Crucial Coordination

Sometimes we are most vulnerable in life when we do not know what we do not know. So it is with estate planning. Have you coordinated your estate planning to provide smooth sailing ahead for you, your loved ones and your assets? In this article we will consider a few areas you may need to shore up so your estate plan is truly ship-shape.

Estate Plan Essentials

Most people mistakenly think of "estate planning" as merely a distribution plan for assets after death. While that is an important aspect of estate planning, the process really begins with *life planning*. With life expectancies on the increase there is a corresponding increase in the likelihood that our mental and physical abilities will not keep up with our birthdays. Consequently, future falls, strokes or Alzheimer's can leave us legally incapacitated. What then?

What legal arrangements have you made for your own care in the event you become incapacitated? Have you legally appointed trusted family members or friends to make your personal, health care and financial decisions? If no, then a judge who does not know you will appoint someone for you through an expensive process that will invade your privacy, too.

Do you still have minor children in the home? If yes, have you legally appointed guardians (i.e., backup parents) to rear them to adulthood should they be orphaned? This is one of the most fundamental responsibilities of parenthood. In the absence of proper legal planning on your part a judge may make this decision for you. Who knows the needs of your children and the best guardians for them, you or that judge?

When it comes to the distribution of your assets, have you taken steps to protect the inheritance *from* and *for* your loved ones depending on their unique needs and circumstances? Squandering, divorces, lawsuits or bankruptcies can quickly consume a lifetime of work represented in an inheritance. Do you have any family members with special needs or potential problems with addictions? When it comes to inheritance protection planning, remember the words of famous jurist Oliver Wendell Holmes who advised "Put not your trust in money, but put your money in trust."

continued on page 2

continued from page 1

Retirement Plan Requirements

Speaking of protecting the inheritance, do you have any retirement funds? For many Americans retirement funds are a large part of their estates. Until a unanimous decision by the U.S. Supreme Court in June of 2014, the conventional estate (and income tax) planning wisdom was to designate adult children as the direct, contingent beneficiaries after one's own spouse rather than a trust for the benefit of those adult children. This approach avoided the complexities of designating a trust as beneficiary for the adult children when seeking to maximize the opportunity to "stretch" retirement fund distributions over their respective life expectancies.

In the case of *Clark v. Rameker*, however, the high court ruled that "retirement funds" were not entitled to any special asset protection treatment and would be subject to the creditors of direct beneficiaries who are individuals. (Note: It remains unclear the impact of this case when the direct beneficiary is the spouse of the retirement plan owner.) Consequently, if you want to protect retirement fund distributions from the potential creditors of your loved ones, then special alternative arrangements should be evaluated sooner rather than later.

Long-Term Care Logistics

Fortunately, you can make sure all of your "estate essentials" are in place and that you have secured protection for retirement fund distributions for your loved ones, but unless you make plans to fund your potential long-term care expenses all of your planning may be for naught. In short, there may be no "inheritance" to leave. Why?

If you or your spouse need long-term care, expect some sticker shock – monthly expenses can run as high as $7,000 or more depending on the location and quality of care. When someone first enters a long-term care facility most of their initial expenses are paid out of cash and savings. Next, their investments are liquidated and, finally, retirement funds are drawn down.

Once the monthly long-term care bills are being paid from retirement funds, the fund balance can disappear rather quickly. Every dollar withdrawn is subject to income taxation at ordinary income rates because the funds were created with pre-tax dollars and have grown tax-deferred until withdrawal.

Fortunately, you can make plans now to protect and preserve your assets from long-term care liquidation later on.

One alternative is to engage an elder law attorney who can help you with legal strategies designed to help you qualify for Medicaid eligibility, if needed.

Another alternative is to acquire long-term care insurance to provide the dollars should you need them. This insurance is now available in a variety of forms that can coordinate nicely with your budget and estate planning objectives.

For example, one popular version allows you access to the cash value of the policy, pays for your long-term care if needed and pays a life insurance death benefit to your loved ones if you do not need long-term care.

In the end the only way to protect yourself, your loved ones and your assets is through a well-designed strategy that coordinates your estate essentials, retirement funds and long-term care planning. Be sure to work with experienced legal counsel who can coordinate a seaworthy strategy with your financial advisor and insurance professional. This is not a DIY project.

Robbing Your Retirement?

