

WELCOME TO JACKSONVILLE RETIREMENT STRATEGY SUMMIT

2018 ESTATE PLANNING & ELDER LAW UPDATE – GRADY H. WILLIAMS, JR., LL.M., ATTORNEYS

YOUR ATTORNEY PRESENTERS:

○ ALISON E. HICKMAN, J.D., ATTORNEY

Associate Attorney Alison E. Hickman, J.D., was born in Christchurch, New Zealand, and moved to Clay County, Florida in 1985. She became a U.S. Citizen in 2007. After attending Middleburg High School, she completed her Associate of Arts Degree, magna cum laude at St. Johns River Community College in 2000, then her Bachelor of Science Degrees in Business Administration, Management, and Business Administration, Marketing, both magna cum laude, at University of North Florida in 2003. Mrs. Hickman graduated from Florida Coastal School of Law in 2010 and was on the Dean's List. Mrs. Hickman practices in the areas of Wills, Trusts and Estates, Probate, and Elder Law. She is active in the community and is a Past President of the Clay County Bar, is the Co-Chair of the Florida Bar Elder Law Technology Committee and of the Jacksonville Bar Elder Law Section, is on the Board of Directors of Penney Retirement Community, and volunteers on the Scholarship Committee of the Clay Chamber and as a Judge for Clay County Teen Court.

○ ZACHARY M. ALTENBACH, J.D., ATTORNEY

Associate Attorney Zachary M. Altenbach, J.D., attended the University of Florida and received his Bachelor of Arts Degree in History and Political Science. As an undergraduate, he interned at a firm that focused on patent, trademark, and copyright law. After completing his undergraduate degree, he continued his legal studies at the University of Florida, Levin College of Law. There he completed the Family Law Certificate Program and served as the Christian Legal Society President. After passing the Florida Bar he served as a law clerk practicing family law. In April 2014, he began working as an Assistant Public Defender through the end of 2017. Zach is a native Floridian who grew up in the beaches area. He is a graduate of Fletcher High School. He and his wife, Kathryn, live in the Riverside area of Jacksonville.

Disclaimer

THANK YOU FOR YOUR ATTENDANCE AT TODAY'S EDUCATIONAL EVENT. INFORMATION PROVIDED IS DEEMED RELIABLE BUT IS NOT GUARANTEED. YOUR ATTENDANCE AND PARTICIPATION IN THIS EVENT, AND ANY COMMENTS OR ANSWERS OF THE ATTORNEY PRESENTERS, DO NOT FORM AN ATTORNEY-CLIENT RELATIONSHIP, AND DO NOT CONSTITUTE LEGAL ADVICE PROVIDED BY AN ATTORNEY TO A CLIENT TO BE RELIED ON BY ANYONE IN ATTENDANCE. ALSO, PRIVILEGES AND DUTIES WHICH NORMALLY FLOW FROM AN ATTORNEY-CLIENT RELATIONSHIP, SUCH AS CONFIDENTIALITY AND LOYALTY, DO NOT ARISE FROM YOUR PARTICIPATION IN OR ATTENDANCE AT THIS EVENT.

WE ARE SO PLEASED THAT YOU CHOSE TO ATTEND AND LOOK FORWARD TO PRESENTING THIS MATERIAL TO YOU! THANK YOU, AGAIN.

Options, Options, Everywhere!



Pinto
Vs.
Mustang



A look under the hood



WHAT'S IMPORTANT TO YOU RIGHT NOW?

- INDEPENDENCE – ABILITY TO ACT AND DECIDE FOR YOURSELF (E.G., DRIVING YOURSELF)
- AUTONOMY – ABILITY TO LIVE BY YOURSELF OR WITH YOUR SPOUSE, PARTNER, OR FAMILY
- HEALTH – WE OFTEN TAKE GOOD HEALTH FOR GRANTED; IF WE AREN'T IN GOOD HEALTH, YOU CAN'T SPEND ENOUGH TIME, EFFORT, OR MONEY TO TRY TO GET PROPER CARE
- DEMENTIA AND CERTAIN DISEASES HAVE NO CURE – NEEDED CARE AND COSTS OF CARE ARE INDEFINITE AND CONTINUING
- MANY OF US CAN ANTICIPATE INCAPACITY OR DEPENDENCY ON OTHERS DURING OUR LIFETIMES

"I SHOULD HAVE PLANNED AHEAD FOR THAT!"

