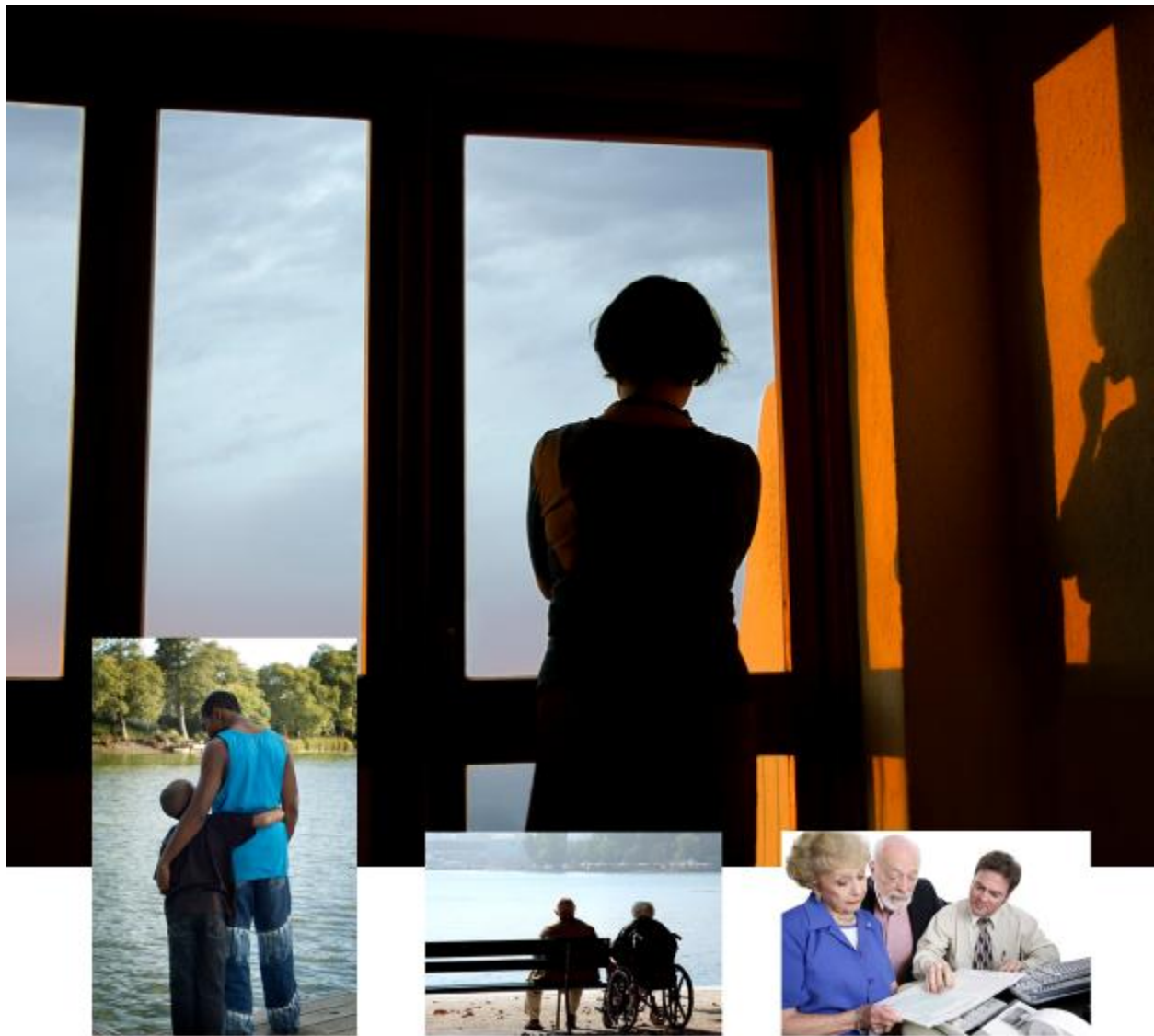


How to Get Your House in Order

*A guide for financial affairs
at the end of life*



Disclaimer: This book is intended only as a basic resource guide. It is not intended to replace the advice and expertise of competent professionals in the accounting, legal, and financial planning professions. This book is intended as an introduction to the points mentioned, and should not be presumed to be exhaustive. Tax rules and regulations change frequently, and state law is also subject to change so be aware that some material presented here may become outdated after the date of this publication. Furthermore, this material may not apply under the laws of states other than Washington State.

