



ASSET PROTECTION AND

ESTATE PLANNING

for All Ages

by Ronald E. Hudkins

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**ASSET PROTECTION AND
ESTATE PLANNING for All Ages**

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Chapter One

Estate Planning Overview

Getting Your Affairs in Order

Ben has been married for 50 years. He always managed the family's money. But since his stroke Ben can't talk or walk. Shirley, his wife feels overwhelmed. Of course, she's worried about Ben's health. But, on top of that, she has no idea what bills should be paid or when they are due.

Eighty-year-old Louise lives alone. One night she fell in the kitchen and broke her hip. She spent one week in the hospital and two months in an assisted living facility. Even though her son lives across the country, he was able to pay her bills and handle her Medicare questions right away. That's because several years ago, Louise and her son talked about what to do in case of a medical emergency.

Plan for the future.

No one ever plans to be sick or disabled. Yet it is just the kind of planning that can make all the difference in an emergency. Long before she fell, Louise had put all her important papers in one place and told her son where to find them. She gave him the name of her lawyer as well as a list of people he could contact at her bank, doctor's office, investment firm and insurance company. She made sure he had copies of her Medicare and other health insurance cards. She added her son's name to her checking account, allowing him to write checks on her account. Finally, Louise made sure Medicare and her doctor had written permission to talk to her son about her health or any insurance claims.

On the other hand, because Ben always took care of financial matters, he never talked about the details with Shirley. No one but Ben knew that his life insurance policy was in a box in the closet or that the car title and deed to the house were filed in his desk drawer.

Ben never expected his wife would have to take over. His lack of planning has made a tough situation even tougher for Shirley.

I truly hope some unforeseen event does not fall upon you or your loved ones any time soon but, especially prior to you getting your estate plans in proper order.

Estate Planning Starts Early

Young people just starting out in life may think that estate planning is not a high priority. However, according to a leading expert in the field, it's never too early to consider how vital this step is to prudent financial planning.

When just starting out, perhaps there are more worries about the immediate needs, Eventually, goals blossom into actually preparing for the future and a comfortable living standard. The idea of immortality is more the thought than any possibility of death. With the longer life spans enjoyed in these modern days, there just may be some benign measure of reality there. However, writing a will is not just a concern for seniors, the young and everyone in between; it is a legal matter, which must be an important part of financial planning.

The state probate process is one solid reason to complete a will. In rough terms, as much as 6% of an individual's total (gross) assets (or more) go to probate fees and associated costs.

The last thing someone would want to do is lose control of their assets to the court system. Unfortunately, putting off what you know needs to be done now – planning and implementing an estate plan – could result in just that.

Asset distribution laws vary from state-to-state, but generally a married person's possessions go first to the spouse and children, should there be any.

If you are single, then most often your possessions would be passed to your parents, if they are still alive. Should your parents be deceased, then the order of succession is usually to the siblings (brothers, sisters), then to other living family (relatives) and finally, to the state. The state is highly capable of absorbing and liquidating assets.

By no means is it being said that various wills are the answer to a complete estate plan. A

will alone, specifically will not control who gets ‘joint property’ (such as a home you and a spouse purchased together), or possibly, bank and brokerage accounts and 401(k)s or IRAs

(Individual Retirement Accounts) for which you have designated a beneficiary.

Simply put a last will and testament is the main piece of a basic estate plan that does not require a substantial amount of legal fees for its creation.

Putting together a well-thought-out plan that provides for you during incapacity as well as after your death is essential,” Hudkins said. “Talk to an estate planning attorney about other legal documents such as a Medical Power of Attorney (proxy) for Health Care, a Living Will (Health Care Declaration), and a Durable Power of Attorney for Financial Affairs.

You are never too young to need a will. If you end up in a hospital in a coma, you need someone in a position to make personal, medical and financial decisions for you. Should you have an untimely death, the key to planning ahead is to have a written plan so your wishes will be carried out exactly as you so designate. Without a written plan, there is probate, family feuds, extended agonies and other unpleasant possibilities.

Congratulations! You have taken a very important step in the right direction. After reading this book, you will have a much better idea on how to customize your individual estate needs by understanding your legal initiatives, alternatives and obligations that secure the future of your heirs.

The Life Estate

The life estate is something every first year law student learns about when they study the arcane and often bizarre history of property law that harkens back to the days of English knights, lords and serfs, and the transfer of property through the ceremonial throwing of dirt clods with oaths of duty to accompany. The life estate is about as old as they come as instruments of wealth transfer go and students love it, because it is relatively easy to understand. Apart from what students love and what is easy to remember, however, the life estate still has practical value today in your estate planning and assets management schemes.

The basic idea of the life estate is that a person can be left a piece of property for life, and

upon their passing, the property in question can go to whoever is designated to receive that property afterward. The individual or group who receives the property after the life-tenant passes is called the remainderman or remaindermen, which is useful only in that it helps

one to remember that the person who remains gets the property. If, for example, one wants to leave a family estate that has been with the family for many generations to their spouse and then have it immediately pass on to their children or another relative who will maintain the estate for the generation to come, then a life estate might be the perfect vehicle to do so. Another example is the same family estate, left to a surviving spouse until the surviving spouse either dies or remarries. Again, the aim is to ensure that the estate stays in family, a contingency which is threatened by the remarriage because that creates a new marital joint-tenancy, absent any other provision. Often the life-estate was used to keep assets, like the family home, headed down a single line of familial ownership.

However, the life estate has other uses, for example, it can leave an asset to be owned by one person until the death of third person. If an older relative has become incapacitated, such that it is difficult for them to make decisions for themselves, then the asset can be left in the care of another for the incapacitated person's lifetime. An example might be, that Blackacre (the fictitious name for a piece of property used in law schools everywhere) is left in the care of cousin Tilly, until great aunt Nelly's death. Thus, Tilly is allowed to make Nelly comfortable at Blackacre (the family home) until Nelly passes on. In this instance, Nelly's life is what is called, the measuring life of the life estate, and Tilly's ownership ends when Nelly is gone.

On the whole, the life estate may be falling out of use for a number of reasons and being replaced by the much more fluid instrument of the trust. But, the life estate still captures, from time to time, our instincts regarding how property is to pass from one generation to another and that is why it is still relevant even for an estate planner who uses it very rarely. It helps us to ask and to get the answer to very difficult questions, which is part of the act of estate planning. Both the client and the attorney must face tough questions, and the life estate (even if it is sometimes regarded as a legal relic of the past) tells us how people used to answer questions of intra-generational wealth transfer and why. We may use different instruments to bring about our legal ends (or we may not), but even if we do, the life-estate still has relevance in helping us think about the questions that underlie the choices to be made in estate planning.

Protecting Assets from Medicaid

Having its origins in 1965, [Medicaid](#) is a Federal program that offers

health care coverage for select low-income families. Title XIX of the Social Security Act is a Federal/State sponsored program that is designed to pay medical costs for certain designated families who happen to have low incomes/resources with which to pay for it themselves. So who is eligible for Medicaid? Eligibility includes people who are aged, blind, or disabled, along with certain people in families with dependent children. Although a Federal program, Medicaid is run by the states, which means that each state determines who is eligible and the range of health services offered.

It is a common misconception that Medicaid is a program that is designed to cover all poor persons. Medicaid DOES NOT offer paid medical assistance to every single poor person. Those eligible to receive medical assistance must be a part of one of the groups designated in the following list:

Medicaid - BASIS OF ELIGIBILITY:

Unfortunately, many nursing home residents end up exhausting their assets on long-term care. But it doesn't have to be that way. The best time to plan for the possibility of nursing home care is when you're still healthy. By doing so, you may be able to pay for your long-term care and protect assets for your loved ones.

Medicaid is a joint federal-state program that provides medical assistance to various low-income individuals, including those who are aged (i.e., 65 or older), disabled, or blind. It is the single largest payer of nursing home bills in America and is the last resort for people who have no other way to finance their long-term care. Although Medicaid eligibility rules vary from state to state, federal minimum standards and guidelines must be observed. In addition to you meeting your state's medical and functional criteria for nursing home care, your assets and monthly income must each fall below certain levels if you are to qualify for Medicaid. However, several assets (which may include your family home) and a certain amount of income may be exempt or not counted.

To determine whether you qualify for Medicaid, your state may count only the income and assets that are legally available to you for paying bills. Medicaid planning helps you devise ways of making

your assets and income inaccessible. Over the years, attorneys have developed several strategies to rearrange finances and legally shelter assets from the state. These strategies--and the Medicaid rules themselves--can be complicated, so you should consult an experienced elder law attorney if you wish to take steps to protect your assets from the state.

Countable assets are those that are not exempt by state law or otherwise made inaccessible to the state for Medicaid purposes. The total value of your countable assets (together with your countable income) will determine your eligibility for Medicaid. Under federal guidelines, each state compiles a list of exempt assets. Usually, this list includes such items as the family home (regardless of value), prepaid burial plots and contracts, one automobile, and term life insurance.

There are special rules for counting assets and allocating the assets between the spouses. When you or your spouse first enter a medical institution, nursing home, or request a community waiver program, the county/tribal human or social services department will, if requested, conduct an assessment of your total combined assets. The amount of your total combined assets at the first time of institutionalization determines the amount of assets you may keep.

If you have assets of \$100,000 or less, you can keep \$50,000 for the community spouse and \$2,000 for the institutionalized spouse. If your assets are over \$100,000 you should contact your local county/tribal social or human services department for help in determining the amount of assets you can keep. The community spouse share can be higher than the standard if a court or administrative hearing officer orders a higher amount.

Once the couple's assets are at or below their asset limit, they have one year in which to assure the institutionalized spouse has no more than \$2,000 worth of assets in his/her name. During this time period, the institutionalized spouse usually transfers all but \$2,000 of his/her assets to the community spouse.

Examples of countable assets may include, but are not limited to:

- Cash.
- Checking Accounts.
- Savings Accounts.
- Certificates of Deposit.
- Life Insurance Policies.

Medicaid does not count some assets. Those not counted include:

- Your home (as long as the community spouse or other dependent relatives live there).
- One vehicle.
- Burial assets (including insurance, trust funds, and plots).
- Household furnishings.
- Clothing and other personal items.

“Excess” assets (assets which are above the asset limit) can be reduced to allowable limits if they are used to pay for nursing home or home care costs, or for other things such as home repairs or improvements, vehicle repair or replacement, clothing, or other household expenses. If excess assets are not reduced the institutionalized spouse cannot become eligible for Medicaid.

There are special rules for counting income and the amount of income that can be transferred from one spouse to another. Only the institutionalized person’s income is counted in determining eligibility. The community spouse cannot be required to pay for the institutionalized spouse’s care except when there is a court order to do so.

Through Medicaid planning, you can rearrange your finances so that countable assets are exchanged for exempt assets or otherwise made inaccessible to the state. For example, instead of spending your savings solely on nursing home bills, you can pay off the mortgage on your family home, make home improvements and repairs, pay off your debts, purchase a car for your healthy spouse, and prepay burial expenses. There are many other ways to shelter countable assets. Consult an experienced attorney for more information.

Along with qualifying you for Medicaid benefits, Medicaid planning

seeks to accomplish the following goals:

- Sheltering your countable assets
- Preserving assets for your loved ones
- Providing for your healthy spouse (if you're married)

Factors for qualifying for Medicaid are listed below:

- **Individuals** who meet the requirements for the Aid to Families with Dependent Children (AFDC) program
- Children under age 6 whose family income is at or below 133 percent of the Federal poverty level
- Pregnant women whose family income is below 133 percent of the FPL
- Supplemental Security Income (SSI) recipients in most States
- Recipients of adoption or foster care assistance
- Special protected groups (typically individuals who lose their cash assistance due to earnings from work or from increased Social Security benefits, but who may keep Medicaid for a period of time)
- All children born after September 30, 1983 under age 19, in families with incomes at or below the FPL

MEDICAID SCOPE OF SERVICES:

- Inpatient hospital services
- Outpatient hospital services
- Prenatal care
- Vaccines for children
- Physician services
- Nursing facility services for persons aged 21 or older
- Family planning services and supplies
- Rural health clinic services
- Home health care for persons eligible for skilled-nursing service
- Laboratory and x-ray services
- Pediatric and family nurse practitioner services
- Nurse-midwife services
- Early and periodic screening, diagnostic, and treatment services

for children under age 21

Using annuities to protect assets has become very popular. Two recent books on the subject, *The Medicaid Planning Handbook* by Alexander A. Bove, Jr. and *Avoiding the Medicaid Trap* by Armond Buddish, specifically discuss the use of annuities to avoid Medicaid seizure.

Generally, if your assets exceed the Medicaid test limits, you may still be eligible for Medicaid by converting the assets to an immediate annuity income stream. Using an income annuity in this manner may be beneficial in the right situation if structured properly.

Keep in mind that states' rules for Medicaid differ greatly and it is important to learn as much as possible about your own state's requirements. The annuity income stream must begin prior to applying for Medicaid. Under the Kennedy Kassebaum and OBRA '93 Acts, an annuity must have life expectancy payout rates that are in accord with the latest social security mortality tables (HCFA Tables). Many insurance companies' payout rates are not in compliance. You should contact an agent with experience in this field.

Using a straight life annuity with no refund or no period certain guarantee will cause the income stream to stop on the death of the annuitant. Additionally, under the Estate Recovery rules passed by OBRA 93, any income that continues to heirs after the Medicaid recipient's death may be subject to recovery by the state.

You must be careful that the combined monthly income from the annuity together with your other social security and pension payments stays under the allowable federal limits. Otherwise, the purchase of too large an annuity income stream could inadvertently take you even slightly over the limit and completely disqualify you from Medicaid.

For example: Say you want to reside in a nursing home that costs \$4,500 per month. In order to pass Medicaid qualification tests, you use a significant portion of your assets to purchase an immediate fixed annuity that pays \$800 per month for life. Your only other income, from Social Security and pension plans, is \$525, making

your combined monthly income total \$1,325. Be careful that this total remains below the federal guidelines. If the federal limit were \$1,315, then you would be \$10 over the limit and be ineligible for Medicaid coverage. Better to purchase LESS annuity income to stay well below the threshold than more income.

Like many other people, you may be thinking about giving your home away now that you are older. There may be several reasons why you might consider doing this:

- You want to avoid probate,
- You want someone else to take responsibility for the upkeep of the property,
- You want to help a family member,
- You fear you can no longer live alone and want someone to stay in the home with you, or
- You worry that you may have to enter a nursing home someday.

If you are one of the people thinking about transferring your home, here are some things to think about first.

You should never sign away your home ownership without first getting advice from an attorney. There are many risks in transferring home to another. You should talk to an attorney who is certified for or knowledgeable in elder law or estate planning.

What happens if you transfer your home? You will lose control over the use of your home and property. You will have no say in whether the property is sold, mortgaged, taken by creditors or used for a purpose that you don't like. You will lose the right to live in the home or somewhere on the property. You will lose the right to rent the property or otherwise use or occupy the property.

You may create problems with creditors. You may get in trouble if you have creditors that have a lien on the property or if you file bankruptcy. If you transfer a home or other property, and, as a result, a bank or other creditor is unable to collect a debt, the transfer can be canceled. In some circumstances, such a transfer is considered fraud.

You may lose your Property Tax relief. If you are over age 65 or disabled, you may have the right to some relief in paying property tax under state law. If you add another person's name as co-owner of the property, that person's income will be counted along with yours. The increase in income may cause you to lose your eligibility for tax relief. Of course, if you are no longer the homeowner, you would no longer have to pay the taxes. The new homeowner will not have a right to relief from these taxes unless he or she can qualify.

You may lose the chance to get help from certain state or federal programs. You may lose your eligibility to participate in these programs if you add another's name to the property deed or if you transfer the property.

If you have Medicaid and live in a nursing facility, or if you live in a nursing facility and plan to apply for Medicaid within the next three years, there is a Medicaid penalty for any gift or transfer "for less than fair market value." The state checks to see if transfers of any property (including a home) occurred during the three years prior to entering the nursing home or applying for Medicaid. The time is five years for transfers involving trust property.

A transfer made that is improper for Medicaid purposes may result in the denial of Medicaid for a certain amount of time (depending on the amount of the gift or transfer).

Taking your name or any co-owner's name off the deed is also considered a transfer that may be penalized under the Medicaid program.

If you give away assets when you are on SSI, there is a penalty similar to the Medicaid penalty. You may lose SSI for a certain amount time depending upon the amount of the gift or transfer.

If you give your home to someone who receives SSI or other government benefits, your gift may cause the other person to lose benefits, if he or she already has a home. (Owning property, other than your home, can affect eligibility for SSI, Medicaid, Families

First benefits and food stamps.)

There may be TAX consequences if you give your home away. You may have to pay a gift tax. The gift tax, generally, applies to the transfer of a present interest. Sometimes, the first \$10,000 of a gift is exempt from taxation. There may be a \$20,000 exemption if a gift is made by married couple. The person who receives the gift may have to pay more capital gains tax if he or she sells the property at a later time. There are many factors which determine whether a capital gains tax is owed and how much the tax will be.

An agreement to exchange your home for in-home care is risky and should always be reviewed by an attorney. This is especially important if you plan to give the caregiver the deed to your home or a promise that the caregiver will inherit your home. These arrangements are dangerous and may cause many problems. The agreement may also affect Medicaid eligibility and tax liability. Never make this type of agreement without the help of an attorney who is knowledgeable in this area of the law.

Older adults concerned with providing for their children or other heirs may choose to transfer some or all of their assets:

- gift a maximum \$10,000 per year per person with no inheritance tax consequences
- transfer a major portion of (or all) assets to their children or others
- set up a special trust, to benefit their children or others, but continue to receive income produced from the trust

Transfers or trusts may enable you to qualify for Medicaid coverage of long term care while preserving assets for your children or others. But consider these possible problems:

- loss of your independence and control over your assets
- potential for assets to be used in a way you did not intend or desire

You may give away assets for safekeeping, expecting them to be

there if you need them, but they may not be available at that time.

For example, in an attempt to reduce the number of elders who shelter assets to become Medicaid eligible, New York¹ has adopted the following Medicaid changes as required by federal law:

- a transfer must have been made at least 36 months before applying for Medicaid.
- if asset transfers were made less than 36 months before you apply for Medicaid, a penalty period may result. The penalty period starts in the month following the month in which you made the transfer. You will be refused Medicaid coverage for certain services for the number of months the assets would have paid for care in a nursing home.
- if transfers were to or from a trust made less than 60 months before you apply for Medicaid, a penalty period may result as described directly above.

New laws to further limit the use of transfers or trusts to become Medicaid-eligible may be expected in the future.

The core issues revolving around how you can control your financial, legal and health affairs in the event that you become incapacitated require you to consider drafting some important legal documents with the guidance of a lawyer specialized in family or elder law matters.

By preparing a set of documents, you can decide who will receive your assets when you die, and preserve your nest egg and make decisions if you become incapacitated. These documents form the foundation of good estate planning:

1. Last Will and Testament

The Last Will and Testament is the only one of the four documents that you *must* prepare with the assistance of an attorney. The Last Will and Testament is your last opportunity to decide who gets your property when you pass away.

It should be drawn up by a lawyer and reviewed at least once every five years. When you review it, make sure that the people

mentioned in the Last Will and Testament are still alive, available and the people you want to be named. The key people are: your heirs; your executor; your alternate executor; and your two witnesses. You should know where these people are because when you die, they must be located to attest

1) that they were physically present when you signed the document and

2) You were competent when you signed it. Witness affidavits should be attached to the Last Will and Testament.

The Last Will and Testament goes into effect when you die. That is, when the physician signs your death certificate. Until you are dead, your executor and heirs have no authority to act on your behalf. While you are alive, you make all of your financial, legal and medical decisions. But if something goes wrong and you are unable to make these decisions – you become incompetent – there are other legal documents that you can prepare to plan ahead.

a. Changing A Will

“I am taking you out of the will,” or “I am going to disinherit Gregory and leave all my money to Steven,” are statements that seem far more like they belong in an Agatha Christie novel than in a serious discussion of estate planning.

Although the world is not filled with conniving relations who maneuver endlessly to gain the favor of a truly despicable older family matron or patron who uses their wealth to control them all until it culminates in murder most foul, this model is instructive regarding how changing a will can cause hard feelings between family members and create legal difficulties. The chief legal difficulty created by changing a will is that sometimes the two wills look like sequels to a movie and are literally called (Will I) and (Will II).

When this happens there will be, just as in the Agatha Christie mysteries, a group of relatives and friends who are favored by the first will (Will I) and not by the second (Will II). These relatives realize that if they can challenge and get rid of Will II, Will I will take its place, and they set out

to get rid of Will I after the deceased is gone and can not take further action. Of course there are also the relations or friends that are favored by the revised will (Will II) and fight to keep it valid in the eyes of the law. There are many ways to attempt to invalidate a will that can be the subject of another article. The point of this article is to make it clear that changing a will by substituting it with another will drafted later in time is an exercise fraught with peril.

A better way to go is to expressly change from one will to the other or to expressly repudiate the first will. An express change is a change in writing. For example, if you want to get rid of the first will write that, "I hereby repudiate the first will with this writing and all of its provisions hereby are to be considered void." It is difficult to get around the fact that you intend to get rid of the first will entirely if you fail to make such a claim in writing. Once that is settled, then you can begin the second will by stating again that you made another will before and that it is entirely void and does not in any way reflect your desires with respect to your property. And finally, include in the second will that it and it alone are a reflection of what you want when you are gone.

Another good way to go is not to let anyone, other than your attorney, know you are making a will or replacing an old will with a new one. People cannot fight over what they have no idea exists or has existed. This is a good way to keep the elements of an Agatha Christie novel regarding wills out of your life and the lives of your heirs. The fictional tyrant who rules the family with their notions of inheritance or disinheritance is the kind of person who has people fighting over their will because they are always blabbing about it. With wills it is best to adopt the policy that loose lips sink ships when it comes to your relatives fighting over what you meant after you are gone. This is not what anyone wants for their families and, with a little discretion and a lot of planning, it is easily avoided.

b. Adding a No Contest Clause

There is value in the story of an older client who had seen a very interesting clause employed in a will. There was a great deal of money at stake and the many family members had little reason to love each other, because they had never met and never knew of each other's existence. It was expected that the will would be heavily contested on several different fronts in every conceivable way. The testator realized that a truly lengthy

contest would result with the bulk of his estate in the hands of people he really didn't care for in the least: Lawyers.

In fact, that is not an unworthy consideration in a heavily contested will or long fought divorce; lawyers may end up with the bulk of the estate or marital property. The move to arbitration is one of the ways that the legal profession is trying to prevent these unseemly outcomes. The clause that this client had seen employed in his grandfather's will was like the following, "Anyone named in and contesting this will receives the maximum bequest of \$1, regardless of the outcome." This clause meant that regardless of whether the litigant had proven undue influence or diminished capacity or fraud, they would still only receive \$1 as a bequest specifically because of having brought and proven their claim. Since none of the family knew or trusted one another a great deal, this effectively eliminated potential contests.

Often testators anticipate their will to be contested and they wish to insert what is called a no-contest clause in their will. The no contest clause is exactly what this elderly client had described, because it was designed to terrorize a would-be contestor of the will into thinking twice about facing the threat of getting just a dollar rather than the sum they had been left. Such clauses are also sometimes called *terrorem* clauses, because they are designed to scare the beneficiaries into accepting the bequest they are given. The no-contest clause described above was executed correctly in that each relative was wisely given something in the will that was worth the fear of losing.

