REVIEW PROCESS?

“WHAT’S THE BIG DEAL ABOUT MY LEGAL PLANNING?”

- What Do I Need to Know?
- What Do I Need to Do?
- What Do I Get Out of Legal Planning?
- Why Do I Need a Legal Review?
- Isn't the Law the Same as in 2003?  
Or as in 1992?
- What Are the Consequences of Not  
Acting or Not Staying Current?

# LEGAL PLANNING & REVIEW PROCESS 2015

## LIFETIME PLANNING CONSIDERATIONS

- **Save & Protect \$**
- **Speak Clearly**
- **Authorize Helpers**
- **Keep Options Open**
- **Avoid Guardianship**
- **Age & Die Your Way**

## TESTAMENTARY CONSIDERATIONS

- **Save & Protect \$**
- **Avoid Probate**
- **Keep Affairs Private**
- **KISS (if Possible)**
- **Protect Family's Future**
- **Help Control from Grave**

# FLORIDA LEGAL PLANNING TOOLS & TECHNIQUES

ELDER LAW & ESTATE PLANNING DESIGNED FOR YOU

- LIFETIME PLANNING
  - INTER VIVOS TRUST
  - FAMILY ENTITIES
  - QUALIFIED TRUSTS (E.G., “SNT”)
  - DURABLE POWER OF ATTORNEY
  - HEALTH CARE SURROGATE
  - LIVING WILL
  - HIPAA RELEASE
  - PRENEED GUARDIAN
- TESTAMENTARY PLANNING
  - SURVIVORS & BENEFICIARIES
  - LAST WILL & TESTAMENT
  - TESTAMENTARY TRUST

# APPLICABLE LAW AND AUTHORITIES

“WHERE DO ALL OF THESE COME FROM?”

- LAST WILL & TESTAMENT: FLORIDA PROBATE CODE, F.S. Chaps. 731-735
- TRUSTS: FLORIDA TRUST CODE, F.S. Chap. 736
- DURABLE POWER OF ATTORNEY: F.S. Chap. 709, Part II
- HCS, LW, ANATOMICAL GIFT: F.S. Chap. 765
- HIPAA RELEASE: 42 U.S.C. 1320d & 45 C.F.R. 160-164
- PRENEED GUARDIAN DESIGNATION: F.S. s. 744.3045

# CLIENT'S PRELIMINARY PREPARATION & PROCESS

SPECIFIC NEED OR DESIRE TO PLAN OR REVIEW NOW

# CLIENT'S TRIGGERING EVENT FOR LEGAL PLANNING PROCESS

- GENERAL CONCERN; SPECIFIC PLANNING GOALS; OR TRIGGERED AWARENESS
- ORGANIZATION OF THOUGHTS & INFORMATION BEFORE LEGAL OVERLAY
- WHO IS INCLUDED IN YOUR CAST & CREW?
- IDENTIFICATION OF INCOME, ASSETS & OTHER RESOURCES
- PRIMARY LIFETIME, INCAPACITY/LTC/SPECIAL NEEDS, PRIMARY POST-MORTEM, AND CONTINGENT PLANNING GOALS
- SELECTION OF LEGAL COUNSEL & OTHER PROFESSIONALS

# ATTORNEY'S PRELIMINARY PREPARATION & PROCESS

"THREE-PHASE PLANNING" FOR YOU & YOUR FAMILY

- PLANNING FOR "NOW"
- PLANNING FOR "THEN"
- PLANNING FOR "AFTER"