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Please Note:

This book is a guide to assist those with a terminal illness and their families. It is written for the patient as a quick reference to assist him or her in taking the steps to address financial affairs.

GATHERING & ORGANIZING

This section is designed to help clarify and define the issues, resources and potential problems. Whether this gathering and organizing of information and documents occurs while you are alive or after your death, it is important to have the clearest picture possible of the financial situation you or your family faces.

ASSESSMENT TOOLS

Many of the suggestions listed in this booklet begin with knowing the state of your financial affairs. The first step is to begin to identify, gather and organize both your assets (what you own) and your liabilities (what you owe) so you have all of the information in a central location. The following list should help you in thinking about: what assets/liabilities you have; where the paperwork is located; and a suitable location for all related information. To begin with, a shoebox may do. Later on the material should be transferred into a system such as a portable file box.

You or your family should create lists that include the following key pieces of information:

- **Your Emergency Contact Information**
Name, address, phone, and relationship of family, friends and business acquaintances. Also list the circumstance in which to contact.
- **Your Important Information**
Family member's birth dates, SSN, driver's license numbers, religious affiliation, notes, military records, employment, marriage data, etc.
- **Personal & Legal Documents**
Location of wills, trusts, dates completed, attorney, executors, birth certificate information and location.
- **Account Information**
All bank accounts, savings, money market accounts, etc.
- **Income**
Annuities, dividends, interest earned, part time jobs, business, etc.
- **Investments & Retirement**
Brokerage accounts, 401K, SEP/Keogh, Stocks, IRAs, Bonds, Treasuries
- **Home/Auto/Property**
List private residence, vacation property, autos, recreational vehicles, home alarm codes and information, pets, safe deposit box information, etc.
- **Insurance Information**
Life, health, auto, home care, umbrella policies. (List account numbers, addresses, amount of coverage, agent's name and address, etc.)
- **Mortgages & Loans**
Mortgage and auto loans, credit card and debt, etc. Balances owed, loan company information and account numbers.

On the surface, the listings may appear overwhelming but you and your family should try to provide whatever information you can – it's OK to be unable to fully complete the lists. It may be helpful to create a simple spreadsheet to organize and store this information.

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

- Family members in whom you 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
- Membership cards
- Credit report
- Titles to property
- It may be necessary to call local banks to determine whether there is a safe deposit box in the your name

AFTER DEATH

Ideally, this gathering and organizing takes place while a person 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 a death benefit claim.

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 statements
- Tax returns from the last three years
- Latest financial statements
- Veterans Affairs number
- List of employer fringe benefits

See Timeline and Checklist of Tasks (Survivor's Issues, page 40)

PLANNING

This section covers a broad array of actions and choices for alert, oriented adults as they “get their affairs in order” in anticipation of death, impending or otherwise. It may also be useful as a tool to assess the current situation of an incapacitated patient (one who is no longer able to understand what options may still be open) and take meaningful action to protect, or provide for, his or her loved ones.

CARE OF DEPENDENTS

Listed below are some examples of dependents and how planning ahead can ensure their care. You should seek the advice of an attorney experienced in drafting estate planning documents that cover the care of dependents both during your illness and beyond.

Spouse: A spouse may continue to receive support depending on how assets are titled and whether he or she has access to property. To ensure proper titling of assets, individuals are advised to seek a competent advisor.

