

Financial Affairs

At the End of Life

THIRD EDITION

Taking care of
Life,
Legacy,
Loved Ones

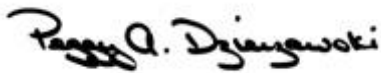
Through Financial Information

SPECIAL MESSAGE FROM MICPA

I am pleased and proud to provide the third edition of this powerful resource guide as a benefit to our members and our communities. This valuable tool was originally developed to assist Hospice of Michigan social workers and grief counselors with information and resources for their patients and their families with financial issues that may confront them at the end of life. After working again with Hospice of Michigan, this **third edition** is intended for use by all families that need to talk about getting their financial affairs in order, in addition to you, your clients and the community. Please use this manual to help your clients – in whatever capacity they might need.

As another example of our Michigan CPAs making a difference in our communities, this guide reflects the passion and dedication of our members. And as a collaboration with the American Institute of Certified Public Accountants 360 Degrees of Financial Literacy initiative, MICPA joins CPAs across the nation in financial education outreach.

A very special thanks to our members and the HOM staff who dedicated their time and expertise to develop this wonderful resource.



Peggy A. Dzierzawski, CAE
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Disclaimer: This second edition is intended as a basic resource guide for hospice patients and their families. It is not intended to replace the advice and expertise of competent professionals in the accounting, legal, and financial planning professions. The points mentioned are introductory, and should not be presumed to be exhaustive. Tax rules and regulations change frequently, so be mindful of dated material. This material is dedicated to the current interpretation of Michigan law only.

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TABLE OF CONTENTS

Acknowledgments	vi
Gathering and Organizing	1
Assessment Tools	1
Patient/Family Worksheets	1
Planning	3
Care of Dependents.....	3
Spouse	3
Former Spouse	3
Child Support	3
Children with Special Needs	3
Other Dependents.....	3
Guardianship	3
Naming a Guardian for Minor Children	3
Advance Directives	4
Treatment Directives	4
Proxy Directives	4
Do Not Resuscitate (DNR).....	4
General Power of Attorney.....	4
Durable Power of Attorney	5
Titles to Property and Assets.....	5
Assets Titled in One Name Alone	5
Assets Titled with a Spouse.....	5
Assets Titled with a Non-Spouse	5
Assets Titled in Trust	5
Business Ownership	6
Retirement Accounts & Pensions	7
Employer Provided.....	7
Employee Provided	7
Life Insurance	7
What Happens if Illness Hampers Ability to Pay Premiums?	7
How Can Life Insurance be Used to Cover Expenses Related to Terminal Illness?	7
Are Life Insurance Proceeds Income Taxable?.....	8
Estate Planning.....	8
Is Estate Planning Only for the Rich?	8
Special Circumstances	8
Probate Court.....	8
Wills	8
What if There is No Will	8
How to Prepare a Will	8
Disinheritance	9
Living Trust	9
Meeting Financial Needs	10
Withdrawing Funds from an IRA.....	10
Tax Deductions and Credits for Care Givers.....	10
Home Ownership	10

Supplemental Security Income	11
Medicaid.....	11
Medicare	11
Medicare Hospice Benefit.....	12
Medicare and Medicaid	12
Other Insurance/No Insurance	12
Social Security Disability Benefits	12
Veteran's Benefits.....	13
Debt & Credit Management	15
"Debt Trap" Danger Signs	15
Escaping the "Debt Trap"	15
Controlling a Credit Card	15
Repairing Poor Credit	16
Funeral Costs, Services and Products	17
Pre-Need and Planning.....	17
Prepayment.....	17
The Funeral Rule	17
Choosing a Funeral Provider	17
Types of Funerals	18
Traditional Full Service Funeral	18
Modified Traditional Funeral	18
Direct Burial.....	18
Direct Cremation	18
Funeral Costs	18
Services and Products.....	19
Embalming	19
Caskets	19
Cremation.....	19
Outer Burial Containers	19
Cemetery Sites.....	20
Survivors' Issues	21
Timeline and checklists.....	21
Social Security Survivor's Benefits	24
Life Insurance Benefits	24
Retirement Accounts	24
Other Benefits	25
Tax Status.....	25
Planning for Survivors.....	25
Resources	27
Certified Public Accountant.....	27
Attorney.....	27
Financial Planner	28
Glossary	29
Index	34

INTRODUCTION

It is beyond argument that current day Americans enjoy the most effective, scientifically based and technologically advanced health care in history. Literally every day new discoveries in medicine, surgery, and pharmaceuticals add to our quality of life. Diseases that ravaged earlier generations, like smallpox, tuberculosis, and polio, have been eradicated or contained. Treatments for chronic illnesses like diabetes and heart disease are increasingly effective, and new therapies give hope to persons with a variety of cancers. Advances in public health and preventive medicine benefit many millions of people around the world.

It is also true, however, that there are diseases for which cures have not yet been found, and illnesses that progress relentlessly despite our best treatments. It is for people with these illnesses, and the families who suffer along with them that the medical discipline of Hospice and Palliative Medicine has emerged. *Palliative medicine* focuses not on a chase for elusive cures but on relief of pain and other symptoms to diminish suffering and allow ill persons as full a life as possible. *Hospice* utilizes a team of physicians, nurses, social workers, spiritual care and grief support counselors, home aides, and volunteers to provide support and comfort to the families and caregivers as well as to the dying person. Hospice of Michigan fills an important role in the continuum of modern health care—to care for those for whom cure is not possible, to never say “there is nothing more to be done.”

It is in this spirit that Hospice of Michigan has embraced our partnership with the Michigan Association of Certified Public Accountants, and why we are so excited to be part of the *Financial Literacy* project. We see every day the consequences of financial turmoil on persons with life-limiting illness, and the suffering of families that lasts far beyond the death of their loved one when financial planning was neglected. This manual is our joint effort to help Michigan families attend to their financial well-being in the same way they look to their physical health—promoting positive situations, avoiding risks, planning in advance, and consulting experts to guide their approach to security.

On behalf of Dorothy Deremo, CEO and President, and our Hospice of Michigan Board of Directors, I applaud MICPA for helping us develop this terrific resource, and hope that together we can achieve the widest possible impact. For more information about our programs and services, check our website at www.HOM.org.

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[A program of Hospice of Michigan]

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GATHERING & ORGANIZING

This section is designed to help clarify and define the issues, resources and potential problems of a case. Whether this gathering and organizing of information and documents occurs while the patient is alive or after his or her death, it is important to have as clear a picture as possible of the financial situation the patient or family faces.

In an effort to help explain and navigate the document, we have developed a comprehensive glossary of legal and accounting terminology at the end of this document.

ASSESSMENT TOOLS

All work on a case begins with clear understanding of the current situation, much the same as an initial psychosocial assessment. Many of the suggestions listed in this booklet begin with knowing the state of a person's financial affairs.

The first step in assisting patients and families begin to identify, gather and organize both their assets (what they own) and their liabilities (what they owe) is to have all of the information in a central location. The following tools should support individuals in thinking about: what assets/liabilities they have; where the paperwork is located; and a suitable location for all related information. A shoebox works well until a set of folders, perhaps placed in a portable hanging file, is set up. Electronic files, or cloud-based storage programs are also helpful for the storage of sensitive data.

Patient/Family Worksheets: Three handouts are designed to be given to patients or their families so that they can efficiently organize their papers to thoroughly understand their financial affairs. They are designed to capture as much information as the patient is capable of providing. On the surface, the listings may be overwhelming. Encourage the patient and family to provide whatever information they can – it's ok if it is not fully completed. These sheets consist of:

- Directions for the Comprehensive Lists
- Comprehensive Listing of Assets
- Comprehensive Listing of Liabilities and Other Important Information

In some situations it may be helpful to sit with the individuals as they begin to work through the handouts, allowing you to remind them of additional sources and information that they may not know, for example:

- Family members in whom the patient may have confided
- Lawyer, executor or personal representative, banker, accountant or financial planner
- Auto and home insurance agents
- Court records if the estate has been probated
- Cancelled checks, bank accounts and credit card statements to determine whether insurance premium payments were made
- Business ownership interests
- Military records (Records for veterans or next-of-kin of deceased veterans can be obtained at vetrecs.archives.gov)
- Membership cards
- Credit report (annual credit report.com offers one free credit report each year)
- Titles to property
- It may be necessary to call local banks to determine whether there is a safe deposit box in the patient's name

After Death

Ideally the aforementioned gathering and organizing takes place while the patient is alive and able to provide valuable information. If this has not occurred, however, this list may be very helpful to those who assume additional financial responsibilities after death.

Identifying information may involve a significant amount of investigation. For instance, it is helpful to remember that an insurance company is not obliged to notify a survivor about an existing policy. Typically, the insurance company will wait to be notified of a death by receipt of death benefit claim. It is often helpful to obtain a death certificate prior to contacting insurance companies, Social Security, Medicare and other entities.

ADDITIONAL DOCUMENTS

AFTER DEATH, A FAMILY MEMBER WILL LIKELY ALSO NEED COPIES OF:

- Birth certificate
- Death certificate
- Marriage certificate
- Titles to motor vehicles, deed to home, etc.

Other important documents that may be needed:

- Bank books
- Tax returns from the last three years
- Latest financial statements
- Veterans Affairs number
- List of employer fringe benefits
- Social Security (number or card)
- Medicare (number or card)

Documents such as birth, death and marriage certificates can be obtained through The State of Michigan Vital Records Office. You can order a record online using a debit or credit card, print an application to order by mail.

For more information on ordering a record online or by mail visit: <http://www.michigan.gov/mdch/0,1607,7-132-4645---.00.html>

If you need general info about Michigan Vital Records, or need to have an application mailed to you, please call **517-335-8656**.

See Timeline and Checklist of Tasks (Survivor's Issues, page 21)

PLANNING

This section covers a broad array of actions and choices for alert, oriented patients as they “get their affairs in order.” This section may also be useful as a reference to assess the current situation even though a patient is no longer able to take meaningful action and to understand what options may still be open to his or her loved ones.

CARE OF DEPENDENTS

There are a variety of situations that involve caring for dependents throughout an individual’s illness and after death. Listed below are some examples of dependents and how planning ahead can ensure their care even after an individual has died. The patient should seek the advice of an attorney experienced in drafting proper estate planning documents that embrace both circumstances during the life of the individual and after death. To ensure proper titling of assets, proper planning, and the wishes of the patient are known and followed, it is important to seek a competent advisor.

- **Spouse/Domestic Partner:** A spouse may continue to receive support depending on how assets are titled and whether he or she has access to property.
- **Former Spouse (Alimony):** Establishing an automatic transfer arrangement if alimony is to continue during incapacity may eliminate an administrative task and simplify the patient’s life. Alimony generally terminates at death; however, an individual who wishes to provide for a former spouse may do so. See the “Other Dependents” discussion below.
- **Child Support:** Generally, child support is terminated upon death. Death benefits provided through Social Security are intended to replace this loss of support to minor children. Individual circumstances may require additional planning.
- **Children with Special Needs:** A child, even a grown one, with physical or mental disabilities, can require special planning.
- **Pets**
- **Other Dependents:** It is unlikely that parents, other less immediate family members, or individuals not directly related to the patient would continue to receive support upon an individual’s death. If a patient wishes to provide for these individuals during incapacity or after his or her death, additional action is almost always required.