# ATTORNEY'S PLANNING PREPARATION & PROCESS

- PROVIDE GENERAL PLANNING INFORMATION
- PROVIDE LEGAL PLANNING INTAKE AND ORGANIZATIONAL MATERIALS TO CLIENT, PROSPECT AND/OR REPRESENTATIVE
- CONFIRM TIME AND DATE FOR INITIAL CONFERENCE
- CONFIRM FORUM AND INCLUSION OF SPOUSE (IF APPLICABLE) AND/OR OTHER DECISION MAKERS
- IDENTIFY ANY ANTICIPATED SPECIFIC PLANNING GOALS
- CHECK PRIOR PLANNING FILE IF A REVIEW CASE
- REMEMBER, 3-PHASE PLANNING (NOW, LATER, POST-MORTEM) IS NEEDED; THEREFORE, FACT FINDING IS A MUST

# THE PLANNING INTAKE OR REVIEW MEETING

PEOPLE SKILLS AND PAPER SKILLS; BOTH ARE NEEDED!

# INITIAL PLANNING MEETING CHALLENGES

## “PEOPLE” RELATED CONSIDERATIONS

- ESTABLISH RAPPORT
- DETERMINE VALUES
- WHAT ARE GOALS & DREAMS?
- WHAT ARE FEARS?
- WHO DO YOU LOVE?
- WHO CAN YOU TRUST?
- PRACTICAL CONSIDERATIONS
- CAPACITY OF CLIENT?
- UNDUE INFLUENCE OF CLIENT?
- DETERMINE UNCERTAINTIES
- ARE YOU PROCEEDING AT AN APPROPRIATE PACE?

## FACT FINDING & FIGURES

- REVIEW OF CLIENT’S INTAKE INFORMATION & MATERIALS
- REVIEW OF LEGAL RESPONSIBILITIES OF FIDUCIARIES W/ CLIENT
- IDENTIFY EXISTING PLANNING “GOTCHAS” TO CLIENT
- FORECAST POSSIBLE TRANSACTIONAL, TAX, INCAPACITY, ELIGIBILITY, PROBATE & TRUST OUTCOMES
- IDENTIFY TBD OR TBP ITEMS
- SCHEDULE FOLLOW UP, DESIGN, AND/OR SIGNING CONFERENCE

# COMPARISON TO CLIENT REVIEW MEETING

- MAY REPLICATE INITIAL MEETING
- RECOMMEND IMMEDIATE REVIEW MEETING FOR ANY OF THE FOLLOWING:
  - DEATH OF SPOUSE, BENEFICIARY OR FIDUCIARY
  - SUDDEN & SERIOUS ILLNESS (PHYSICAL, COGNITIVE OR EMOTIONAL)
  - RELOCATION OUT OF STATE
  - CHANGE IN PLANS OR GOALS
  - DRAMATIC + OR - IN WEALTH, INCOME, OR OTHER RESOURCES
  - THREATENED OR ACTUAL ABUSE, NEGLECT OR EXPLOITATION
- RECOMMEND A “FULL REVIEW” AT LEAST EVERY 3 YEARS
- IN BETWEEN, SELF-AUDIT AND INFORMALLY CONTACT US TO KEEP PLANNING CURRENT AND TO ANTICIPATE NEED FOR INTERIM ACTIONS

# PERSONAL INFORMATION FORM & MATERIALS

- PERSONAL INFORMATION FORM IS DESIGNED TO GIVE ATTORNEY & STAFF AN IMMEDIATE SNAP SHOT OF YOU, YOUR FAMILY, YOUR FINANCES & YOUR LIKELY PLANNING NEEDS
- IF PLANNING AHEAD OF A CRISIS, THIS BECOMES A FORECASTER
- IF PLANNING AT THE TIME OF CRISIS, IT IS A ROAD MAP TO ALTERNATE ROUTES
- THE MORE ADVANCED THE PLAN, THE MORE (ACCURATE) INFORMATION IS NEEDED UP FRONT
- PLANNING IS BASED ON THE ATTORNEY'S EXPERIENCE, TRAINING, FACT FINDING & DECISION MAKING
- BAD FACTS MAKE BAD LAW; INCORRECT INFORMATION = INCONSISTENT PLANNING RESULTS
- REQUESTED MATERIALS BACK UP AND VERIFY THE PERSONAL INFORMATION FORM