Former Spouse (Alimony or Maintenance): In Washington alimony is typically called “maintenance.” When maintenance is to continue during your incapacity, establishing an automatic transfer arrangement may eliminate an administrative task and simplify things. Maintenance 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, though sometimes the person obligated to pay support will have been required to obtain insurance to fulfill support obligations even after the death of the obligor. Death benefits provided through Social Security are intended to replace this loss of support to minor children. Individual circumstances may require additional planning. Seek a competent advisor for such planning.

Children with Special Needs: A child, even a grown one, with physical or mental disabilities, can require special planning. To ensure these special needs are addressed, it is advisable and best to consult a competent advisor.

Other Dependents: Absent special prior arrangements, 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 person wishes to provide for such individuals during incapacity or after his or her death, additional action is almost always required. A competent advisor should be consulted in order to ensure that the person’s wishes are known and followed.

GUARDIANSHIP

Guardianships provide for a substitute decision maker when required for the protection of minors or other persons who are legally determined to be incapacitated as to the management of their personal or financial affairs. A guardianship can be limited to certain purposes or can be of full scope. To avoid the imposition of a guardianship, in the case of someone becoming incapacitated, the individual should consult a competent advisor about advance directives such as those outlined in the section following this one.

In all cases, it is advisable for parents of minor children to have a legal document naming whom they would want to have guardianship over their child, if such a need should arise (due to their own incapacity or death). Such a document will allow the incapacitated or deceased parent's wishes to influence the choice of guardian for their child. This may be done in the context of a Will, or in a separate document. It is advised that the parent consult with an attorney regarding these matters.

Guardianship over children in the event of the death of a parent 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 a parent, the surviving spouse will continue to be the custodial parent. The parent can name a guardian by creating a Will that makes his or her wishes known in the event that the parent's spouse dies or becomes incapacitated.

Not Married to the Other Parent, One Parent has Sole Custody: It is not automatic that the other parent would become a child's guardian. It is advisable for the parent with custody to name a guardian in a legally executed Will. . Although the court is not bound by this choice, due consideration will be given to the designation in the Will.

Not Married to the Other Parent, Shared Legal Custody: Parenting plans in Washington often have both parents participate in a residential schedule for the child, and one is usually designated as the legal custodian. It is likely that the surviving parent would continue as sole custodial parent.

NAMING A GUARDIAN FOR MINOR CHILDREN

This is an extremely important decision for a parent since it involves choosing a surrogate parent for their minor children. Some issues to consider:

- A guardian is usually named in the Will.
- The Court will normally follow these wishes unless some other interested party can show that the named guardian is unfit.
- Some parents name one person to take custodial care of children (as guardian of the person) and a different person to take care of the children's financial matters (as guardian of the estate).
- Single parents may choose to name the currently non-custodial parent, whether that parent shares legal custody or not. The Court has final authority, but gives deference to the parent's selection unless there is evidence that the nominee is not an appropriate choice.

Items to consider when choosing a guardian:

- Who loves and cares about the children?

- Who do the children love and respect?
- To whom are the children emotionally bonded?
- Will a move to the guardian's home sever ties with other people who are significant to the children?
- Who does the parent trust?
- Who is financially and emotionally able to take on the added responsibilities?
- Who is willing to take on guardianship responsibility?
- Who is honest and dependable?

Talk with a prospective guardian about:

- Gravity of the request
- 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, your time and reflection are required. Advance care planning should also entail some communication about these decisions or wishes with 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 be honored.

TREATMENT DIRECTIVES

In these documents, you will outline what treatments you wish to have or wish to avoid. The most common example is the "Living Will". A "Living Will" also called a Health Care Directive, only applies under two circumstances, if the patient is diagnosed with a terminal condition or if the patient is in a permanent unconscious condition. More recently, other documents such as "The Five Wishes" and the "Physician Orders for Life-Sustaining Treatment (POLST)" 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 advisable to have such documents prepared, with copies provided to family and to medical care providers. It is expected that hospice and medical staff will honor those expressed wishes.