GUARDIANSHIP

Guardianship depends on the marital status of the parents and their custodial rights over the child. For example:

- **Married to the Other Parent:** If spouses share legal custody, upon the death of the patient, the surviving spouse will continue to be the custodial parent. The patient can name a guardian by creating a Will that makes his or her wishes known in the event that the patient’s spouse dies or becomes incapacitated.
- **Not Married to the Other Parent, Patient has Sole Custody:** It is not automatic that the other parent would become a child’s guardian. It is advisable for the patient to name a guardian in a legally executed Will.
- **Not Married to the Other Parent, Shared Legal Custody:** It is likely that the other parent would continue as sole custodial parent. However, if something should happen to the other parent, a Will allows for the patient’s input and makes the patient’s wishes known.

Naming a Guardian for Minor Children

This is an extremely important decision for the patient since he or she is choosing a surrogate parent for minor children. Some issues to consider:

- Guardian is usually named in the Will.
- Some parents name one guardian to care for children and a different guardian (known as a conservator in Michigan) to care for the children’s assets and finances.
- Single parents may choose to name the currently non-custodial parent, whether a parent with legal custody or not.
- Court has final authority, but holds patient selection in highest regard.

Items to consider when choosing a guardian:

- Who loves and cares about the children?
- Whom do the children love and respect?
- Whom does the patient trust?
- Who is financially and emotionally able to take on added responsibilities?

- Who is willing to take on guardianship responsibility?
- Who is honest and dependable?

Encourage the patient to talk with a prospective guardian about:

- Gravity of the request
- Patient's wishes for children's upbringing (religion, college etc.)
- What financial resources will be available (e.g., life insurance)

ADVANCE DIRECTIVES

The process of establishing advance directives is called advance care planning, and results in a document specifying a person's health-care desires. In making decisions about health care, the patient's time and reflection are required. Advance care planning should also entail some communication of these patient decisions or wishes to trusted loved ones and to health care providers.

Federal law requires that health care providers provide information about formulating advance directives and that those directives are honored.

Treatment Directives

In these documents patients outline what treatments they wish to have or wish to avoid. The most common example is the "Living Will", a document not strongly upheld by state courts including those in Michigan. More recently, other documents such as "The Five Wishes" (<http://www.agingwithdignity.org/five-wishes.php>) have been created to include an emphasis on desired treatments rather than just exclusion of life-prolonging interventions. Many of these tools also include the designation of a proxy (see next section). It is good practice to obtain a copy of these documents and it is expected that hospice staff will honor those expressed wishes.

Proxy Directives

These documents name a spokesperson who will communicate a patient's desire should the patient become unable to speak. That designated spokesperson may be referred to as a proxy, surrogate, or advocate, among other things. General Powers of Attorney and Durable Powers of Attorney may include provisions for medical decision-making and should be reviewed to determine the scope of the directive.

Specifically, it is the Power of Attorney for Healthcare, the Medical Durable Power of Attorney, or similarly titled document that concerns health-care decisions. It is a good practice to obtain a copy of these documents and it is expected that hospice staff will honor the decision-making capacity of the person named.

In other cases, a patient may have a legal guardian named by the courts. This person has decision-making capacity in most instances.

Do Not Resuscitate (DNR)

The DNR order occurs in two types of settings:

- In hospitals, nursing homes, and community mental health facilities, a physician's order may be written to prevent resuscitation should breathing and heartbeat cease. A physician should communicate with patient, family, and hospice staff to establish the treatment plan in this situation.
- In settings other than those in which a physician is directly responsible for care, the Michigan or other state's Do Not Resuscitate Act created a form that combines an advance directive with a physician's order to prevent resuscitation. Those settings not directly under the direction of a physician may include private homes, assisted living facilities, or adult foster care homes. This form may only be signed by the patient or a legally designated power of attorney for health care, and may not, in Michigan, be signed by a guardian. The DNR is then signed by a physician to become a legal order. Even that requirement may be omitted for exceptions based on religious belief. It is this second order, the Michigan DNR, which Hospice of Michigan utilizes.

General Power of Attorney

A power of attorney is a legal document that allows one person to act on behalf of another. That designated person, sometimes referred to as an agent or attorney-in-fact, can be authorized to do things such as sign checks and tax returns, enter into contracts, buy or sell real estate, deposit or withdraw funds, or run a business.

A power of attorney can be broad or limited and is tailored for a specific purpose. An agent cannot act outside of the scope designated in the document. A regular power of attorney ends when its purpose is fulfilled, or at the incapacity or death of the person who enacted it.

Durable Power of Attorney

A durable power of attorney serves the same function as a power of attorney; however, the agency relationship remains in effect even if the person becomes incapacitated. This allows an agent to continue to manage a patient's financial affairs, provide for family needs, and perhaps reduce the risk of financial loss.

TITLES TO PROPERTY AND ASSETS

This section pertains to whose name is on what property and what difference that may make. Establishing, evaluating, and updating how property is titled can be key to ensuring that a patient's wishes are known and respected. It may also be key in providing for dependents and loved ones. The most common ways to title assets: one name alone, with a spouse, joint with a non-spouse, and in a trust. There are considerations for each category. Titling assets is not as easy as

one may think. Consulting a competent advisor is a good idea.

Assets Titled in One Name Alone

These are distributed according to the decedent's Will. If the decedent doesn't have a Will, essentially the State of Michigan and other states have written one. The laws actually spell out who will receive the assets after the debts and expenses of administration are paid. Wills are filed with Probate Court. The Court will oversee the administration of the estate to some degree, depending on the circumstances.

Assets that are in the sole name, but have a named beneficiary (i.e., a beneficiary other than the decedent's estate) will be distributed directly to the beneficiary. Examples of this are IRAs and life insurance policies that actually designate the beneficiary or beneficiaries.

Assets Titled with a Spouse

These can be titled two different ways, "tenancy by the entirety" and "joint tenancy". In both cases the surviving spouse takes full title upon the death of the first spouse.

This creates a problem in the event of simultaneous death or where there have been multiple marriages. Using joint ownership to avoid probate may result in the ultimate inheritance of property or assets by persons other than those whom the decedent intended or desired.

Assets Titled with a Non-Spouse

These can be titled two different ways.

- **Joint with Rights of Survivorship:** This means survivor takes all. When individuals title their property this way, they need to make sure the other owner(s) is the person(s) they wish to inherit the subject property. This method is often used to avoid Probate Court. People are warned to be careful about using this as a probate avoidance strategy because lawsuits, liens, and divorces of the other owner(s) can impact all owners' interests.
- **Tenancy in Common:** This is more often used as if the owners have undivided interests in an asset. An easy example: several individuals choose to buy some vacant land. They title it this way so each person owns a percentage of the property as if it is in their sole name, which will pass to their heirs at death. Refer now to the rules for Assets Titled in Name Alone discussed previously in this section.

Significant questions that arise with these two options are:

- Is this what the person wants?
- Is the co-owner the intended recipient?
- What happens if a co-owner is sued?
- What happens if a co-owner divorces?
- What happens if the co-owner dies first?

Assets Titled in Trust

These assets generally transfer outside of probate and go directly to the intended recipients on whatever schedule the trust maker directs. Trusts can also avoid the pitfalls associated with joint ownership. Other benefits of Trusts include:

- Generally avoiding court supervision
- Maintain privacy (Wills are recorded with the court and are open to the public eye)
- Provide for control of assets during life and after death
- Allow tax benefits
- Possibly structured to take care of family

Business Ownership

A business can be set up as a sole proprietorship, meaning that the business is a legal extension of the sole proprietor or owner. Sole proprietors are liable for all business debts and other obligations the business might incur, and the proprietor's personal assets can be subject to the claims of the business' creditors. In addition to sole proprietorship, there are other types of business entities, such as partnerships, corporations, and limited liability companies. Each has advantages, disadvantages, and provisions for more than one owner. Each also has special rules and sub-categories specific to the entity.

There are many estate-planning tools that can be used to transfer a business, depending on whether the patient planned to retire from the business or keep it until death. Business succession planning generally considers both the continuity of the business and the minimization of adverse tax consequences. If there is time to pursue business succession planning, it will be necessary to consult a tax professional and an estate-planning attorney. If there is no opportunity for the patient to take action, it will still be important for the family to have a basic understanding of how the business structure will affect them and the patient's assets.

RETIREMENT ACCOUNTS AND PENSIONS

Discussing retirement accounts and pensions can be confusing because there are so many different kinds. Some are provided by an employer, in which case both current and past employers must be considered. Other types of retirement accounts are created by the individual. That individual may be an employee of a small or a large company, or even self-employed.

The emphasis at this point is to identify the patient's possible accounts and put things in order to care for him or herself or his or her family during illness and beyond. An important first step is to identify all possible accounts and resources. Be sure to include accounts from which the patient may be currently receiving benefits. Identifying the accounts and the resources may become a part of a larger focus to get the patient's entire estate plan in place. The patient, however, is often the best source of information. Gathering the information while the patient is able to help will in turn lighten the caretaker's or estate administrator's burden. It likely will simplify and speed up resources to the patient's loved ones. Let's break it down into categories:

- **Employer provided:** If the patient has ever worked for an employer who has put money aside in a profit sharing plan or a pension plan, there might be monies available. The patient should consider both current employers and former employers (including the military).
 - » *Former:* If a former employer provided a plan, inquire whether the patient took control of these funds as a result of the termination of employment. If the patient withdrew the entire share of plan assets or had the plan assets transferred to another type of retirement plan, no additional steps are necessary. If there is still an account balance, the steps are similar to any plan provided by a current employer (see below).
 - » *Current:* Does a current employer put money aside for its employees, including the patient? If so, the patient (or caretaker or advisor) will want to investigate the availability of these resources. Questions to ask would include what is available as a result of (a) disability, (b) retirement, and (c) death. Often a plan participant, the patient, will have the opportunity to name a beneficiary. The beneficiary designations should therefore be reviewed on each available plan to make sure it agrees with the patient's desire and/or estate plan.
- **Employee provided:** There are many other ways to create retirement accounts (including plans for self-employed individuals). Common retirement plan types include IRA's (traditional, non-traditional, and Roth), Keoghs, 401(k)'s, SIMPLE plans, SEPs and 403(b)'s. Many of these names are confusing unless there has been prior exposure. Patients most likely will know whether their employers allowed them to put money into some type of plan. At this point, the type is less important than knowing that the accounts are out there. Once a list of accounts has been created, a few key questions should be considered. The patient will want to know what benefits are available in the event of (a) disability, (b) retirement, or (c) death. These accounts also provide for designating beneficiaries and so the beneficiary designations should be reviewed for each and every account to ensure that they agree with the patient's desire and/or estate plan.

LIFE INSURANCE

It is important to review all beneficiary designations on policies to assure they are current and appropriate. It is important to know whether the patient is paying any premiums or receiving any benefits currently.

What Happens if Illness Hampers Ability to Pay Premiums?

If there is a waiver-of-premium benefit, life insurance premiums do not have to be paid during a period of disability. Some life insurance contracts automatically provide this waiver; most have it as an optional benefit. Even if the benefit is provided, there is a waiting period of six months during which premiums must be paid. If the waiting period ends and disability continues, premiums are waived retroactively.

How can Life Insurance be Used to Cover Expenses Related to the Terminal Illness?

It is best to consult a financial advisor before selling or surrendering parts or all of a life insurance policy. The dependents' needs for the life insurance benefit would be the major consideration.

- If a policy has accumulated a cash value over the years, a patient can borrow against it. Borrowed amounts must be paid back. If left outstanding, amounts owed plus interest are subtracted from the death benefit.
- The policy owner may surrender the policy and get a check for the cash value, ending all life insurance coverage thereafter.
- If there is an accelerated benefits rider, it can be used if there is less than one year to live. The insurance company pays a portion of the benefit to the patient, usually 25% up to a maximum dollar amount. At death, the balance is paid to the beneficiary. This may incur an administrative fee.