TYPICAL PROBLEMS:

CAN'T DRIVE ANYMORE

CAN'T HANDLE MY OWN BUSINESS

NEED HELP WITH DAILY ACTIVITIES

MY SPOUSE IS NOT WELL

I CAN'T SAFELY LIVE IN MY HOME

MY MEDICINE OR CARE COSTS TOO MUCH

MY ADULT CHILDREN AREN'T AROUND

WHO WILL MAKE DECISIONS FOR ME?

- ELDER LAW IS HOLISTIC; IT INVOLVES LEGAL AND PRACTICAL SOLUTIONS TO COMMON PROBLEMS
- VULNERABLE ADULTS AND EVEN MINORS NEED ELDER LAW SERVICES
- PUBLIC ASSISTANCE PLANNING IS OFTEN USED TO FINANCE THE COST OF EXTRA AND LONG TERM CARE FOR YOU OR YOUR LOVED ONE
- ELDER LAW ATTORNEYS USE LEGAL TOOLS TO HELP YOU PRIVATELY PLAN FOR AND ADDRESS CONCERNS
- LEGAL GUARDIANSHIP IS NOT NECESSARY IF YOU PLAN AHEAD

LIFETIME LIVING PLAN VS. GUARDIANSHIP

CLIENT WITH LIFETIME LIVING PLAN

- CURRENT, BROAD DURABLE POWER OF ATTORNEY
- “SUPERPOWERS” INCLUDED TO EMPOWER YOUR AGENT TO (I) DO TRUST PLANNING IN FUTURE AND/OR (II) DO PUBLIC BENEFIT/LONG TERM CARE ELIGIBILITY PLANNING FOR YOU IN FUTURE
- RECOMMEND YOU APPOINT A TRUSTED AGENT AND 2 ALTERNATES

LEGAL GUARDIANSHIP OPTION

- SOMEONE WITH AN INTEREST IN YOUR CARE PETITIONS RE YOUR INCAPACITY
- INCAPACITY COMMITTEE IS APPOINTED BY COURT TO EXAMINE YOU AND REPORT BACK ON YOUR CONDITION
- INCAPACITY HEARING IS CONDUCTED
- AS APPROPRIATE, GUARDIAN OF PERSON APPOINTED
- COURT ORDER NEEDED FOR PLANNING

ADVANCE HEALTH CARE DIRECTIVES VS. GUARDIANSHIP OF PERSON IN FLORIDA

ADVANCE DIRECTIVES

- HEALTH CARE SURROGATE DESIGNATION
- LIVING WILL
- HIPAA RELEASE
- PRENEED GUARDIAN DESIGNATION – RECOMMENDED BUT OPTIONAL
- DNRO – PHYSICIAN'S ORDER IN FL
- ANATOMICAL GIFTS – YOU DECIDE

GUARDIANSHIP OF PERSON

- INCAPACITY DETERMINED AS DESCRIBED IN ABOVE SLIDE, IN COURT PROCEEDING
- COURT MAY DEFER TO PREVIOUSLY APPOINTED HCS AND LW SURROGATE DESIGNATIONS
- EXPECT LEGAL COSTS AND DELAYS
- FORUM FOR DISAGREEMENTS BY FAMILY
- LIMITED "PROXY" AUTHORITY IF NO HCS/LW, W/O GUARDIANSHIP