PROXY DIRECTIVES

These documents name and authorize a spokesperson to communicate your desires should you become unable to do so. The 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 their scope in this regard.

Specifically, a Power of Attorney for Healthcare, or a Medical Durable Power of Attorney, or similarly titled document, concerns health-care decisions. Use of the word "durable" in the title and body of the document signifies that the power is effective even if the principal loses capacity to make decisions. For this reason, they are generally preferable to non-durable powers. It is advisable to have such a document executed and to provide copies to trusted persons and to medical care providers. Hospice and medical staff are expected to honor the decision-making capacity of the person named in the power of attorney.

In the absence of the powers of attorney discussed above, you may have a legal guardian named by the courts. This person has decision-making capacity in most instances. If a person has not designated one or more people to have Power of Attorney for Healthcare, the courts must follow a priority list designated by Washington law even though the person may be estranged from those people. Certain relatives or a registered domestic partner are given priority. An important reason to have a power of attorney is to avoid a circumstance in which you may have to have a legal guardian named by the courts. Factors to consider are that a power of attorney has greater freedom to act without court oversight, that there are expenses to the your estate associated with a guardianship, and that the you may not be able to influence the choice of guardian but can chose the person to serve as power of attorney.

PHYSICIAN ORDER FOR LIFE SUSTAINING TREATMENT ("POLST")

In hospitals, nursing homes, and community mental health facilities, physician orders may be written to control whether various kinds of treatment may be provided, such as resuscitation should breathing and heartbeat cease. A physician should communicate with you, family, and hospice staff to establish the treatment plan in this situation.

The Washington State Department of Health and the Washington State Medical Association advocate the use of POLST forms as a way to communicate an individual's preferences with regard to life-sustaining treatment. The form is completed by the attending physician, nurse practitioner, or Physician Assistant-Certified (PA-C) with you. It translates discussions with you about end-of-life decisions into treatment decisions.

GENERAL POWER OF ATTORNEY

A power of attorney is a legal document that allows one or more persons to act on behalf of another. The 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. It can also include the power to make health care decisions and/or access medical records (see preceding section on proxy directives).

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 general power of attorney, i.e., one that is not "durable", 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 and it, too, expires at the principal's death. However, when the power is durable, the agency relationship remains in effect even if the person becomes incapacitated. This allows an agent to continue to manage a person's financial affairs (and medical decisions, if it so provides). This can allow the attorney in fact to continue to provide funds to meet financial obligations (such as for family needs), and may help reduce the risk of financial loss.

TITLES TO PROPERTY AND ASSETS

This section pertains to whose name is on what pieces of property and what difference that may make. Establishing, evaluating, and updating how property is titled can be key to ensuring that your 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, in the names of both husband and wife, joint with tenancy, 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

Community Property

Washington is a community property state. All property owned by a married person is presumed to be community property unless it is proven to be separate property of one spouse or the other. Examples of separate property are (1) property acquired by gift or inheritance; (2) property acquired before marriage to the other spouse; (3) property acquired during marriage while residing outside the State of Washington, even if that state is a community property state; and (4) property acquired as damages for personal injury. Simply titling the property in the name of one spouse does not make it separate property. If community property real estate is titled in the name of only one spouse, the other spouse may file and record his or her claim on the real estate in the auditor's office of the county where the property is located in order to prevent the sale of the property without his or her consent. Each spouse is entitled to control the disposition of his or her share of community property and his or her separate property at death by Will. In the alternative, the parties may enter into a written agreement designating certain property as community property or as the separate property of one of the spouses. The agreement may be entered into either before or during the marriage. The Court will enforce such an agreement unless it determines that it would be unfair to do so. Examples of unfairness are that one of the spouse's did not fully disclose his or her assets and liabilities or one of the spouses was not represented by an attorney when the other was represented.