In drafting a no contest clause, it is important not to entirely disinherit someone or to give them a bequest that is not something that they are afraid to lose. If someone is entirely disinherited, then they risk nothing by contesting the will. If they are successful, they may be able to have the will nullified in whole or in part. That is risked when the testator decides not to give someone who would traditionally receive money nothing at all. That is a mistake, a crucial error in such a clause, where the person who might challenge is given nothing to fear losing and therefore has no reason not to contest the will with every possible means. This situation is made worse when there is a group of people who are "disinherited," and contesting the will. When this happens, the rest of the family must wait to inherit, which may cause substantial hardship on those who have done nothing wrong and are often those who are nearest and dearest to the

testator.

Many jurisdictions refuse to strictly enforce no contest clauses because they discourage valid and invalid contests alike. These states look to “probable cause” to bring the contest and, if there is any, refuse to enforce the penalty against the challenger. Furthermore, no-contest clauses are falling out of vogue legally and are being construed very narrowly by courts. Many enquires into the will are not deemed contests in the eyes of these courts, because they wish to see no contest clauses become a thing of the past.

Before deciding to insert such a clause you should ask your attorney how your state is handling them and what is likely to happen in the future. In addition, you must make sure that those whom you decide not to make a substantial part of your will and attempt to intimidate with a no contest clause are left some amount of money that they would think twice about losing.

However, there may be better ways to leave your assets to those you choose rather than that traditional will. For many reasons the living trust is the superior instrument for most people’s needs. It is important to consult your attorney to find out the best way to protect your assets and whether a will with a no contest clause is a viable option in your state. A will, in many ways, is too encumbered with restrictions that make a trust a much better option if you would like to leave your assets to those that you choose and reduce the chances of your desires being challenged. Again, as always, ask your local attorney for advice about your wishes and find out whether no contest clauses are becoming a thing of the past in your jurisdiction.

c. Protecting A Will’s Integrity

In the not overly distant past, the writings of the testator were the only evidence of his or her intentions and mental capacity. Undue influence was harder to defend against when the only evidence was the testator’s writings and the recollection of those around them. Imagine the scene, the packed court room (perhaps I have a flair for the dramatic), the testimony as to the deceased’s mental health and the influence exercised over them by their final caretakers and close family members made the testator’s mental

health and the influence of others over them a matter of the testimony of the living and those often involved in contesting or defending the will.

But new options exist today that make it far easier for the testator to present evidence after they have passed away. The first question to be asked in a contest involving mental capacity is that of mental deficiency. Mental deficiency is demonstrated by the testator not being able to comprehend what he/she owns, to whom he/she is giving it, and how it will be transferred in addition to the overall impact such transference will have on their estate as a whole. Previously this could only be done in writing and it was often suspected that the attorney representing the deceased might have helped that writing have all the necessary components, rendering the doctrine more flexible and open to jury or judicial interpretation than a clear matter of fact.

However, today the process can include having the testator explain on video tape what the asset is, how it is to be transferred and to whom, and the overall implications of that transfer to the overall estate. It is easier to see the deceased, to see whether he or she seems to understand all the implications and to see whether or not he/she is the type of person who is weak willed enough to be susceptible to undue influence. In addition, protecting your client by having them explain it in their own handwriting and, on a couple of different occasions, on video tape alters the essential landscape of the court room proceedings by making the deceased a witness.

In addition, it is often useful to send a client to a psychiatrist to verify their mental health and acuity on an ongoing basis. This is evidence that those contesting the testamentary instrument will not easily be able to counter, because they will not have their own psychiatrist who has had access to the testator. This is another excellent card to have in your arsenal as an attorney in order to protect your client's interests which again alters the landscape of the proceeding if the will is contested. Questions as to whether a client is mentally capable of understanding his/her bequests, the implications of those bequests, and the relation of those bequests to the rest of his/her estate as well as questions regarding to what extent, if any, their own personality was waning and susceptible to undue influence can be answered in different way. The more the judge and jury are able to see the testator, how they behaved, and how lucid and in control of their faculties they appeared to be, the more the trial regarding wills shall depend on a

more direct perception of the testator rather than one provided by second hand accounts. The wise estate planner will use video tape in conjunction with psychiatry and standardized psychiatric tests to show that the testator knew exactly what he/she was doing and will not be hamstrung, as in days past, by the perception of others.

d. Do You Really Need a Will?

Many people wonder if they really need a will. They may think that they don't have enough assets to bother with a will. Some people erroneously believe that a will causes your heirs to have to go through probate, leading to unnecessary expenses. However, a will is a good idea for just about everyone. Read on for some of the reasons to have a will.

A will is a document in which a person declares what he wants done with his property at the time of his death. A will has no effect until the person who wrote it, known as the testator, dies. The testator can also revoke a will at any time prior to his death.

If you die without a will, the state will distribute your property to your heirs according to the state's intestacy statutes. The statutes might call for a distribution that is similar to what you want. Then again, maybe they won't.

State intestacy laws will provide how the sum total of your property is to be divided among your heirs. It can't provide for who will get certain specific items of your property. This can lead to many problems. Your heirs may not agree on who will get certain items of your personal property. For example, say you have inherited your grandmother's wedding ring and intend to pass it on to your daughter. If you die without a will saying that is what you want, your son may feel very strongly that his wife should have it. So even if you don't have a lot of assets, you may be concerned about making sure that certain items of your property go to the people that you want it to. You can do this with a will.

Another misconception about having a will is the idea that having a will causes your heirs to have to go through probate, and that it will be difficult and expensive. If you die without a will, the court is still

going to have to oversee the distribution of your assets to your heirs. There is absolutely no reason to think that this process is made easier or less expensive by your not having a will. In fact, it will probably be more expensive. For one thing, whoever administers your estate will probably have to post a surety bond if you don't have a will. If you do have a will, not only can you choose the person who will administer your estate, you can provide that he or she will not have to post a surety bond.

Do you have minor children? If so, you really need a will. If you don't have one, the probate court will have to set up a conservatorship to manage your children's share of your property. A judge will decide who manages the money. When each child turns 18, he or she will get his share, whether they can handle it or not. If you have a will, you can decide who will manage your children's inheritance on their behalf and you can choose the age at which you want it to be distributed to them.

Even if your estate is small, there are good reasons to have a will. You should see an attorney who practices in the area of estate planning or wills and trusts. This attorney can also help you decide if you need more advanced estate planning techniques and help you implement an estate plan that is best suited to your needs.

Durable Power of Attorney

A durable power of attorney (DPA) will allow you to legally appoint a trusted partner, family member or friend to make medical decisions for you, should you become unable. A DPA is especially wise for unmarried couples, single people, or those whose partners are deceased. Laws regarding these documents vary between states, so check with your local lawyer, physician, or healthcare facility to see what documents you can submit for your own protection and peace of mind.

The Last Will and Testament and Durable Power of Attorney documents deal with control over financial and legal matters. But how can you plan for (and help others plan for) your life, healthcare matters and destiny? You may have asked yourself this question: "If the only reason I am being kept alive is by machines, would I wish

to continue to live that way?" Your Last Will and Testament and Durable Power of Attorney can not help your loved ones decide that or act on it in the case you become incapacitated by a stroke, accident or Alzheimer's Disease.

3. Living Will

A living will is a document you draft that stipulates what kind of treatment you want or don't want in the event of an unrecoverable illness or injury that leaves you unable to speak for yourself. It gives you the power to refuse extraordinary measures that would keep your body alive when there is no hope of recovery, and when you would choose, if able, to die a natural death.

People have differing attitudes and beliefs about what constitutes life and quality of life. For some, their religious beliefs dictate that any form of life is sacred and should be preserved as long as is humanly possible. Others believe life ends when the brain ceases to function and that life-support in this state is a form of dehumanization and a burden on loved ones, emotionally and economically.

A living will allows you to make your desires known on this issue. Without a living will or advance directive, it is incumbent on the hospital or healthcare facility to continue to provide life support, unless a spouse comes forward to relay your (unwritten) wishes and ask that life-support be suspended. If there is no spouse, the closest living relative can speak for you. However, requests to stop life-support without a living will or advance directive in place can be met with resistance by other family members, friends, and even unaffiliated parties with political agendas, including members of government.

A living will only comes into play when multiple conditions have been met. The will must be legal and in the possession of your doctor. Your doctor must further find that your condition precludes you from making a competent decision about the care you wish to receive. Lastly, a second doctor must concur and both physicians must also find you to be terminally ill or permanently unconscious.

Living wills can be drafted by lawyers, via software programs, or by

simply writing out your wishes and desires; it's best to follow an official form as the language will not leave room for ambiguity, and laws that regulate living wills vary from state to state. The document requires a signature and the signing should be witnessed by two people who also lend their signatures as proof. Alternately, you can have it officially notarized. A copy should be given to your doctor to be kept in your file. If at any time you change your mind about the conditions you set forth for yourself, you are free to retrieve and destroy all copies of the existing will, and replace it with a newly drafted and notarized document.

1. Though the task of making a living will may not be a joyous one, it is not only in your best interest but in the best interest of loved ones. An advance directive also allows you to stipulate what kind of medical care you wish to receive, or do not wish to receive, and can be as detailed and specific as you like. Your children: Be aware that your wishes may not necessarily be the same as their wishes – you should try to avoid disagreements among your children by carefully spelling out your wishes in a Living Will;
2. Your physician and HMO (if applicable): Have original copies of your Living Will made a part of your medical record so that it is clear to your health care providers what your wishes are.

But other types of medical issues that do not include life support may arise. For example, you also make decisions on which procedures or surgeries to have. Who will step into those cases if you become incapacitated? A living will does not allocate property rights or estate, which is covered in a standard will, often referred to as the last will and testament.

4. Health Care Proxy (or Medical Power of Attorney)

A Health Care Proxy is often called a "Medical Power of Attorney" because it is a way to delegate your health care decision-making to another person in the event you become unable to make those decisions yourself. You should choose someone who you trust and someone who knows your wishes with regard to medical treatment and concerns.

A Health Care Proxy covers *all* types of medical decisions, including changing medications, experimental treatments, surgical procedures, changing physicians and transferring between facilities. One specific decision is not covered: tube feeding. You must specifically state that you do not want to be kept alive by artificial nutrition or hydration ("tube feeding"), or else your physician will make the decision for you.

Probate is the process by which assets are transferred to your heirs on death. Although the law states that probate can be completed in six months, a more realistic figure is a year to a year and a half. During this time, your assets are not readily available to your heirs, are open to public view, and are subject to creditor claims, whether or not they are valid. The costs of probate can be high, and consist of attorney's fees, appraiser's fees, court fees and fees to an insurance company for an executor's bond. Probate also prolongs the natural grieving process, because the ongoing court proceedings continually remind family members of the death of their loved one.

Why not simply liquidate all of your assets to pay for your nursing home care? After all, Medicaid will eventually kick in (in most states) once you've exhausted your personal resources. The reason is simple: You want to assist your loved ones financially. You want to be able to leave something to them, rather than to strangers.

Trusts

There are several different types of trusts that people use for estate planning. While most fall into specific categories, it is important to understand that trusts are highly individual creations – one size does not fit all. Be wary of firms who offer a cookie cutter approach or a "kit" to create your own. Any trust (indeed all estate planning activities) should be designed with careful consideration and thoughtful legal consultation. Be aware that when establishing some trusts, you may limit your options in the future.

A "revocable trust" may be established to set aside certain assets in the event that the individual becomes incapacitated. These assets never technically leave the person's ownership, so the assets are

still considered part of one's estate when one applies to Medicaid for benefits. The value of a revocable trust is that you can designate a professional to manage your finances, receive income from the trust, and potentially reduce expenses associated with settling your estate at death. With a revocable trust the individual can change the terms of the trust at any time.

An "irrevocable trust" is also referred to as a "Medicaid Trust." Assets are transferred into a new legal entity that then owns those assets. These assets are then no longer considered part of your taxable estate. By shifting assets into the trust, you may now be eligible for Medicaid benefits, but subject to the specific "look-back" rules of your county (see below). When setting up the trust, you determine who will receive the assets, regular payments, and income from the assets. Irrevocable trusts may also be used as an entity to own one's life insurance policy.

This is a simplification of the process, so keep in mind that estate planning involves a lot of "moving parts" that should all be considered. Some types of transfers may result in tax liabilities and future financial limitations. Irrevocable trusts require that the individual give up some degree of flexibility with the assets and may be expensive to prepare. Once the trust is established, the individual gives up all rights to the assets that are included in the trust. You can not change the terms once it is finalized.

Since most people are concerned about spending down all of their assets to pay for long-term care, they will establish certain types of entities like trusts, give cash gifts to children, spend money on exempt assets, or engage in other legal financial maneuvers. You should make sure that your financial activities are legal as well as the smartest use of your assets. Even with perfectly legal activities, you may compromise or delay some of your potential benefits.

Living Trusts

There are many ways to protect assets for your loved ones. One way is to use a living trust. Living Trusts are routinely used by average persons, not just the wealthy, to avoid the high cost, publicity and inconvenience of probate. Property placed in an

irrevocable trust will be excluded from your financial picture, for Medicaid purposes. If you name a proper beneficiary, the principal that you deposit into the trust (and possibly any income generated) will be sheltered from the state and can be preserved for your heirs. Typically, though, the trust must be in place and funded for a specific period of time for this strategy to be an effective Medicaid planning tool. For information about Medicaid planning trusts, consult an experienced attorney.

A trust has three parties - a donor, trustee and beneficiary. The donor sets up the trust, the trustee manages the property in the trust, and the beneficiary gets the use and enjoyment of the property. A person who sets up a living trust wears all three hats, donor, trustee, and beneficiary.

After a living trust is set up, it must be "funded". This involves changing the title of your assets, such as your home and your bank accounts, into the name of the trust. You maintain complete control over the money and the property in the trust. You can buy, sell, trade, or do whatever you want with your property, just as if the trust did not exist.

A living trust can be easily changed to meet the needs and goals of you and your family. In addition, the trust can provide for management of your assets in the event you become ill or incapacitated during your life. When used together or with a durable and health care power of attorney, it can help completely avoid expensive guardianship proceedings.

Upon your death, the person you have designated as "successor trustee," usually a child, automatically takes over management of your assets. Your successor trustee settles your affairs, and then distributes your money and property to your heirs.

Although the purpose of a trust, avoiding probate is simple, a trust is a complex legal document. There may be tax issues involved, and the terms of the trust must be thought through and drafted with great care and skill. Therefore, a trust should only be prepared by an attorney who is experienced in the field of estate planning, and who will stand behind his or her work. Those who purchase mail

order trust kits advertised in the back of magazines, or who utilize the services of non-attorney door-to-door salesmen, are taking great perils with one of the most important documents of their life. On the other hand, a properly drafted living trust will lighten the burden that death places on your family, and will greatly simplify the process of transferring your assets.

a. Recap of the Living Trust

A living trust has many advantages over a simple will or testamentary trust (trust after death). The first advantage is that it keeps the IRS even further out of the process than does either a will or trust that becomes effective after death. The second is that, unlike a testamentary trust, a living trust is not continually supervised by the court. And finally, a living trust is far less likely to be challenged, because creating a trust while you are alive makes contests over what you intended easy to resolve (you are still there to make your wishes known). It is less likely that a relative will come forward and say that they think you are insane or incompetent, while you are still around to challenge the assertion. As instruments go, the living trust has a great deal to offer.

The only downside of the living trust may be that your would-be-heirs (provided you had a will) know what you are giving them. Those who are being extra nice just in case they might get something, and for that reason alone, may stop visiting as often, although that may be a blessing in disguise. That is the great thing about a will -- people only know what you think of them after you're beyond hearing complaints and insults. However, trusts are by most accounts still vastly superior.

Elements of a trust:

- A trust is easy to form and it is a trust's minimal requirement that makes it such a flexible instrument for asset transfer.
- A trust is created when the settlor (a term denoting the creator of the trust) places property into the care of another person or group (called the trustee) for the benefit of a third party beneficiary.
- The property used to create the trust is traditionally used to generate income for the beneficiary.
- One rule is that the settlor (the creator of the trust) cannot be the *sole* beneficiary of the trust. This means that you can't create a trust by placing assets into the care of another person or group solely for

your own benefit, but it is okay if you benefit too.

So, unlike a will, you can use a trust to create income for yourself before you die and build your would-be-heirs into the trust as well. The only real problem this creates is that the other beneficiaries (your heirs) may have rights to the trust before you have passed. However, the instrument is flexible enough to allow for a great deal of control over this aspect of the trust, such that if you wish to create a trust whose other beneficiaries' rights grow greater upon your passing, that is easy to do. This definitely makes a trust something to explore with your lawyer when you do your estate planning.

For example: The creation of a trust begins when you put your assets into the care of a third party, like a bank or an estate planning attorney or a trusted relative or friend. Your attorney may be able to structure the trust so that you get the vast majority of the benefit and allocate a very small portion of the benefits to the other beneficiaries. Your attorney should be able to design the trust so that, upon your passing, your share of the benefits goes to the other beneficiaries in the amounts you see fit.

By bringing your beneficiaries into the trust before your passing you will have greater control over their ability to contest what happens after you are gone. You will also insulate your assets from taxation schemes that affect wills, but do not have any effect on trusts. In most cases the trust is by far the better option for estate planning and you should seriously consider asking your attorney to explain it as an option.

b. Rules and Trustees

If you are wisely attempting to put some assets into a trust (inter vivos) in your lifetime, then you have been paying attention to the important differences between wills and trusts. A trust created during your life will be far more secure with respect to its ability to withstand challenges to how your assets are to be distributed during estate planning than a will. Making a trust is a brave thing to do, because it telegraphs, to a certain extent, what you are going to do with your assets while you are still alive. This is what insulates it from attacks on your capacity, because it is

unlikely, for example that, one of your relations is going to say you are insane or feeble and unduly influenced by another of your relatives to your face and this makes the trust a far surer bet than a will, in some cases.

However, the trust also may engender hard feels regarding the exclusion of a relative and those feelings will become known to a person creating a trust while they are still alive. This is the advantage of a will -- if people don't like it, you will never know. The will maker is long gone when those that don't like what they have done contest the will and those that do like it try to defend it. Although, it should be noted that clever drafting should be able to alleviate the necessity of either a contest or a defense. That is why you need a clever estate planning attorney to create your will rather than just a form. The attorney that creates your will often defends its contents, or in other words, their understanding of your wishes. The trust is a different story, because your trust will be administered by someone (called the trustee) for the purpose of those that the trust benefits (the beneficiaries).

One of the paramount problems of forming a trust is deciding what powers the trustee has and what powers they do not have relative to the assets you have placed in trust. Remember that a trustee is already assumed to have a duty to benefit the trust and that many states have laws regarding what a trustee can and cannot do, if the settlor (the creator of the trust) does not specify otherwise. But, again, you don't want to leave the financial destiny of your trust up to the state any more than you want the state to decide who gets your assets. Your wills and trusts attorney will be able to give you a list of the traditional powers of a trustee in your state and tell you what they mean. Many of the powers concern what type of assets the trustee can invest in on behalf of the trust. For example, the trustee is sometimes prohibited from buying general securities for the trust because they are considered too risky. But, if you have chosen your trusted stock broker as your trustee and she has agreed, then this might be exactly the restriction you don't want. Consult with your attorney about the kind of trust you would like to create and what the rules are in your state. Remember, that these rules are there to cover the bases in case you don't make your own rules. Understanding the rules that are there, and why, will give you a sense of the kinds of rules that might be good and the ones that you would rather not have. In addition, you will be able to give the trustee more freedom than the state rules would allow, or less, depending on how conservatively you want your assets to be managed.

Be prepared to have a candid conversation with your attorney regarding what the rules are and what you would like to see happen. It is good to remember that your estate planning attorney has seen many trusts and understands how they work. Sometimes restrictions that seem good today might be the very restrictions that cripple your trust in a vastly different economic environment. In some cases, a trust may span several decades and the trustee may change along with the climate the trust was created in. When radical economic changes have occurred, a trust with greater flexibility will be beneficial. So you have a lot to think about as you enter the exciting world of forming a trust. Don't let rules be off-putting, they are there as guides and when you understand them you will have a greater understanding of what you need. Ask your estate planner to give you information about the current rules and some general advice about how to choose a trustee.

c. Equal Share Problems

The problem created by evenly splitting an interest in real property between your heirs.

Many parents want to give an equal share of the family home or some other sentimental form of real property (actual land usually) to their surviving children in equal shares. As an estate-planning attorney, one often sees the strange problems created by such plans. In particular if there are an even number of children, this may create hardships as voting blocks of family members eventually have to resolve votes that are evenly split in court or at least face the hardship of that choice among their siblings.

Suppose, for example, that well-meaning parents leave the family home to four children who are well intentioned adult human beings who generally wish to treat each other fairly, as family members often endeavor to. The problem is that four children will usually have some important differences in age, lifestyle and financial needs. When four such people own property, they must all pay a fourth of the tax and of the general maintenance and upkeep of the property. Suppose one of the children is unsentimental about the family home and wants to sell the property to finance a business or vacation, and two of the other children want to keep the family home to gather for Christmas (or any other important holiday). The fourth child has a hard time deciding, but is also having financial

difficulty paying their share of the taxes, maintenance and upkeep. In order to keep the home and avoid going to court, the two children who wish to keep the home will have to pay the other children what their shares of the property are worth. This can create definite hard feelings even if the children who wish to keep the property have the ability to pay the others for their interest in it. When family Christmas (or any other important holiday) comes around, the children who sold their share of the property will feel badly about using it for the celebration of Christmas around their siblings who had to pay to keep it. By the same token, the children who had to pay to keep it may feel awkwardly about having to share it with their siblings whom they had to pay. This kind of thing can create long standing rifts in a family, difficulty between relatives who formerly got along well together.

The problem, from an estate-planning point of view, is that the property was given in equal shares to prevent any of the children from having their feelings hurt or feeling less loved and important than the other children. If, an estate planner does not help their clients see this possibility, for it is a very likely situation in the real world, it is felt that they (the attorney) have failed. Unless the family is extraordinarily wealthy the possibility that they will have differing financial needs is very common. Anyone who is a middle class American is usually at some point in need of money, particularly if they have children.

It is important for both the client and the attorney to face tough questions and to look toward non-idealized versions of the future when crafting estate planning strategies. The problem of the four children is easy enough to fix, but it illustrates a more important principle. When you are ready to start your estate planning it is important that you answer hard questions for yourself. Clients should be asked questions about how they have seen other families handle wills after their loved ones have passed on. Usually the client is able to tell stories about the greedy children or relations of others, and that helps broach subjects that might otherwise be difficult to bring up. When you prepare to visit your estate planner remember the worst family you ever heard of and imagine that part of the problem that they were having is because bad estate planning forced them to do things they might not otherwise have done. If there is any skill estate planners try to hone, it is the ability to talk to their clients about why they are asking for certain bequests and to help them see that there are several options to reach the goal they are seeking, rather than offering them a cookie cutter version

of a will or trust.

d. Offshore Trusts

Offshore trusts as part of effective estate planning and the fear that keeps many clients and attorneys from knowing more about how to use them effectively

The creation of offshore trusts and other financial plans is a way of shielding your assets from the laws of the nation in which you reside. It can sometimes be used to remove one of the two certainties of life; taxes. Americans are far less likely than the citizens of other countries to put assets abroad because, although when you receive the benefits of being free of your country's laws regarding assets (namely taxation) you also lose the aspect of those laws that are designed to protect your assets. Americans are far more likely to just accept taxes, because our country has an enviable financial system that people around the world wish to participate in already. However, many people would like to know more about offshore banking options for a portion of their wealth because they view taxes as an all too unnecessary evil. Whenever we read stories about the government buying a hammer for \$500 from a certain large corporation (Name omitted to avoid liability) as part of a no bid contract, we may begin to entertain the idea of placing personal assets offshore.