- A viatical settlement is a financial transaction in which a patient sells life insurance policy for cash while alive. The new owner, typically a viatical settlement broker, resumes premium payments and becomes the beneficiary. Companies usually offer about 60% of the face value of the policy, depending on the health of the patient.

Are Life Insurance Proceeds Income Taxable?

In general, life insurance proceeds are not taxable to the recipient/beneficiary if the contract meets certain Internal Revenue Service (IRS) requirements. Proceeds may be taxable in limited cases if proceeds are paid in installments with interest, since interest may then also be taxable. Proceeds may need to be included in Gross Household Income for purposes of determining some tax credits (e.g. homestead property tax credits).

If a policy is sold or transferred, the proceeds may be taxable to a certain extent. Federal income tax rules also vary with benefits paid before the insured's death, such as cash withdrawals, policy loans or dividends.

ESTATE PLANNING

An estate is usually considered to be the property of a decedent. This is the definition that is most appropriate in this booklet. For more technical considerations, an estate is considered the right title, or interest which a person has in any property, to be distinguished from the property itself, which is the subject matter of interest.

Is Estate Planning Only for the Rich?

No. Estate planning allows anyone to implement certain tools to ensure that financial concerns and goals are fulfilled after death. Goals may include providing for dependents, avoiding probate, or reducing estate taxes. It can also address issues arising from incapacity.

Estate planning may be as simple as implementing a Will (the cornerstone of any estate plan) or as complex as executing trusts and exploring sophisticated tax or estate planning techniques. Estate planning may be more important with a smaller estate because final expenses will have a greater impact.

Special Circumstances

Estate planning may also be important in the following cases:

- Minor or special-needs children
- Spouse is uncomfortable handling financial matters
- Property in more than one state or country
- Special property, such as artwork or collectibles

Probate Court

Probate is the court process of proving a decedent's Will and/or supervising the administration of a decedent's estate. Proceedings are initiated by someone who petitions the court.

If there is a Will, the petitioner must present it to the court. The court then watches over the executor/personal representative while he or she settles the estate. If there is no valid Will, the court appoints an administrator to settle the estate.

The process can take between three months and two years or longer if there is litigation. Probate also makes the Will a public document.

Probate court charges include court costs, publication costs for legal notices, attorney fees, executor fees, bond premiums, and appraisal fees. Total costs for probating an estate can range from \$250 to \$10,000 (or more if there is litigation). The estate pays the probate costs, thereby reducing the amount of money going to the heirs.

Wills

A Will is a written and legally enforceable declaration of a person's wishes regarding matters to be attended to after his or her death.

What if there is No Will?

Without a Will, there are no legal instructions about how property is to be distributed to heirs. In the absence of a Will, the state steps in and dictates how property will be distributed, following intestacy laws. A typical pattern, although it varies among states, is that half of the property goes to a spouse and half is split equally among the children.

The disadvantage of not having a Will is that the property may not be distributed according to the patient's wishes. Assets will be distributed based on state laws. In addition, special matters, such as who settles an estate or who takes care of minor children will also be decided by the state.

How to Prepare a Will

Legally, a Will may be prepared without an attorney. The patient may draft a Will, or a preprinted form may be purchased in an office supply store or obtained online. It is legally effective if the patient is 18 years or older, is mentally competent, and

executes it properly. Proper execution includes the step that the patient signs and acknowledges the Will in the presence of adult witnesses who will not benefit by anything under the Will.

There is a copy of a document created by the Michigan Legislature that includes a blank Michigan Statutory Will; access the Will here: <http://www.legislature.mi.gov/documents/publications/PeaceofMind.pdf>. This file also contains information about keeping personal records, medical and prescription records, advance directives, and organ donation.

Most people feel uncomfortable with a do-it-yourself Will. An experienced estate-planning attorney can help ensure that a patient's intentions are clearly communicated to avoid questions after the death. In addition, other special concerns trigger the need for an attorney:

- Minor children and/or children from a previous marriage
- Beneficiary with special needs
- Ownership of significant assets and the desire to minimize estate taxes
- Goals such as controlling the management and distribution of property after death
- Chance that the Will may be contested after death
- Desire for a specific asset (such as a collection) to go to a specific person
- Desire that heirs be disinherited

Disinheritance

Disinheritance is intentionally depriving someone who would otherwise be a rightful heir of receiving the estate. Typically heirs include a spouse, descendants, and possibly other relatives. In most non-community property states, such as Michigan, spouses who are disinherited under a decedent's Will may take legal action in an attempt to receive a portion of the estate.

Leaving a child out of a Will may not succeed in disinheriting that child. It is best to consult a competent advisor.

Living Trust

There is more than one type of "Trust." A living trust is a trust that becomes operative during the lifetime of the patient (as opposed to a "trust under will"). A patient may transfer property to a separate entity created to "own" that property, such as a house, boat, jewelry or mutual funds. The patient may name him or herself as trustee and someone else as successor trustee. At incapacitation or death, the successor trustee steps in to manage the property according to the terms of the trust agreement.

A living trust is revocable, that is, it generally can be changed while the patient is alive. Property may be removed from the trust, beneficiaries may be changed, or the trust may not be used any longer at all.

Aspects of a Living Trust:

- Allows the successor trustee to step in automatically at incapacitation as defined in the trust document
- Assets do not pass through the Will upon death
- Typically avoids guardianship court hearing upon incapacitation as defined in the trust document
- Assets are not part of the probate estate
 - » Assets may get to beneficiaries more quickly
 - » Terms of the trust are private

MEETING FINANCIAL NEEDS

Many patients and families experience a significant change in their financial situation as a result of the patient's incapacity and/or death. Meeting short-term and long-term expenses and commitments and achieving a sense of security may become problematic. Accessing resources, managing affairs and dealing with funeral expenses are all discussed in the following section. Some options may be more beneficial than others and the impact on the patient's and survivors' financial situation should be considered carefully.

WITHDRAWING FUNDS FROM AN INDIVIDUAL RETIREMENT ARRANGEMENT (IRA)

There are many restrictions placed on early withdrawal of funds from an Individual Retirement Arrangement. Normally a 10% penalty for withdrawal prior to age 59-1/2 is assessed, and there may still be tax on all or part of the distribution.

In the case of disability, however, the penalty may not apply. Subject to limits and conditions, distributions taken to pay for qualifying medical expenses or health insurance premiums while unemployed may be allowed.

It's not just escaping the penalty related to disability; it's also the planning opportunities available for taking distributions penalty-free. Seek advice from a competent tax advisor.

OTHER RESOURCES

Refer to the discussion beginning on page 9 for other possible resources on Retirement and Life Insurance

TAX DEDUCTIONS AND CREDITS FOR CAREGIVERS

Some expenses related to health care or caring for a chronically ill individual may be tax deductible for the caregiver. The expenses must be for the care of a chronically ill individual who needs help with at least two activities of daily living or requires substantial supervision to protect health and safety due to severe cognitive impairment. These expenses could include:

- Transportation to medical appointments
- Changes to a home or car for medical reasons
- Long term care insurance premiums
- Privately hired in-home health-care employees (seek the advice of a competent tax advisor on their employment status as contractor or employee and the related tax implications).
- Prescription drugs

Tax credits usually benefit low-income individuals and usually require the caregiver to live with the patient and to be employed outside of the home.

HOME OWNERSHIP

In the case of a patient who owns his or her own home, but is too ill to remain there alone, there may be options to help secure the necessary care. The patient may:

- **Stay at home** and rent out rooms in the rest of the house through a house-sharing arrangement. Provides income and possible tax advantage.
- **Rent out residence** and move to a relative's home or apartment. Provides income and possible tax advantage; however there may be tax implications to be considered
- **Sell the home** if the home is declining in value or neighborhood is unsafe
- **Exchange room and board** for care giving, although there may be problems with:
 - » Depreciating the room for tax purposes
 - » Enforcing obligation of caregiver
 - » Proving to IRS that care met requirement for health services
- **Pursue Reverse Equity Mortgage**, but upfront costs can be very high
- **Enter sale lease-back agreement** that allows patient to sell the home but remain as a lifetime tenant. Drawbacks include:
 - » Increasing legal complexity
 - » Impact on Medicaid eligibility
 - » Elimination of benefit from gain in property value (long term)

- » Loss of principal residence exemption resulting in increased property taxes

SUPPLEMENTAL SECURITY INCOME - SSI

As a cash assistance program of last resort, a patient must file for all other possible benefits first, including Social Security. If a patient is receiving social security, but has limited income and resources, SSI may be available.

- Maximum monthly payments are \$721 per person or \$1,082 per couple
- Patient must be a U.S. citizen, although some lawful non-citizens may qualify
- Countable assets do not include a home (if the individual is living in the home) and one motor vehicle
- Assets such as bank accounts, stocks, and bonds may not exceed \$2,000 for an unmarried individual or \$3,000 for a married couple
- Illness must be severe and anticipated to either result in death or last twelve months or more.
- If eligible for SSI, patient will usually qualify for Medicaid and food stamps
- Contact: <http://www.socialsecurity.gov> or 1-800-772-1213

MEDICAID

Medicaid is a program that pays for medical assistance for certain individuals and families with low incomes and minimal resources. This program is jointly funded by the federal and state governments to assist states in providing medical long-term care assistance to people who meet certain eligibility criteria. Medicaid is the largest source of funding for medical and health-related services for people with limited income.

Although patients may have substantial assets, they may still qualify for Medicaid if they give those assets away or hold them in certain types of trusts. This is because assets that are inaccessible to a patient are not counted for Medicaid purposes. However, although a proper transfer of assets will preserve those assets for a patient's loved ones, the transfer may also create a period of ineligibility before a patient can collect Medicaid. Caution is advised with any asset transfer, since federal legislation exists that prohibits transfers specifically to qualify for Medicaid.

The rules surrounding Medicaid eligibility are complex, and one should consult an attorney who specializes in Medicaid law before such transfers.

Contact:

http://www.michigan.gov/mdch/0,4612,7-132-2943_4860---,00.html Or

Michigan Department of Community Mental Health

Capitol View Building

201 Townsend Street

Lansing, MI 48913

Michigan Medicare and Medicaid Assistance Program (MMAP) offer free counseling and education on Medicare and Medicaid benefits, at 800-803-7174 or learn more at mmapinc.org.

MEDICARE

Medicare is health insurance for people age 65 and older and people with disabilities. Medicare includes:

- Medicare Hospital Insurance (Part A) pays for inpatient hospital and certain follow-up services. Eligibility includes:
 - » 65 years and older or
 - » Eligible for Social Security, Railroad Retirement benefits, or government employees who pay Medicare tax, or
 - » Receiving Social Security benefits for 24 months
- Medicare Medical Insurance (Part B) pays for doctors' services, outpatient hospital and other medical services. Eligibility includes:
 - » Qualification for Part A and
 - » Purchase of the benefit for approximately \$104.90 per month, as of 2014
 - » Medicare Advantage (Part C) plans are purchased in addition to original Medicare and offer additional coverage. Plans are offered by private companies and vary in price.
 - » Medicare Prescription Drug Plan (Part D) add prescription drug coverage to original Medicare, costs vary.

Michigan Medicare and Medicaid Assistance Program (MMAP) offers free counseling and education on Medicare and Medicaid benefits at 800-803-7174. (mmapinc.org)

MEDICARE HOSPICE BENEFIT

Medicare and Medicaid

Both Medicare and Medicaid have a hospice benefit and between them cover over 90% of the patients receiving hospice care in Michigan. Hospice care insurance pays for everything related to the terminal illness. Medicare gives hospices the option of charging patients 5% of the cost of any drugs up to a \$5 maximum. Hospices may also charge a 5% co-insurance on the cost of inpatient respite care.