MAKE YOUR “RESERVATION” FOR TRUST OR PUBLIC ASSISTANCE PLANNING NOW

- LIFETIME LIVING PLAN, INCLUDING DPOA, HCS, LW, HIPAA, PNG, AUTHORIZES FUTURE ADVANCED PLANNING ON YOUR BEHALF
- PRE-PLANNING FOR PUBLIC ELIGIBILITY IS ALSO AVAILABLE, BUT MANY DEFER UNTIL TIME OF NEED
- CONSIDER IRREVOCABLE TRUST, WILL, AND REVOCABLE TRUST OPTIONS W/ ATTORNEY
- PUBLIC BENEFIT ELIGIBILITY PLANNING FOR LONG TERM CARE INVOLVES FL MEDICAID
- PROBATE AVOIDANCE MAY BE ACHIEVED BY USE OF REVOCABLE LIVING TRUST AND OTHER LEGAL PLANNING TECHNIQUES
- ASSET PROTECTION AND IMPROVING ELIGIBILITY STATUS MAY BE ACCOMPLISHED BY IRREVOCABLE TRUST PLANNING
- A BROAD DPOA MAY AUTHORIZE TRUST CREATING AND PLANNING, BUT NOT MAKING A WILL

Still so many options!



LONG TERM CARE EXAMPLE

- JOHN HAS DEMENTIA AND NEEDS HELP WITH GETTING OUT OF BED IN THE MORNING INTO HIS RASCAL, BATHING, DRESSING, FEEDING HIMSELF, AND TOILETING
- BASED ON HIS LEVEL OF CARE JOHN WOULD NEED SUBSTANTIAL ADDITIONAL HELP IN HIS HOME, A MEMORY CARE FACILITY, OR A SKILLED NURSING HOME FACILITY
- FLORIDA SEMIPRIVATE NURSING HOME BEDS ARE ABOUT \$9,000/MO.
- MANY NEED FINANCIAL ASSISTANCE FOR SUCH COSTS, BUT ASSET AND INCOME GUIDELINES ARE CHALLENGING
- LEGAL PREPLANNING CAN AUTHORIZE YOUR AGENT TO ENGAGE IN FUTURE PUBLIC ASSISTANCE ELIGIBILITY PLANNING IN THE FUTURE, EVEN IF YOU CAN'T MAKE DECISIONS FOR YOURSELF THEN
- GUARDIANSHIP COURT APPROVAL OF THE SAME PLANNING IS UNCERTAIN & EXPENSIVE

PLANNING WITH WILLS VS. TRUSTS

WILL PLANNING

- WILL IS EFFECTIVE ONLY UPON YOUR DEATH
- ONLY YOU MAY CREATE, AMEND AND/OR REVOKE YOUR WILL
- PROBATE COURT ADMITS LEGAL WILL TO PROBATE BY COURT ORDER & LETTERS
- NO WILL OR DEFECTIVE WILL = INTESTATE ESTATE IN PROBATE
- WILL COVERS LIMITED ASSETS & ACCOUNTS

TRUST PLANNING

- TRUST IS EFFECTIVE IMMEDIATELY OR WHEN YOU SAY SO
- TRUST AVOIDS PROBATE AND GUARDIANSHIP OF PROPERTY
- TRUST NAMES SUCCESSOR TRUSTEES TO HANDLE THINGS FOR YOU LATER
- TRUST CAN BE SIMPLE OR MORE COMPLEX
- TRUST CAN BE SHORT TERM OR LONG TERM
- REVOCABLE OR IRREVOCABLE

ADMINISTRATION OF WILL VS. TRUST

PROBATE ADMINISTRATION

- POST-MORTEM
- YOUR SEPARATELY TITLED ASSETS WHICH DON'T HAVE A BENEFICIARY
- DOESN'T COVER OTHER ASSETS (E.G., JOINT OR BENEFICIARY DESIGNATIONS)
- INTESTATE IS "BY THE BOOK" – FLORIDA STATUTES CONTROL WHO GETS WHAT
- ADMITTED WILL MAY OR MAY NOT BE 100% ENFORCEABLE AS WRITTEN