Another reason many Americans decide not to use offshore asset protection options is that they are advised by their attorneys not to do so. This is because offshore asset protection (while desirable) is a topic that your attorney may be very unfamiliar with and therefore uneasy guiding you through it. Attorneys are as afraid of being sued for malpractice as any other professional person is and while most estate planning attorneys in the United States understand the laws that govern asset protection domestically, they are not as well versed in protecting their clients' interests abroad. For that reason, many well-intentioned, responsible and highly-able attorneys fear putting their client's interests into a system where they cannot as easily protect them, and thus, they advise against taking assets abroad. If your own attorney has discouraged you from taking assets abroad in the past, it is a good sign that he/she genuinely cares about serving your needs as a client and is doing his/her level best to look out for you and your family. On the other hand, it is often true that asset protection in another country requires an attorney from that country,

so it may be that it is simply a matter of greed and a desire not to lose your business to someone else that motivates some members of the profession to discourage offshore asset protection.

But, in an increasingly global marketplace it will become more and more common for estate planners to be well versed in the finer points of offshore asset management and the rewards that it can bring. Offshore asset management can be a powerful tool in the world of estate planning and it will become the norm for professionals in the field of estate planning to understand this complex field of law or begin to lose business to those who do understand how to take care of their clients needs using every available strategy in a global market.

e. Legality of Offshore Trusts

Having an offshore banking account, corporation or trust are common themes in legal thrillers, spy novels and eastern European politics. There is a reason to be concerned about the legality of such accounts, for although many people would like to include them in their estate planning, a legal misstep regarding the use of any of these asset management tools could result in thousands of dollars lost in back tax payments and legal problems with none other than the IRS in addition to the possibility of spending time in prison. With that in mind, it is not surprising that many Americans shy away from offshore banking altogether.

As any good tax attorney will be able to explain to you there is a difference between tax avoidance and tax evasion. Tax avoidance is the use of legally employable strategies to reduce the amount of tax one has to pay. Tax evasion, on the other hand, is the use of illegal means to do the same thing. So the goal of any transaction that you would like to undertake offshore is to make certain that you are a tax avoider and not a tax evader. A lawyer will never be a willing party to tax evasion, if that lawyer is behaving within the cannon of professional ethics as well as the accepted norms of safeguarding their client's best interest.

To begin with it is *illegal* to have a secret bank account in another country that you don't tell the IRS about. It is also illegal to move unreported cash even if it is your money. The penalty for either of these offenses makes

bank robbery look like a more attractive option.

However, with our own country continuing to advance the goal of globalization, of course it is legal to invest in, and to interact with, foreign markets and there are some tremendous incentives to do so. The key to taking advantage of these opportunities is to start modestly and remember that if it sounds too good to be true then it probably is too good to be true. Secondly, it is your duty as an American citizen to report your financial activities to the IRS. So divest yourself of notions of secrecy in the absolute and think in terms of tax savings rather than not paying taxes. If someone tells you that they can help you avoid paying any tax whatsoever, they are offering to help you engage in a criminal enterprise. And if you already are a criminal of some sort then perhaps you should look into the matter, but for the vast majority of those reading this article, don't endanger a life spent being a law abiding citizen by buying into an outrageous scheme.

As I said before, U.S. citizens and permanent residents are required to disclose their banking accounts abroad, where they are located and what the account numbers are, on a form called a TDF 90-22.1. However, there are exceptions to having to file this report and taxpayers are confused about the definition of these exceptions as well as the meaning of key terms within the document. One excellent way to begin to understand what must be reported, and when, is to look to the Jacobs Report. The Jacobs report which can be found at <http://finance.groups.yahoo.com/group/jacobsreport/> and it is an extensive document filled with the applicable law and IRS instructions as well as the accumulated wisdom of many web sites and foreign bank reports.

Remember, the cardinal rule when beginning your inquiry into offshore banking is to find out about these matters in detail. You need to check into things yourself and keep in mind that if a deal sounds too good to be true then it is. In addition, keep in mind the fact that you want to be a tax avoider not a tax evader. Consult your estate planner and a tax specialist because the laws in many of the nations that provide tax havens have changed somewhat since the beginning of the War with Afghanistan and Iraq, because the U.S. is looking for hidden terrorist cash reserves and that has changed the way discretion is handled in many tax haven nations that are friendly with our government.

Financial Rules for Long Term Care Recipients

Medicaid pays for medically necessary nursing home care for patients in skilled or intermediate care nursing homes or in intermediate care facilities for the mentally retarded. The patient's income must be less than the cost of care in the facility at the Medicaid rate, and there is a limit on resources. If the patient or his representative gives away assets or sells them for less than market value, he may be ineligible for payment of the cost of care. The sanction period is based upon the value of the assets transferred away.

Financial Protection for a Spouse

Medicaid policy specifies that when a legally married individual needs Medicaid to help pay for nursing facility services, a portion of the couple's income and assets may be protected for the spouse at home, the community spouse. The following is a summary of spousal protection rules:

- Medical services: nursing home care, hospital care that exceeds 30 days, or services provided by the Community Alternatives Program (services which enable an individual to remain at home who would otherwise be institutionalized)
- The community spouse is allowed to keep one half of the couple's assets, with a minimum of \$19,020 and a maximum of \$95,100 (current as of 1/1/2005).
- The protected share is calculated by assessing the value of all assets owned separately or jointly by either spouse at the point the individual becomes institutionalized. The home site is generally not counted in determining the value of assets since the home site is protected for the spouse.
- The nursing facility spouse must spend his half of the assets on his care prior to becoming Medicaid eligible. A nursing home recipient is allowed a maximum of \$2,000 in assets.
- The protected assets, including the home site, must be transferred to the name of the community spouse.
- Once assets have been allocated following spousal impoverishment rules, and the spouse in the nursing facility is

found eligible for Medicaid, spousal financial responsibility ends and each spouse will be treated separately for Medicaid purposes.

- A portion of a married institutionalized Medicaid recipient's income may also be allocated to the community spouse.
- Income is allocated for the needs of the community spouse if the community spouse's income is less than 150% of the poverty level (currently \$1,562). It is also possible to allocate additional income to the community spouse for excessive shelter costs.
- Income may also be allocated for the needs of other dependents.

Protecting Your Spouse

The first question many people have when considering estate planning is how to protect their spouse in the event that they pass away. Although it is common to offer the advice that a will or trust is the best way to protect a surviving spouse, it is also important to remember to explain what protection a spouse has prior to a will or trust being created in which they are named as an heir or beneficiary. This will enable both the client and the lawyer involved to see what else may be done to advance the protection of the surviving spouse. In addition, running through such a checklist may help an attorney see avenues for reducing costs for clients and let the clients know that their attorney is attempting to select legal options tailored to their needs rather than choosing a one size fits all approach.

For example it is important for most clients who are married to understand that they probably own most of their major assets in what is called joint tenancy. An asset held in joint tenancy is passed automatically to the surviving spouse in the event that one spouse dies. Most married couples own most of their assets, such as the family home, automobiles, investments and accounts in joint tenancy. So the typical question that an estate planner helps to answer, for those couples, is not how to protect the surviving spouse with respect to the major marital assets. The typical assets in an estate owned by a married couple do not need to be guarded for the surviving spouse, in every instance. The question becomes, where

do we want this asset to go after we have *both* passed away.

However, you may discover, in the state in which you live, that it is helpful to have estate-planning tools, such as wills and trusts, in place in case there is some challenge to the remaining spouse's ownership. The example above is not meant to suggest that most people don't need estate planners to guard their spouse's interest in case of their passing, but rather, that it is important to understand what rights your spouse has before the question of estate planning arises and then to build onto those rights. It is important to have an attorney who will explain what those basic rights are, and how the state in which you live has designed those rights. Then your choices regarding estate planning will make more sense. Remember, that planning an estate is, in part, a creative process. There are many ways to plan an estate and the one that captures your interests in the most thorough way is the best. Your attorney should be working hard to find the right solutions tailored to your needs.

Whether it is because assets have come into the marriage in a way that is not traditional, or because the assets in the marriage have already been altered by law, like a pre-nuptial agreement, there may be legal instances where a spouse will need additional legal protections in the form of estate planning. In addition, states will have different laws regarding how they allow assets to be transferred via a will. For example, if the individual who passes away has children, some states require that the children and the surviving spouse split any asset that goes into probate. In other words, the state will require the assets that can go into a will to be split in this way. This system might be great for some clients, but for others it means that an already modest estate be split, leaving the surviving spouse and children in financial trouble. Because wills are more heavily regulated than are trusts, a living trust might be the better strategy in a state that requires this kind of split.

Again, it is important when considering how best to protect your spouse in the event of your passing, to understand what assets need protecting -- in other words, what assets could be taken away from your spouse after you die. Second it is important to understand what your state's policies are regarding wills and trusts in order to understand what asset protection strategies are right for you. And finally, it is good to understand which assets will only be the subject of asset transfer in the event that both spouses pass away, and to decide, with your spouse, what you want to be

done with those assets.

Protecting Your Furred Friend

The whole concept of estate planning has a couple of primary aims: 1) making sure that your assets are distributed where and how you want them to be, and 2) ensuring that your loved ones are cared for and able to comfortably live out their lives after you are gone. If you consider your pets as part of your property, to whom do you leave them – and the obvious answer is to someone who won't immediately haul them to the nearest shelter and drop them off.

Providing for your beloved pets may be more complicated than it sounds. There is much to be considered. For example, who will take your dogs and cats in and provide for them with the same loving care you have shown them? Who will develop the same kind of close relationship that your animals are used to sharing with you? Your son may not want a cat that insists on sleeping on his head or your daughter may abhor a dog that sheds all over her chic apartment.

Choosing an appropriate caregiver requires some careful thought and planning. First, you must make certain that whoever is going to care for Bootsie or Fluffy or Shadow, actually likes them and wants to have them around. Sure, a few thousand dollars to provide for Spot's care over the next 15 years is a huge incentive – big enough to have all kinds of people professing their love and admiration for your friend in fur. While your next door neighbor may genuinely care for Callie the cat and all of her progeny into perpetuity, what happens when the kitty litter budget runs out? If you leave Fergus the dog to your cousin Harold, along with \$10,000 to provide Fergus with the best of everything, what's to guarantee that Harold won't buy himself the best of everything and let Fergus eat cheap kibbles? What if there is simply nobody to leave Callie or Fergus to because you have no children and don't trust the neighbors?

Pet care businesses are springing up and advertising their facilities as havens for pets with money. It sounds good in print, but what happens when the facility is full, Sparky is getting old and there is still a few thousand left in Sparky's care account. If Sparky were to depart a little early, there'd be room for another wealthy resident and Sparky's assets would revert to the care facility.

That's precisely why, over the past few years, estate planning for pets has taken a whole new twist. Many people don't consider their cat or dog as property, but as their best friend, not to be subjected to the twisted machinations of those bent on exploitation. Rather than leaving the pets to someone to be cared for from their assets, some pet owners are choosing to leave the assets to their surviving pets, or at least to make certain the pets are cared for throughout their lifetimes through the mechanism of a trust.

In fact, a trust may be the only way of insuring that your pet receives the love and care to which he or she is entitled after you are gone, particularly if the trust stipulates that any money left over after the pet dies is inherited by a third party rather than the caregiver. The caregiver then has sufficient incentive to keep the pet in question alive and well as long as possible.

Several states already recognize and enforce pet trusts and others will inevitably follow. If your aim is to make certain your pets are not just cared for, but pampered just as you would pamper them, talk to your estate planner about setting up a trust specifically for that purpose.

Estate Taxes

Estate tax, or the death tax as it is sometimes referred to, is an issue often bandied about at election time. If the innuendoes of the sound bites are to be believed, the instant someone dies, the government collects a huge amount of tax from the estate just as a general principle. The specter of estate tax is looming in the corner of every hospital room in America, or so goes the story, waiting to deprive widows of their husbands' hard-earned pensions and children of their college funds, if Mr. X is not elected to Congress or the White House.

While it is true that a decrease in estate tax benefits the wealthiest two percent of Americans, it is also true that only the wealthiest two percent of Americans are subject to estate tax to begin with—at least under present law.

Estate taxes are taxes assessed on property transferred at the time of death. They are based on the gross estate, including real estate, insurance, trusts, annuities, cash, business interests, securities, and all other assets. The items are not assessed at their value at the time they were purchased, but

rather at their fair market value at the time of death. For example, if you purchased a home for \$50,000 in 1970 and the value of the property has appreciated in the meantime to be worth \$175,000 based on sales of comparable properties in the same neighborhood, estate taxes would be assessed on the present worth of \$175,000.

Once the gross estate is calculated, applicable deductions are subtracted from that value. Deductions include property that passes to surviving spouses, mortgages and other debts, and estate administration expenses. In some cases the value of operating business interests or farms may be reduced, according to the IRS, “for estates that qualify.” The value arrived at after deductions is referred to as the “taxable estate”. Lifetime gifts are added back in and an available unified credit is applied before the estate tax is actually assessed. The good news for most of us is that your taxable estate, as an individual, must exceed \$1,000,000 for estate tax to apply, as the law currently stands.

The federal Tax Act of 2001 changed several provisions of the law regarding estate taxes. The rate at which estate taxes were assessed in 2001 was 55% of the gross estate less all applicable exemptions. The 2001 Tax Act began stepping estate taxes down gradually in 2002 to the present rate of 46% in 2006 and on down to 0% in 2010.

The premise behind the 2001 Tax Act is that some of the revenue lost to the U.S. Government through reduction and eventual abolishment of the estate tax will be recouped by capital gains taxes that your heirs will have to pay if and when they dispose of the property bequeathed to them. Prior to 2001, heirs automatically received a “full basis step-up” to fair market value on inherited property and did not have to pay capital gains tax when they sold the property. At present, heirs do not enjoy that benefit. If, for example, you paid \$60,000 for five acres of land in 1965 and you leave it to your son or daughter when you die. The son or daughter sells the land for \$200,000 in 2006 and has to pay capital gains tax on \$140,000, or the difference between what you paid for it at the time of purchase and the fair market value at the time it was sold.

Needless to say, estate tax issues are extremely complicated and, if you fall into the category of wealth that would require payment of estate taxes on your demise, be sure to discuss them with your attorney or other estate

planner.

Insurance Options

Many life insurance policies offer, at extra cost, an Accelerated Death Benefit rider. A portion of your life insurance benefit - usually no more than 80% of the face value of the policy is paid to you under certain circumstances when long term care is needed, rather than to your beneficiary at death. Remember, if you need guaranteed death benefits (for a spouse or dependent child), using a portion for long term care will defeat the purpose of life insurance. Carefully evaluate the additional premium cost vs. the benefits. Be aware of any limitations on using your benefits in relation to the cost of long term care and the amount of assets you wish to protect.

Long-term care insurance is similar to other insurance in that it allows you to pay a known premium that offsets the risk of much larger out-of-pocket expenses. Long-term care insurance may cover care in a nursing home, in the home, or in a community setting (e.g., adult day care) depending on the policy you choose. Most long term care insurance policies are indemnity policies, paying a fixed dollar amount (e.g., \$100 per day) for each day you receive specified care either in a nursing home or at home. *No policy will cover all expenses fully.*

Paying a long term care insurance premium now insures at least partial coverage later for nursing home, home care, and other types of long term care, depending on the policy. This insurance may help if you are unable to pay for long term care yourself but can afford to pay a long term.

Medicaid planning is not without certain risks and drawbacks. In particular, you should be aware of look-back periods, possible disqualification for Medicaid, and estate recoveries.

When you apply for Medicaid, the state has a right to review, or look back, at your finances (and those of your spouse) for a period of months before the date you applied for assistance. In general, a

36-month look-back period exists for transfers of countable assets for less than fair market value, along with a 60-month look-back period for similar transfers into irrevocable trusts. Transfers of countable assets for less than fair market value made during the look-back period will usually result in a waiting period before you can start to collect Medicaid. So, for example, if you give your house to your kids the year before you enter a nursing home, you'll be ineligible for Medicaid for quite some time. (A mathematical formula is used.)

Also, you should know that Medicaid planning is more effective in some states than in others. In addition, federal law encourages states to seek reimbursement from Medicaid recipients for Medicaid payments made on their behalf. This means that your state may be able to place a lien on your property while you are alive, or seek reimbursement from your estate after you die.

The Omnibus Budget Reconciliation Act of 1993 amended federal Medicaid law to require states to institute estate recovery. This means that after you die, the County Department of Social Services may make a claim against your estate, including your home, for what Medicaid paid after your 55th birthday or while you were an inpatient in a medical facility. However, they cannot "recover" until after the death of your surviving spouse or surviving minor, blind, or disabled child.

Life Insurance Options

Not too many years ago life insurance was considered to be the indispensable platform upon which all other estate planning efforts should be based. In fact, for those in the median and lower income ranges, it was often the only recognized method for protecting one's heirs, particularly in the event of untimely death. However, over the past twenty or so years, the concept of financial planning has changed considerably. The proliferation of varied retirement plans available through work (IRAs, SEPs, SARSEPs, mutual funds, etc) has changed people's perspectives about the need for life large life insurance policies.

Does that mean that you don't need life insurance? No. Most people, perhaps with the exception of the very wealthy, do need some sort of life

insurance, although even the very wealthy may opt for a life insurance policy (generally whole life) to defray the costs of burial and estate taxes.

In general, the options are whole life (also called permanent insurance) and term life, with variations like universal life or variable life that combine some of the benefits of each. Different companies offer different options, but which you need and how much you need are matters for heated debate. Those who sell one and make most of their commissions from it will vehemently try to convince you that the other is not a good investment. Here are some facts for your consideration.

Whole Life Insurance Advantages:

- Offers a guaranteed death benefit no matter how long you live
- Is generally not subject to rising premiums; rates stay the same
- Many policies become “paid up” at some point (15 years, age 65, etc.) after which no more premiums are paid
- Has investment value which can be cashed out after some specified interval
- Can be borrowed against in case of financial emergency
- Can, in many cases, occasionally earn dividends depending on the company’s solvency and accuracy in predicting actual costs
- The income from a whole life policy is tax deferred
- Can be cashed out after age 65 and used for retirement

Whole Life Insurance Disadvantages:

- Costs more than term life insurance
- Generally returns a fairly low rate of interest
- Does not begin to accumulate any real value for the first 10-15 years
- If the policy is surrendered within the first few years, money paid into it is lost
- Does not provide the investment value of a mutual fund or other investment

Term Life Advantages:

- Premiums are generally very inexpensive
- Lower premiums allow the buyer to purchase more insurance with higher death benefits
- Can be quite useful if the buyer only needs coverage for a specified period (while paying off the mortgage or while kids are in college,

etc.)

- Leaves the buyer with more money to purchase other investment vehicles like mutual funds, stocks, bonds, etc. that provide higher rates of return than whole life
- Often beneficial for younger families who can't afford whole life rates, but need to insure the primary income earner

Term Life Disadvantages:

- Only pays if and when you die; you can never personally recoup any of the money spent on term life insurance
- While premiums are lower than whole life, they also tend to go up and can become unaffordable
- Term life is only available for a specific term (up to 30 years), and then goes away; if you don't die within the term, your premiums are lost

Almost everyone needs life insurance of one variety or the other. The type of insurance and the amount to purchase depend entirely upon you, your family and your mutual goals and needs. In any case, make sure the company you purchase insurance from is reputable and financially solvent. Don't be convinced by a fast-talking sales person without doing your homework first. There are few remedies if your life insurance company dies before you do.

Roth IRA's (Individual Retirement Accounts)

An IRA is an IRA is an IRA, unless it's a Roth IRA. Roth IRAs, which burst upon the investment scene not so long ago, offers some attractive departures from traditional IRAs, especially if it's being used as a retirement planning tool.

The Roth is the same as a traditional IRA in that it is not an investment in and of itself, but a vehicle to investing in other instruments such as stocks, bonds, bank certificates of deposit, mutual funds, and even real estate. That's pretty much where the similarities end and the differences begin.

With an ordinary IRA, the money you contribute is not subject to income

taxes first, it comes straight from your gross salary. Taxes are paid when you withdraw the money and traditional IRA monies have to be withdrawn from the account when you turn 70 ½, or they become subject to higher tax rates.

In the case of the Roth IRA, the money you pay in comes from your net salary – in other words, you have already paid the income taxes on it. For many people it makes sense to have paid the income taxes up front when they are making more money, than later on when they need the money for retirement.

In addition, there are no taxes on the growth from your Roth IRA. What you put in, stays in, and earns additional money for you. And, the longer you leave it in, the more it grows.

At the same time, the Roth IRA is a bit more accessible since you can make withdrawals from it, provided you have had it for at least five years and you are at least 59½ years old. There are no penalties for early withdrawal from a Roth IRA and, because the income taxes were paid up front, there is no tax to pay at the time of withdrawal.

There are some rules that govern contributions to a Roth IRA. For example, you can contribute up to \$4,000 per year as an individual, but if you are 50 or older you can make an additional contribution of up to \$1,000 as of 2006, in order to “catch up.” As long as you have income – from either work or alimony in most cases, you can make contributions to a Roth and you can keep doing so, no matter how old you are. You don’t qualify for full contributions to a Roth IRA if your modified adjusted gross income (AGI) is over \$95,000, but can make partial contributions if you don’t earn more than \$110,000. Married couples can make full contributions to a Roth IRA if their joint income doesn’t top \$150,000, and partial ones if their income isn’t over \$160,000.

There can be retirement advantages to a Roth IRA, primarily that the taxes have already been paid and there are none due upon withdrawal. Many people have converted their traditional IRAs to Roth IRAs as part of their estate planning processes. The transfer rules are somewhat complex, however. In order to withdraw money from the traditional IRA, taxes on it must be paid at the time of withdrawal. If the additional income in the year the money is withdrawn kicks the individual into a higher tax bracket,

the tax bite can be more than anticipated.

While there are advantages to the Roth IRA, make sure you consult with your financial planner and estate planner to make sure you are cognizant of and meet all the rules.

Gender Issues Meet Social Security

If Social Security benefits play a significant role in your retirement plan, it may be time to rethink your strategy. The big news on the Social Security front over the past few years has been the fact that, due to an overabundance of encroachments on the system, it will soon be paying out more than it takes in. Opponents argue that the current Administration's move toward personal retirement accounts will further erode what the American Association of University Women has referred to as "one of the most successful anti-poverty programs in our nation's history."

An issue that often goes unnoticed, or at least unsung, is the extent to which the Social Security system extends the inequities against women that are established in the workplace. Despite gains in salary equality reported in the 1990s, which brought women somewhat closer to parity with men in the working world, studies show that those gains have slowed in the first five years of the 21st century. There is still a huge salary gender gap prevalent in the world of corporate America and it is a gap that carries over into retirement plans, and specifically Social Security.

It is estimated that women who work full-time in this country earn 76 cents on the dollar when their salaries are compared with men in the same work categories. The gap gets wider for older women (ages 55-64) who only earn 68 cents on the dollar when compared with men of the same age group. Women's pensions are correspondingly smaller because they haven't paid as much in to the company's pension plan, and women who live alone reputedly have a difficult time making ends meet, much less saving for anything.

Not only do women earn less than men, but married women generally spend less time in the workforce than do men, due to time spent raising families, taking care of elders, and other care issues that confront the typical family. Thus their earning power is diminished, impacting pension plans, specifically Social Security.

Thus, women are more dependent on Social Security, but receive less of it. Of all women aged 65-75 in this country, a quarter of them report Social Security as their primary income, constituting 90% of what they have to live on from month to month. That number goes up among women 85 years of age or older, 40% of whom depend on Social Security for 90% of their income. It is estimated that over half of all older women in the US would be living in poverty without Social Security.