Other Insurance/No Insurance

Of course, other insurances, both HMO's and PPO's, as well as private insurance plans, may reimburse for hospice care. The plan should be checked for details about exact coverage of service. For patients without insurance, there is the option of private pay. For those who cannot afford that, hospices espouse the value of providing care to patients regardless of ability to pay. Fundraising efforts are conducted to defray some of that expense.

Health Insurance Marketplace

SOCIAL SECURITY DISABILITY (SSD) BENEFITS

Social Security pays benefits to people who cannot work because they have a severe medical condition which is anticipated to either result in death or last 12 months or more. Eligibility depends on the patients having sufficient FICA work credits.

Benefits do not begin until the sixth month of disability. The initial decision can take up to five months; however, if death is expected and the Social Security Administration (SSA) is alerted, the claim can be given expedited handling. The claim can be given a special designation called a TERI case, which indicates a terminal illness. The Social Security Administration should be alerted if the claim is a TERI case.

The five-step process used by the Social Security Administration to determine eligibility includes the following questions:

1. Is the patient working?
 - » Monthly earning must be below \$1000 per month
2. Is the medical condition severe?
3. Does the medical condition fall within the requirements of the list of impairments?
 - » SSA has a list that describes conditions that automatically qualify
 - » If NOT, the SSA goes to the next step
4. Can the patient do the work he or she did before?
5. Can the patient do any other type of work that is substantial and gainful?

There may be SSD benefits payable to the family in certain situations.

Contact:

- Apply online at <http://www.socialsecurity.gov> or call 1-800-772-1213. Interview appointments can be made, or the interview can be done by phone, and lasts about one hour.
- Disability Starter Kit is mailed for scheduled appointments, or can be downloaded at <http://www.socialsecurity.gov/disability>.

VETERAN'S BENEFITS

The Department of Veterans Affairs (VA) administers a wide array of benefits for veterans with honorable or general discharge. There are some benefits available for those with dishonorable or bad conduct discharges as well. Certain benefits require wartime service. Eligibility depends upon individual circumstances.

General Benefits

- VA Home page: <http://www.va.gov>
- Education Benefits: 888-442-4551; <http://www.gibill.va.gov/>
- Home Loan Guarantees: <http://www.benefits.va.gov/homeloans/>
- Income Verification and Means Testing: 800-929-8387
- Military records: <http://www.archives.gov/index.html>
- Spanish version: <http://www.archives.gov/espanol/>

Healthcare Services

- Hospital, outpatient medical, dental, pharmacy and prosthetic services
- Domiciliary, nursing home and community based residential care
- Sexual trauma counseling
- Health programs for homeless veterans
- Alcohol and drug dependency treatment

Contact Health Benefits Service Center:

877-222-VETS or <http://www.va.gov/healthbenefits/apply/>

Pension

Veterans with low incomes who are permanently and totally disabled or are age 65 and older may be eligible for monetary support if they have 90 days or more of active military service, at least one day of which was during a period of war.

Contact: Compensation & Pension: <http://www.vba.va.gov/bln/21>

Life Insurance

There are eight life insurance programs; only four are open to new enrollees. Two of these are specifically designed for disabled veterans. The other two "open" programs are Service Members Group Life Insurance and Veterans Group Life Insurance.

The VA Life Insurance Office has specialists available between 8:30 a.m. and 6:00 p.m. eastern standard time (EST) to discuss premium payments, insurance dividends, address changes, policy loans, naming beneficiaries, and reports of the death of an insured at: 800-669-8477. The website is also helpful: <http://www.insurance.va.gov>.

Funeral and Burial

- Burial in National Cemeteries

- » Limited by available space
- » Gravesites cannot be reserved, but reservations under previous programs will be honored
- » Two cemeteries in Michigan, both have space:
 - Fort Custer National, Augusta, Michigan (269) 731-4164
 - Great Lakes National, Holly, Michigan 248-328-0386
- Headstones and Markers
 - » May be furnished by government, inscription is regulated
 - » In national cemetery, marker
 - must be consistent with other markers
 - is ordered through cemetery
 - » If burial is in private cemetery, application is made to VA
 - » Information and application instructions: <http://www.cem.va.gov/>
 - » Headstone and Marker Status: 800-697-6947
- Presidential Memorial Certificates
 - » To recognize honorably discharged deceased veterans
 - » Next of kin, relatives, or friends may request at any local office or by mail at Presidential Memorial Certificate (41A1C), Department of Veteran Affairs, 5109 Russell Road, Quantico, VA 22134-3903
 - » No pre-printed form or time limit
 - » Need copy (not original) of discharge document and address to send certificate
 - » Sample and information at: <http://www.cem.va.gov/pmc.asp>
- Burial Flag
 - » Available if decedent served during wartime or after 1954
- Reimbursement of Burial Expenses
 - » Available, based on service-connected death and financial need
- Military Funeral Honors
 - » Department of Defense will provide upon request
 - » Includes folding of flag, two or more uniformed armed service personnel, and a bugler or electronic device playing Taps
 - » National cemetery staff can arrange
 - » Funeral director should request if interment is in private cemetery
 - » Contact: 1-877-MIL-HONR or <https://www.dmdc.osd.mil/mfh/>

Hospice Care for Veterans

Both the Veterans Administration and the Social Security Administration provide comprehensive programs that cover large populations. Refer to the VA to determine your eligibility.

DEBT AND CREDIT MANAGEMENT

The introduction of terminal illness into a family system or household can cause many types of changes, including those in the financial position. The issues of medical expenses, loss of income, and an uncertain future can combine to weigh heavily on

the patient or family. In addition to the typical social work responsibility of linking the family to available community resources for both long-term and emergency relief, there may be other needs.

Caregivers or the bereaved, who are newly thrust into the role of money manager for the household, or those who are overwhelmed by these life changes, are vulnerable to slip into trouble with debt. Living on credit can become a way of life, but for many it leads to chronic debt problems. The following is some basic information to help assess for potential danger and some basic guidelines for managing credit.

“Debt Trap” danger signs:

- You charge purchases you don’t really need
- You purchase items with minimum down payments
- You take cash advances on credit cards
- You find yourself borrowing more and more money from family and friends
- You use your cash reserves to pay bills
- You receive new bills before old ones are paid
- You reach or exceed your credit limit

Escaping the “Debt Trap”:

1. Know exactly where the money is going by tracking spending for at least three months.
 - Does more money go to clothes, entertainment, or luxury items than necessary?
 - If more than 15% of your after-tax income is going to credit payments, be firm about following a debt-management plan.
2. Start reducing debt.
 - Set definable goals. Establish rules that will help reach those goals, such as “reduce expensive, impulsive purchases.”
 - Maintain your strategy.
3. Use credit as a last resort.
4. Pay back what you owe.
 - Don’t borrow to pay off other debts since this method usually fails.

In certain situations, credit is necessary, and if properly controlled, can help achieve financial freedom. For example, borrowing money to buy a home may be a wise use of credit.

Controlling a Credit Card:

- Know the terms of the card, including annual percentage rates (APR), annual fees, and grace periods.
- Avoid cards that charge unreasonable late payment fees, high cash-advance charges and over-limit penalties.
- If you consistently carry a balance on your card, choose one with a low interest rate.
- If you pay your balance in full every month, select one with a low annual fee.
- Know the method used to calculate interest:
 - » **Adjusted balance** - The interest charged is based on the amount you owe after subtracting your payment from the previous balance. This method is the least expensive.
 - » **Previous balance** - This method is the most costly since you receive no credit for payments made during the last billing period. Instead, you are charged interest on your previous balance at the end of the month.
 - » **Average daily balance** - Your balances for each day in the billing period are added together. The total is then divided by the number of days in the billing period.

Debt and Credit Management

Contact the patient’s bank, credit union, or credit card companies to find out if the patient’s accounts are set up with automatic withdrawal for services such as utility bills, health club, gym membership, cable TV, or Internet. This will be the easiest way of canceling all withdrawals.

Repairing Poor Credit

Whether a caregiver or bereaved family member has a long or relatively short history of financial troubles, turning things around to achieve solvency or security is difficult. Anyone trying to dig out of debt and establish a sound financial situation will not only have to change habits or circumstances, they will have to assure outsiders that they are reliable and stable in their business interactions. Here are some guidelines you may share with your clients as they try to repair poor credit reports. This information may also be helpful for people trying to complete the comprehensive list of liabilities (see page 1.)

- Obtain a credit report from Annual Credit Report at <http://www.annualcreditreport.com>.
 - » Central site allows request of a free credit file disclosure (credit report.)
 - Available once every 12 months from each of the nationwide consumer credit reporting companies
- Should include all recorded outstanding debts, loans and mortgages.
 - » Check the report carefully for any errors and make sure that all the information contained in the report is correct.
 - » You may also obtain a credit report, for a fee, by contacting these agencies by phone, fax, or website
 - Equifax - <http://www.equifax.com>
 - Experian - <http://www.experian.com>
 - TransUnion - <http://www.transunion.com>
- Mitigate the impact of derogatory credit by adding positive account information to the credit file.
 - » Contact creditors where there is a good credit relationship and give them permission to release account information to credit reporting agencies.
 - » Contact the credit reporting agencies and provide them with names and telephone numbers of the creditors with whom credit is good.
 - » For a small fee, most credit reporting agencies will call creditors and add the positive account information to your file.
- Account has been reconciled
 - » Go directly to your creditors and try to clear credit record.
 - » If poor credit resulted from circumstances that were beyond control, such as hospitalization or medical expenses, and account has been reconciled, creditors may be convinced to upgrade rating.
- Bad debts are current
 - » May be able to negotiate away poor credit by agreeing to pay off debts over a period of time.
 - » Contact creditors and propose a reasonable repayment schedule if they agree to upgrade status with the credit bureau.
- Add a statement to your credit report that tells the story. One has the right to include a 100-word statement in credit file.
 - » The statement should list any extenuating circumstances that could possibly mitigate negative credit information in credit report.
 - » Explain an isolated instance or period of derogatory credit.

FUNERAL COSTS, SERVICES AND PRODUCTS

Finances surrounding funerals and final arrangements can be a source of great concern for some. Funerals rank among the most expensive purchases many consumers will ever make. Many consumers want to compare prices and services so that ultimately, the funeral reflects a wise and well-informed purchasing decision, as well as a meaningful one. Here are some guidelines to assist with this work.

Pre-Need and Planning

An increasing number of people are planning their own funerals, designating their funeral preferences, and sometimes even paying for them in advance. They see funeral planning as an extension of Will and estate planning.

- Arrangements can be made with a funeral establishment or through a funeral planning or memorial society.
- Decisions should include where the remains will be buried, scattered, or entombed.
- Buying family plots in advance avoids rushed decisions about a cemetery at time of death.
- Put preferences in writing; give copies to family members and attorney.
 - » Don't put them in the Will (often not read until after the funeral)
 - » Don't put them in safe deposit box, may not be accessible after business hours

Prepayment

Inform family about any plans and inform them about document location. Be sure the family knows whether something has been prepaid so that it is not paid again at time of death. Consider the following before putting any money down:

- What are you are paying for? Are you buying only merchandise, like a casket and vault, or are you purchasing funeral services as well?
- What happens to the money you've prepaid? States have different requirements for handling funds paid for prearranged funeral services.
- What happens to the interest income on money that is prepaid and put into a trust account?
- Are you protected if the firm you dealt with goes out of business?
- Can you cancel the contract and get a full refund if you change your mind?
- What happens if you move to a different area or die while away from home? Some prepaid funeral plans can be transferred, but often at an added cost.

The Funeral Rule

The Funeral Rule, enforced by the Federal Trade Commission, requires funeral directors to give you itemized prices in person and, if you ask, over the phone. The Rule also requires funeral directors to give you other information about their goods and services.