# **BETA TEST – IS A MAINTENANCE PLAN SUBSCRIPTION FOR YOU & YOUR FAMILY?**

- **BENEFITS OF A MAINTENANCE PLAN ARE:**
  - ANNUAL REVIEWS
  - PERIODIC EXCLUSIVE ACCESS & EVENTS BENEFITS
  - DOCUMENT RETENTION & DPOA ESCROW SERVICE
  - ONGOING LEGAL DIRECTIVES SUBSCRIPTION
  - ATTORNEY TELEPHONE CALLS & “2 CENTS” WORTH INPUT
  - CONTINUOUS TRUST FUNDING & DEFUNDING AVAILABILITY
  - REDUCED PLAN AMENDMENT DRAFTING FEES
  - REDUCED TRUST AND/OR PROBATE ADMINISTRATION FEES
  - PLANNING STAYS CURRENT AND ACCURATE
  - ANNUAL MEDICAID ELIGIBILITY REVIEWS
  - BETTER FAMILY TRANSITION/CRISIS MANAGEMENT
  - DETER ELDER EXPLOITATION BY ATTORNEY INVOLVEMENT
- **DOWNSIDES OF A MAINTENANCE PLAN ARE:**
  - SUBSCRIPTION COST IS ONGOING
  - DESIRE TO BE LEFT ALONE (I.E., TOO MUCH OF A GOOD THING)
  - WILL I USE IT?

# **PLAN DESIGN MEETING & PRE- FUNDING MEETING**

**“WHERE THE RUBBER MEETS THE ROAD!”**

# PLAN DESIGN AND PRE-FUNDING MEETING(S)

- THIS MAY BE 1 OR 2 MEETINGS WITH CLIENT
- MAY BE COMBINED WITH INITIAL PLANNING INTAKE OR REVIEW MEETING
- ABSOLUTELY ESSENTIAL TO GET SPECIFIC AND VERY CLEAR AT THIS POINT
- REQUIRES UNDERSTANDING OF FAMILY (I.E., PEOPLE), RESOURCES, GOALS, PLANNING TECHNIQUES, PRACTICAL PROBLEMS & LIKELY BEST OUTCOMES
- REQUIRES ATTORNEY TO LISTEN AND LEARN, THEN REASON AND ADVISE
- ABILITY TO THINK LOGICALLY IS VERY IMPORTANT
- IMAGINE THE CONTINGENCIES AND DISCUSS ANY PLAN WEAKNESSES
- THE MORE ADVANCED THE PLANNING, THE MORE ADVANCED THE FUNDING
- FUNDING = TRANSFERS, BENEFICIARY DESIGNATIONS, DEEDS, BILLS OF SALE, JOINT OWNERSHIP, LADY BIRD DEEDS, AND MORE (E.G., SNT MAY = COURT)

# DESIGN MEETING PLANNING TOOLS

## PLANNING TOOL

- HOW DO YOU OWN YOUR ASSETS?
- OWNING & DISTRIBUTING YOUR ASSETS
- STAIRWAY TO (PLANNING) HEAVEN
- RLT FLOWCHART

## PURPOSE & USE

- CURRENT ASSET STATUS SUMMARY; PROBATE & TRUST OVERVIEW
- REINFORCES ABOVE WITH NARRATIVE
- TRUST & ALTERNATIVE PLANNING ILLUSTRATOR
- EXAMPLE OF POST-INCAPACITY & POST-MORTEM FEATURES