TRUST ADMINISTRATION

- YOU ADMINISTER NOW; SUCCESSOR ADMINISTERS LATER & POST-MORTEM
- SUCCESSOR TRUSTEE MAY BE FRIEND, RELATIVE, CPA, PROFESSIONAL, CORPORATE
- NO COURT PROCEEDING, LIMITED NOTICE FILED POST-MORTEM
- PLAN FOR POST-MORTEM GOALS (E.G., PROTECT SPOUSE OR CHILDREN IN FUTURE)

TYPICAL REVOCABLE LIVING TRUST PLAN

- RLT USED FOR BANK, CREDIT UNION AND FINANCIAL INVESTMENT ACCOUNTS
- RLT USED FOR REAL ESTATE IN FLORIDA AND OUT OF STATE PROPERTY
- RLT USED FOR STOCKS, BONDS, AND CLOSELY HELD BUSINESS INTERESTS
- FL TREATS RLT TRANSFERS OF RECORD FAVORABLY; TRUSTEE MAY SELL AFTER YOUR DEATH
- NO PROBATE = LESS EXPENSIVE, LESS WORRISOME ADMINISTRATION AFTER YOUR DEATH
- FLEXIBLE DESIGN MAY BE USED FOR SPOUSE AND/OR CHILDREN-GRANDCHILDREN
- SUPPORTED WITH POUR OVER WILL AND LIFETIME LIVING PLAN (I.E., DPOA, HCS, LW, HIPAA, PNG, ETC.)
- NEED TO ENSURE TRUST FUNDING IS COMPLETED FOR THE RLT PLAN TO WORK LATER

DO'S AND DON'TS OF RLT FUNDING

YES FOR RLT FUNDING

- BANK OR CREDIT UNION ACCOUNT
- FINANCIAL INVESTMENT ACCOUNT
- STOCKS OR BONDS
- NON-HOMESTEAD OR OUT OF STATE REAL ESTATE
- NOTES OR MORTGAGE RECEIVABLES
- OTHER STANDARD INVESTMENT ASSETS

NO OR LATER FOR RLT FUNDING

- HOMESTEAD – RESERVE LIFE ESTATE OR USE LADY BIRD DEED; IF MARRIED USE MARITAL AGREEMENT OR NEW STATUTORY WAIVER
- RETIREMENT ASSETS – NO, BUT USE BENEFICIARY DESIGNATIONS OR IRA INHERITANCE TRUST (SPECIAL RLT) TO ENSURE TAX RULES ARE FOLLOWED
- PROFESSIONAL CORPORATIONS OR CLOSELY HELD BUSINESS – PERHAPS TOD TO SHAREHOLDER'S TRUST

HOW DO I PLAN AHEAD FOR NURSING HOME CARE?

IS THERE REALLY A 60 MONTH "LOOK BACK PERIOD"?
WHAT IF I CAN'T WAIT?

IRREVOCABLE TRUSTS MAY BE
USED TO PLAN AHEAD

VARIATIONS INCLUDE "INCOME
ONLY TRUSTS" AND "WALK
AWAY TRUSTS"

"WALK AWAY TRUSTS" MAY
PROVE MOST USEFUL, BUT NOT
FOR EVERYONE

RECOMMENDED MINIMUM
FUNDING OF \$200K & UP

NEED STABLE, TRUSTWORTHY
CHILDREN OR EQUIVALENT

REMEMBER, TRANSFERS TO NON-
SPOUSES W/IN 60 MOS. OF
APPLICATION = PENALTY PERIOD

WHAT IF AN IRREVOCABLE TRUST IS NOT FOR ME OR MY FAMILY? WHAT THEN?