Where the decedent is single, or where it is determined that there was separate property within a marriage, the separate property is distributed according to the deceased's Will. If the deceased didn't have a Will, the property will pass according to the state's laws of intestate succession, which determine will receive the assets after the debts and expenses of administration are paid. (See section on Wills).

The laws actually spell out who will receive the assets after the debts and expenses of administration are paid. Wills must be filed with the Superior Court within 30 days after the person's death. The Court will oversee the administration of the estate to some degree, depending on the circumstances. If the debts of the estate do not exceed its assets, the personal representative may petition for an "Order of Solvency," which allows the settlement of the estate without court intervention unless some interested party files an objection with the Court. If the deceased was not married but was in a committed intimate relationship the courts may treat property acquired during the relationship like community property for married people, granting the surviving partner an interest in the property.

Assets that are in the sole name of the deceased, but have a named beneficiary (i.e., a beneficiary other than the deceased's estate) will be distributed directly to the beneficiary designation, not according to the deceased's will or the intestacy statutes. Examples of this are IRAs and life insurance policies that actually designate the beneficiary or beneficiaries. **However, the surviving spouse has the right to elect against the beneficiary designation of his or her community property share if he or she has not been named as the beneficiary. Failure to exercise that right of election will be treated as a taxable gift.**

Where the deceased is married, if the property is community property, only the deceased's share of the community property is subject to distribution according to the deceased's Will. The surviving spouse retains his or her ownership interest in his or her share of community property. However, the Court has jurisdiction over both halves of the community property.

ASSETS TITLED WITH A SPOUSE

These can be titled two different ways, "joint tenancy", and "community property (for example, as 'husband and wife')." In the case of "joint tenancy", the surviving spouse takes full title upon the death of the first spouse without the need for probate. This may create a problem in the event of simultaneous death or where there have been multiple marriages. Using joint tenancy to avoid probate may result in the ultimate inheritance of property or assets by persons other than those whom the deceased intended to inherit. With community property the surviving spouse enjoys a step up in basis in the whole property, not just the decedent's half interest.

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 is the person they wish to inherit the subject property. This method is often used to avoid Probate but care should be taken about using this as a probate avoidance strategy because lawsuits, liens, and marriages of the other owner(s) can impact all the owners' interests. In addition, adding someone to the title may result in a taxable gift.

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 are generally transferred outside of probate and go directly to the intended recipients on at whatever time and in whatever manner the trust maker (called the "grantor" or "settler") directs. Trusts can also avoid the pitfalls associated with joint ownership:

- Generally avoid 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's 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 subcategories specific to the entity.

There are many estate-planning tools that can be used to transfer a business, depending on whether you 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 to take action, it will still be important for the family to have a basic understanding of how the business structure will affect them.

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 possible accounts and put things in order to fund care while you are a patient or need care for yourself or your family during illness and beyond. An important first step is to identify all possible accounts and resources. Be sure to include accounts from which you are currently receiving benefits. Identifying the accounts and the resources may become a part of a larger focus to get the entire estate plan in place. Gathering the information while you are able to help will in turn lighten a caretaker's or estate administrator's burden. Consider reviewing past tax returns for clues on existing retirement accounts. Filing a Power of Attorney with the IRS will allow access to third party tax reporting documents that may be helpful in identifying retirement benefits you may be unaware existed. It likely will simplify and speed up the flow of resources to your loved ones. Let's break it down into categories:

EMPLOYER PROVIDED

If you have worked for an employer who has put money aside in a profit sharing plan or a pension plan, there might be monies available. You should consider both current and former employers (including the military). It should be noted that federal law controls disposition of these assets at death. Although an account may be community property under state law, federal law overrides state community property law and provides its own set of rules for the protection of the employee's spouse. If the retirement benefit can be received in the form of an annuity, it must be provided in a form that provides the surviving spouse with at least 50% of the employee's benefit after the employee's death unless the spouse specifically waives that right in writing. If it is provided in any other form, the employee cannot name anyone other than his or her spouse as the beneficiary unless the spouse consents in writing.