Yet, because of women's lower earnings and less years in the workforce, elderly men's pension incomes are generally twice that of women, who are forced to depend on spousal benefits for survival in their elderly years.

No matter what happens with the political maneuverings surrounding Social Security, it is apparent that it is a critical program that allows people to remain self-sufficient long after their working years. For many people, particularly women, it may be the only estate planning tool available.

Second Marriages and Estate Planning

As the life expectancy of people in the United States increases, the reality of second and third marriages becomes more likely even for those who tend to marry for a long time if not until the death of their first spouse. Widows and widowers are increasingly likely to meet and decide that a second marriage is an excellent way to avoid spending their autumn years alone and that love is not the exclusive province of the young. It is often a surprise to adult children to meet the boyfriend/girlfriend or husband/wife of their elderly parents.

However, remarriage later in life creates a unique set of legal questions that those who are getting married don't often think through. For example, many older clients take it for granted that their adult children will inherit from them when they pass away, because the majority of their property and life has been spent with their previous spouse who was often a co-parent to those children and the one who helped to build or sustain the family assets. But, a new marriage means that the marital property is governed by the laws of the new marriage. Absent any prenuptial agreement, the surviving spouse would, in most jurisdictions, receive at least half of the marital assets, which means that the adult children from the first marriage might be in for a big surprise if they think the family home that their family has owned for years will become theirs.

Another problem is that as people get older they often move to places where it is warmer. This means that they move to states where they have not traditionally lived before and these states not only have different (warmer) climates, but different laws as well. If they spend the colder months (or the entire year) in these states, it becomes increasingly likely that they will pass away in these states. But, are the laws of the state in which they pass away the ones that control the transfer of their assets or do the laws of where they have lived most of their lives control that transfer? If they have a will, then this question becomes even more complex. Often the real property (real estate) assets are governed by the laws of the state in which they sit, whereas the personal property (bonds, stocks, money, possessions) are controlled by the laws of the state that is their final residence.

The problems that are created by second marriages should not be taken lightly. It is important to talk these things through with your future spouse because, chances are, they want to make sure that their adult children get their assets upon their passing just as much as you do. If you don't have a frank discussion with your would-be spouse, you may end up causing all those whom you love a great deal of heart ache and confusion as they struggle to figure out what would be best and what you would have wanted. This happens every day -- earnest people do their best to honor their deceased loved one, but honestly and simply disagree about what he/she would have wanted; a situation further complicated by those who just want to fight for any dollar they can get.

Consult with an attorney who can help you set up an agreement waiving certain marital rights that may be tailored toward married couples who start out together, rather than those who meet later in life's journey. Be prepared to be honest and up front about what you want and ask your attorney what kinds of problems they commonly see with respect to estate planning and autumn romances and how they think such problems are best avoided. Your attorney will have plenty of good ideas that will ultimately help you safe-guard the important people in your life.

Disinherit or Oversight and Estate Planning

Sometimes family and estate planning begins before the family is complete, particularly in an age where people (generally) are waiting until

later to have children. In that case there could be grandchildren named in a will and others not, who are all in the same family. The reason may simply be that the children who were left out were not born when the will was made and it is too late to remake it. Fortunately, most states now have laws that are designed to remedy this situation.

Generally children are protected if they are left out, because they are considered to be overlooked as opposed to specifically disinherited. Some states protect spouses and grandchildren under the theory that they have been omitted rather than excluded. But, states have a couple different ways of handling omitted relatives. Many states assume that if the testator (the will maker) had a chance or had not forgotten to do so, that they would have included the omitted relative. This is important because the suggestion is that naming the individual would have been the testator's intent had they recognized the omission. Other states make no mention of what the testator's intentions would have been, because they want a testator who intends to disinherit someone to do it using positive language rather than just not mentioning that person. Both of these approaches can fly in the face of the facts regarding what the testator wanted or intended. But, one thing is clear, if you intend to leave someone out of your will who is a close relative you must do so expressly. That can be done by saying something like, "And, to my wife Sheila I leave nothing," or "To my son Thomas, I leave the kick in the rear end I should have given him years ago."

Such a scenario is a nightmare for your estate planner who knows that Shelia and Thomas will challenge your will because they have no reason not to. As was discussed in a previous article, it is better to leave a relative something that they are afraid to lose and use a no-contest clause in many instances. However, sometimes a client is clear in the desire not to leave a thing to one of his/her relatives. This is become increasingly difficult under state laws that protect omitted relatives and disfavor no-contest clauses. It is another case of laws that are designed to protect our interest also protecting us from being free. Why shouldn't the testator be able to disinherit those they don't like with ease? Why should the government decide who your assets will go to? Remember that most people die intestate so the state is used to making these decisions, but why should they be able to do so if you make a will? Perhaps it is another legal road paved with good intentions or perhaps it is another instance of big brother deciding for you.

This is another pitfall that your estate planner will be able to help you avoid. If you want to disinherit someone, then let your estate planner clearly know your intention. There is nothing wrong with that. Remember that, as an attorney, your estate planner's job is not to judge your wishes, but to make them happen and guard you and your estate against what you don't want. Your estate planner should not, and most likely will not, make you feel judged. They work for you and have taken an oath to faithfully serve your legal wishes to the extent that they have the legal power to refuse to break your confidence even after you pass away. Any estate planner who isn't ready to fight tooth and nail to see your wishes met is not doing their job.

Just remember that if you intend to leave someone out of your will, you can do that. And conversely, your estate planner can help you provide for extra grandchildren that you may not have been lucky enough to meet, but that you still might help go to college.

Planning for the Intangibles

Every state has statutes and mechanisms in place that deal with disposal of tangible assets whether the deceased had a will or not. Families might fight over who gets the house, the cars, the stocks and the cash, but there is generally no question about where such property is located.

On the other hand, many of the questions surrounding intangible digital assets are just beginning to be asked, much less answered. Estate planning in the information age raises a whole new set of issues that just didn't exist even as few as ten years ago.

When a person dies, for example, who inherits the computer files, the web pages, blogs and emails? More complicated yet, how are online bank accounts, stock holdings that exist entirely in digital media, or the rights to an exclusively online business to be handled? The proliferation of online businesses and the world's propensity for doing paperless business means that digital holdings very often have considerable monetary value. What if nobody knows your passwords or your various usernames? Do your digital assets just disappear into the ether? Can your online business be seized and sold to pay your creditors?

The dynamic nature of Internet transactions makes their inclusion in a will eminently impractical. User names and passwords change, new businesses are created, new stocks are e-traded, and new email accounts come into being. Changing a will, or adding a codicil, every time your online dealings change is not at all feasible.

Even though the law governing digital assets is unclear, largely because it hasn't yet been written, there are ways to protect those assets and make sure your heirs are able to locate and use them.

First, keep a master list of all your online dealings, complete with urls, user names and passwords. The list should include items like domain names, where they are registered, and when they need to be renewed to keep the business name and Internet location. Put this particular information on paper, update it every time something new is added or something old deleted, and keep it in a safe place with your other important business papers, preferably in a safety container.

Make sure your attorney or your estate executor is aware of the list, even if you don't want it opened until after your death. Instruct your executor or attorney as to when the list is to become available to your heirs – for example in the case of serious illness in the event that someone needs to take care of online business transactions in your stead. Such instructions may or may not be legally binding, but chances are your instructions will be followed, as a matter of moral obligation.

If you have a prosperous online business, online bank accounts, e-trade accounts, or other valuable digital assets, those need to be figured into your estate planning. Otherwise, your heirs may be stuck with a messy situation and many unexpected expenses, or even legal challenges to deal with – problems that your estate planning was initially designed to protect against.

Capacity Challenges

Wills and trusts have an interesting history in a culture as heavily influenced by British common law as our own. The bequests of wills have been the pole star around which a great deal of mystery fiction has been written where furtive and anxious relatives wait around a long imposing table to hear what is to become of the family fortune and thus; what is to

become of them. As usual, fiction and the media give one side of what something has been or is, while the other side of the tale exists behind the scenes or on an obscure back page of a newspaper.

What is not often shown about a will is that it is contested. Perhaps this is because the craving for legal courtroom drama is a relatively new phenomenon, and perhaps because the way the family members behave toward one another over large sums of money is too violent even for television. Wills are contested in long bitter rivalries that often leave no member of the family unscathed. Often there are two opposing camps and each relative must decide which “side” they are going to be on. It is refreshing when the sides earnestly agree that they each wish to bring about what they believe the deceased would have wanted, but it is more often the case in which that is merely the incantation recited to get what each opposing camp thinks is their due.

One means of opposing a will is to suggest that the person making the will was crazy when they made it. That is why even most lay people begin their will with the phrase, “I (so and so) being of sound mind and body....” This legal doctrine is not unique to wills, but affects the right to enter into contracts and agreements of all sorts. In the context of wills, this is called capacity.

Capacity can be broken down into two elements -- first, the will maker must not be mentally deficient. For the most part this means that the will maker must understand what they own, who will get it and the basic arrangements used to get that person whatever it is they are to receive. These elements combine such that the will maker must understand how these elements relate. It seems that video taped sessions where the deceased explains the whole process are changing the applications of this law. There is the deceased on-screen explaining who gets what, why and how and in what way that affects the rest of his/her property. Note that the requirement of mental deficiency is not about what the person understands generally, but what they understand about what they own. It is tempting to wonder if this requirement stems from the fact that the rich are allowed to be ‘eccentric’ to a certain extent in our society.

The second prong of capacity is whether the will maker is operating under an “insane delusion” or “mental derangement.” However, again, this insane delusion or “false belief against reason,” is not about anything other

than the assets in the will. Provided that someone has an insane belief against reason, it doesn't matter unless it affects the property divided up by the will. If someone believes they see dead people, but doesn't attempt to leave money to any of them, then that is probably all right. Usually, insane delusions come in the form of an irrational belief that someone is not the deceased's child or that the deceased spouse has been disloyal in the conjugal sense. But, again the deceased can hold a whole host of irrational beliefs about matters other than their property, and that would not invalidate their will.

Undue Influence Considerations

Often during the final years of a dear friend's or relative's life some person or persons will take over the task of caring for their sick and elderly friend or relative to a greater degree than the other people in their lives. This is sometimes due to sheer geography where the aged or sick person lives nearer to one set of relatives than to another. In addition, some relatives or friends may be better suited to dealing with the realities of sickness, age and dying than are others. There are some people who do not have the temperament to be care givers for those they love dearly, because they cannot bear to see a parent decay and succumb to age and death, particularly if the process is prolonged.

Those who are elderly, sick and in need often attempt to show their gratitude for the care that they are being given through bequests in their will. It seems only fair that the relative who is actually caring for their loved one should be rewarded by the one who is being cared for. However, there is the potential that the other heirs want an equal share of the bequest regardless of who took care of whom in the final days of a person's life. Sometimes, for no other reason than that they want to feel that they were loved equally and view an equal share of the will as a demonstration of that.

When this happens, a common means of contesting a will is employed that involves a claim of undue influence. This claim is essentially grounded in the idea that a relative exercised an extreme amount of coercive ability with respect to the deceased. It must be true that the person who is claimed to have undue influence also received an 'undue benefit.' Undue Influence is usually combined with a claim of lack of capacity in one form or the other. The less forceful the waning personality of the deceased becomes in the eyes of the courts, the easier it is to establish the

dominance that the undue influencer had over that person. After all, it is difficult to say that a strong, healthy, fully cognizant adult was duped by his/her insidious caregiver. To be sure, there are people who try to take advantage of those whom they care for, but there are a great many claims of undue influence raised by those that simply didn't pay attention to their elderly loved ones, yet expect an equal share of the bequest. Another interesting facet of undue influence claims is that they can involve the degenerated mental state of the will maker without relating that state to the property or to whom it goes. Part of the undue influence claim is showing that the person being influenced was addled and that the person doing the influencing used that to their advantage. This is unfortunate, because the elderly often become more absent minded or less mentally acute than they once were, and yet they may still be attempting to reward a relative who has come to their aid when it mattered to them the most.

Undue Influence is also shown by proving an opportunity to exercise such influence. In one case a test of "psychological domination" was used to prove undue influence. But, the central question is always whether an unwarranted coercive force or ability existed and was exercised. This is problematic, in that there may be one child or relative whose advice really is important to the will maker, but that fact is not attendant to undue influence so much as a general respect for that person's counsel.

Protecting Assets from the State

It isn't just the US Government waiting out there to grab a chunk of your hard earned estate when you become incapacitated or die. Strangely enough, state coffers are frequently enlarged through the mechanism of Medicaid. When someone requires long-term care in a nursing home, unless he or she has a private long-term care insurance policy, their whole estate may belong to the state when they pass on.

Nursing home care is not free, even in county or state operated facilities. Someone, somewhere, has to foot the bill. If you, or your family, does not have resources to pay for the care, Medicaid steps in. While Medicaid is a federal program, funds are allocated to the states for administrative purposes and are subject to state rules and regulations.

People who apply for Medicare aren't always aware of exactly how the program works, but even more sadly, most people who are forced to apply

for Medicare really have no other choice, so it doesn't matter how it works. By the same token, Medicaid rules have been revised so that if one half of a married couple requires nursing home care, the other spouse doesn't have to sell the house and live on the street.

Under the most recent Medicaid rulings, when one spouse has to be in a nursing home for 30 days or more, the couple's assets are assessed and some assets are excluded by virtue of "spousal impoverishment" rules. The couple's residence is excluded from the asset evaluation, along with household furnishings and personal effects. In some states, the remaining spouse's IRAs are exempted, as well. The non-ailing spouse is then entitled to half of any remaining assets, subject to minimum and maximum limits, while the other half must be spent on the nursing home care.

In addition, income like Social Security, some pensions, and some interest dividends are subject to "maintenance allowance," rules designed to allow the healthy spouse enough money to live on. If, for example, the Social Security Income or other pension income is in the remaining spouse's name, he or she is entitled to keep it for living expenses. In some cases, the spouse at home can receive more than half of the marital assets, particularly if his/her income falls below minimum levels.

If there is no spouse, in many states the individual requiring nursing home care is required to sign over his or her home to the state to reimburse Medicare. When the nursing home stay is not permanent, the Medicaid recipient is allowed to live in the house until death, but cannot pass it on to children or other heirs, because it actually belongs to the state, not to the individual.

Estate planning, particularly if it involves some sort of long-term care insurance, can alleviate or eliminate some of the worries associated with the potential for requiring nursing home care. Talk to your attorney or other estate planner about what can be done to protect your remaining assets if you have to go to a nursing home.

The Mortgage

Where does your home mortgage fit into your financial planning and particularly into your estate planning? In the world of yesteryear, the chief goal was to pay off the mortgage and hold the property free and clear. Higher land prices, higher building costs, and fluctuating interest rates

have changed the landscape of the housing market, with instruments available from flexible interest schedules to interest-only mortgages, in which the buyer never actually purchases the property.

There are advantages to paying off your mortgage as quickly as possible and there are disadvantages as well. It just depends on your needs and your aims for the future, which route you should take. Say, for example, that you had just come into a lump sum of money – from a stock market windfall, inheritance from Uncle Joe, or some other pile of cash that gave you the option to pay off your mortgage and be done with it, or not.

Some things to consider in contemplating this matter include:

- Are you still working and intend to be working for 20 more years, or are you nearing retirement age within the next few years?
- Do you intend to retire in the home, or move to another retirement location altogether?
- Do you have children who would want to inherit the family home?
- Are you in a stage where you are actively trying to build a retirement nest egg?
- Is the interest rate on your mortgage high or relatively low?
- Do you need extra tax deductions or is that immaterial?

The answers to these questions can help you determine whether you want to use the extra money you have available for paying of your mortgage or put it to other uses.

If the following statements describe you, paying off the mortgage is the best option:

- You are a person who craves personal security and don't like the worry of having a mortgage hanging over you.
- The interest rate on your mortgage is higher than that which you are currently earning on your investments.
- You would like to have money available to begin, or contribute more heavily to, an investment or retirement program.
- You don't intend to retire in the home, but want to buy a smaller home by the lake, mountains, river, in the tropics, etc.
- Your mortgage is near to being paid off (within 10 years) so you are now paying more principle than interest.
- You have enough money to pay off the mortgage and still have a healthy savings account.

If these statements best fit you, you may want to ignore the mortgage and use the money for other purposes.

- The interest rate on your mortgage is lower than the interest rate you are receiving on your investments.
- You have more than ten years till retirement and are able to comfortably handle the mortgage payments and don't anticipate any change in that situation.
- Paying off higher interest credit cards would be more beneficial to your financial situation than paying off a low interest mortgage.
- You still have 20 years to pay on the mortgage so there is a significant amount of interest still to be paid before you begin to seriously impact the principle.

These are questions that your estate planner or estate planning attorney can help you resolve by listening to your plans and making suggestions.

Dying in Intestate

If a person passes on without estate planning of any kind, whether that planning is some kind of will or trust, they are said to have died intestate. Intestate law is the law that decides how assets are transferred and creditors satisfied if a person passes on without saying who gets the house, the car or the guarded family apple pie receipt. Intestacy law is a set of fall back provisions or rules that govern where the assets go, so that the state does not have to decide in each individual case what happens. Intestacy laws are like the default settings on computer program; they are there unless you intentionally alter them. Since most people die intestate, state intestacy laws govern how most people's assets are distributed after their passing. Sometimes, even when a person has a valid will, if that will does not cover some portion of their property, then state intestacy laws will be used as gap-fillers or fallback measures so that all assets are covered.

Although state intestacy laws are best seen as a set of state laws that govern what happens to property left by those who did not make a will or trust, they also reflect some of the other needs a state has. First, states seem to make an attempt to ask what the normal person in the deceased place would want done with their assets. This is an important question because the answers given will reflect what state legislators think a "normal" person is and would want. It is easy for the legislature to overlook non-traditional relationships, such as non-marital co-inhabitants,

lesbian and gay life partners and children born out of wedlock or even stepchildren. This can bring about tremendous animosity among the people you care most about; so the best plan is to get a will or trust to protect those you love if nothing else.

However, your wishes are not the only goal that states keep in mind in drafting intestacy laws. The state may wish to maintain a system where parcels of land are owned by a single person rather than a group of people; because such groups have a tendency to sue each other over property they all have an interest in and this creates a problems and expenses for the state itself. In addition, your state may have an avowed policy of attempting to promote “traditional family” relationships and use its power to craft intestacy laws to give assets to family members that the state deems more worthy. Even if you are someone who normally prefers more traditional family relationships, there is no guarantee that the relationships your state decides are traditional and your understanding of the traditional family will be the same.

Finally, you are in the best position to decide who is to have your assets, because you actually know the people involved; to the state the people involved are people who occupy abstract positions in your life, like spouse, child or parent. You are the one who is in the best position to decide who among your heirs should get something (or anything at all) from your estate, because these people play a greater role in your life than merely occupying some abstract position. They are the people you have laughed with, shared meals with, raised and have had raise you, cuddled with and loved. This is by no means to suggest that what people mean to you can only be known through your will or even be known through your will at all. It is rather to suggest that you should decide what who gets what asset because you know what those around you value and enjoy. You should decide what happens with your assets, because chances are you earned them and should be the one to decide how they would best be passed on.

The Realities of Probate

The idea of having your will or estate go through “probate” conjures up visions of money that should have gone to your heirs being peeled off and divided up for the state’s administrative services in seeing to your last wishes. In addition, the process of probating a will or estate can be a

lengthy one, particularly trying for a spouse or children who have to wait until it is finished to gain clear title to a home or access to bank accounts. Consequently, attorneys and financial planners often encourage people to structure their estates in ways that will avoid probate. That may or may not be beneficial, given that probate court systems in many states have been restructured in recent years and there are only certain types of assets that aren't required to be probated.

What is probate and how does it work? There are actually two facets to the process commonly referred to as "probate". When a person dies, his/her will must go through a formal process of being finalized. The probate court, depending on the state, determines that the will is your last statement confirming the disposition of your estate and officially appoints the person or business that you have already chosen to administer the will (your executor). In cases where a person dies intestate (without a will), the state court may appoint an estate executor, generally an attorney or agency that specializes in such matters.

In addition to the formalities, the term probate is also applied to the whole process of gathering and paying any final bills and taxes that are filed against the estate, as well as distributing the remaining assets to the heirs. The executor is supervised, or at least reports to, the court, and may come under close scrutiny by the will's beneficiaries. Because the executor performs a number of tasks that can be technically difficult and time consuming, he/she is also entitled to be paid a reasonable amount for services rendered. The actual amount of compensation may be provided for in the will, or could be a percentage established by the particular state's probate laws. In either case, it does constitute a certain portion of a person's net assets that subtracts from the amount eventually dispensed to the heir(s).

There are certain assets that are exempt from probate. Those include life insurance or retirement plans that pass to a specific, previously named beneficiary and real estate held jointly by the deceased and the beneficiary. In addition, bank accounts or brokerage accounts that are jointly held and which specify the right of survivorship do not have to be probated.

A living trust, which passes property to your heirs prior to your death is often marketed as a way to avoid probate. However, that assertion may not be entirely true. It is only rarely that some part of a living trust does

not have to go through probate, despite the original intentions. Any property that has not been transferred to others prior to your death is generally willed to the trust itself, then transferred to the heirs via a trustee who very probably charges fees, *after* he or she pays any outstanding taxes from the estate. It is the very process of settling those same taxes and administrative details that can delay and extend the process of probate. Thus, depending on the state where the property is being dispersed and the extent of the estate, the actual time frame and cost of probate can potentially be less than those involved in the distribution of a living trust.

Probate, therefore, is generally a necessary court procedure through which a person's final will is confirmed and the proceeds from it are distributed. Because states have been working toward simplifying the procedures involved in probate, it is not something that must necessarily be avoided at all costs.

Conclusion

If you intend to give away assets to loved ones, don't wait until you are ill and need a nursing home. Medicaid looks back 36 to 60 months (for some trusts) into your finances and will penalize you by delaying Medicaid eligibility, if you have given away assets during that period. If you intend to apply for Medicaid for long-term care, keep good financial records. Medicaid will require bank and brokerage statements and other relevant papers for three years preceding the Medicaid application, or 5 years if you have transferred assets into certain trusts.

This article is not intended to be legal advice. It provides an educational and informational background to the issues and documents involved in basic estate planning. As with all sensitive matters, you should consult your legal, financial and medical advisors whenever you make important decisions. Also be aware that laws may vary, sometimes considerably, from state to state and you should plan accordingly.²

¹ The laws of each state vary, and this example is for illustrative purposes only.

Chapter Two

Finding an Attorney

Finding a lawyer may be easier than you think. Creditable and trustworthy resources are already available to you on the Internet. For instance, www.lawyers.com offers a complete database of lawyers sorted geographically and by expertise. It is by the professionalism and honesty presented by the Website of LexisNexis® and the law firm of Martindale-Hubbell that this chapter is made available as the majority of invaluable information is displayed upon their site for consumer review.

Finding a lawyer may seem like an overwhelming task.

You're already anxious because you have a legal problem. A creditor may have sued you or you may have been injured in an auto accident. Perhaps you want to start a business, adopt a child or finally tackle your estate planning needs. In these situations, you need a lawyer to protect your rights, but each situation requires very different skills. Yet many people don't know how to find a lawyer that is right for them, which only raises their anxiety level.

Not surprisingly, recent studies suggest that the vast majority of consumers (81%) wish there was a resource to help them find competent lawyers. The study also suggests that 62% would like to have access to legal resources on the Internet. This chapter outlines the basic steps to finding and hiring a lawyer, using Internet resources already available to you, and explains how to make that relationship as productive as possible.

Learn about different legal practice areas.