CHOOSING A FUNERAL PROVIDER

Many people don't realize that they are not legally required to use a funeral home to plan and conduct a funeral. Many people, however, find the services of a professional funeral home to be a comfort.

Consumers often select a funeral home or cemetery because it's close to home, has served the family in the past, or has been recommended by someone they trust. But people who limit their search to just one funeral home may risk paying more than necessary for the funeral or narrowing their choice of goods and services.

If you visit a funeral home in person, the funeral provider is required by law to give you a general price list itemizing the cost of the items and services the home offers. If the general price list does not include specific prices of caskets or outer burial containers, the law requires the funeral director to show you the price lists for those items before showing you the items.

Sometimes it's more convenient and less stressful to "price shop" funeral homes by telephone. The Funeral Rule requires funeral directors to provide price information over the phone to any caller who asks for it. In addition, many funeral homes are happy to mail you their price lists, although the law does not require that.

When comparing prices, be sure to consider the total cost of all the items together, in addition to the costs of single items. Every funeral home should have price lists that include all the items essential for the different types of arrangements it offers. Many funeral homes offer package funerals that may cost less than purchasing individual items or services. Law permits offering package funerals, as long as an itemized price list also is provided. But only by using the price lists can you accurately compare total costs.

TYPES OF FUNERALS

Traditional, full-service funeral

This type of funeral usually includes a viewing or visitation and formal funeral service, use of a hearse to transport the body to the funeral site and cemetery, and burial, entombment, or cremation of the remains.

It is generally the most expensive type of funeral. In addition to the funeral home's basic services fee, costs often include embalming and dressing the body; rental of the funeral home for the viewing or service; and use of vehicles to transport the family if they don't use their own. The costs of a casket, cemetery plot or crypt and other funeral goods and services also must be factored in.

Modified Traditional Funeral

A scaled-down version of the traditional funeral is becoming more popular in Michigan. Several funeral homes may participate in a consortium to offer a service that differs from the "full-service" funeral in three significant ways. This service features:

- » One hour viewing with an embalmed casketed body at the location of choice, such as park, fraternal hall or private home
- » Arrangements completed with funeral director at location of choice outside of funeral home, i.e. own home or church
- » Reduced costs on caskets and services that are chosen from a catalog rather than the funeral home show room

Participating funeral homes prefer to get referrals for this product through a general consortium phone number as opposed to exposing their established "full service" families to a lower end product. Customers are directed to the closest participating establishment. The target customers are those who may prefer not to enter a funeral home at all.

Direct burial

The body is buried shortly after death, usually in a simple container. No viewing or visitation is involved, so no embalming is necessary. A memorial service may be held at the graveside or later. Direct burial usually costs less than the traditional, full-service funeral. Additionally, options for "green funerals" are time sensitive. Costs include the funeral home's basic services fee, as well as transportation and care of the body, the purchase of a casket or burial container and a cemetery plot or crypt. If the family chooses to be at the cemetery for the burial, the funeral home often charges an additional fee for a graveside service.

Direct cremation

The body is cremated shortly after death, without embalming. The cremated remains are placed in an urn or other container. No viewing or visitation is involved, although a memorial service may be held, with or without the cremated remains present. The remains can be kept in the home, buried or placed in a crypt or niche in a cemetery, or buried or scattered in a favorite spot. Direct cremation usually costs less than the traditional, full-service funeral. Costs include the funeral home's basic services fee, as well as transportation and care of the body. A crematory fee may be included or, if the funeral home does not own the crematory, the fee may be added on. There also will be a charge for an urn or other container. The cost of a cemetery plot or crypt is included only if the remains are buried or entombed.

Funeral providers who offer direct cremations also must offer to provide an alternative container that can be used in place of a casket.

FUNERAL COSTS

According to the Funeral Rule, if state or local law requires you to buy any particular item, the funeral provider must disclose it on the price list, with a reference to the specific law. Funeral costs include:

1. Basic services fee for the funeral director and staff

The Funeral Rule allows funeral providers to charge a basic services fee that customers cannot decline to pay. The basic services fee includes services that are common to all funerals, regardless of the specific arrangement. These include funeral planning, securing the necessary permits and copies of death certificates, preparing the notices, sheltering the remains, and coordinating the arrangements with the cemetery, crematory or other third parties. The fee does not include charges for optional services or merchandise.

2. Charges for other services and merchandise

These are costs for optional goods and services such as transporting the remains; embalming and other preparation; use of the funeral home for the viewing, ceremony or memorial service; use of equipment and staff for a graveside service; use of a hearse or limousine; a casket, outer burial container, or alternate container; and cremation or interment.

3. Cash advances

These are fees charged by the funeral home for goods and services it buys from outside vendors on your behalf, including flowers, obituary notices, pallbearers, officiating clergy, and organists and soloists. Some funeral providers charge you their cost for the items they buy on your behalf. Others add a service fee to their cost. The Funeral Rule requires those who charge an extra fee to disclose that fact in writing, although it doesn't require them to specify the amount of their markup. The Rule also requires funeral providers to tell you if there are refunds, discounts, or rebates from the supplier on any cash advance item.

SERVICES AND PRODUCTS

Embalming

Many funeral homes require embalming if you are planning a viewing or visitation. But embalming generally is not necessary or legally required if the body is buried or cremated shortly after death. Eliminating this service can save you hundreds of dollars.

Under the Funeral Rule, a funeral provider:

- May not provide embalming services without permission;
- May not falsely state that law requires embalming;
- Must disclose in writing that embalming is not required by law, except in certain special cases;
- May not charge a fee for unauthorized embalming unless embalming is required by state law;
- Must disclose in writing that you usually have the right to choose a disposition, such as direct cremation or immediate burial, that does not require embalming if you do not want this service; and
- Must disclose in writing that some funeral arrangements, such as a funeral with viewing, may make embalming a practical necessity and, if so, a required purchase.

Caskets

Caskets are the single most expensive item in a traditional, full-service funeral. Here are some facts about caskets:

- Usually made of wood, metal, fiberboard, fiberglass or plastic
- Range is usually above \$2,000, can be up to \$10,000
- Funeral Rule requires director to show consumer a list of caskets with prices and descriptions BEFORE showing the casket
- Funeral directors will usually show more costly caskets, knowing consumers usually buy the casket priced in the middle. It is a good idea to ask to see lower end.
- Third party dealers are selling caskets more frequently. Funeral Rule requires director to accommodate use of a casket purchased elsewhere without an extra fee.

Cremation

Many funeral homes rent a casket for the visitation and funeral if a body is to be cremated. Rental can eliminate the cost of purchase of a casket.

A direct cremation has no viewing or other ceremony with the body present. A funeral provider must offer an inexpensive unfinished wood box or alternative container, a non-metal enclosure - pressboard, cardboard or canvas - that is cremated with the body.

Under the Funeral Rule, funeral directors who offer direct cremations:

- May not tell a consumer that state or local law requires a casket for direct cremations, because none do;
- Must disclose in writing a consumer's right to buy an unfinished wood box or an alternative container for a direct cremation; and
- Must make available an unfinished wood box or other alternative container, a non-metal enclosure - pressboard, cardboard or canvas that is cremated with the body.

Outer Burial Containers

Burial vaults or grave liners, are commonly used in "traditional," full-service funerals. The vault or liner is placed in the ground before burial, and the casket is lowered into it at burial. The purpose is to prevent the ground from caving in as the casket deteriorates over time.

- A grave liner is made of reinforced concrete and will satisfy any cemetery requirement. Grave liners cover only the top and sides of the casket.
- A burial vault is more substantial and expensive than a grave liner. It surrounds the casket in concrete or another material and may be sold with a warranty of protective strength.
- State laws do not require a vault or liner, and funeral providers may say otherwise. Many cemeteries, however, require some type of outer burial container to prevent the grave from sinking in the future.
- A funeral provider is required to provide a list of prices and descriptions before showing any outer burial containers. It may be less expensive to purchase from a third-party dealer than from a funeral home or cemetery.

Cemetery Sites

The FTC's Funeral Rule does not cover cemeteries and mausoleums unless they sell both funeral goods and funeral services. If the patient was a veteran. In working with patients or family members considering the purchase of a cemetery plot, here are some things to consider:

- Location
 - Requirements of family's religion
 - What restriction a cemetery places on burial vaults purchased elsewhere
 - Type of monument or memorial allowed
 - Whether flowers or other remembrances may be placed on grave
 - Most, but not all, cemeteries require purchase of a grave liner, costing several hundred dollars.
 - There are charges - usually hundreds of dollars - to open a grave for interment and additional charges to fill it in.
 - Perpetual care on a cemetery plot is sometimes included in the purchase price. If not, look for a separate endowment care fee for maintenance and grounds keeping.
 - If planning to bury cremated remains in a mausoleum or columbarium, costs may include purchase of a crypt, opening and closing fees, and charges for endowment care and other services.
-

SURVIVOR'S ISSUES

SURVIVOR'S ISSUES

This section lists some of the issues related to financial affairs facing survivors after the death of a patient. Some issues are immediate or short-term; some may arise months or even a year or more after the patient's death. Some of these issues listed below can be taken care of by the survivors. However, given the complexity of some of these items, you should discuss the below issues with a professional (CPA and / or attorney) and the Social Security Agency and Veterans Administration (if applicable). These suggested timeframes are meant only as guidelines to help a bereaved person set some priorities when the number of required tasks may seem overwhelming.

The section on Assessment Tools (see page 1) mentions the Comprehensive List of Assets and the Comprehensive List of Liabilities. Even if these worksheets were not completed prior to the death, they can be used as tools to organize after the death. Also refer to the Instruction Sheet for additional guidelines about compiling necessary documents.

TIMELINE AND CHECK LIST OF TASKS TO BE REVIEWED WITH PROFESSIONAL OR AGENCY

Immediately After Death

Survivor

- Arrange for care of minors
- Arrange for care of pets
- Arrange for perishable food, plants, and disposables
- Arrange for security of the patient's home, car, motor home, property or business
- Make funeral arrangements (see Funeral Section, page 17)
- Set up a web-based, phone and mail system to track interactions for the items listed in this section
- Avoid the following:
 - » Don't think about moving from current home until decision is based on reason and not emotion
 - » Don't spend money impulsively
 - » Don't cave in to pressure to sell or give away the patient's possessions
 - » Don't give or lend money to others without reviewing finances first
- **Do not cash any social security checks received during the month of death. According to the Social Security Administration these funds are legally required to be returned. If monthly amounts have been received and deposited, see actions listed in "Within Two Weeks".**

Within Two Weeks

Survivor

- Find the Will or letter of instruction, if any
- Advise personal representative or executor of death
- Locate all important documents (see Appendix: Patient/Family Worksheets which include listing of Assets and Listing of All Liabilities worksheets)
- Survivor call to arrange a meeting with CPA and personal representative to discuss potential questions and open issues regarding tax issues, retirement plan issues and other tax and accounting implications.
- Survivor call to arrange a meeting with attorney and personal representative to discuss potential questions and open issues in regards to the estate.