# PRE-FUNDING MEETING BASICS

- FOR TRUST & OTHER ADVANCED PLANNING SCENARIOS
- “LEGAL-TECHNICAL” TITLE CHANGES; BENEFICIARY DESIGNATIONS
- “GIGO” – NEED ACCURATE INFORMATION TO GET IT RIGHT
- PROBATE = POST-MORTEM COURT TRANSFER OF ASSETS; TRUST FUNDING = \$ & “STUFF” TO TRUST NOW OR BY BENEFICIARY “TOD”
- SPECIALIZED BENEFICIARY DESIGNATIONS ARE JUST AS IMPORTANT AS TITLE CHANGES TO TRUST
  - E.G., IRA INHERITANCE TRUST<sup>TM/SM</sup>
  - E.G., FUNDING OF 3<sup>RD</sup> PARTY SPECIAL NEEDS TRUST (“SNT”) WITH LIFE INSURANCE OR OTHER “PAY ON DEATH” ASSETS
- GOAL: TO BE PREPARED FOR CLIENT TO REVIEW, SIGN & FUND TRUST OR ADVANCED PLAN WITH ATTORNEY AT NEXT MEETING

# TAKEAWAYS FOR THE PLAN DESIGN AND PRE-FUNDING MEETING

- WHAT DOES THE LEGAL PLAN LOOK LIKE?
- WHAT IF THE UNEXPECTED HAPPENS? HAVE YOU REASONABLY COVERED ALL KNOWN OR REASONABLY FORESEEABLE CONTINGENCIES?
- IF USING A WILL ONLY, HAS CLIENT AUDITED AND VERIFIED ALL JOINT ACCOUNTS AND BENEFICIARY DESIGNATIONS STATUS?
- IF USING A TRUST, WHAT ASSETS WILL BE USED WITH THE TRUST, AND WHEN?
- IF DOING LTC PLANNING, WHAT ASSETS MIGHT NEED TO BE SPENT OR CONVERTED, WHY, WHEN, AND HOW?
- PRELIMINARY PAPERWORK & LOGISTICS TO IMPLEMENT PLAN

# **FOLLOW UP MEETING(S) AS NEEDED TO COMPLETE ABOVE**

EVERY CLIENT AND PLAN MOVES AT ITS OWN PACE

# **DOCUMENT REVIEW AND SIGNING MEETING**

REVIEW OF YOUR ATTORNEY PREPARED LEGAL PLAN

# PROTOCOL FOR CLIENT REVIEW & SIGNING

- PRESENCE & UNDIVIDED ATTENTION OF CLIENT(S) FOR 1 TO 4 HOURS
- ADDITIONAL TRUSTEES CAN SIGN SEPARATELY
- NORMALLY DO NOT RELEASE DRAFTS FOR PRIOR REVIEW
- MINOR DESIGN TWEAKS NOT A BIG PROBLEM
- CLIENT(S) SIGN ALONE; VERIFY CAPACITY & LACK OF UNDUE INFLUENCE
- FOCUS: COMPLETENESS & CORRECTNESS; GENERAL UNDERSTANDING
- TRUST FUNDING & BENEFICIARY DESIGNATIONS MAY BE COMPLETED
- LEGAL DIRECTIVES IS A PLUS FOR EASE OF USE & PEACE OF MIND

# **PICK UP, FUNDING, AND DELIVERY MEETING**

NOW, I UNDERSTAND HOW IT ALL FITS TOGETHER!

# PICK UP, FUNDING, AND DELIVERY MEETING

## ACTIONS AT MEETING

- REVIEW OF TRUST OR ADVANCE PLANNING BINDER
- EXPLAIN OR CLARIFY OPERATION OF TRUST
- FINALIZE TRUST FUNDING
- IDENTIFY ADDITIONAL FOLLOW UP ACTIONS NEEDED
- OPTIONAL: DETERMINE NEED FOR FAMILY MEETING
- OPTIONAL: DETERMINE NEED FOR OTHER FAMILY MEMBERS' PLANNING

## POSSIBLE FOLLOW UP

- FOR IRA, LIFE INSURANCE, AND ANNUITY PLANNING, VERIFY BENEFICIARY CHANGES
- ANY KNOWN OUTSIDE EVENTS PENDING WHICH WILL TRIGGER REVIEW MEETING?
- RECORDING AND RETURN OF DEEDS
- DEPOSIT OF PRE-NEED GUARDIAN DESIGNATION(S)
- NOTICES TO REMOVED DPOAS?
- ACCOUNT SPECIFIC DPOAS?
- SUBMIT LEGAL DIRECTIVES?
- REGISTER ORGAN DONATIONS?