You can easily become familiar with the different practice areas to determine the type of lawyer who will work best on your legal

matter. For the purpose of asset protection and estate planning you will need a lawyer well versed in Trusts and Estates.

Check out the database of lawyers in your community.

You can use www.lawyers.com. Other Internet resources can help as well. Lawyer referral services, operated by your local bar association, can assist in finding a lawyer who is right for you. Visit www.abanet.org/referral/ to find a referral service close to home. If you qualify financially, consider contacting your local legal aid service by clicking on www.abanet.org/legalservices/probono.html. You can also contact a legal professional association or the [American College of Trust and Estate](#) to find the best attorneys in your area.

Yet some things can not be done on the Internet! In all cases, be sure to **interview the lawyer** to assure yourself that he or she has the expertise and experience you need, and that you have a comfort level that will allow you to be honest and open with him or her. Usually, you will not be charged (or charged very little) for this initial consultation.

Considerations when selecting a lawyer

Ask yourself the following questions to determine what lawyer is best for your situation:

- Before selecting a lawyer, think about what skills he or she must have to assist you. Is your matter a business matter or have you been sued? Do you need **estate planning advice** or are you getting a divorce? What expertise is required is an important first question when looking for a lawyer.
- Next think about the lawyer's level of experience. Is this a complicated business transaction, or a large estate and asset portfolio? If so, you may want a more experienced lawyer to assist you; mindful that with experience may come higher

fees. Or perhaps all you need is to incorporate a business, a relatively easy task that a less experienced lawyer can handle at a considerably lower cost.

- Is the lawyer in good standing with the bar? Does he or she have a good reputation in the legal community?
- How much experience does the lawyer have with cases like yours?
- If there are other lawyers in the firm, who will have the ultimate responsibility for handling your situation, will it be the lawyer you consult or someone else in the firm? (If it is another attorney you should consider all of these questions as they relate to the other attorney).
- Is the lawyer's office accessible to you? Is it on a bus line? Is there adequate parking? Can your needs be accommodated if you are a person with a disability?
- Does the lawyer have adequate office staff who can respond to you if the lawyer is temporarily unavailable?
- Is the lawyer willing to offer you a free initial consultation and an estimate of what more extensive services may cost should you require them?
- Does the lawyer carry malpractice insurance?
- Does the lawyer provide a written agreement that is easy for you to understand?
- Does the lawyer provide itemized bills? What payment methods are available to you?
- How does the lawyer handle client complaints or other disagreements?

Specific questions for an Estate Planning attorney

Selecting the right estate planning attorney is as important as choosing the right doctor or other professional. You need to look for the right combination of experience and sophistication to deal with your particular situation. In identifying an attorney with the proper credentials, you should ask the following questions:

- Is the attorney's practice concentrated in estate planning and business succession issues?
- How long has the attorney practiced in the estate planning and business succession area?
- What type of clients has the attorney served? Has the attorney worked with clients whose circumstances are similar to yours?
- To what professional organizations does the attorney belong? Is he attorney a member of professional organizations for estate planning and business succession attorneys?
- Is the attorney active in the Probate and Trust Law Section of the Bar Association or any of its committees?
- Does the attorney do outside speaking to both professional and public groups? Does the attorney teach graduate school or law school courses?
- Has the attorney written any articles for continuing legal education courses or professional publications?
- Does the attorney regularly attend continuing education courses in estate planning, business succession and taxation areas?
- How does the attorney charge for services provided in this area of expertise?

After obtaining answers to these questions, you can determine

whether the attorney's level of sophistication is commensurate with the complexity of your estate. For a simpler estate plan, the attorney's participation in professional organizations, publishing, or speaking is less important. As the size and complexity of the estate increases, the attorney's sophistication and experience with similar situations should also increase.

Selecting a Good Trusts and Estate Lawyer

Trust and Estates is a rapidly growing area of practice in the law that includes estate planning, managing your estate during life and disposing of your estate at your death through the use of trusts, wills and other planning documents.

You'll want to hire an attorney who regularly handles matters in the areas of concern in your particular situation, and who will know enough about other fields to question whether the action being taken might be affected by the laws in other areas of law. For example, if you're going to rewrite your will and your spouse is ill, the estate planner needs to know enough about Medicaid to advise you about whether it's an issue with regard to your spouse's inheritance.

Unfortunately, there are some attorneys who hold themselves out as experts in trusts and estates, but who have little or no experience in this area of practice. They recognize that the aging America represents a business opportunity for them and they hope to "cash in". So you'll want to be particularly careful in narrowing down your selection of a trust and estate planning attorney.

Once you have a list of lawyers, use the following guidelines to do some initial screening and narrow your list down to three or four prospective candidates:

- Look at biographical information, including whatever you can find on the Websites for the lawyers and their law firms. Do they appear to have expertise in the area of trusts and estates, or estate planning? Do they have any information on the Web that is helpful to you?

- Use search engines to surf the web. Do searches under the name of the lawyer and his or her law firm. Can you find any articles, FAQ's or other informational pieces that the lawyer has done that give you a level of comfort?
- Ask other people if they have heard of the attorneys and what they think about them.
- Contact your state bar association or visit the bar association's Website to find out if the lawyer is in good standing.
- Is the lawyer certified as a specialist in your state? Not every state certifies specialists in trusts and estates, or estate planning, but if your state does, your lawyer should be certified as a specialist in the estate planning area.
- Check the membership directory of local, state or national associations. Is the lawyer listed? One example would be the [American College of Trust and Estate Counsel](#).
- Check out the yellow pages of your telephone directory. Does the lawyer advertise? If so, do you find it compelling? Helpful? Tasteful?
- You should anticipate that whomever you hire might have to delegate a lot of the responsibility to his or her staff. In turn, an important consideration should be to assess the way the lawyer's staff treats you since they are a reflection of how the lawyer practices. At a minimum, you should expect to be treated courteously and professionally both by the staff and by the lawyer.
- You will probably want to hire a lawyer with at least a few years of experience. However, experience does not a good lawyer make. Every practicing attorney knows other lawyers that he or she would not hire.

- Unless there are special circumstances, you'll want to hire a lawyer with a local office.

Before you hire a lawyer:

- Ask for references. You want to talk to people who could comment on the lawyer's skills and trustworthiness. Ask if it's okay to talk to some of the lawyer's representative clients.
- The Law Directory, which can be found at most libraries, discloses peer ratings of hundreds of attorneys.
- Ask for a copy of a firm brochure and promotional materials. Crosscheck these materials against other sources and references.
- Ask to be provided with a copy of the lawyer's retainer agreement and have it explained to you before you decide on retaining the lawyer or the lawyer's law firm. You may end up paying a lot of money to the lawyer you hire, so make sure you understand what you are signing up for.

Consider any special needs you have. For example, could you benefit from an attorney who speaks a language other than English?

You shouldn't necessarily cross a lawyer off your list just because she or he didn't have the time to meet with you on short notice. Nor should you expect to be able to discuss your matter on the telephone with the lawyer. Good lawyers are busy, so they may not be able to spend as much time as they would like with prospective clients. But if it takes a lawyer too long to meet with you, it may be a sign that he or she is too busy to give your situation sufficient attention.

You should be prepared to pay a fee to meet the lawyer. Trust and Estate lawyers seldom take cases on contingency fee or fail to charge for the first meeting. When you make the appointment, you should ask what the fee for the first meeting will be.

Use your common sense and gut instincts to evaluate the remaining lawyers on your list. You'll want to be comfortable with the lawyer you hire. You want to choose the most efficient lawyer who you think will do the best job for you.

How much can you afford to pay?

All lawyers charge different fees, and some don't charge at all unless you win your case (called a "contingent fee" arrangement). Before looking for a lawyer, decide what you can afford, and be sure to ask the lawyer, in advance, if he or she can give you the assistance you need at a cost within your means.

A personal relationship with your lawyer

It's important to take some time to consider how important your relationship with your lawyer will be. Because you must be completely honest and forthcoming with him or her, a rapport must be developed so that you will be comfortable giving your lawyer *all* of the facts that he or she will need to pursue your matter diligently. This doesn't mean giving your lawyer only those facts that you believe will help your cause, but *all* the facts, even if you believe them to be embarrassing or detrimental to your position.

Remember that your lawyer must maintain the attorney/client privilege, protecting your confidences in all respects. This privilege prevents a lawyer from divulging your secrets, and should allow you to feel comfortable giving your lawyer all facts pertaining to your matter so that the best result can be obtained.

Making the relationship as productive as possible

To keep your fees to a minimum and to allow your lawyer to work as efficiently and effectively as possible, try to give the lawyer all of the information he or she might need to assist you at the time you hire the lawyer, and if you aren't sure what to bring, ask the lawyer before your visit. For example:

- If you have been sued or are considering filing a lawsuit, come to the lawyer's office with the name of witnesses, with all the pertinent papers (such as court papers, contracts, or deeds), and with specific facts or dates that might be important to your matter.
- **If you are setting up an estate plan**, bring a list of assets and an explanation of how you want to distribute your assets.
- If you are starting a business, have the names and addresses of shareholders, officers and directors ready for the lawyer.

In addition, be sure to keep the lawyer informed of changes that may affect the legal advice you are receiving. Nothing is more frustrating for a lawyer than to do a great deal of work only to learn that the client's situation has changed, thereby altering or negating work that has already been completed.

Preparing to meet with your Trusts and Estate Lawyer

It can be a big waste of time for both you and the lawyer if you aren't prepared for your first meeting. Being unprepared may also end up costing you money, because it will take longer for the lawyer you hire to get up to speed on your legal matter.

First of all, the lawyer will want to know who you are and how you can be contacted. The lawyer will also want to know whom you represent and whether other persons may be present for the meeting. For example, in many estate planning matters, a child visits the lawyer to seek help for his or her parent. The lawyer will want to clearly understand your relationship, why you are seeking help for the person and why the person is unable to seek the

lawyer's help personally. You should be prepared to bring with you any documents that will "prove" your authority, such as a durable power of attorney.

Many times, a trust or estate planning lawyer will try to speed the information-gathering process by sending you a questionnaire to fill out in advance. If this happens, be sure to follow the lawyer's instructions for completing the questionnaire. Information typically requested would include:

1. Personal information.
2. Marital status
3. Family information, including children and grandchildren
4. A list of your professional advisors
5. A detailed list of assets and liabilities
6. Banking and financial account information
7. Choice of guardian(s) for minor children (name and address)
8. Choice of executors, trustees and other personal representative

You may also be asked to send information to the lawyer's office before the meeting. Regardless, make sure you bring it with you for the meeting. Also send along or bring copies of any available documents that may be requested in the questionnaire. These documents would typically include:

1. Copies of any current wills or trusts
2. Copies of deeds to all real property
3. Copies of life insurance policies
4. Copies of prior gift tax returns, if any
5. Copies of trust agreements in which husband and/or wife are a donor or beneficiary
6. If you have applied for public benefits (such as Medicaid or Social Security), you should bring copies of documents having to do with the applications

Even if the lawyer doesn't ask for documentation beforehand, it's still a good idea to bring a copy of all documents relevant to your situation to the meeting. Spend some time thinking about what you may have on hand. Try to organize the documents in a logical

manner before you meet with the lawyer.

Prepare a list of questions to take with you to your first meeting. You have to feel comfortable with your attorney. Remember that your lawyer is working for you. You want someone who is skilled, but you also have to get along with your lawyer. In theory, no question is too silly to ask. Keep in mind, though, that you don't want to scare a lawyer out of representing you. Questions you might ask a lawyer would include:

- What would the lawyer like to see in order to evaluate your situation?
- What might your other options be?
- How many similar matters have he or she handled?
- What percent of his or her practice is in the area of expertise that you need?
- What problems does the lawyer foresee with your situation?
- How would the lawyer go about handling your situation?
- How long will it take to bring the matter to conclusion?
- How would the lawyer charge for his or her services?
- Would the lawyer handle the case personally or would it be passed onto some other lawyer in the firm? If other lawyers are on staff will they do some of the work, could you meet them?³

Chapter Three

Community Based Services – Long Term Care

Many communities provide services and programs to help seniors and people with disabilities with a variety of activities. These services include Meals-on-Wheels, transportation services, personal care, chore services, adult day care and a variety of activities in senior centers. These services are usually free or at low cost to individuals who qualify. Local organizations, called Area Agencies on Aging, coordinate these services to promote the independence and dignity of older adults. Your local community Area Agency on Aging can be found by visiting Eldercare Locator at www.eldercare.gov or by calling 1-800-677-1116.

Your state Medicaid program may pay for home health services including skilled nursing care, home health care, personal care, chore services and medical equipment. You must qualify for Medicaid to receive these services.

The following community-based services may be available in your community:

- Adult day care
- Senior Centers
- Financial Management
- Transportation
- Meals On Wheels
- Telephone Reassurance
- Case Management

Adult Day Care Services Overview

Adult day care services provide health, social and recreational

activities in a supportive setting for adults who have functional and/or cognitive impairments that do not need 24-hour care. Some programs offer services in the evenings and on weekends, in addition to standard business hours. Programs may provide services for individuals with specific impairments such as Alzheimer’s or mental illness. Adult day care programs may provide the following services:

Adult Day Care Services	
Health monitoring – blood pressures, food or liquid intake, weight	Assistance with walking, toileting or taking medications
Social activities	Mental Stimulation
Meals and snacks	Exercise activities
Transportation to facility and activities	Personal Care – bathing, shampoo or shaving
Alzheimer’s or dementia care	Safe and secure environment

State Medicaid programs may pay for health care that is provided in State licensed facilities, including therapy services, mental health services, administration of medications, psychological evaluations, dressing of wounds and assistance with feeding. Private long-term care insurance may also pay some of these costs, but Medicare will not.

Telephone Reassurance

Individuals who live alone and have medical or other health needs may fear that they would not be able to summon help in an emergency. Several types of emergency telephone response systems address this concern.

Emergency response systems use the telephone to check on an individual on regular bases. A family friend, relative, or professional service may make a daily call at one or more set times throughout the day. This telephone reassurance program may be free to you because a family member or friend provides this service or it is provided by your state or local aging organization.

If you did not answer the phone, the check-in caller would be alerted to a possible problem. If the caller detected a change in condition or voice based upon regular contact with you, the caller would take appropriate action.

Commercial emergency response systems may also be available. These services require that you wear a “beeper” on your wrist or around your neck. If you have a fall or other emergency, the press of a button would alert the 24-hour response system. This system requires that you pay an initial fee and a monthly fee of \$25 to \$40 for this service.

Senior Centers Overview

Senior centers are located in many communities to provide a wide range of services to you. The Administration on Aging, U.S. Department of Health and Human Services estimates that there are from 10,000 to 16,000 senior centers located throughout the U.S. Senior centers provide a varying array of services, including nutrition, recreation, social and educational services, wellness and fitness activities, information and referral services and Internet training. Most of the services are provided free or at low cost to participants.

Transportation Services Overview

Transportation services are available in many communities through aging services programs, regional mass transportation services and private sources. These services may include door-to-door taxicab services, public bus transportation, or vans with wheelchair accessible transportation.

Medicare does not pay for any transportation services except ambulance services, but Medicaid may pay for transportation services to get you to a medical appointment if you are eligible. Fees for transportation services are generally small and often people pay out-of-pocket for transportation services.

To find transportation services in your area, contact your local community area Agency on Aging which can be found by visiting [Eldercare Locator](#) or by calling them at 1-800-677-1116. Many telephone books have a special section in the front of the book with the names and addresses of various service organizations that provide transportation for special needs.

Types of Long Term Care

Home Health Care

Depending upon your needs, you may be able to get help with your personal activities (for example, help with the laundry, bathing, dressing, cooking and cleaning) at home from family members, friends, or volunteers. If you think you need home care, talk to your family to see if they can help arrange for someone to come to your home to assist.

Some home care can only be given by licensed health workers, such as if you need skilled nursing care and certain other health that you get in your home for the treatment of an illness or injury. Skilled nursing care includes services and care that can only be performed safely and correctly by a licensed nurse (either a registered nurse or a licensed practical nurse) or a licensed therapist. Remember, Medicare only pays for home care if you meet certain conditions. For more information, look at the Medicare booklet, [Medicare and Home Health Care](#).

You can also hire a home health care agency for care in your home if Medicare doesn't cover it, In this case, you will need to pay for this care on your own. Home care costs can vary depending upon where you live, the type of care you need and how often you need care. Usually home care is charged by the hour.

To locate health agencies that provide services in your area, look at [Home Health Compare](#) listed at **Appendix 2** (Information Resources). You can also look at the [National Association for Home Care](#) website to get information about home care and

hospice. This website includes information on how to find a home care or hospice agency and how to prepare for care. Likewise listed at **Appendix 2.** (Information Resources) this publication.

The following home health services may be available in your community:

- Skilled nursing care
- Homemaker/Health aides
- Personal care aides
- Respite care
- Medical equipment
- Home repair and modification
- Hospice

Homemaker/Health Aide Overview

Homemaker/health aides provided medical and personal care if you are elderly or disabled living in your own home or a residential care facility. Home health aids work under the supervision of a registered nurse, licensed practical nurse, or therapist to provide health services. The home health aide is required to record the services performed and your condition and progress.

Personal and home health aides – also called homemakers, caregivers and personal attendants – provide housekeeping and routine personal care services. They clean client’s homes, do laundry and change bed linens. Aides may plan meals (including special diets), shop for food and cook. Aides may also help clients move from bed, bathe, dress and groom. Some accompany clients outside the home, serving as a guide and companion.

Medicare may pay for home health aide and homemaker services only if the individual requires skilled nursing care or therapy. The individual must also be homebound, have a plan of care that is prepared and signed by a physician, and the services are

performed by a Medicare-certified home health care agency. Your state Medicaid program or Medicaid waiver program may pay for home health aides and homemakers if you qualify. Private long-term care insurance may also pay for health aide/homemaker services.

Hospice Overview

If you have a terminal illness, hospice care may provide health and personal care services for you. Hospice also provides assistance to caregivers working in your home. Hospice staff will assess your health and provide additional care or services with regular visits. Hospice staff is in on-call 24 hours a day, seven days a week and focuses on supportive care and pain relief during the last period of a person's life. Hospice care may also be provided in freestanding hospice centers, hospitals, nursing homes and other long-term care facilities.

What services are provided?

The hospice staff:

- Manages the individual's pain
- Provides medical and personal care services to the individual
- Assists family members to care for the individual
- Assists the individual and his/her family members with the emotional, psychological and spiritual aspects of dying
- Arranges for additional services when needed – including respite care, speech and physical therapy, or inpatient care
- Provides bereavement care and counseling to surviving family and friends

Medicare may compensate for your hospice care if a physician certifies that the individual has less than six months to live if the disease runs its normal course. Medicaid may pay for hospice care in some states. Many private insurance plans, HMO's and other managed care organizations will pay for hospice care. Individuals can pay privately for hospice care if they do not qualify for other funding.

Home Repair and Modifications

Home modifications and repairs improve your safety, helps you perform daily activities such as bathing, cooking and climbing stairs as well as maintain the value of your home.

Possible adaptations for aging include:

- Installing grab bars, shower seals, or transfer benches
- Placing non-skid strips or decals in the tub or shower
- Adding lever handles on doors, loop handle on cupboards and paddle electrical switches
- Installing ramps, elevators, or stair lifts
- Installing insulation, storm windows and air conditioning
- Installing handrails for support
- Improving lighting around the home
- Installing security systems
- Adding living space for a caretaker
- Widening doorways to accommodate walkers, crutches and wheelchairs
- Installing lockout features on stoves or ovens
- Adding digital displays on thermostats
- Minimizing thresholds on interior and exterior doorways for easy maneuvering

Occupational and physical therapists are helpful in suggesting additional ways to adapt your home for safety and accessibility. Medicare does not pay home adaptations but does pay for some durable medical equipment. Medicaid may pay for home modifications and medical equipment. Many state and local governments have programs to provide loans and grants to help you pay for home modifications.

In Law Apartments

An in-law apartment is a separate housing arrangement within a single-family home or on your lot. It may also be referred to as a second unit, accessory apartment, or accessory dwelling unit. An

in-law apartment is a complete living space and includes a private kitchen and bath.

An in-law apartment may provide a living space for a caretaker or may be rented to provide additional income to you. Many local or state governments have restrictions about the addition of a second apartment on your property. You should consult your local city or county government about zoning and other restrictions, and for help with an in-law apartment.

To find out about in-law apartments visit the [National Resource Center on Supportive Housing and Home Modification](#) website. The complete address, phone number and web address is listed at **Appendix 2** (Information Resources) this publication.

Housing for Aging and Disabled Individuals

The federal government and most states have programs that help pay for housing for older people with low or moderate incomes, less than \$46,000 if single or \$53,000 if married.

Usually you have to fill out an application, and there may be a waiting list. Some of these housing programs also offer help with meals and other activities like housekeeping, shopping and doing laundry. Residents usually live in their own apartments in the complex. Usually a Federal or State agency will review your monthly income and expenses to see if you are eligible for this type of housing. Rent payments are usually a percentage of your income.

To find out more about subsidized senior housing in your area, visit the [U.S. Department of Housing and Urban Development-Subsidized Housing](#) website.

Visit the [U.S. Department of Housing and Urban Development-Persons with Disabilities](#) section to find subsidized housing for Persons with disabilities. These agency's complete address and contact information is listed in **Appendix 2** (Information Resources) at the rear of this publication.

Board and Care Homes

This group living arrangement provides help with activities of daily living such as eating, bathing and using the bathroom for people who cannot live on their own but do not need nursing home services. It is sometimes called a “group home”. In some cases, private long-term care insurance and other types of assistance programs may help pay for this type of living arrangement. Many of these homes do not receive payment from Medicaid or Medicare and are not strictly monitored. The monthly charge is usually a percentage of your income.

You can find out more about board and care facilities by contacting your Area Agency on Aging. The local community Area Agency on Aging can be found by visiting the [ElderCare](#) Locator website or by calling 1-800-677-1116. to obtain information about available services in your area. You may also find more information about board and care facilities in your area from the [Administration on Aging \(AOA\)](#) website. This is listed within **Appendix A** (Information Resources) this publication.

Assisted Living

These housing communities have different levels of care based upon your needs. Where you live depends upon the level of care you need. In the same community, there may be individual homes or apartments for residents who still live on their own, an assisted living facility is for people who need help with daily care, and a nursing home for those who require higher levels of care. Residents move from one level of care to another based on their needs but still stay in the Continuing Care Retirement Community (CCRC).

If you are considering a CCRC, be sure to check the record of its nursing home. Your CCRC contract usually requires you to use the CCRC nursing home if you need this level of care. Many of the questions that you might want to ask about these communities are the same as those to consider when choosing a nursing home. CCRCs generally charge a large payment before you move in

(called an entry fee) and then charge monthly fees. In 2004, entrance fees range from \$38,000 to \$400,000. Monthly fees range from \$650 to \$3,500 per month.

You can find out if a CCRC is accredited and get advice on selecting this type of long-term care community from the [Commission on Accreditation of Rehabilitation Facilities](#)

You can also get more information about continuing care retirement communities from the [Administration on Aging \(AoA\)](#) and [American Association of Homes and Services for the Aging \(AAHSA\)](#). These sources are listed in **Appendix 2** of this publication.

Nursing Homes

These facilities provide care to people who can't be cared for at home or in the community. Nursing homes provide a wide range of personal care and health services. For most people, this care generally is to assist people with support services such as dressing, bathing and using the bathroom, for people who can't take care of themselves due to physical, emotional, or mental problems.

Medicare doesn't pay for this type of care and doesn't pay for most nursing home care.