- Contact SSA and make arrangements to return any funds received and deposited manually or by electronic deposit during the month that the patient died. (May want to include the form from SSA as an attachment to provide for this).
- Contact Internet/cable provider to change or disconnect service
- Contact Veteran's Administration and set meeting to discuss survivor benefits (if applicable)
- Contact post office to change mail delivery as necessary
- Obtain bill for last illness from hospital
- Reconcile bills with payment from insurance carriers prior to paying bills and other medical providers, such as physicians, labs, durable medical equipment, home healthcare and hospice.
- Cancel or redirect newspapers, subscriptions and other home deliveries
- Be aware of insurance payments and property taxes due on any of patient's property

Items to consider discussing with CPA or Attorney or agencies:

- Notify life insurance companies of death and request claim form
- If there is mortgage insurance on a home, notify insurance company
- Contact creditors who are demanding payment and notify of death (this may be an issue to discuss specifically with the attorney, especially if the creditors are creditors of a business). Do not pay any bills except those needed to maintain value of the assets of the estate at this time (see below "Within One Month").
- Cancel credit cards on which patient was the only signer
- Notify all other credit card companies
- Consult with CPA and/or attorney before requesting distribution of retirement benefits. There may be significant tax and estate ramifications for decisions made in this area.
- If there is a debt crunch and you expect money from an insurance or estate settlement:
 - You may be able to get a cash advance from the life insurance company
 - You may be able to take out a cash advance from a credit card (this option should be used with great caution)
 - You may be able to negotiate with creditors to postpone payment for 30 days. You may be able to negotiate with creditors, but make sure to get competent advice **before** communication.

Within One Month

Survivor

- If not already accomplished, notify Social Security, Medicare etc.
- Finish gathering and organizing financial documents
- Change titles on automobile held in joint tenancy
- Change title on stocks, bonds, etc. held in joint tenancy
- Investigate whether any debts are covered by credit life insurance

If illness was of short duration, notify the patient's employer and talk to the employee benefits office. Find out about last paycheck, company life insurance, pension benefits, money in deferred compensation, or profit sharing accounts.

Do not use any proceeds from personal insurance proceeds to pay off any personal or business obligations without first discussing with a CPA or attorney advisor.

Items to consider discussing with CPA or Attorney or agencies:

Certified Public Accountant

- Change title on property. If trust is involved, consult a competent advisor.
- Do not pay off patient's debts or make partial distributions of the principal until discussed with attorney and/or executor. Do not begin to pay off estate debt or liquidate assets until discussed with attorney and/or executor. Discuss at the beginning of the process.
- Obtain valuations of assets as appropriate
- Evaluate business and partnership obligations (e.g., was there a business continuation plan or purchase arrangement in place) Work with attorney or CPA advisor to begin review and to proceed with existing plan.

Discuss use of any proceeds from personal insurance or use of personal insurance proceeds to pay off any personal or business obligations.

If self-employed individual or partner in a business where no continuation plan or purchase agreement was in place, contact CPA or attorney advisor to discuss alternatives in order to proceed with plans in order to preserve business value until ownership is either transferred or the business is closed and assets liquidated.

Attorney

- Change title on property. If trust is involved, consult a competent advisor.
- Do not pay off patient's debts or make partial distributions of the principal until discussed with attorney and/or executor. Do not begin to pay off estate debt or liquidate assets until discussed with attorney and/or executor. Discuss at the beginning of the process.
- Obtain valuations of assets as appropriate
- Evaluate business and partnership obligations (e.g., was there a business continuation plan or purchase arrangement in place). Work with attorney or CPA advisor to begin review and to proceed with existing plan.

If self-employed individual or partner in a business where no continuation plan or purchase agreement was in place, contact CPA or attorney advisor to discuss alternatives in order to proceed with plans in order to preserve business value until ownership is either transferred or the business is closed and assets liquidated.

Underway after Two Months

- If trust is involved, arrange for allocations or transfers
- Arrange for final personal income tax return, fiduciary income tax return, and estate tax return
- Follow up with any business mentioned in the above lists in which an agency or individual has delayed response or action

SOCIAL SECURITY SURVIVOR'S BENEFITS

The number of credits needed for survivors depends on the patient's age at death. No one needs more than 40 credits (10 years of work) and under a special rule, children and the spouse caring for them can receive benefits for 6 credits of work in 13 quarters prior to death. The following rules are general; exceptions are complicated and will require individual review.

Widows or widowers can collect benefits if he or she is:

- 60 or older
- 50 or older and disabled
- Any age if caring for the patient's child who is younger than 16 or disabled and receiving Social Security benefits

Children can receive benefits if they are unmarried and:

- Younger than 18 or
- Between 18 and 19 but in elementary or secondary school full time
- Age 18 or older and severely disabled (disability started before 22 years old)

Parents can receive benefits if they were dependent upon patient for at least half of their support.

The Social Security Administration will want the following documents:

- Proof of death (death certificate or funeral home notice)
- Survivor's Social Security number as well as the patient's
- Survivor's birth certificate
- Marriage certificate if a spouse
- Divorce papers if applicable
- Patient's children's social security numbers if available
- Patient's W-2 forms or federal self-employment tax return for most recent year
- Name of survivor's bank, as well as account number, for direct deposit

LIFE INSURANCE BENEFITS

It is necessary to determine how the death benefit of a life insurance policy will be paid out. Frequently, lump-sum payments are taken, an option that is not taxable. Usually the beneficiary has the ability to choose payment options.

CAUTION: It is EXTREMELY important to consider the options of any distributions and their tax implications. Before making any decisions on these options, seek the assistance of a competent CPA or attorney. It is important, also, that the option you select is appropriate for your family situation. Evaluate options in light of what the family's needs and objectives are going to be. As a result, it might be prudent to delay making a decision for a period of time.

Among the common options:

- **Interest option**, where company retains the proceeds and pays only the interest earned to beneficiary at regular intervals
- **Fixed period options**, where company pays proceeds together with interest at regular intervals for fixed period of time
- **Fixed-amount option**, where benefits are paid in fixed amounts at regular intervals until the proceeds and interest are depleted
- **Annuity option**, where proceeds and interest are used to provide regular payments to the beneficiary for the remainder of his or her life
- **Lump sum**, where the company pays the total amount of the benefit in one single payment at the death of the insured

RETIREMENT ACCOUNTS

Many individuals may have named their spouse or other family members as beneficiaries of their retirement accounts. These retirement accounts may consist of IRAs, Roth IRAs, 401K, 403B, 457 or other tax qualified or pension benefits. **CAUTION: It is EXTREMELY important to consider the tax implications of any distributions. Seek the assistance of a competent advisor.**

Unlike insurance proceeds, any benefit received from tax-qualified retirement accounts is taxable at the beneficiaries' tax rates. Consequently, it is extremely important to understand the tax implications of the specific tax situation. This is also a good opportunity to perform additional post-mortem tax planning and take advantage of excellent tax-planning opportunities

(e.g., beneficiary IRAs to preserve the valuable "tax-deferred" asset status that a survivor may otherwise lose and never regain).

OTHER BENEFITS

If the patient was a former federal, state, or local government worker, contact the Federal Employment Retirement System (FERS) or the local organization that coordinates benefits for employees.

If the patient was a veteran, contact the Department of Veterans Affairs for possible benefits (see page 13).

TAX STATUS

Tax returns and filing status will be issues for a survivor after the end of the year in which the patient died. Here are some guidelines for this process (which are more likely to be confronted by grief support or bereavement staff than by social work case managers.) For the survivor, it is essential to work with the personal representative, and it may be necessary to work with a tax consultant (the assistance of a competent advisor is strongly suggested).

A surviving spouse has several filing choices that may be appropriate:

- Married filing jointly. Can file a joint return for the year the spouse died, as long as the survivor has not remarried before the end of the year in which the death occurred. In the case of remarriage within the calendar year of death, the decedent's return must still be filed. Seek advice from a competent tax preparer.
 - » Usually have to file in cooperation with personal representative, executor or administrator of estate (which may be the same person)
 - » If no personal representative is appointed:
 - Write name of decedent and spouse, address, and Social Security Number in space at top of tax form
 - Sign return
 - In space for patient's signature, write "Filing as Surviving Spouse"
 - » If personal representative is appointed
 - He or she must sign the form
 - Surviving spouse must sign the form
- Married filing separately.
 - » Figure taxes both jointly and separately and use most advantageous
 - » Write decedent's name on his or her tax form
 - » Write personal representative's name and address in the remaining space
 - » Personal representative must sign that form
- Qualifying widow(er).
 - » Have to meet certain criteria
 - E.g. Support a dependent child
 - E.g. Have not remarried
 - » Allows the joint return status for each of TWO years after death of spouse
- Head of household.
 - » If unable to qualify for above and
 - » Provide support for a relative and meet several conditions

PLANNING FOR SURVIVORS

The issues of tracking assets and liabilities, adjusting to altered sources of revenue, care of dependents, managing financial affairs, preserving the value of a small business and accessing available resources and benefits may shift, after death, to one or more loved ones. This booklet contains the framework and structure to accomplish this shift, even though the focus of the material is no longer a "patient." The urgency of impending death may be absent, but it is frequently replaced by the burden of

being thrust into a new and unfamiliar role in managing finances as family members and loved ones seek information, reassurance and security in the months and years after the death of the patient.

Bereavement may impact financial decisions you make following the death of a loved one. Hospice programs in your community are required by regulation to provide bereavement and grief support counseling to persons suffering emotional or psychological difficulty as they try to cope with the loss of a loved one, even if these problems only show themselves weeks or months later. Although these services are provided automatically to families and caregivers of persons enrolled in hospice, non-profit hospices make these services available at no charge to bereaved persons whose loved one did not select hospice care, as part of their community benefit covenant.

For more information on bereavement and grief support, or more general information about hospice programs in your area, check the Hospice of Michigan website at www.hom.org or that of the Michigan Hospice and Palliative Care Organization at <http://www.mihospice.org/>. Continuing ongoing grief support groups are available in many communities.

RESOURCES

Competent Advisor: An attorney, certified public accountant, financial planner or insurance agent that has specific knowledge, experience and credentials in the topics for which you are requesting advice.

The material contained in this booklet is designed to introduce some basic and fundamental topics related to managing financial affairs at the end of life. These topics can be fairly dense and complex, and appropriate referral to a professional is an important part of good clinical service. Information about resources and referral centers for three professions, CPA, Attorney, and Financial Planner are provided here.

CERTIFIED PUBLIC ACCOUNTANT - CPA

CPAs can assist individuals with a variety of financial issues, including tax assistance, financial planning, management consulting and valuation services for businesses, and assurance services. Assurance services are new, exciting niche areas of expertise, including Personal Financial Specialists (CPA/PFS) and ElderCare Services, to assure that the care goals of family members are achieved when elderly family members are no longer able to act independently.

Michigan Association of CPAs (MICPA): With more than 17,000 members representing the accounting profession in Michigan, the Michigan Association of Certified Public Accountants (MICPA) offers consumers access to practicing CPAs offering a variety of services. The firms listed in their free CPA Referral Program employ members of the MICPA, and these members submitted the information provided in the search. Visit the MICPA website at: <http://www.micpa.org>

To locate a CPA:

<http://www.micpa.org> or (248) 267-3700.

For more information, read the documents “Understanding and Using CPA Services” and “How to Choose a CPA”, available at

<http://www.micpa.org>

American Institute of Certified Public Accountants (AICPA): Providers of The 360 Degrees of Financial Literacy web site www.financialliteracy.org, a national effort of the CPA profession offering information for managing personal finances.

ATTORNEY

Attorneys can assist individuals with a variety of legal issues, including Wills, estates, trusts, and health care advance planning. It is advised that an individual seek the advice of an experienced attorney when dealing with any identified legal issue.

American Bar Association

Visit: <http://apps.americanbar.org/legalservices/findlegalhelp/main.cfm?id=MI> for more information on the most common questions about the estate planning process, probate and administration of estates, transfer taxes and tax planning for your assets and disability planning.

State Bar of Michigan Lawyer Referral Service

The purpose of the Lawyer Referral Service is to assist the public in selecting the most appropriate resource for assistance with legal problems. The State Bar of Michigan Lawyer Referral Service is designed to assist anyone who can afford to retain a lawyer. Persons who have a legal problem and cannot afford a lawyer should contact the Legal Aid Office in their community.