TIME OF NEED PLANNING IS THE NORM

THIS IS DUE TO LACK OF LTC INSURANCE

DIFFICULTY IN PLANNING 5 YEARS OUT
PROCRASTINATION AND DENIAL

TALL TALES AND MISINFORMATION

BEWARE STATE TO STATE VARIATIONS

BEWARE OF SIGNIFICANT DIFFERENCES
IN CONDITIONS AND CIRCUMSTANCES

SEE AN ELDER LAW ATTY FOR THE FACTS

- MANY FLORIDIANS NEVER NEED LTC ASSISTANCE
- MANY FLORIDIANS ARE CARED FOR IN THEIR HOME, OR IN THEIR RELATIVE'S HOME, WITH NO LTC PUBLIC ASSISTANCE
- HCBS WAIVER PROGRAMS ARE AVAILABLE ON A LIMITED BASIS FOR \$ AND SERVICES IN HOME OR IN ALF OR EQUIVALENT
- MEDICARE MAY COVER YOUR DOCTOR, HOSPITALIZATION, PRESCRIPTIONS, AND HOSPICE, BUT ONLY COVERS TEMPORARY STAYS FOR REHAB, **NOT** LONG TERM CUSTODIAL CARE
- PERMANENT LIFE INSURANCE MAY OFFER ADVANCE BENEFITS RIDER TO COVER LTC COSTS
- ELDER LAW ATTORNEYS CAN PLAN FOR YOU AND YOUR FAMILY AT THE TIME OF NEED – DON'T BE AFRAID TO SEEK OUT NEEDED HELP IN ADVANCE!

LOTS OF INFORMATION – TIME TO PUT IT ALL TOGETHER

THE BEST PLAN ISN'T IN YOUR OR YOUR ATTORNEY'S HEAD, IT'S ON PAPER AND IN USE!

TO DO STEPS FOR YOUR 2018 ESTATE AND ELDER LAW PLANNING NEEDS

- ASSESS YOUR CURRENT REALITY – IS YOUR HOUSING, CARE, DECISION MAKING, FINANCIAL, AND TRANSPORTATION MEETING YOUR NEEDS AND YOUR FORESEEABLE FUTURE NEEDS?
- ARE THE RIGHT PEOPLE NAMED AS THE AGENTS, SURROGATES, FIDUCIARIES, AND BENEFICIARIES OF YOUR PLANS?
- ARE YOUR OWN LEGAL PLANNING DOCUMENTS UP TO DATE? E.G., IF YOU HAVE A PRE-OCT. 1, 2011 DPOA IN FLORIDA, IT'S TIME FOR AN UPDATE DUE TO STATUTORY CHANGES!
- INCREASED ESTATE AND GIFT TAX EXEMPTION AMOUNTS MAKE ESTATE AND GIFT TAX PLANNING MUCH EASIER FOR MOST OF US. HOWEVER, FOR THE WEALTHY, ANTICIPATE AN ADJUSTED ESTATE AND GIFT TAX EXEMPTION AMOUNT OF \$6 MILLION IN 2026.
- WITH INCREASED LTC COSTS, EVERY SENIOR NEEDS TO BE CONCIOUS OF PLANNING FOR THEIR AND THEIR SPOUSE'S FUTURE LTC NEEDS.

IT HAS BEEN A PLEASURE TO UPDATE YOU!

- IF YOU WOULD BENEFIT FROM AN INFORMAL, PRIVATE FOLLOW UP, PLEASE SCHEDULE A COMPLIMENTARY ATTORNEY CONFERENCE WITH PAULA EMERY
- AVAILABLE DATES ARE JUNE 27 IN ORANGE PARK, JUNE 28 IN JACKSONVILLE, AND JUNE 29 IN ST. AUGUSTINE
- PLEASE REMEMBER TO PRIVATELY CONSULT WITH AN ATTORNEY BEFORE MAKING ANY IMPORTANT DECISIONS REGARDING YOUR ESTATE OR ELDER LAW PLAN
- THIS UPDATE WAS PRESENTED FOR INFORMATIONAL AND EDUCATIONAL PURPOSES ONLY
- THIS DOES NOT CONSITUTE AN ATTORNEY-CLIENT CONSULTATION NOR DOES YOUR ATTENDANCE FORM AN ATTORNEY-CLIENT RELATIONSHIP WITH YOUR ATTORNEY PRESENTERS OR WITH THIS LAW FIRM

THANK YOU!



BEST WISHES ON YOUR PLANNING IN 2018 AND BEYOND!