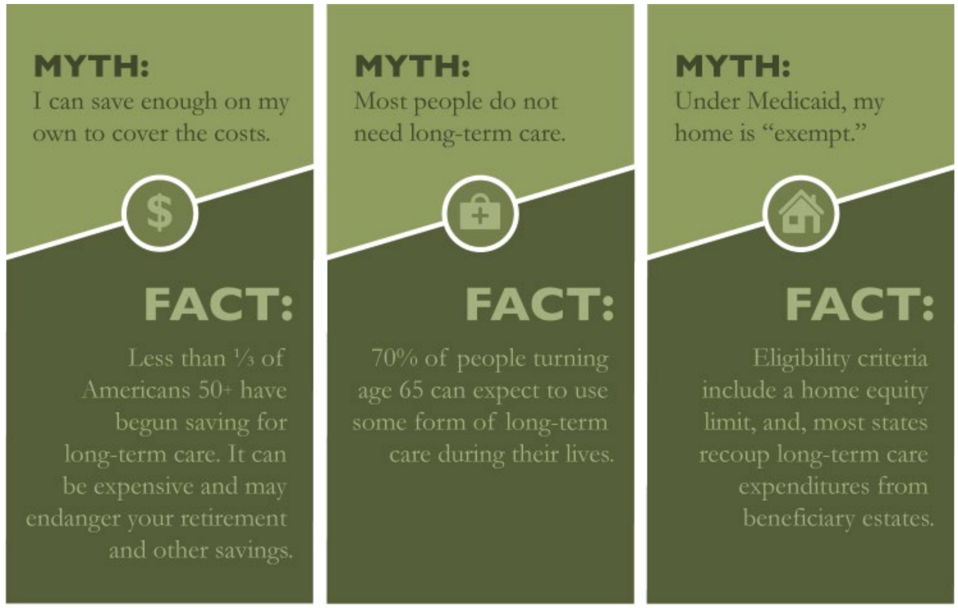
Scary Statistics

Have you given any thought to long-term care expenses as part of your comprehensive estate planning?

You should. Consider some frightening statistics from the U.S. Department of Health and Human Services:

- 70 percent of people turning age 65 will need long-term care at some point in their lives;
- Women need care longer (3.7 years) than men (2.2 years);
- One-third of today's 65 year-olds may never need long-term care support, but 20 percent will need it for longer than 5 years.

Sadly, less than one-third of Americans over age 50 have begun saving for long-term care expenses that can devastate your finances and even endanger your retirement savings.



Source: LongTermCare.gov

Medicaid

Because the cost is so high, many families end up relying on Medicaid to pay for long-term nursing care. In fact, Medicaid pays for the largest share of long-term care services, but to qualify, your income must be below a certain level and you must meet minimum state eligibility requirements.

When an individual applies for Medicaid benefits, her assets are categorized as either *exempt*, assets that Medicaid will not include in the total to determine eligibility; or *countable*, basically, all money and property that can be valued and turned into cash. Individuals can keep only a very small amount in *countable* assets, the rest will be used to pay for care.

When married couples are involved, however, the calculus is more complex. When one spouse applies for Medicaid benefits to pay for long-term care, the assets of *both* spouses are counted in determining eligibility for Medicaid benefits. That means that if one spouse uses all of her assets to pay for his nursing home care, he will not be eligible for Medicaid benefits until his spouse also spends down her assets to the allowable program limit, even if they have a prenuptial agreement that says otherwise.

Retirement Savings

The long-term care expenses of one spouse can blow a huge hole in the retirement planning of both and rapidly liquidate their retirement funds. So, how does Medicaid look at retirement funds when determining eligibility? What if a major asset of the couple is an Individual Retirement Account? Must it be liquidated until within the minimum countable asset limit for Medicaid eligibility? It depends.

The key is the *payout status* of the IRA. If paying out as required minimum distributions or as regular periodic distributions based on life expectancy, then (depending on state law) IRA income may not be counted when determining Medicaid eligibility. However, the payouts themselves will count as income, the lion's share of which will be applied toward the nursing home tab.

If all of this seems complicated, know that it is. An experienced elder law attorney can help you avoid running aground.

Find the average annual cost of nursing home care in your state online at www.longtermcare.gov or scan this QR code to visit the site directly.

PUT NOT YOUR **TRUST IN MONEY,**
BUT PUT YOUR MONEY IN TRUST.

-OLIVER
WENDELL HOLMES

Note: Nothing in this publication is intended or written to be used, and cannot be used by any person for the purpose of avoiding tax penalties regarding any transactions or matters addressed herein. You should always seek advice from independent tax advisors regarding the same. [See IRS Circular 230.]

Redkey Gordon Law Corp

www.redkeygordonlaw.com • blog.redkeygordonlaw.com

Jude Redkey, founding partner of Redkey Gordon Law Corp, has practiced personal injury law for 15 years. If someone you know needs a free consultation please feel free to contact our office. Mr. Redkey graduated from University of California, Davis and received his Juris Doctorate from University of Denver, College of Law. Mr. Redkey is admitted to practice law by the State Bar of California and U.S. District Court, Eastern District of California. He is also a Judge Pro Tempore for the El Dorado County Superior Court.

Robert A. Gordon is a JD/MBA graduate from the University of San Francisco and holds an Economics degree with highest honors from the University of California, San Diego. Mr. Gordon focuses primarily on estate planning. Mr. Gordon's detail oriented method for drafting wills and trusts, which he tailors to meet each client's unique situation will ensure the protection of your assets. Whether you are a traditional family, blended family, single parent or individual, your values and assets are worth preserving and passing on to those you love.

To learn more about our firm, we encourage you to visit us online at http://www.redkeygordonlaw.com. At our website you may access our online newsletter, subscribe for free to our monthly e-Newsletter and you will be able to follow us through our social media accounts. Be sure to follow our blog at http://blog.redkeygordonlaw.com.