Some nursing homes may provide skilled care after an injury or hospital stay. Medicare pays for skilled nursing facility care for a limited period of time if you meet certain conditions. For more information, look at the Medicare booklet, [Medicare Coverage of Skilled Nursing Care](#). To locate nursing homes in your area, look at [Nursing Home Compare](#) on their website.⁴

To find out information on accreditation of nursing homes in your area, look at the [Joint Commission on the Accreditation of Healthcare Organizations \(JCAHO\)](#) website. The complete address, phone numbers and web address of the agencies aforementioned is listed within **Appendix 2**, this publication.

Nursing Home Checklist

It is very important for you and your family members to visit the nursing home to make sure that it meets your needs, as well as those of your family. A few things to consider when choosing a nursing home are listed below:

Questions	Yes	No
Is the nursing home accepting new residents?		
Is the Nursing home easy to visit for family or friends?		
Does the nursing home use hospitals where my doctor practices?		
Does the nursing home have the services I need?		
Does the nursing home have a variety of activities I might enjoy?		
Do residents appear clean and well groomed?		
Do the residents have the same staff on a daily bases?		
Is there enough staff available to assist residents?		
Does the staff respond quickly to resident's calls for help?		
Does the nursing home have an active resident/or family council?		
Is the nursing home clean and pleasant?		
Is the nursing home certified by Medicaid or Medicare?		
Are the nursing home and current administrator licensed?		
How much is the cost of care in this nursing home?		
What services are included in this price?		

What additional costs will I have to pay?

Ask to see the nursing home's last annual state inspection report. Did the report find any problems? Ask how the problems were fixed.

Chapter Four

How To Evaluate Health Information on the Internet

Millions of consumers are using the Internet to get health information. And thousands of Websites are offering health information. Some of those sites are reliable and up-to-date: some are not. How can you tell the good from the bad?

First, it's important to carefully consider the source of the information and then to discuss the information you find with your health care professional. These questions and answers can help you determine whether the health information you find on the Internet or receive by E-mail from a Website is likely to be reliable.

Who Runs the Website?

Any good health Web should make it easy to learn who is responsible for the site and its information. On the U.S. Food and Drug Administration's (FDA) Website, for example, the FDA is clearly noted on every major page, along with a link to the site's home page, www.fda.gov.

Information about who runs the site can often be found in an "About Us" or "About This Website" section, and there is usually a link to that section on the site's home page.

What is the Purpose of the Website?

Is the purpose of the site to inform? Is it to sell a product? Is it to raise money? If you can tell who runs and pays for the site, this will help you evaluate its purpose. Be cautious about sites trying to sell a product or service.

Quackery abounds on the Internet. Look for these warning signs and remember the adage “If it sounds too good to be true, it probably is.”

- Does the site promise quick, dramatic or, miraculous results? Is this the only site making these claims?
- Beware of claims that one remedy will cure a variety of illnesses, that they have a “breakthrough,” or that it relies on some “secret ingredient.”
- Use caution if the site uses a sensational writing style (lots of exclamation points, for example.)
- A health Website for consumers should use simple language. Not technical jargon. Get a second opinion. Check more than one site.

What is the Original Source of the Information on the Website?

Always pay close attention to where the information on the site comes from. Many health and medical Websites post information collected from other Websites or sources. If the person or organization in charge of the site did not write the material, the original source should be clearly identified. Be careful of sites that don't say where the information comes from.

Good sources of health information include:

- Sites that end in “.gov,” sponsored by the federal government, like the U.S. Department of Health and Human Services at www.hhs.gov, the FDA at www.fda.gov, the National Institutes of Health at www.nih.gov, the Centers for Disease Control and Prevention at www.cdc.gov, and the National Library of Medicine at www.nlm.nih.gov.
- .edu sites, which are run by universities or medical schools, such as Johns Hopkins University School of Medicine and the University of California at Berkeley Hospital, health system

and other health care facilities Sites, like the Mayo Clinic and Cleveland Clinic.

- .org sites maintained by not-for-profit groups whose focus is research and teaching the public about specific diseases or conditions, such as the American Diabetes Association, the American Cancer Society and the American Heart Association
- Medical and scientific journals, such as The New England Journal of Medicine and the Journal of the American Medical Association, although these aren't written for consumers and could be hard to understand.
- Sites whose address end in .com are usually commercial sites and are often selling a product or service.

How is the Information on the Website Documented?

In addition to identifying the original source of the material, the site should identify the evidence on which the material is based. Medical facts and figures should have references (such as citations of articles in medical journals). Also, opinions or advice should be clearly set apart from information that is “evidence based” (that is, based on research results).

How is Information Reviewed Before it is Posted on the Internet?

Health-related Websites should give information about the medical credentials of the people who prepare or review the material on the Website.

How Current is the Information on the Website?

Websites should be reviewed and updated on a regular bases. It is particularly important that medical information be current and that the most recent update or review date be clearly posted. These date are usually found at the bottom of the page. Even if the information has not changed, it is helpful to know that the site owners have reviewed it recently to ensure that the information is

still valid. Click on a few of the links on the site. If there are a lot of broken links, the site may not be kept up-to-date.

How Does the Website Choose Links to Other Sites?

Reliable Websites usually have a policy about how they establish links to other sites. Some medical Websites take a conservative approach and do not link to any other sites; some link to any site that asks or pays for a link; others link only to sites that have met certain criteria. Look for the Website's linking policy, often found in a section titled "About this Website."

What Information About Its Visitors Does the Website Collect, and Why?

Websites routinely track the path visitors take through their sites to determine what pages are being used. However, many health-related Websites ask the visitor to "subscribe" or become a "member." In some cases, this may be done so they can collect a fee or select relevant information for the visitor. In all cases, the subscription or membership will allow the Website owners to collect personal information about their visitors.

Many commercial sites sell "aggregate" data about their visitors to other companies – what percent are women with breast cancer, for example. In some cases, they may collect and reuse information that is personally identifiable, such as a visitor's ZIP code, gender and birth date.

Any Website asking users for personal information should explain exactly what the site will and will not do with the information. The FDA Website, for example, spells this out in its [Privacy Statement](#). Be sure to read and understand any privacy policy or similar language on the site, and don't sign up for anything you do not fully understand.

How Does the Website Manage Interactions With Visitors?

There should always be a way for visitors to contact the Website owner(s) with problems, feedback and questions. The FDA's Website provides contact information on its [Contact Us](#) page.

If the site hosts a chat room or other online discussion areas, it should tell its visitors about the terms of using the service. Is the service moderated? If so, by whom, and why? It is always a good idea to spend time reading the discussion without joining in, to feel comfortable with the environment, before becoming a participant.

Can the Accuracy of Information Received in an E-mail be Verified?

Carefully evaluate e-mail messages. Consider the origin of the message and its purpose. Some companies or organizations use e-mail to advertise products or attract people to their Websites. The accuracy of health information may be influenced by the desire to promote a product or service.

Is the Information Discussed in a Chat Room Accurate?

Assessing the reliability of health information that you come across in Web discussion groups or chat rooms is as least as important as it is for Websites. Although these groups can sometimes provide good information about specific diseases or disorders, they can also perpetuate misinformation. Most Internet Service Providers (ISP's) don't verify what is discussed in these groups, and you have no way of knowing the qualifications or credentials of the other people online. Sometimes people use these groups to promote products without letting on that they have a financial stake in a business. It's best to discuss anything you learn from these groups with your health care professional.

The Federal Trade Commission (FTC) enforces consumer protection laws. As part of its mission, the FTC investigates complaints about false or misleading health claims posted on the Internet. The FTC's [Operation Cure-All](#) page has information to

help evaluate health product claims. Their contact information is listed in the (Information Resource) Guide at Appendix 2, this publication.¹

The NABP is a professional association of the state boards of pharmacy. It has a program to help you find some of the pharmacies that are licensed to sell medicine online. Internet websites that display this program's seal have been checked to make sure they meet state and federal rules. For more on this program and a list of pharmacies that display the Verified Internet Pharmacy Practice Sites™ Seal, (VIPPS® Seal), go to www.vipps.info. VIPPS is a voluntary certification program. The fairly rigid conditions the online pharmacy must agree to for acceptance into the program

Chapter Five
Buying Prescription Medicine Online

The Internet has changed the way we live, work and play. The growth of the Internet has made it possible to compare prices and buy products without ever leaving the home. But when it comes to buying medicine online, **it is important to be very careful**. This scene is becoming increasingly common in the United States: Consumers are replacing a trip to the corner drugstore with a click onto the Internet, where they find hundreds of Websites selling prescription drugs and other health products. Some websites sell medicine that may not be safe to use or could put your health at risk.

Some websites that sell medicine:

- Are not U.S. state-licensed pharmacies at all
- May give a diagnosis that is not correct and sell medicine that is not right for you or your condition
- Will not protect your personal information

Despite the fact that many pharmacies are lawful enterprises that genuinely offer convenience, privacy and the safeguards of traditional procedures for prescribing drugs, For the most part,

consumers can use these Internet services with the same confidence they have in their neighborhood pharmacy. In fact, while some are familiar large drugstore chains, many of these legitimate businesses are local “mom and pop” pharmacies, set up to serve their customers electronically.

But consumers must be wary of others who are using the Internet as an outlet for products or practices that are already illegal in the offline world. These so-called “rouge sites” either sell unapproved products, or if they deal in approved ones, often sidestep established procedures meant to protect consumers. For example, some sites require customers to only fill out a questionnaire before ordering prescription drugs, bypassing any face-to-face interaction with a health professional. This practice undermines safeguards of direct medical supervision and physical examination performed by a licensed health professional.

“Skirting the system this way sets the stage for problems that include dangerous drug interactions and harm from contaminated, counterfeit or outdated drugs. Websites that prescribe based on a questionnaire raise additional concerns,” says Jeffrey Shuren, M.D., medical officer in the Food and Drug Administration’s Office of Policy, Planning and Legislation.. “Patients risk obtaining inappropriate medication and may sacrifice the opportunity for a correct diagnosis or the identification of a contradiction associated with the drug.”

Some medicines sold online:

- Are fake (counterfeit or “copycat” medicines)
- Are too strong or too weak
- Have dangerous ingredients
- Have expired (are out of date)
- Are not FDA approved (haven’t been checked for safety or effectiveness)
- Are not made using safe standards
- Are not safe to use with other medicine or products you use
- Are not labeled, stored or, shipped correctly

The FDA is investigating numerous pharmaceutical Websites

suspected of breaking the law and plans to take legal action if appropriate. The agency has made Internet surveillance an enforcement priority, and they are targeting unapproved new drugs, health fraud and prescriptive drugs sold without a valid prescription.

The FDA offers these tips to consumers who buy health products online:

- Check the National Association of Boards of Pharmacy to determine if the site is a licensed pharmacy in good standing by visiting NABP's Website at www.nabp.net, or call 1-847-698-6227.
- Don't buy from sites that offer to prescribe a prescription drug for the first time without a physical exam, sell a prescription drug without a prescription, or sell drugs not approved by the FDA
- Don't do business with sites that do not provide access to a registered pharmacist to answer questions
- Don't do business with sites that do not identify with whom you are dealing and do not provide a U.S. address and phone number to contact if there is a problem
- Beware of sites that advertise a "new cure" for a serious disorder or a quick cure-all for a wide range of ailments
- Be careful of sites that use impressive-sounding terminology to disguise a lack of good science or those that claim the government, the medical profession, or research scientists have conspired to suppress a product
- Steer clear of sites that include undocumented case histories claiming "amazing" results
- Talk to your health-care professional before using any medication for the first time

For some people, buying prescription drugs online offer advantages not available from a local drugstore that include:

- Greater availability of drugs for shut-in people or those who live far from the pharmacy
- The ease of comparative shopping among many sites to find the best prices and products
- Easier access to written product information and references to other sources than in traditional storefront pharmacies

- The ability for consumers to order products and consult with a pharmacist in the privacy of their homes

Meet and Talk With Your Doctor

- Talk with your doctor and have a physical exam before you get any new medicine for the first time
- Use **ONLY** medicine that has been prescribed by your doctor or another trusted professional who is licensed in the U.S. to write prescriptions for medicine
- Ask your doctor if there are any special steps you need to take to fill your prescription

These tips will help protect you if you buy medicines online:

Know your source to make sure it is safe

Make sure a website is a U.S. state-licensed pharmacy. Pharmacies and pharmacists in the United States are licensed by a state's board of pharmacy. Your state board of pharmacy can tell you if a website is a state-licensed pharmacy and is in good standing. You can find a list of state boards of pharmacy on the National Association of Boards Pharmacy (NABP) by going to their website at www.nabp.info .

include:

- Maintaining all state licenses in good standing
- Allowing information about the pharmacy to be posted and maintained on the VIPPS Website (<http://www.nabp.net/vipps/intro.asp>)
- Allowing all NABP-sanctioned team to inspect its operations, given reasonable notice
- Displaying and maintaining the VIPPS seal with a link to the VIPPS Website.

Look for Websites with practices that protect you.

A safe website should:

- Be licensed by the state board of pharmacy where the website is operating (remember, check www.nabp.info for a list of state boards of pharmacy)
- Have a licensed pharmacist to answer your questions
- Require a prescription from your doctor or other health care professional who is licensed in the United States to write prescriptions for medicine
- Have a way for you to talk to a person if you have problems

How Online Sales Work

In general, legitimate online pharmacies operate this way:

- Users open an account with the pharmacy, submitting credit and insurance information. The pharmacy is licensed to sell prescription drugs by the state in which it operates and in those states to which it sells, if an out-of-state license is required
- After establishing an account, users must submit a valid prescription. Doctors can call it in or, in some states, email it, or users can deliver it to the pharmacy by fax or mail.
- Some online pharmacies send products from a central spot, while others allow users to pick up the prescription at a local drugstore. Prescriptions are usually delivered within three days, often with no shipping charge. For an extra fee, many sites will deliver overnight.
- Sites usually have a mechanism for user to ask questions of the pharmacists, either through email or a toll free number

Be sure your privacy is protected.

Look for privacy and security policies that are easy-to-find and easy-to-understand. Don't give any personal information (such as Social Security number, credit card, or medical health history), unless you are sure the website will keep your information safe and private. Make sure that the site will not sell your information, unless you agree.

Protect yourself and others.

Consumers need to be cautious. You should use the same kind of common sense you use when buying from any business. You look for a reputable dealer. You get recommendations from friends. You check the place out.

Report websites that you are not sure of, or if you have complaints about a site. Go to www.fda.gov/buyonline and click on “Notify FDA about problem websites” Buying your medicine online can be easy. Just make sure you do it safely. For more information on buying medicine and medical products over the Internet, go to www.fda.gov and click on “Buying Medicines Online” or go directly to www.fda.gov/buyonline .

For related information go to:

1. Imported medicine www.fda.gov/importeddrugs
2. Counterfeit medicine www.fda.gov/counterfeit
3. Generic drugs www.fda.gov/cder/ogd

Important Consumer Safety Alert

You should not buy the drugs listed below over the Internet

You bypass important safeguards to protect your health (and others) if you buy these drugs over the Internet.

These drugs have special safety restrictions on how they are distributed to the public. Also, drugs purchased from foreign Internet sources are not FDA-approved versions of the drugs, and are not subject to FDA-regulated manufacturing controls or FDA inspection of manufacturing facilities. To learn more about buying drugs safely over the Internet, please read [Buying Prescription Medicines Online: A Consumer Safety Guide](http://www.fda.gov/cder/drug/consumer/buyonline/guide.htm) available by going to <http://www.fda.gov/cder/drug/consumer/buyonline/guide.htm>.

Accutane (isotretinoin)	Plenaxis (abarelix)
Actig (fentanyl citrate)	Thalomid (thalidomide)
Clozaril (clozapine)	Tikosyn (dofetilide)
Humatrope (somatropin[rDNA	Tracleer (bosentan)

origin])	
Lotronex (alosetron hydrochloride)	Trovan (trovafloxacin mesylate, or alatrofloxacin mesylate injection)
Mifeprex (mifepristone or RU-486)	Xyrem (sodium oxybate)

Why is the FDA concerned about unlawful drug sales on the Internet?

Patients who buy prescription drugs from Websites operating outside the law are at increased risk of suffering life-threatening adverse events, such as side effects from inappropriately prescribed medications, dangerous drug interactions, contaminated drugs and impure or unknown ingredients found in unapproved drugs.

The current system of federal and state safeguards for protecting patients from the use of inappropriate or unsafe drugs has generally served the country well. These laws require that certain drugs be dispensed only with a valid prescription because they are not safe for use without supervision of a licensed health care practitioner. Generally, before the practitioner issues a prescription for a drug the patient has never taken before, they must first be examined to determine the appropriate treatment. Subsequently, the patient receives the drug from a registered pharmacist working in a licensed pharmacy that meets state practice standards.

The Internet makes it easy for unscrupulous people to sell drugs to patients without these safeguards in place. A Website may appear to be associated with a legitimate pharmacy when in fact it is not. Websites that sell prescription drugs without a valid prescription deny consumers the protection provided by an examination conducted by a licensed practitioner.

If the FDA is not aware of adverse events associated with approved drugs sold online, why does the agency think that unlawful online sale is a big problem?

It is believed that adverse events are under-reported and they know from history that tolerating the sale of unproven, fraudulent, or altered drugs results in harm to the public health. It is reasonable to expect that the illegal sale of drugs over the Internet and the number of resulting injuries will increase as sales on the Internet grow. Without clear and effective law enforcement, violators will have no reason to stop their illegal practices. Unless the FDA begins to act now, unlawful conduct and the resulting harm to consumers most likely will increase.

How many states have acted against Websites selling prescription drugs?

Several states have taken or are contemplating taking action against illegitimate online sellers of prescription drugs. Fourteen states (Arizona, California, Colorado, Connecticut, Illinois, Michigan, Kansas, Nevada, New Jersey, Ohio, Texas, Washington, Wisconsin, and Wyoming) have already taken some action against physicians prescribing drugs over the Internet. Although most of these cases involve cease and desist orders, some states have assessed fines and are contemplating stiffer penalties. One state has issued a temporary restraining order against an Internet pharmacy selling drugs without a valid prescription.

Who will the FDA refer complaints to at the state level?

The FDA has been working with the National Association of Boards of Pharmacy, The Federation of State Medical Boards and the National Association of Attorneys General to establish points of contact in all states specifically for Internet related problems. Both the FDA and NABP Websites have online reporting forms for consumers to use in referring complaints to the appropriate regulatory authorities.

What are international agencies like WHO doing about Internet prescribing and dispensing?

The World Health Organization is in the process of developing a guide entitled "Medical Products and the Internet." In addition to providing tips on finding reliable health and medical information on

the Internet, it will provide advice on buying medical products online. FDA participated in the development of this guide.

Can an American patient get a medication not approved in the U.S. from a foreign dispenser?

As a general matter, it is illegal to import an unapproved drug into the U.S. However, under FDA's personal importation policy, FDA has authorized its inspectors to use their enforcement discretion to allow U.S. residents to import certain products under certain limited conditions. Under this policy, FDA may allow a U.S. resident to bring into this country an unapproved drug for their personal use for a serious condition. If there has been no commercialization or promotion of the drug to U.S. residents.

Is it illegal for a foreign pharmacy to ship prescription medicines into the U.S.?

It is illegal for anyone, including a foreign pharmacy, to ship prescription drugs that are not approved by the FDA into the U.S. even though the drug may be legal to sell in that pharmacy's country. Under the scheme that Congress established to ensure that drugs are safe and effective, drugs are tested and test results are thoroughly reviewed by FDA scientists. U.S. law also requires that products approved for sale in the United States have their formulation approved by the FDA, and be produced under quality standards enforced by the FDA.

Prescription drugs available from a foreign pharmacy that are products that FDA has not approved; products with similar, but not identical formulations as FDA-approved products; products not made under the quality standards required by U.S. law or labeled according to U.S. requirements; or products not stored or distributed under the quality conditions required in the U.S. cannot be legally sold in the United States.

Are there any benefits to purchasing approved drugs online?

Yes. Legitimate pharmacy sites on the Internet provide consumers with a convenient, private way to obtain needed medications, sometimes at more affordable prices. The elderly and persons in more remote areas can avoid the inconvenience of traveling to a store to purchase medications. Many reputable Internet pharmacy's allow patients to consult with a licensed pharmacist from the privacy of their home. Moreover, Internet pharmacies can provide customers with written product information and references to other sources of information like the traditional storefront pharmacy. Finally, the increasing use of computer technology to transmit prescriptions from doctors to pharmacies is likely to reduce prescription errors.⁵

Chapter Six

Choosing the Right Doctor

Mrs. Hise had a big surprise the other day when she called her doctor to make an appointment. The receptionist told her Dr. Horowitz was retiring at the end of the year. After all this time – after decades of flu, bladder infections and a nasty cancer operation; after helping her through menopause – now this desertion! Mrs. Hise grumbled to her daughter Ginny how she didn't know what she would do to try and find a new doctor.

Gary was grumbling to his sister Linda. This new managed health insurance plan seemed like a good idea at first, but now he wasn't so sure. What's a primary care doctor anyway? Can't he just continue to see Dr. Bissel for his arthritis? Linda sighed wondering how she was going to help her brother find a whole new set of doctors.

Stories like these are becoming all too common. Finding good medical care can be tricky at any age but for older people this task may be even tougher. Yet, it's important to have a primary care doctor who knows you and all your health problems. Even if you see other doctors for certain conditions, for example, a heart specialist (cardiologist) for heart disease, your primary care doctor is needed to work with those specialists and coordinate all your health care.

Choosing a doctor is one of the most important decisions anyone can make. The best time to make that decision is while you're still healthy and have time to really think about all your choices. If you have no doctor or are thinking of changing doctors, the following ideas may help you find a doctor who is right for you.

What Should You Look for in a Doctor?

Of course you want a doctor who is well trained and competent. A doctor who knows you well may be better able to help you prevent some health problems and manage those that do come up. In choosing a doctor some things to think about are as follows:

- Board certification. Board certified doctors have extra training after medical school to become specialists in a field of medicine such as family practice, internal medicine, or geriatrics.
- Communication style. Because communication is key to good health care, you want a doctor who will listen carefully to your concerns, answer your questions and explain things clearly and fully.
- Type of Health Insurance. Does the doctor accept Medicare predetermined payments? See sidebar on managed care for more information.
- The location of the doctor's office, will it be easy for you to get there?
- Where patients get lab work done – in the doctor's office or somewhere else?
- Whether the office staff will process your medical insurance claims for you.
- Which hospital the doctor uses to treat patients.
- Whether the doctor works with a group of other doctors. If so, who are the others and what are their specialties?
- Who covers the doctor if he or she is out of town or not available?

- Whether, with your permission, the doctor will share information with a family member.
- Which language the doctor speaks.

A good first step is to make a list of things that matter most to you. Then, go back over your list and rank them in order of importance.

What Type of Doctor?

For your primary care doctor, you might want a general or family practitioner, an internist, or geriatrician.

- General practitioners provide health care for a wide range of medical problems. They do not focus on any one area of medicine.
- Family practitioners are similar to general practitioners, with extra training to focus on health care for all family members, regardless of age.
- An internist is a doctor for adults. Some internists take additional training to become specialists. For example, cardiologists are internists who specialize in diseases of the heart.
- Geriatricians specialize in the care of older adults. A geriatrician is trained in family practice or internal medicine, but has additional training in caring for older people.

How Does Managed Care Affect Your Choice of Doctors?

Most people aged 65 and older are eligible for Medicare hospital insurance (Part A). They can enroll in Medicare medical insurance (Part B) for a monthly fee. Medicare medical insurance helps pay for visits to the doctor. It also covers many other medical services

and supplies not covered by Medicare's Part A.