Contact: (800) 968-0738 or visit <http://www.michbar.org>

National Academy of Elder Law Attorneys

Established in 1987, the Academy provides a resource of information, education, networking and assistance to those who deal with the many specialized issues involved with legal services to the elderly and people with special needs.

Contact: NAELA Member Consumer Registry

This Web site includes a searchable directory of attorneys who belong to NAELA -

http://www.naela.org/Public/About/Consumers/Find_An_Attorney/Public/About_NAELA/Public_or_Consumer/Find_an_Elder_Lawyer/Find_an_Elder_Lawyer.aspx?hkey=01d28480-72a3-4294-8d32-554931fc26b4

For information and FAQ's, go to

http://www.naela.org/Public/About/Media/Q_A_When_Looking_for_an_Elder_Law_Attorney/Public/About_NAELA/Public_or_Consumer/Q_A_When_Looking_for_an_Elder_Law_Attorney.aspx

Disclaimer: Listing in this directory does not constitute an endorsement, referral, or statement of qualification by NAELA, nor does NAELA screen or evaluate those listed. Users of this directory should determine for themselves the qualifications of any elder law attorney prior to utilizing his or her services. NAELA is not responsible for the acts or omissions of any elder law attorney.

Palliative Care Organization (MHPCO)

MHPCO also provides assistance with obtaining free legal aid for hospice patients. A hospice professional requests the one-page form from MHPCO “Hospice Legal Aid/Patient Referral Fax Form” (Appendix D), completes the form, and faxes it back. The form includes identifying information about the clinician and the patient, including the type of legal aid needed. MHPCO then attempts to find an attorney to assist.

Contact: (517) 803-2500 and request “Hospice Legal Aid/Patient Referral Fax Form,” then fax completed form to MHPCO at (517) 688-6492.

Elder Law of Michigan, Inc - Legal Hotline <http://www.elderlawofmi.org/legal-hotline.html>

The Legal Hotline for Michigan Seniors gives Michigan residents age 60 and older a place to call for free, confidential, basic legal advice and information over the telephone from experienced elder law attorneys.

Contact: (866) 400-9164

The Hotline seeks to help those with the greatest social and economic needs. Elder Law of Michigan is a non-profit, tax-exempt organization funded by grants and contributions from attorneys, businesses, individuals and Hotline clients. Those who can afford to make a modest donation are encouraged to do so.

Sixty Plus Elder Law Clinic

This free legal clinic is associated with Thomas M. Cooley Law School in Lansing. Law students supervised by licensed attorneys provide individuals over the age of sixty with free legal assistance.

Contact: (517) 334-5760

The American College of Trust and Estate Counsel (ACTEC)

This is access to a searchable database of lawyers who specialize in trusts and estates nationwide. To become a member, a lawyer must be elected by the membership at large and have at least 10 years of practice experience.

Visit <http://www.actec.org/public/roster/search.asp> for more information

Law and Aging Guide

This is a comprehensive listing of the statewide resources available to help older persons with law-related issues. Published by the American Bar Association Commission on Law and Aging, the Guide includes important contact numbers and addresses for legal assistance providers and other law-related services for the elderly.

Visit <http://www.abanet.org/aging/resources/states/Michigan.html>, for a printable version.

FINANCIAL PLANNER

A financial planner is someone who uses the financial planning process to help you figure out how to meet your life goals. The planner can take a “big picture” view of your financial situation and make financial planning recommendations that are right for you. It may be important to understand the responsibilities (e.g. fiduciary versus suitability) that the financial planner has to you as a client. In other words, are they always responsible for working in your best interest at all times and/or are they held to a different standard of care? It may be important to understand those differences prior to the engagement with the advisor.

Visit this website to help locate a financial planner:

<http://pfp.aicpa.org/Resources/Consumer+Content/Why+Should+I+Choose+a+CPA+PFS/>

GLOSSARY

Active Trust – This refers to a trust in which the trustee must perform certain duties.

Advance Directives – Legal document written by an attorney or person directing the physician about a patient's request for terminal care; can designate whom a patient selects for making medical decisions when the patient is no longer able to.

Amendment – Any change (addition or deletion) in a legal document.

Ancillary – Something that is subordinate or auxiliary to something or someone else.

Annuitant – The beneficiary of an annuity.

Annuity – The payment of an allowance or income, either annually or at other intervals for a lifetime or for a certain number of years.

Attorney in Fact – A person who holds a power of attorney that has written authorization to transact business and execute documents for another person.

Beneficiary – The person who collects the benefits from a Will, trust, life insurance policy or annuity.

Bequest – An act of giving a gift of personal property by Will.

Claim against Estate – A statement made by a requestor (often a creditor) upon an estate requesting an action or forbearance of an action thought owed the requestor.

Codicil - A supplement or appendix to a Will; intended to alter an already executed Will.

Community Property – Classification of property equally owned by a husband and wife that was acquired during their marriage. This legal concept is recognized in some states.

Conservator – A person legally appointed by a court to manage the property of an individual who may be physically or mentally incapacitated.

Constructive Trust – Without regarding the intention of the parties, this trust is created by a court as a means of justice – to benefit the party that has been mistakenly deprived of its rights.

Contest of a Will – A legal process attempting to prevent the probate of a Will or the distribution of property according to the Will.

Corporate Fiduciary - A bank or trust institution with fiduciary powers.

Corpus (Body) – The capital or principal amount of an estate or trust.

Custodian – One whose duty is to take care of something, such as an estate or property.

Decedent – A deceased individual.

Disclaimer - A repudiation of any interest in or claim to the subject of the action, such as, rejection of any title, claim, interest, estate, or trust.

Distribution – The dissemination of property to those entitled to receive it according to the terms of a Will or trust agreement.

Domicile – The location of a person's permanent home; where he/she legally resides.

Domiciliary Administration – Relates to the share of an estate that is located in the state of a deceased person's domicile.

Donee – One who obtains a gift.

Donor – One who makes a gift.

Dower - The right of a woman to all or a portion of her deceased husband's estate.

Durable Power of Attorney - A legal document that allows an individual to designate another person to make legal decisions on the individual's behalf despite disability or incompetency of the person granting the power to another.

Duress – Unlawful constraint used to force a person to do some act against his will.

Estate – Signifies the total assets of a person at the time of their death.

Estate Plan – A plan for the administration and disposition of an individual's property during their lifetime and at their death; established in a Will and or one or more trust agreements.

Estate Tax – Federal and state governments impose this tax on the transfer of a person's estate upon their death.

Executor – See *Last Will and Testament*.

Executrix – See *Last Will and Testament*.

Fair Market Value – The price that a property is transferred between willing buyers and sellers who are both acting rationally and with complete knowledge of the situation.

Fiduciary – An individual or institution bearing a relationship of trust and responsibility for the benefit of another. Examples include an executor, administrator, trustee or guardian, who is legally bound to work in their client's best interest.

401(k) Plan – This retirement plan is established by employers and enables eligible employees to designate a portion of their salary to defer to the 401(k) investment choices selected by their employer. Employers may contribute to their employee's 401(k) by matching a portion of the investment.

Gift Tax – This is a federal and state tax imposed on transfers of property during life; to be paid by the donor, rather than the recipient.

Grantor – This person grants property or property rights through a written instrument.

Gross Estate – The total value of an individual's property in an estate before liabilities are deducted.

Guardian—There is a legal relationship between a ward and a guardian. Wards are usually persons who have been declared incompetent by the courts to make particular decisions on their own behalf. Court appointed guardians act as surrogate decision makers for the ward.

Guardian Ad Litem - A court appointed person representing the interests of a minor or incompetent person in court and legal matters.

Heir – This person is entitled by a Will or by the court to inherit the estate of another.

Heirs-at-Law – Typically refers to the relatives of a person who would inherit the property if the decedent created a Will, whether the decedent did or did not in fact create one.

Holographic Will – A handwritten Will by the testator.

Incidents of Ownership - The rights the owner has under the policy contract. Examples include the right to cash in the policy, to receive a loan on the value of the policy and to change the designated beneficiary.

Incompetent Person – A person who is legally not capable of managing his/her affairs because of a mental (not physical) handicap.

Individual Retirement Account (IRA) (also see *Roth IRA*) – An IRA is a tax-deferred investment and savings account that acts as a personal retirement fund for people with earned income.

Intestacy – This condition refers to an individual who dies without leaving a valid Will.

Intestate – See *Last Will and Testament*.

Inventory – Refers to the list of items included in the estate of a deceased person.

Irrevocable Trust – See *Trusts*.

Joint and Survivorship – This phrase refers to a husband and wife who are joint beneficiaries of an annuity; upon the death of either, the remaining spouse becomes the sole beneficiary.

Joint Tenancy – Two or more people mutually holding legal title to property – in the event that one owner dies, the surviving owner receives the entire property.

Keogh Plans (HR-10 Plan) —A Keogh is a tax-deferred retirement plan designed to help self-employed workers or individuals who earn self-employed income establish a retirement savings program. The self-employed person makes contributions, and these along with investment earnings grow tax-deferred until withdrawal (assumed to be retirement), at which time they are taxed as ordinary income.

Last Will – The last Will a person completes. All former Wills are invalid; this term is used to emphasize the fact that it is the most current and effective Will of the maker.

Last Will and Testament—A Will is perhaps the most well-known means of disposing of property at death. Every state has its own rules for the making of a valid Will, but at the very least, they involve a written document that is:

- 1) Signed by the person making it (called the **testator** or, if female, the **testatrix**), and
- 2) Witnessed by at least two disinterested people (those who do not stand to inherit under the Will).

The person nominated by the testator to wind down the affairs of the decedent is called the personal representative (also known as **executor** or **executrix**). When a person with a Will dies, he/she is said to die **testate**. This means that the Will governs the disposition of that person's property. The "alternative" to dying testate is dying **intestate**. A person dying intestate has no last Will and testament. Typically state law steps in to determine the disposition of an intestate estate.

Letters of Administration – A legal document issued by a probate court which gives the administrator authority to take control of assets in the deceased person's name.

Letters of Conservatorship – A document showing the authorization for an individual or other fiduciary to act as a conservator of a person's property.

Letters Testamentary – A legal document issued by a probate court giving an executor (usually named in the decedent's Will) power to take control of and distribute property in the deceased person's sole name.

Lien – A legal claim against a property; security for payment of an obligation.

Life Estate – An estate granted to an individual for the remainder of his/her life.

Living Trust – A trust that becomes effective while the creator is still living.

Living Will—A living Will is a directive to physicians allowing an individual to express his or her desire not to be kept alive by extraordinary means when he or she is determined to be in a terminal condition. This document typically directs the physician to give or withhold life sustaining medical care, states the conditions under which treatments should be continued or discontinued, and what types of life sustaining efforts should be made.

Lump Sum Distribution – One lump payment of an individual's retirement plan benefits; rather than equal payments over a specific period of time.

Minor – A person under legal age; meaning under the age where he/she is granted full legal rights.

Notary Public – A public officer authorized by the state to certify documents.

Notice to Creditors – A public notice to creditors of an estate to present their claims for what the executor or administrator owes them.

Pension Plans (defined benefit plan) – This is a traditional retirement plan offered by some employers that pays a set amount each year during retirement. These are company pensions that guarantee a specific amount of benefits to employees.

Personal Representative – A person who manages the legal affairs of another, such as an executor or administrator.

Pour-over - Refers to transferring property from one estate or trust to another estate or trust based on the occurrence of an event.

