

LEGAL CHECKUP

PROVIDED AS A COURTESY OF:

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A. FIVE IMPORTANT LEGAL DOCUMENTS

1. Last Will and Testament - provides for a clear transfer of your property when you die - if there are minor children, the Will can contain a testamentary trust for the minor children until they reach a certain age beyond majority such as 25 or 30 years of age.

2. Durable Power Of Attorney For Financial Affairs - can save you the time and expense of a Conservatorship if you ever become mentally or physically unable to make decisions for yourself. Conservatorships are court proceedings if you unable to handle your medical or financial affairs. Most Conservatorships are unnecessary if there is a Durable Power Of Attorney For Financial Affairs and an Advance Health Care Directive.

3. Living Will - also known as an Advance Health Care Directive - you must be mentally or physically unable to make decisions for yourself in order for the Living Will to become effective.

4. Durable Power Of Attorney For Health Care - also known as an Advance Health Care Directive - you name someone to make health care decisions for you if you ever become mentally or physically unable to make those decisions for yourself - works in conjunction with the Living Will.

5. Advance Care Plan - this is the newer Advance Health Care Directive being used by most in the legal and health care field.

B. TWO OTHER IMPORTANT LEGAL DOCUMENTS FOR SPECIAL SITUATIONS

1. Special Needs Trust - also known as a Supplemental Needs Trust - for disabled children or adults who receive or may be eligible to receive SSI - the Special Needs Trust allows such children or adults to receive property through the trust and continue receiving SSI - if they were to receive property through a Will or inheritance they would lose their SSI.

2. Income Qualifying Trust - allows someone to qualify for Medicaid long term nursing home benefits if their monthly income exceeds TennCare limits - the “look back” period for transfers of property to meet TennCare asset rules is 5 years.

C. STANDARD METHODS OF TRANSFERRING PROPERTY

1. Warranty Deed or Quit Claim Deed if real property is being transferred - leaving real property by Will allows the beneficiaries of the Will to take a “stepped up” basis in the real property so that federal capital gains tax is reduced, if not entirely, eliminated.

2. Certificate Of Title if automobiles or other motor vehicles or motor homes are being transferred.

3. Bill Of Sale if personal property is being transferred which is not covered under the certificate of title laws.

4. Last Will and Testament (see also above) for the transfer of both real property and personal property at the time of death - probate of the Will is the process whereby the Will is officially recognized by the probate court and the Executor or Executrix receive their Letters Testamentary to serve as personal representative for the estate - if there is no Will, property which is not jointly titled descends to heirs by descent and distribution.

5. Living Trusts for the transfer of both real property and personal property - Living Trusts, because they are revocable, do not transfer property until the time of death - why have a Living Trust? - avoid probate if you desire to avoid the probate of a Will - be sure to have a reliable Trustee to serve after you die.

D. OTHER MATTERS

1. Reverse Mortgages

2. Long Term Care Insurance

3. Tax Freeze On Residence for Seniors Over 65

4. Abolition of the Tennessee Gift Tax and Tennessee Inheritance Tax

V.A. AID AND ATTENDANCE AS ADDITIONAL INCOME

Many people are unaware that the Veteran's Administration (V.A.) has a special program, known as "Aid and Attendance", that pays a monthly benefit to veterans and their surviving spouses if certain criteria is met. Yet less than 20% of those who may qualify ever file an application with the V.A. for this benefit.

The benefit for a veteran and spouse can be \$1,949.00 per month, \$1,664.00 per month for a single veteran and \$1,056.00 per month for a surviving spouse, all adjusted annually for inflation. Excluding a residence, personal household contents, one car and burial lots which are exempt, the maximum assets which can be owned are \$80,000.00.

The monthly costs of a nursing home, assisted living, in home care (which can include payments for in home care to a nondependent child), medical insurance premiums and other unreimbursed health care costs are all deductible against monthly income. So, by way of example, if an applicant has \$4,000.00 per month in monthly income and \$4,000.00 per month in unreimbursed health care costs, his or her net monthly income is \$ 0.00., meaning benefits can be awarded at \$1,949.00 per month to a veteran and spouse, \$1,664.00 per month to a single veteran and \$1,056.00 per month to a surviving spouse.

The veteran must have served 90 continuous days in the military, one day of which must have been in "wartime", defined by the Code of Federal Regulations as World War II, Korea, Vietnam and the Gulf War. No wartime injury is required but honorable discharge from service is a criteria.

The medical test for determining eligibility is being unable to attend to the daily activities of life such as feeding, clothing, bathing, grooming and toileting. This requires the medical records of the primary care physician and a statement in letter form by the primary care physician that the applicant is no longer able to attend to the daily activities of life without the assistance of others.

Monthly benefits are retroactive back to the month of the filing of the application. V.A. "Aid and Attendance" can be a much needed financial lifeline to families by providing an additional source of income to offset the high costs of health care for an elderly parent.