Many older people use Medicare's original fee-for-service health insurance program. Under this program, you may see any doctor or health care provider you choose. You usually pay Medicare's deductible and co-insurance, along with any other charges not covered by Medicare. Medicare pays the rest. Under this plan, you handle bills and payments.

Another option is a Medicare managed care plan. When you enroll in a managed care plan, you choose your doctor from a list of primary care doctors who are part of the plan's network. Your primary care doctor then coordinates all of your health care needs. If you do not choose a primary care doctor, the managed care plan will assign one to you.

In some managed care plans, you can see a doctor outside the network, but it will cost you more money. Also, you may have to pay co-payment for some services and visits.

Today, there are many different kinds of managed care plans. Their benefits, costs and rules vary. Be sure to compare each plan and consider the type of insurance (fee-for service vs. managed care) that is best for you. For information about Medicare benefits, call the Social Security Administration office listed in your phone book. Or call toll free the Medicare Hotline at 1-800-633-4227. Information about Medicare eligibility, enrollment, insurance plans and more is available in Chapter 1, of this publication or online at www.medicare.gov.

Finding a New Doctor

Once you have a sense of what you want in a doctor, ask people you know about doctors they use and like. Friends, coworkers and other health professionals may be helpful. You can make it easy for them to tell you about the doctors they like by asking questions, such as, "What do you like about Dr. Smith?"

A doctor's name that comes up often might be a strong possibility as a choice. It might help to have several names to choose from in

case the doctor you select is not taking new patients or does not take part in your health insurance plan.

If you belong to a managed care plan, you can get a list of doctors from the plan's membership services office. Your choices will be limited to those doctors who are part of the plan.

If you need more help finding names of doctors, contact your hospital of choice, local medical society, local physician referral services, nearby medical schools, or university medical centers in your area.

How Do You Make an Informed Choice?

Once you have chosen two or three doctors, call their offices. The office staff can give you information about the doctor's education and training. They can also tell you about office policies, standard insurance the office takes, payment methods and the doctor's hospital admitting privileges.

You may want to make an appointment just to talk to the doctor before deciding on a final choice. Make sure that he or she knows that you are trying to decide on a doctor. You likely will be charged for such a visit; your insurance company may not pay for it.

Make a List of Questions You Want To Ask the Doctor

For example:

- What age groups make up most of your practice?
- How do you manage patients with lots of health problems? Do you usually treat everything? Do you refer patients? or Are some problems older people have just something they must live with?
- What do you think are the most important preventative care issues for older adults? How do you manage them?

- What is the best way for me to prepare for an office visit with you? For example, Should I bring my questions in writing?
- Would you provide your instructions in writing for me?
- May I bring a family member (spouse, daughter, or son) to my office visits with you?
- If I give you permission, are you comfortable talking with my family about my condition?
- How do you involve you patients in health care decisions?
- Do you see may patients with the same chronic health problem that I have (for example, diabetes)?

The First Appointment

After choosing a doctor, make your first medical appointment. During this visit, the doctor will probably take a medical history and ask questions about your health. There may be questions about the health of your family members as well. The doctor will also examine you. Be sure to bring your past medical records (or have them sent). Also bring all the medicines you take with you to show the doctor. Include both prescription and over-the-counter drugs, even vitamins, supplements and eye drops. Make a list of any drug allergies or serious drug reactions you've had. During this visit take time to ask any questions you may still have about the doctor and the practice.

Once you have found a doctor you like, your job is not finished. A good doctor-patient relationship is a partnership. Both you and your doctor need to work together to solve your medical problems and maintain your good health. Finding a medical practice that is well suited to you needs is an important first step. Good communication with the doctor and the office staff is the key.

Where To Go for More Help

The following professional groups may be able to help you find a doctor:

- American Geriatrics Society (AGS)
www.americangeriatrics.org
- American College of Physicians-American Society of Internal Medicine
www.acponline.org
- American Academy of Family Physicians
www.aafp.org
- American Medical Association
www.ama-assn.org
- American Osteopathic Association
www.aoa-net.org
- Centers for Medicare & Medicaid Services
www.medicare.gov

For more information the National Institute on Aging (NIA) has a free booklet called [Talking To Your Doctor; A Guide for Older People](#) and other information on health and aging. For a free copy of these materials go to www.nia.nih.gov. Their Age Page fact sheet series covers more than 40 different health topics. These are available online at www.niapublications.org or by calling 1-800-222-

2225. For notice of new publications and other information, anyone can subscribe to NIA's E-mail alerts at www.niapublications.org/alerts.⁶

The complete address and contact information for agencies listed above is contained within (Information Resources) Appendix 2, this publication.

Chapter Seven

Buying Contact Lenses on the Internet, Phone or by Mail

The FDA wants you to be a wise consumer if you buy contact lenses, an FDA-regulated product, on the Internet, or over the phone or by mail. While such purchases are often a convenient and economical way to get lenses, Internet, phone or mail orders require consumers to exercise caution. The following questions and answers should help you take simple precautions to make your Internet, phone or mail purchase safe and effective for you.

What Do I Need to Consider When Buying Contact Lenses on the Internet, Phone or by Mail?

- Is my contact lens prescription current? You should always have a current, correct prescription when you order contact lenses.
- If you have not had a check-up in the last one to two years, you may have problems with your eyes that you are not aware of, or your contact lenses may not correct your vision well.
- The expiration date for your prescription is currently set by your state. Some require a one-year renewal, while other states leave it up to your doctor to decide.
- Never order lenses with a prescription that has expired.

What Does a Valid Contact Lens Prescription Include?

- This depends on the state where your doctor practices. State laws often define a prescription's requirements. In states without a legal definition, the prescribing doctor includes some minimum elements.
- The minimum elements usually include your name and doctor's name along with the contact lens brand name and material. Also, lens measurements such as power, diameter and base curve are included.
- More detailed prescriptions will include directions for safe use such as a wearing schedule, whether lens are for daily or extended wear, the number of refills, whether lens material substitutions are allowed and an expiration date.
- Some Internet sites ask for information about your doctor so that they may check the prescription with your doctor. State laws vary greatly concerning the kind of verification that is required. Internet sites should comply with applicable State requirements concerning verification of prescriptions for contact lenses.

Will I Get in Legal Trouble if I Buy My Contact Lenses on the Internet, Phone or by Mail If I Don't Have a Copy of My Prescription?

- You won't break any laws, but the company is selling you a prescription device as if it were an over-the-counter device. In legal terms, this misbrands the device. Often, the company will say that they will check back with your doctor to confirm the prescription and expiration date; however, that may not always happen.
- Some Internet sites will allow you to fill out a chart with the ordering information about your contact lens and ask you to fill in your doctor's name and phone number. The site may or

may not ask for an actual copy of your prescription, but they should comply with applicable State law concerning contact lens prescription verification.

Since individual states have different licensing requirements for optical dispensers, enforcement of prescription device sales has usually been left to State authorities.

What Harm Can Be Done if I Don't Have Regular Check-Ups With My Doctor or I Order Lenses Without a Valid Prescription?

- At your check-up, your doctor will re-evaluate the fit of your contact lenses and observe any changes in your cornea caused by your lenses. You will benefit by having a correct, current prescription and you may avoid serious problems, especially if you wear your lenses on an extended or overnight schedule.
- Though infections of the cornea are rare, severe cases can cause loss of vision and even blindness. During regularly scheduled visits, your eye doctor looks for irregularities that, if left untreated, may lead to severe problems. These irregularities often have no symptoms and you may be totally unaware of them.
- Contact lens wear causes many changes to cells and tissues of the eye, and sometimes wearing contact lenses can damage the cornea (the clear window of the eye). Even if you are currently experiencing no problems, the lenses may be causing damage to your eyes. Regular check-ups will reduce the likelihood of damage going undetected.
- Contact lenses that are not properly fitted by an eye doctor might not work well, or even worse, may harm your eyes.
- Ask your eye doctor how often to have a checkup.

Will Regular Check-Ups Help Prevent Me From Having Problems With My Contact Lenses?

- Anyone wearing contact lenses runs an increased risk of corneal infection. Regular check-ups will help reduce your chances of having a problem. At your check-up, your doctor may find something that requires refitting with a new lens or requires modifying your wearing schedule.

What Can I Do to Avoid Serious Problems With My Contact Lenses?

- Ask your eye doctor how often you should have a check-up and see the doctor according to the recommended schedule.
- You run a greater risk of developing serious eye problems such as infection if you wear lenses overnight.
- Order your contact lenses from a supplier you are familiar with and know is reliable. Contact lenses are often more complex than they appear.
- Request the manufacturer's written patient information for your contact lenses. It will give you important risk/benefit information, as well as instructions for their use.
- Beware of attempts to substitute a different brand than you presently have. While this may be acceptable in some situations, there are differences in the water content and shape between different brands. The correct choice of which lens is right for you should only be made based on examination by your doctor, not over the phone.
- Carefully check to make sure the company gives you
 1. The exact brand
 2. lens name

3. power
4. sphere
5. cylinder, if any
6. axis, if any
7. diameter
8. base curve
9. peripheral curves, if any

- If you think you have gotten an incorrect lens, check with your eye doctor. Do not accept a substitution unless your doctor approves it.

Where Can I Report Problems That I Have With My Contact Lenses?

- You can report a serious eye problem associated with your contact lenses with the FDA's MedWatch reporting form at <http://www.fda.gov/medwatch>. Also, contact your health professional for medical advice.
- You can report problems involving contact lens sales by Websites by sending an E-mail to webcomplaints@ora.fda.gov.
- If you do not get the exact lenses that you ordered, you should report the problem directly to the company that supplied them.⁷

Chapter Eight

Getting Fit for Life

“I don’t have time.” “I’m too old – I might hurt myself.” “I’d be too embarrassed at a gym with all those fit young people around.”

Sound familiar? Maybe one of these is the reason you aren’t physically active or exercising. But, in fact scientists now know that it’s usually more dangerous to not exercise, no matter how old you are. And you don’t need to buy fancy clothes or belong to a gym to become more active.

Most older people don’t get enough physical activity. Here are some reasons why they should:

- Lack of physical activity and not enough eating the right foods, taken together, are the second greatest underlying cause of death in the United States. (Smoking is the #1 cause).
- Exercise can help older people or too out of shape people feel better and enjoy life more. No one is too old or too out of shape to be more active.
- Regular exercise can prevent or delay some diseases like cancer, heart disease or diabetes. It can also perk up your mood and help depression, too.
- Being active can help older people to stay independent and able to keep doing things like getting around or dressing themselves.

So, make physical activity a part of your everyday life. Find things

you enjoy. Go for brisk walks. Ride a bike. Dance. Work around the house and in the yard. Take care of your garden. Climb stairs. Rake leaves. Do a mix of things that keep you moving and active.

Four Types of Exercise

There are four types of exercise you need to do to have the right mixture of physical activities.

One – Be sure to get at least 30 minutes of activity that makes you breathe harder on most or all days of the week. That’s called “endurance activity,” because it builds your energy or “staying power.” You don’t have to be active for 30 minutes all at once. Ten minutes of endurance activity at a time is fine. Just make sure those 10-minute sessions add up to a total of 30 minutes most days.

How hard do you need to push yourself? One doctor describes the right level of effort this way: If you can talk without any trouble at all, you’re not working hard enough. If you can’t talk at all, it’s too hard.

Two – Keep using your muscles. When muscles aren’t used, they waste away at any age.

How important is it to have “enough” muscle? Very! When you have enough muscle, you can get up from a chair by yourself. When you don’t – you have to wait for someone to help you. When you have enough muscle, you can walk through a park with your grandchildren. When you don’t – you have to stay home. That’s true for younger adults as well as for people age 90 or older.

Keeping your muscles in shape can help prevent another serious problem in older people – falls that cause problems like broken hips. When the leg and hip muscles that support you are strong, you are less likely to fall. Even if you do fall, you will be more likely to be able to get up on your own. And using your muscles may make your bones stronger, too.

Three – Do things to help you balance. For example, stand on one foot, then the other. If you can, don't hold onto anything for support. Stand up from sitting in a chair without using your hands or arms. Every now and then walk heel-to-toe. When you walk this way, the toes of the foot in back should almost touch the heel of the foot in front.

Four – Stretch. Stretching can help keep you flexible. You will be able to move more freely. Stretch when your muscles are warmed up. Never stretch so far that it hurts.

Who Should Exercise?

Almost anyone, at any age, can improve his or her health by doing some type of activity. But, check with your doctor first if you plan to do strenuous activity (the kind that makes you breathe hard and sweat) and you are a man over 40 or a woman over 50. Your doctor might be able to give you a go-ahead over the phone, or he or she might ask you to come in for a visit.

You can still exercise even if you have a long-term condition like heart disease or diabetes. In fact, physical activity may help your illness, but only if it's done during times when your condition is under control. During flare-ups, exercise could be harmful. If you have any of the following problems, it is important to check with your doctor before starting an exercise program:

- A chronic disease, or a high risk of getting one – for example, if you smoke, if you are obese or if you have a family history of a long-term disease.
- Any new symptom you haven't talked about with your doctor
- Chest pain
- Shortness of breath
- The feeling that your heart is skipping, racing or fluttering

- Blood clots
- Infections or fever
- Unplanned weight loss
- Foot or ankle sores that won't heal
- Joint swelling
- Pain or trouble walking after you've fallen
- A bleeding or detached retina, eye surgery or laser treatment
- A hernia
- Hip surgery

Safety Tips

Here are some things you can do to make sure you are exercising safely:

- Start slowly. Little by little build up your activities and how hard you work. Doing too much, too soon, can hurt you, especially if you have not been active.
- Don't hold our breath while straining – when using your muscles, for example. That could cause changes in your blood pressure. It may seem strange at first, but the rule is to breathe out while your muscle is working, breathe in while it relaxes. For example, if you are lifting something, breathe out as you lift: breathe in when you stop.
- If you are taking any medications or have any illnesses that change your natural heart rate, don't use your pulse rate as a way of judging how hard you should exercise. One

example of this type of medicine is a type of blood pressure drug known as a beta blocker.

- Use safety equipment to keep you from getting hurt. That means, for example, a helmet for bike riding or the right shoes for walking or jogging.
- Unless your doctor has asked you to limit fluids, be sure to drink plenty when you are doing activities that make you sweat. Many older people tend to be low on fluid much of the time, even when not exercising.
- Always bend forward at the hips, not at the waist. If you keep your back straight, you're probably bending the right way. If your back "humps" that's probably wrong.
- Warm up your muscles before you stretch. For example, do a little easy biking, or walking and light arm pumping first.

Exercise should not hurt or make you feel real tired. You might feel some soreness, a little discomfort, or a bit weary, but you should not feel pain. In fact, in many ways, being physically active will probably make you feel better.

How to Find Out More

Local gyms, universities, or hospitals might be able to help you find a teacher or a program that works for you. You can also check with nearby churches, synagogues, senior and civic centers, parks, recreation associations, YMCA's, YWCA's, or even area shopping malls for exercise, wellness or walking programs.

Looking for a safe exercise program? The National Institute on Aging (NIA) publishes [Exercise: A Guide from the National Institute on Aging](#). This free 80 page booklet has instructions and drawings for many strength, balance and stretching exercises you can do at home. Will they work? Scientific researches supported by the NIA helped experts develop these exercises so they should help you if you do them as described. You can get the guide in English or

Spanish. In addition, the NIA has a 48-minute exercise video for \$7. You can order the video from the NIA Information Center as listed in Appendix 2 (Information Resources) this publication.⁸

Appendix One
Frequently Asked Questions

Question	Answer
What is a Living Will?	A living will is one type of advance directive. It only comes into effect when you are terminally ill. Terminally ill generally means you have less than six months to live. In a living will you can describe the kind of treatment you want in many situations. A living will doesn't let you select someone to make decisions for you
Does everyone need a living will?	A living will standing alone is not the document most people need. The first document most people need is a Health Care Power of Attorney (or Health Care Proxy) that names a trusted person as agent, or proxy. Better would be to have both.
Why is a proxy appointment more important than a living will?	Most living will forms are limited in what they can accomplish or the conditions they cover. Most forms provide instructions that apply only if a person is in a terminal status or permanent state of unconsciousness; yet most health care decisions needed to be made for someone lacking capacity concern questions about day-to-day care, placement options and treatment directions short of "pulling the plug." A

	health care proxy can make these kinds of decisions, as well as interpret the instructions contained within a living will.
Is a Health Care Power of Attorney or “Medical power of attorney” ever inappropriate?	If there is no one close to the individual whom a person trusts to act as health care proxy, then the health care power of attorney should not be used. In a situation such as this, a living will is safer, regardless of its limitations.
What is an Advanced Directive?	A general term that describes two kinds of legal documents, living wills and medical powers of attorney. These documents allow a person to give instructions about future medical care should they be unable to participate in medical decisions due to serious illness or incapacity. Each state regulates the use of advanced directives differently.
Are written advanced directives legal in every state?	Every state has a health care proxy law, and all states except Michigan and New York have a living will statute. However, even in those states, both kinds of directives are recognized as a matter of practice. The laws of the different states vary widely.
Will one state recognize an advanced directive written according to another state’s laws?	Many states expressly recognize out of state advance directives if the directive meets the requirements of either the state where the treatment arises or the state where it was written. If there is a conflict, the rules of the state where the

	treatment will be accomplished will normally control.
Should I have an Advanced Directive?	Most advanced directives are written by elder or seriously ill people. For example, someone with a terminal illness might write that they do not want to be put on a respirator if breathing stops. This action can reduce suffering, increase the peace of mind and increase control over death. However, even if in good health, you may consider writing an advanced directive. An accident or serious illness can happen unpredictably, and if there is a signed advanced directive, your wishes are more likely to be followed.
How can I write an Advanced Directive?	Advanced Directives can be written in several ways. 1. Use a form provided by a doctor. 2. Write your wishes down by yourself. 3. Call your health department or state department on aging to get a form. 4. Call an attorney. 5. Use a computer software package for legal documentation. Always have the directive reviewed by an attorney or your doctor to ensure your instructions are understood exactly as you intended. Orders should be notarized if possible and copies provided to your family and your doctor.
Can I change my Advance Directive?	You can change or cancel your advance directive at any time, as long as you are considered of sound mind to do so. This means you are still able to think clearly and communicate your wishes rationally. Any changes made should again, be

	<p>reviewed, signed and notarized in accordance to the laws of your state. Make sure that your doctor and any family members who knew about your previous directives are also aware you have made changes. If you do not have time to put your changes in writing, you can make them known while in the hospital. Tell your doctor, any family members or friends that are present exactly what you want to happen. Usually, wishes that are made in person will be followed in place of the ones made earlier in writing. Be sure your instructions are clearly understood by everyone you have advised.</p>
<p>Are oral instructions valid?</p>	<p>A person physically unable to execute an advance directive may provide oral instructions that are reduced to writing by a doctor or another person, acting for a patient. Witnessed properly, several states recognize such statements as formal advance directives. These less formal instructions, such as a conversation with family, friends or physicians, will not have the legal status, but they do constitute important evidence of your wishes and help to expand upon, clarify and reinforce individual preferences.</p>
<p>Does naming a proxy mean the individual gives up control?</p>	<p>No, as long as the person is able to make decisions, their consent is required for medical treatment, regardless of what the patient's agent or written instruction may say. In most states, health care advanced directives are "springing"-they have no legal effect at all unless and until the patient lacks the capacity to make health care decisions. In states where this is not true, the patient nevertheless retains the right to override the proxy or revoke the directive.</p>

<p>What is Surrogate decision-making?</p>	<p>Several states expressly designate default “surrogates,” typically family members in order of kinship, to make some or all health care decisions about medical treatments for a patient who have lost decision-making capacity and did not prepare an advanced directive. Even without such laws, most doctors and health facilities routinely rely on family involvement in decision making, although disagreement among family members can easily undermine this. In such situations, patients risk having decisions made contrary to their wishes or by persons they would not choose.</p>
<p>Can family members make health care decisions for someone who does not have an advance directive?</p>	<p>As a matter of law, medical providers cannot treat an individual against their wishes, including wishes contained in a directive or contrary to the decision of the patient’s authorized proxy. There can be complications, however. First, the doctor or health care facility must know about the directive in order to implement it. It is up to the patient and those close to the patient to ensure that everyone who might need a copy of the directive has a copy. Second, vague language in a directive does not give much guidance, and even giving a proxy authority to interpret one’s wishes doesn’t help much if the proxy is not sure what the patient would want done. Third, most states permit a physician or facility to refuse to honor an advance directive based on reasons of conscience, but the facility must notify the patient of its policies regarding advanced directives at the time of admission, and should provide assistance in transferring the patient to a provider who will comply with the directive. Fourth, emergency medical personnel are required in most states to resuscitate and stabilize patients until they are brought safely to a hospital.</p>

	<p>Many states now address the situation by procedures that allow emergency personnel to refrain from resuscitating terminally ill patients who are certified as having a “do not resuscitate order” and who have an approved identifier, such as a special bracelet.</p>
<p>What is Euthanasia?</p>	<p>The term traditionally has been used to refer to the hastening of a suffering person’s death or “mercy killing”. Voluntary active euthanasia involves an intervention requested by a competent individual that is administered to that person to cause death, for example, if a physician gives a lethal injection with the patient’s full informed consent.</p>
<p>Is physician-assisted suicide legal?</p>	<p>The U.S. Supreme Court in 1997 ruled that physician-assisted suicide is not a constitutional right, and left it to the states to determine for themselves. To date, physician-assisted suicide is legal only in the state of Oregon.</p>
<p>What is withholding or withdrawing treatment?</p>	<p>Forgoing life- sustaining measures or discontinuing them after they have been used for a certain period of time.</p>
<p>What is Palliative Care? Sometimes called “comfort care” or “hospice care”.</p>	<p>A comprehensive approach to treating serious illness that focuses on the physical, psychological, spiritual and existential needs of the patient. Its goal is to achieve the best quality of life available to the patient by relieving suffering, by controlling pain and symptoms and by enabling the patient to achieve maximum functional capacity. Respect for the patient’s culture, beliefs and values are an essential component.</p>

Appendix Two
INFORMATION RESOURCES

Every State has a Department of Insurance that regulates insurers and assists consumers. If you need more insurance information or if you want to register a complaint, check the government listings in your local phone book for your State's Department of Insurance.

Additional information about long-term health care is available from the Area Agency on Aging. For your local office, call 1-800-677-1116. Other sources include;

Take Advantage of Services Provided by the Federal Government and Other Organizations

The Federal Government operates a number of clearing houses and information centers, including the National Institute of Arthritis and Musculoskeletal and Skin Diseases or NIAMS Information Clearinghouse. Services vary but may include publications, referrals and an answer to consumer inquiries.

MedlinePlus.gov has a number of directories available freely to search for health facilities, health providers and services.

Web Address = <http://www.nlm.nih.gov/medlineplus/directories.html>

AARP

601 East Street NW

Washington, D.C. 20049

Phone = 1-888-687-2277

Web Address = www.aarp.org

This is an organization for anyone over the age of 50. Membership is very reasonable and includes access to discount health, auto and home insurance. Advocacy information is available on issues before the government like Medicare, Social Security and consumer safety. Community services such as Tax Preparation, driver safety courses, computer skills learning and more. Travel discounts, prescription drug program, monthly magazine and much more member benefits.