Powers of Attorney – A power of attorney is a document whereby one person (called the "principal") authorizes someone else (called the "agent", or the "attorney-in-fact") to act on his/her behalf. A power-of-attorney may be "general", granting broad authority to make decisions concerning investments, tax matters, and property transactions, or it may be "specific", granting only limited authority to perform one of more specific duties. Every state has legislation authorizing the creation and use of powers of attorney. In all cases, the principal must be competent when the power-of-attorney is executed. *Note:* There are different kinds of powers of attorney that are also called **advance directives**.

Probate (verb) – A legal process where a deceased person's estate is administered and distributed; includes payment of outstanding obligations.

Probate Court – This court has jurisdiction over a deceased person's estate and also over people under guardianship.

Probate of Will - Presentation of proof before a court to establish the validity of a Will and to admit a Will to probate.

Profit-Sharing Plan – This plan provides employees with a share of the net profits of their business (in addition to their regular wages).

Qualified Domestic Relations Order ("QDRO") - A court order accounting for the assignment of marital property, generally employee benefits to an alternate payee such as a spouse or dependant.

Quit Claim Deed - Conveyance of real property.

Residue – The remaining portion of a deceased person's estate after all payments (debts, expenses, etc.) have been made.

Revocable Trust – See *Trusts*.

Revocation - The act of making a Will or a trust instrument void.

Rollover - Repeated investments of the profits of short-term securities upon maturing.

Roth IRAs (also see *Individual Retirement Account*) – Retirement contributions are not deductible up front, but withdrawals can be made tax-free after age 59½, in contrast to the traditional IRA.

Simplified Employee Pension Plan ("SEP") – An arrangement by which an employer contributes to an individual retirement account or annuity of an employee.

Simultaneous Death – When two or more people die and the order of their death cannot be determined.

Subchapter S Corporation – An eligible corporation whose shareholders elect to be treated as a partnership for income tax purposes.

Successor Trustee – When an original trustee dies or becomes incapable of managing his/her own trust, this person(s) becomes responsible for management of the trust.

Tenancy by the Entirety – Joint ownership of real property by a husband and wife in which both have rights to the property. Upon the death of either the other has the title through the right of survivorship.

Tenancy in Common - When two or more owners share a stated portion of property. Upon the death of one of the owners, their portion does not go to the remaining owner(s); it goes to the deceased owner's heirs.

Testamentary Capacity – The mental ability to comprehend how to make a valid Will.

Testamentary Trust – A testamentary trust is created by the maker's Will, funded by the estate, and administered by a trustee named in the Will.

Testate – See *Last Will and Testament*.

Testator – See *Last Will and Testament*.

Testatrix– See *Last Will and Testament*.

Trusts – Trusts are legal arrangements by which the legal ownership and the beneficial ownership of assets are separated. Trusts can be divided into two major categories—revocable or irrevocable. Irrevocable trusts can not be changed (with very few exceptions) once they are put in place. Revocable trusts can be amended and/or changed.

Trust Company – A corporation engaging in the trust business; serves both individuals and business organizations.

Trust Instrument – A writing under which a trust is established. Examples include a Will, trust agreement, declaration of trust, deed of trust, or order of court.

Trust Under Will – See *Testamentary Trust*.

Variable Annuity - This type of annuity allows the owner to invest in various portfolios or sub accounts. The return on assets fluctuates over time and is not guaranteed, in contrast to a fixed annuity.

Vesting – This term indicates a person has received a benefit right, which is attributed to employer contributions (relating to pension and profit sharing plans), and is not contingent upon the person's duration of employment. Vesting requirements can vary by plan.

Ward – There is a legal relationship between a ward and a guardian. Wards are usually persons who have been declared incompetent by the courts to make particular decisions on their own behalf. Court appointed guardians act as surrogate decision makers for the ward.

Warranty Deed - A deed in which the seller guarantees the title is good; the deed contains covenants of title.

Will – A legal document stating a person's desires regarding how and to whom they want their property distributed after they die.

INDEX

401(k), 33
 403(b), 7
 Accelerated benefits rider, 8
 Accumulate a cash value, 7
 Adjusted balance, 16
 Administrator, 7, 8, 28, 33, 34, 35
 Advance Directives, ii, 4, 32
 After Death, 1, 24
 Agent, 1, 4, 5, 30, 35
 Alimony, 3
 American Bar Association, 30, 31
 American College of Trust and Estate Counsel, 31
 Annual fee, 16
 Annuity option, 27
 Appraisal fee, 8
 Artwork, 8
 Assurance services, 30
 Attorney, 3, 4, 6, 8, 9, 12, 18, 24, 25, 26, 27, 30, 31, 32, 35
 Average daily balance, 16
 Bank, 1, 12, 27, 32
 Bankruptcy, 17
 Beneficiary, 5, 7, 8, 27, 28, 32, 33, 34
 Bonds, 12, 25
 Burial, iii, 15, 22, 23
 Burial flag, 15
 Burial vault, 18, 23
 Business, 4, 6, 17, 18, 24, 25, 26, 29, 32, 35, 36
 Cash reserves, 16
 Casket, 18, 20, 21, 22, 23
 Cemetery, 15, 18, 20, 21, 23
 Ceremony, 21, 22
 Certified Public Accountant, iii, 25, 30
 Children, 3, 4, 8, 9, 27
 Court, 6, 8, 9, 32, 33, 34, 35, 36. *See also* Probate
 CPA. *See* Certified public accountant
 Credit
 Credit card, iii, 16
 Credit Report, 17
 Life Insurance, ii, iii, 7, 8, 11, 14, 27
 Management, 9, 16, 30, 36
 Tax Credits, 8
 Credit report, 1
 Creditor, 6, 17, 25, 32, 35
 Cremation, 20, 21, 22
 Crypt, 20, 23
 Custody, 3
 Death benefit claim, 1
 Death certificate, 1
 Deferred compensation, 25
 Dependents, 3, 5, 7, 8, 29
 Direct Burial. *See* Burial
 Direct Cremation. *See* Cremation, *See* Cremation
 Disinheritance, ii, 9
 Divorce, 27

DNR. *See* Do not resuscitate

- Do Not Resuscitate, ii, 4
- Durable Power of Attorney. *See* Power of attorney
- Education Benefit VA, 14
- Elder Law of Michigan, 31
- ElderCare Service, 30
- Embalming, 20, 21, 22
- Endowment care, 23
- Entomb, 18, 20
- Equifax, 17
- Estate, 1, 3, 4, 5, 6, 7, 8, 9, 18, 24, 25, 26, 28, 30, 32, 33, 34, 35, 36
- Estate planning, ii, 8
- Executor, 1, 8, 24, 25, 26, 28, 33, 34, 35
- Experian, 17
- Federal Employment Retirement System (FERS), 28
- Federal Trade Commission (FTC), 23
- Fiduciary income tax return, 26
- Financial planning, i, iv, 30, 31
- Five wishes, 4
- Fixed amount option, 27
- Fixed period option, 27
- Food stamps, 12
- Funeral, 11, 18, 19, 20, 21, 22, 23, 24, 27
- Government worker, 12, 28
- Grave, 23
 - Gravesites, 15
 - Liner, 23
 - Liners, 23
 - Site, iii, 23
- Graveside service, 20, 21
- Guardian, 3, 4, 33, 36
- Head of household tax status, 28
- Headstone, 15
- Health insurance premiums, 11
- HMO, 13
- Home loan guarantee, 14
- Home ownership, 11, 20
- Immediate burial. *See* Burial
- Income Tax. *See* tax
- Insurance, 1, 4, 5, 7, 8, 11, 12, 13, 14, 25, 26, 27, 28, 30, 32
 - Beneficiary, 5
 - Life, 5
- Insurance premiums. *See* Insurance
- Interest income, 18
- Interest option*, 27
- Interest rate, 16
- Interment, 15, 21, 23
- Intestate, 34
- IRA. *See* Individual retirement arrangement, *See* Individual retirement arrangement
- Joint ownership, 5, 6
- Keogh, 7, 34
- Late payment fee, 16
- Law and Aging Guide, 31
- Lawsuit, 5
- Legal notices, 8
- Letter of instruction, 24
- Liabilities, 1, 24
- Lien, 34
- Limited liability company, 6
- Living Trust, ii, 9, 34
- Living Will, 4, 34
- Low income, 12, 14
- Lump sum benefit, 35

Marker. *See* Headstone
 Married, 3, 28
 Mausoleum, 23
 Medicaid, iii, 12, 13
 Medicare, iii, 12, 13, 25
 Memorial service, 20, 21
 Michigan Medicare and Medicaid Assistance Program (MMAP), 12, 13
 Michigan statutory will, 9
 Military Funeral Honors. *See* Veteran
 Military record, 1, 14
 Minor children. *See* Children
 National Academy of Elder Law Attorneys, 30
 National cemetery, 15
 Outer burial container. *See* Grave liner
 Over limit penalties, 16
 Package funeral, 19
 Partnership, iv, 6, 25, 26, 36
 Pension, 7, 14, 25, 28, 35, 36
 Pensions, 35
 Perpetual care, 23
 Personal representative, 1, 8, 24, 28, 34
 Personal Representative, 35
 Petition, 8
 Plan participant, 7
 Poor credit. *See* Debt management, *See* Debt management
 Poor Credit. *See* Debt management
 Power of attorney, 4, 5, 32, 35
 Power of attorney for healthcare. *See* Power of attorney
 PPO, 13
 Prearranged funeral services, 18
 Premium, 1, 7, 8, 11, 14
 Prepayment, iii, 18
 Presidential memorial certificate, 15
 Previous balance, 16
 Privacy, 6
 Probate, 5, 6, 8, 9, 30, 32, 34, 35
 Profit sharing, 7, 25, 36
 Profit-Sharing Plan, 35
 Qualifying medical expenses, 11
 Qualifying widow(er), 28
 Railroad retirement benefits, 12
 Retirement, 7, 24, 25, 27, 28, 33, 34, 35
 Return
 Tax, 28
 Reverse equity mortgage, 11
 Right title, 8
 Roth, 7, 27, 34, 35
 Safe deposit box, 1, 18
 Sale lease-back agreement, 12
 SEPs, 7, 35
 Shared Legal Custody, 3
 SIMPLE plan, 7
 Simultaneous death, 5
 Simultaneous Death, 36
 Single parent, 3

 Sixty Plus Elder Law Clinic, 31
 Social Security, iii, 3, 12, 13, 15, 24, 25, 27, 28
 Social Security Disability SSD, 13
 Survivor benefits, 25
 Sole custody. *See* Custody
 Sole name, 5, 34
 Sole proprietorship, 6

- Special needs children. *See* Children
- Spouse, ii, 3, 5, 8, 9, 27, 28, 34, 35
- State Bar of Michigan, 30
- Stocks, 12, 25
- Successor trustee, 9
- Successor Trustee, 36
- Supplemental Security Income (SSI), 12
- Surrender policy, 7
- Surrender the policy, 8
- Tax, 4, 6, 8, 11, 12, 16, 24, 25, 26, 27, 28, 30, 31, 33, 34, 35, 36
 - Benefit, 11, 12
 - Deduction, 11
 - Estate Tax, 33
 - Gift Tax, 33
 - Income, 34
 - Income Tax, 36
 - Medicare, 12
 - Return, 2, 26, 27, 28
- Tenancy by the Entirety, 36
- Tenancy in Common, 5, 36
- Title, 5, 8, 25, 26, 32, 34, 36
- TransUnion, 17
- Treatment Directives, ii, 4
- Trust, ii, 5, 9, 31, 32, 34, 35, 36
- Trust under will, 9
- Trustee, 9, 32, 33, 36
- Veteran, iii, 14, 15, 23, 25, 28
- Veterans, 14
- Viatical settlement, 8
- Will, ii, 3, 5, 8, 9, 18, 24, 32, 33, 34, 35, 36