**REVIEW MEETING EVERY 3 YRS  
OR AS NEEDED IN FUTURE**

OR CONSIDER ATTENDING IN OFFICE WORKSHOPS TOO!

# LONG-TERM CARE ELIGIBILITY PLANNING AND APPLICATIONS

SPECIAL ADJUSTMENTS NEEDED FOR LTC/INCAPACITY

# LTC PRE-NEED PLANNING & CRISIS PLANNING

- LTC PRE-NEED PLANNING USUALLY INVOLVES EXPERIENCED USE OF ADVANCED, SPECIALIZED IRREVOCABLE TRUST PLANNING WITH ASSET TRANSFERS
- VA AID & ATTENDANCE PLANNING & MEDICAID ELIGIBILITY PLANNING MAY BOTH BE RELEVANT
- LTC ELIGIBILITY CRISIS PLANNING IS TYPICALLY SIMILAR TO A RLT PLANNING CASE, ONLY INTRASPOUSAL TRANSFERS, ASSET CONVERSIONS, AND SPENDDOWNS ARE THE STARS OF THE SHOW
- QUALIFIED INCOME TRUST PLANNING IS PART OF THE PROCESS IF “TOO MUCH” INCOME
- SPECIAL NEEDS TRUSTS, POOLED TRUST ACCOUNTS, AND SPOUSAL ELECTIVE SHARE TRUSTS MAY ALL BE NEEDED
- EMPHASIS ON BROAD, UP TO DATE LIFETIME LIVING DOCUMENTS (E.G., DPOA)
- IF APPLICATION APPROVED, CLIENT NEEDS TO BE READY FOR ANNUAL REVIEWS

# PERSONAL PLANNING ASSESSMENT

MAKING IT REAL AND MAKING IT WORK FOR YOU!

# PERSONAL PLANNING ASSESSMENT

## EXISTING

- LEGAL PLANNING?
- INCOME & ASSETS ASSESSMENT?
- NEED PRE-PLANNING DONE?
- WOULD CRISIS PLANNING WORK?

## UPDATED

- VERIFY & DOCUMENT LEGAL PLANNING
- PRE-NEED ACTIONS
- REGULAR ASSESSMENTS
- CRISIS TEAM

# YOUR PERSONAL CALL TO ACTION

- **START THE REVIEW PROCESS NOW WITH OUR SPECIAL OFFER FOR INDIVIDUALIZED FOLLOW UP MEETING (30 MINS. SNEAK PREVIEW)**
- **IF APPROPRIATE, CONTINUE WITH A FULL PLANNING REVIEW**
- **UPDATE, CORRECT, AND IMPLEMENT YOUR OWN LEGAL PLANNING FOR YOU AND SPOUSE; FAMILY**
- **ANTICIPATE CHANGES WHICH COME WITH AGING, ILLNESS & FAMILY DYNAMICS**
- **ASSEMBLE YOUR OWN “DREAM” TEAM TODAY**
- **USE QUALIFIED PROFESSIONALS; ANTICIPATE FUTURE LTC PLANNING**
- **AVOID DEATHBED OR CAPACITY CHALLENGED LEGAL PLANNING**
- **MINIMIZE LTC COSTS, PROBATE, GUARDIANSHIP, AND CREDITOR/ ESTATE RECOVERY RISKS**

**THANK YOU FOR YOUR  
ATTENDANCE; PLEASE**

**FOLLOW UP WITH OUR STAFF**

YOU ARE WELCOME TO ATTEND NEXT TIME & BRING A GUEST!

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