Accreditation of Healthcare Organizations (JCAHO)

601 13th Street, Suite 1150N

Washington, DC 20005
Phone – (202) 783-6655
Fax – (202) 783-6888
Web Address – <http://www.jcaho.org/>

American Academy of Family Physicians
11400 Tomahawk Creek Parkway
Leawood, KS 66201
Phone – 1-800-274-2237
Web Address – www.aafp.org

American Health Care Association
1201 L Street, NW
Washington, D.C. 20005
Phone - (202) 842-4444
Web Address - www.ahca.org

American Medical Association
515 North State Street
Chicago, IL 60610
Phone – 1-800-621-8335
Web Address – www.ama-assn.org/

American Osteopathic Association
142 East Ontario Street
Chicago, IL 60611
Phone – 1-800-621-1713
Web Address – www.aoa-net.org

National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108
Phone – (816) 842-3600
Web Address – www.naic.org

National Council on the Aging
300 D Street, SW, Suite 801
Washington, D.C. 20024
Phone – (202) 479-1200
Web Address – www.ncoa.org

America's Health Insurance Plans
601 Pennsylvania Ave, NW

South Building, Suite 500
Washington, D.C. 2004
Phone – (202) 778-3200
Web Address – www.ahip.org

To find a long-term care insurance agent or financial advisor near you who has earned the Long-Term Care Professional (LTCP) designation, call America's Health Insurance Plans (AHIP) Insurance Education Program at (202) 778-8471

American Academy of Estate Planning Attorneys

4365 Executive Drive, Suite 850
San Diego, CA 92121
Phone – 1-800-846-1555
Fax – 858-535-8241

This college has a **National Directory of Estate Planning, Probate and Elder Law Attorneys**

Web Address – www.estateplanforyou.com/

American Association of Homes for the Aging

2519 Connecticut Ave., NW
Washington, D.C. 2008
Phone = (202) 783-2242
Fax = (202) 783-2252
Web Address = www.aahsa.org

A nonprofit provider of long-term care and senior housing. The organization works to strengthen nursing homes in terms of quality, constructive regulation and sufficient resources. Site offers books on Adult Day Services, Healthy Living and more.

American Council of Life Insurers

101 Constitution Ave., NW
Washington, D.C. 20004
Phone = (202) 624-2000
Web Address = www.acli.com

Product availability includes Life Insurance, Annuities, Retirement Savings Plans, Long-Term Health Care Insurance and Disability Income Insurance

American Health Care Association

1201 L Street NW
Washington, D.C. 2005
Phone = (202) 842-4444
Fax = (202) 842-3860
Web Address = www.ahca.org

Provides consumer information about long term care such as finding and selecting a nursing home or assisted living facility, preparing for long term care transitions, writing Advanced Directives and how to pay for long term care. Hosts companion sites such as Families4Care.org and MRDDLiving.com. MRDD provides a guide for Homes and Residential services for persons with mental retardation or developmental disabilities.

Care Scout

36 Washington Street, Suite 170
Wellesley Hills, MA 02481
Phone = (781) 431-7033
Fax + (781) 431-7034
E mail = info@CareScout.com
Web Address = www.carescout.com

This is a company dedicated to helping consumers make informed eldercare decisions. CareScout connects consumers to eldercare information, provide ratings and comparative data on products. They have developed a network enabling private pay individuals to receive discounts on their cost for care.

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850
Phone – 1-800-633-4227
Web Address – www.medicare.gov

CHID (Combined Health Information Database)

Developed and managed by health-related agencies of the Federal Government, this database can help people find information and educational resources such as brochures, books and audiovisuals on selected topics. CHID contains a number of subfiles and is available on the Internet at no fee by going to; <http://chid.nih.gov>.

ClinicalTrials.gov®

This is an information service of the National Institutes of Health developed by the NLM that provides patients, family members, health care professionals and the public with easy access to information on clinical trials for a wide range of diseases and conditions. This database provides opportunities to participate in the evaluation of new treatments. The NLM is developing the database in collaboration with the NIH institutes, other Federal agencies, the pharmaceutical industry and academic and other nonprofit organizations. To access the database go to; <http://clinicaltrials.gov>

Commission on Accreditation of Rehabilitation Facilities

1730 Rhode Island Avenue, Suite 209
Washington, DC 20036
Phone – (202) 587-5001
Fax – (202) 587- 5009
Web Address – www.carf.org/

Department of Health and Human Services

Healthfinder® Is a site designed to assist people in locating health information on the Internet, the Federal Government’s Department of Health and Human Services developed this site. It serves as a gateway to a broad range of consumer health information resources produced by the government and many of its partners. The site includes a searchable index and locator aids for news, publications, online journals, support and self-help groups, online discussions and toll-free numbers. The Web address is; <http://www.healthfinder.gov>.

Centers for Medicare & Medicaid Services

7500 Security Boulevard
Baltimore, MD 21244-1850
Phone – 1-877-267-2323
Phone (TTY) – 1-866-226-1819
Web Address – www.cms.gov

Council of Better Business Bureaus

4200 Wilson Blvd., Suite 800
Arlington, VA 22203
Phone = (703) 276-0100
Fax = (703) 525-8277
Web Address = www.bbb.org

Some core services provided by the BBB include; Business Reliability Reports, Dispute Resolution, Truth-in-Advertising, Charity Review, Consumer and Business Education. Titles of some of their Health Articles include; Medicare Prescription Drug Scams, Choosing an Assisted Living Facility, Health Clubs, Insuring Your Life, Nursing Home Care and many more.

DIRLINE®

This database contains location and description information about a wide variety of resources, including organizations, research resources, projects, databases and electronic bulletin boards concerned with health and biomedicine. The database is available online through the NLM at no fee. Go to <http://dirline.nlm.nih.gov>.

Elder Care Link

190 Front Street, Suite 201
Ashland, MA 01721
E mail = ElderCarelink.com
Web Address = www.eldercarelink.com

This organization provides assistance finding eldercare products or services in your local area. The service is free and there is no obligation associated with their referral service. They maintain a proprietary data base for the following services; adult day care, assisted living facilities, care planning and management, companion care, durable medical equipment, financial planning, hearing aids, home health aids, home health care, legal assistance, medication management, meal preparation, nursing homes and personal emergency response.

Health Hotlines

A listing of health information hotlines available from the National Library of Medicine.

Web Address = <http://sis.nlm.nih.gov/hotlines>

Medicare Part D Resources for Consumers

Medicare Part D offers seniors help with the high cost of prescription drugs. The Centers for Medicare and Medicaid Services (CMS), which runs the Medicare programs, provides several resources to consumers who may wish to access this new benefit. To learn more about Part D and the prescription drug plans offered visit Medicare online at www.medicare.gov or call 1-800-633-4227.

Medicare prescription drug plan finder is located at
<http://www.medicare.gov/MPDPF/Public/Include/DataSection/Questions/Questions.asp>

MEDLINE®/PubMed®

This database contains citations and often abstracts for over 15 million articles in over 4,800 biomedical journals on all aspects and allied health fields.

MEDLINE®/PubMed® (<http://pubmed.gov>) now covers the literature from 1951 to the present and is available free of charge through the NLM website at <http://www.nlm.nih.gov>. Some free full-text articles are available through publishers and PubMed Central™ (<http://pubmedcentral.nih.gov>)

National Association of Area Agencies on Aging

1730 Rhode Island Avenue, NW
Washington, DC 20036
Phone – (202) 842-0888
Web Address – www.n4a.org

National Center for Assisted Living (NCAL)

1201 L Street, NW
Washington, DC 20005

Phone – (202) 842-4444
Web Address – www.ncal.org/

National Association of State Units on Aging

1201 15th Street, NW
Washington, DC 20005
Phone – (202) 898-2578
Web Address – www.nasua.org

National Citizens Coalition for Nursing Home Reform

1828 L Street, NW, Suite 801
Washington, DC 20036
Phone – (202) 332-2275
Fax – (202) 332-2949
Web Address – <http://www.nursinghomeaction.com>

National Consumers League

1701 K Street, NW, Suite 1200
Washington, DC 20006
Phone = (202) 835-3323
Fax = (202) 835-0747
E mail = info@nclnet.org
Web Address = www.natlconsumersleague.org

This is our nation's oldest consumer organization. Their mission is to protect and promote social and economic justice for consumers in the United States and abroad. Some publications available; Avoid Phishing Scams, Don't Fall for Fake Check Scams, Eye Care 101, Learning the Difference Between Opticians, Optometrists and Ophthalmologists, many more. The organization offers two additional sites; www.AmEyeHealthy.org – A national eye health education and awareness campaign and www.tenthings.org – Teaches consumers more about the new Medicare prescription drug coverage plan.

National Health Information Center

PO Box 1133
Washington, D.C. 20013-1133
Phone = 1-800-336-4797
Web Address (Home Page) = <http://www.health.gov/nhic>

Many public libraries have *Infotrac*, a database that includes consumer health information. It indexes popular magazines, newspapers and 2 to 4 years worth of medical publications. Medical libraries have more extensive medical databases. Just ask your Librarian to help you find the most appropriate CD-ROM or online (Internet) databases for your needs. Many medical databases can also be accessed from your own home or work computer or wherever you have Internet access. Here are some major data bases worth searching;

National Institute on Aging
Building 31, Room 5C27
31 Central Drive, MSC 2292
Phone – (301) 496-1752
Fax – (301) 496-1072
Web Address – <http://www.nia.gov>

This website is for older adults and was developed by the National Institute on Aging and NLM to access health information, including the choice of speech-activated text resources for low-vision seniors.

National Long Term Care Ombudsman Resource Center
Web Address – <http://www.ltcombudsman.org>

The National Council on Aging, Inc.
300 D Street, Suite 801
Washington, DC 20024
Phone = (202) 479-1200
Fax = (202) 479-0735
E mail = info@ncoa.org
Web Address = www.ncoa.org

NCOA can help or provides resources or addresses to obtain data for Research Papers, Parental Assistance or Care, Legal Issues, Educational or Project Funding and much more. Some of their services include data base directories for; senior jobs, dental programs, subsidized housing, adult day services, nursing home or assisted living facility listings, facts about Long Term Care Health Insurance and much more.

National Association for Home Care
228 Seventh Street, SE
Washington, DC 20003
Phone – (202) 547-7424
Fax – (202) 547-3540
Web Address – www.nahc.org/

National Resource Center on Supportive Housing and Home Modification
Audrus Gerontology Center
University of Southern California
3715 McClintock Avenue
Los Angeles, CA 90089
Phone – (213) 740-1364
Fax – (213) 740-7069
E-mail – homemods@usc.edu

Web Address – <http://www.homemods.org>

. Nursing Home Compare

Web Address – www.medicare.gov/NHCompare/home.asp

Alerts provide timely information on women's health and retirement information and Legislative Activity. One of their current initiatives is; The Color of Money: Retirement for Women of Diverse Communities.

Older Women's League

1750 New York Ave. NW, Suite 350

Washington, DC 20006

Phone = (202) 783-6686 or 1-800-825-3695

Fax = (202) 628-0458

E mail = owlinfo@owl-national.org

Web Address = www.owl-national.org

The organization focuses solely on issues unique to women as they age.

Senior Housing Network

30700 Russell Ranch Road

Westlake Village, CA 91362

Phone = (805) 557-2300

Fax = (805) 557-2680

Web Address = www.seniorhousing.net

This site is a collection of realtors offering new homes, apartments and senior housing throughout the country. There may be terms of use for their services. The site includes many selected articles on topics relative to; Aging and Your Health, Focus on Alzheimer's, Understanding Your Heart, Medical Care Tips and General Topics on Aging.

U.S. Department of Housing and Urban Development-Subsidized Housing

451 7th Street, SW

Washington, DC 20041

Phone – (202) 708- 1112

Web Address – www.hud.gov

U.S. Department of Housing and Urban Development-Persons with Disabilities

(same as above)

Use Information Wisely

It can be hard to judge the accuracy and credibility of medical information you read in books or magazines, see on television, or find on the Internet. Even people with medical backgrounds sometimes find this task challenging. Following is some tip to help you decide what information is believable and accurate;

Check the authors credentials by looking up his or her affiliations, such as university and medical school attended, associations and list of other publications. For doctors, this information can be found in one of the physician directories at your library or on the American Medical Association's (AMA) Web site at <http://www.ama-assn.org>.

You can also call the American Board of Medical Specialists at 1-866-275-2267 to see whether a physician is board certified in their specialty. Your librarian can help you find other resources to check the credentials of nonphysicians

Appendix Three

Estate Documentation Overview

What Exactly Is Important Documents?

The answer to this question can be different for every family and their circumstances. The following lists are provided for your review, consideration and subsequent determination of what is exactly vital in your estate plans.

This is general guidelines and you may have additional information to add. For example, if you have pets, be sure to include the name, address and phone number of your veterinarian(s) or designated party to care for the animals.

Some **personal records** may include the following:

- Full legal name
- Social Security Account Number or Alien Document Number
- Legal Residence
- Date and Place of Birth
- Name, address, phone numbers of spouse and children
- Death certificate (if applicable) of immediate family members
- Location of Estate Documents – Last Will and Testament, Durable Power of Attorney, etc.
- Location of birth certificates, citizenship, certificates of marriage, divorce decrees, adoption paperwork, etc.
- Employers, their locations and employment dates
- Educational Transcripts
- Military Records, DD Form 214, SGLI, VGLI, etc.
- Names, addresses and phone numbers of close friends,

- relatives, doctors, clergy, lawyers, financial advisor, etc.
- Listing of your medications and their locations
 - Your religion, name of church or synagogue and name(s) of the clergy
 - Membership in Groups and awards received.

Pertinent **Financial Records** may include the following:

- Sources of income and assets (pension funds, 401K's, IRA's, CD's, Bonds, Trusts, policies, interest, etc.)
- Information about Insurance policies (auto, life, home, health, long-term care etc), bank accounts, deeds and certificates and associated agents contact information
- Location and documentation associated with valuables, jewelry, collections, rare books etc.
- Social Security, Medicaid, Medicare information
- Investment income (stocks, bonds, Mutual Funds, property, etc.) and the names, address and contact numbers of brokers
- Name of your bank(s) and their account number(s) (checking, savings, credit union)
- Location of safe deposit boxes and their keys
- Computer accounts to include user name pass codes and e-mail accounts
- Security access (fire box, locks, combinations, file cabinet, ect.) their purpose and locations
- Copy of most recent state and federal tax returns
- Copy of your will
- Location, arrangements and paperwork associated with burial plans (plot, headstone, cremation etc.)
- Liabilities (bills) you owe their account numbers, location, due dates contacts and methods of payment
- Mortgages and debts – how and when they are paid
- Location of deed of trust, car titles and recreational vehicles
- Credit card and charge account numbers and their pins
- Property tax information
- Location of all personal items such as family treasures, collections, heirlooms, etc.

- Household inventory of assets

Checklist – Valuable Document/Data Locator

USEFUL INFORMATION
Your Name
SSAN
Date of Birth
Location (City/State)
Birth Parent (Father) Address Phone E-mail
Birth Parent (Mother) Address Phone E-mail
Step Father Address Phone E-mail
Step Mother Address Phone E-mail
Child 1 Name Address Phone E-mail
Child 2 Name Address Phone E-mail

Foster Parent Address Phone E-mail
Grandparents Address Phone E-mail
USEFUL INFORMATION
Emergency Contact Address Phone E-mail
Spouses Name SSAN DOB Address Phone E-mail
Doctor Address Phone E-mail
Minister Institution Address Phone E-mail
Attorney Address Phone E-mail
Investment Broker Firm Address Phone E-mail
Accountant Firm

Address Phone E-mail
Other Address Phone E-mail
USEFUL INFORMATION
Other Address Phone E-mail
FINANCIAL AND LEGAL INFORMATION
Birth Certificate
Marriage Certificate
Divorce Papers
Military Records Electronic Financial address – https://mypay.dfas.mil Pin Number Branch of Service Military ID # Dates of Service Type of Discharge
Passport/Citizenship Papers
Name of Bank (Checking) Address Phone Account Pin
Name of Bank (Savings) Address Phone Account

Pin
Credit Union Address Phone Account Pin

DOCUMENT STORAGE LOCATION
Bank Statements
Bonds
CD's
Mutual Funds
Savings Bonds
401K Account
IRA's
Certificates of Deposit
Mortgage Information
Property Deeds/Title
Auto Title/Registration

Outstanding Loans
Stock Certificates

DOCUMENT STORAGE LOCATION
Income Tax (Federal)
Income Tax (State)
Pension Records
Will
Trusts
Power of Attorney
Safety Deposit Box Address Box Number Location of Key(s)
INSURANCE INFORMATION LOCATION
Automobile

Disability
Homeowners Policy

INSURANCE INFORMATION LOCATION
Life
Long-Term Care
Health
Other
MEDICAL INFORMATION LOCATION
Advance Directive
Do Not Resuscitate Papers
Living Will
Organ Donor Card
FINAL WISHES
Clergy
Phone

Funeral Home
Phone
Burial Arrangement Contract

MOTOR VEHICLES OWNED
Auto
Make
Model
Year
License Plate Number
VIN
AUTO
Make
Model
Year
License Plate Number
VIN
RV
Make
Model
Year

License Plate Number

VIN

MOTOR VEHICLES OWNED

Motorcycle

Make

Model

Year

License Plate Number

VIN

BOAT

Make

Model

Year

ID Number

OTHER

Make

Model

Year

License Plate/ID Number

VIN

To protect yourself from identity theft, it is highly recommended that you never E-mail this form if it is annotated with your personal information.

This checklist is provided for your convenience. It is a handy way to help you remember to keep your important documents close at hand.

It is suggested that you place the checklist in an envelope posted to your refrigerator or by your telephone clearly stating "IMPORTANT PAPERS." While you might want to keep actual legal documents in another safe place, perhaps with a trusted friend or relative.

Putting this checklist in an accessible place will help others locate any of the listed items if you become incapacitated.

Advertisements (Multiple Selections) for your needs!

Internet Shopping Mall

MaxMalls organizes hundreds of the Web's biggest and best stores. New stores will be added regularly. Many additional features are planned to create the optimum online shopping experience. To tour the mall businesses that all offer secure check outs visit;

<http://www.adultwishfoundations.com/mall.html>

Coupons, Discounts – Savings!

Nice Offers works directly with merchants all over the world to create exciting and exclusive offers for you, which are made available at this Nice Offers Website.

Nice Offers makes it easy for everyone everywhere to find great moneysaving deals on specific products and services you're looking for, while also providing a fun and exciting way to discover new and different products, services, businesses, restaurants, and more. See how you can save visit;

<http://www.adultwishfoundations.com/offers.html>

Home Based Business Free Opportunity

SFI is a totally FREE Home Business to join. And there's absolutely NO OBLIGATION. SFI provides you with FREE Websites, a FREE course that teaches you everything you need to know to make money online (\$295 value), and hundreds of exciting products to

stock your online store shelves with. Start earning an additional income now – sign up here;

<http://www.adultwishfoundations.com/free.html>

Needed Education for Those Running a Home Based Business

The International Association of Home Business Entrepreneurs IAHBE is an organization that champions the home-business lifestyle and provides its members with a multitude of resources designed to achieve maximum home-business success. Learn what they are offering by visiting;

<http://www.adultwishfoundations.com/IAHBE.html>

Free Income



**EyeEarn Program (EE)
Text Ads**

GET PAID TO DRIVE YOUR CAR, wear T-shirts, and more! Earn money effortlessly while you go about your day! It's fun, easy, and no experience is necessary!

<http://www.ezinfocenter.com/9999222/EE>

Music Lovers

Music lovers: Earn FREE MP3s for reviewing hot, new music. Rate songs, earn FREE MP3s! The best music you've never heard. Open your ears! Hear the music the big record labels don't want you to know about. Change your tune. Support the musicians, not the record labels. Taking music back from the big record labels one email at a time. Check it out here;

<http://www.ezinfocenter.com/9999222/TF>

Internet Domain Name Service +

If you're serious about online success, your own domain is a must.

Get your .com, .org, .net, .info and .biz domains here:

<http://www.ezinfocenter.com/9999222/GD>

www.adultwishfoundations.com/domain.html

www.you.com

References

¹ Cover Design, Ovi Dogar, Romania, Absolute Covers at <http://www.absolutecovers.com>

² Welker, Matthew, T., Esq [Asset Protection and Estate Planning for All Ages](#) Chapter 1, Estate Planning Overview. E-Book, February 1, 2006 at matt@welkerlawfirm.com

³ Alan S. Kopit, (2001). "Finding A Lawyer", "Selecting A Good Lawyer", "Preparing To Meet Your Lawyer". February 4, 2006, LexisNexis, Martindale-Hubbell <http://www.lawyers.com>.

⁴ The Official U.S. Government Site for People with Medicare. "Types of Long-Term Care" February 2006. www.medicare.gov/.

⁵ The Official U.S. Government site of the U.S. Food and Drug Administration, a consumer safety guide [Buying Prescription Medicine Online](#) Chapter Five, February 2006. www.fda.gov/

⁶ The Official site of the U.S. National Institutes of Health specifically - National Institute on Aging, Age Page, [Choosing a Doctor](#) Chapter Six, February 2006. www.nia.nih.gov/. with permission from "Karp, Freddi at KarpF@nia.nih.gov.

⁷ The Official U.S. Government site of the Food and Drug Administration, Consumer Information. [Buying Contact Lenses on the Internet, by Phone, or by Mail: Questions and Answers](#) Chapter Seven, February 2006, www.fda.gov/.

The Official site of the National Institute on Aging, Age Page, Exercise: Getting Fit for Life, Chapter Eight, February 2006 www.nia.nih.gov/.

If you just need a specific article from Chapter One of this publication please feel free to make a return visit to my site www.AdultWishFoundations.com and view the articles page. In addition to these articles, there

has been an RSS Feed added to share other relative articles to estate planning, financial news, real estate, credit and perhaps even daily news headlines.

Again, my personal thanks for the review of my book. It should have provided you a good foundation for your estate needs. Remember, these are some of the most vital and critical documents you will attend to. Please be sure to use the information in Chapter Two (Finding an Estate Planning Attorney) to find the best and most competent attorney in your geographical area.

If you liked the book and would want to send a Testimonial, please Email me at my personal email address (rhudkins2@comcast.net). Please include permission to publish your testimonial and I will gladly include it within my webpage in the not too distant future.

Related Reference Books (Special Reports)

[It's All Free For Seniors!](#) - Here are thousands of Little-Known Give-Always for people over 55.

(<http://guard1.bestbarg.hop.clickbank.net/>)

[Heirs Affairs Personal Record Keeping.](#) - Organize your personal records and vital information - quickly and easily!

(<http://guard1.bama55.hop.clickbank.net/>)

[How To Protect Your Assets Legally!](#) - Essential information to legally protect assets with an offshore trust.

(<http://guard1.freebird1.hop.clickbank.net/>)

[Life Documents for the Military.](#) - Crucial documents for military personnel.

(<http://guard1.life4milit.hop.clickbank.net/>)

[Recover From the Grief of Pet Loss.](#) - eBook on how to emotionally cope with the death or loss of a pet.

(<http://guard1.robinbrown.hop.clickbank.net/>)

[I Need More Time!](#) - Time Management tips and tricks to organize your home, kids, wardrobe and office.

(<http://guard1.ineedtime.hop.clickbank.net/>)

[Last Will-Testament, 9 Different Wills](http://guard1.willshop.hop.clickbank.net/) - Last Will-Testament for most situations, married women without children, single men with children, etc. and Living Wills.

(<http://guard1.willshop.hop.clickbank.net/>)

[Nursing Home Secrets Revealed](http://guard1.nhsecrets.hop.clickbank.net/) - New Book Reveals the Secrets Nursing Homes Don't Want You to Know.

(<http://guard1.nhsecrets.hop.clickbank.net/>)

[The Truth About Wills and Probate.](http://guard1.keywills.hop.clickbank.net/) - How State Laws Affect Your Will and What Makes a Good Will. (<http://guard1.keywills.hop.clickbank.net/>)

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