FORMER: If you have not or are not able to provide information to your family, a family member may contact a former employer who provided a plan, to inquire whether you took control of these funds as a result of the termination of employment. If you withdrew the entire share of plan assets or had the plan assets transferred to another type of retirement plan, the successor plan will control any available benefits. If there is still an account balance, refer to the steps applicable to a current employer (see below).

CURRENT: Has your current employer put money aside for its employees? If so, you (or a caretaker or an 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 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 your desire and/or estate plan. If an employer plan contains restrictive withdrawal provisions, contact an expert to consider rolling over the plan balance to a more favorable type of plan—a simple process.

EMPLOYEE PROVIDED OR SELF EMPLOYED

Common retirement plan types include IRA's (traditional, non-traditional, and Roth), Keoghs, single-participant 401(k)'s, SIMPLE plans, and SEPs. Many of these names are confusing unless there has been prior exposure. It is important to convey to family members that your employers allowed you to put money into some type of plan. At this point, the type of plan 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. You 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 so the beneficiary designations should be reviewed for each such account to ensure that they agree with your desires 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 the owner of each life policy and whether they are paying any premiums or receiving any benefits currently. It is also recommended that appropriate powers of attorney be in place to facilitate payment of premiums, or management of the policy. If a person owned the policy within three years of his or her death then the entire value of the death benefit is included in the estate for estate tax purposes, *even if the estate doesn't receive the proceeds from the policy.*

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 may be a waiting period of six months during which premiums must be paid. If the waiting period ends and disability continues, premiums are waived retroactively. The insurance contract should be reviewed for qualification and notification requirements, to make a claim on the rider.

HOW LIFE INSURANCE CAN BE USED TO COVER EXPENSES RELATED TO A 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, you can borrow against it. Borrowed amounts must be paid back. If left outstanding, amounts owed plus interest are subtracted from the death benefit. If you no longer own the policy but can still borrow against it the entire value of the death benefit is included in the estate for tax purposes even though someone other than the estate is the named beneficiary.

The policy owner may surrender the policy and get a check for the cash value, ending all life insurance coverage thereafter. (This may trigger a taxable event with the gain being subject to income tax at ordinary income rates)

If there is an accelerated benefits rider, you may collect a portion of the policy's death benefit prior to death, usually when there is less than one year to live. The insurance company pays a portion of the benefit to the patient. At death, the balance is paid to the beneficiary. This early payment of a portion of the death benefit may incur an administrative fee.

A viatical settlement is a financial transaction in which the owner of the life insurance policy sells the policy for cash before the insurer passes. The new owner, typically a viatical settlement broker, continues premium payments and becomes the insurance policy's beneficiary. Companies usually offer a percentage of the face value of the policy, based on your health. Any transaction with a viatical company should be carefully reviewed with your legal, tax and financial advisors. Selling your policy may impact your ability to purchase life insurance in the future.

WHEN LIFE INSURANCE PROCEEDS ARE 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. If the person is also the owner of the policy at the time of death, or within 3 years of transferring the policy ownership to another, the life insurance proceeds will be included in their estate for federal and state estate tax purposes.

If a policy is sold or transferred, or improperly owned the proceeds may be taxable to a certain extent. Federal income tax rules also vary with benefits paid before the insured's person's death, such as cash withdrawals, policy loans or dividends. Insurance policies owned by Trusts require special attention and should be discussed with the Trustee to assure proper collection and distribution after death.

ESTATE PLANNING

An estate is usually considered to be the property of a deceased. 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 that right, title, or interest.

ESTATE PLANNING IS NOT ONLY FOR THE RICH

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, designating who will be in charge of handling the estate, avoiding probate, or reducing estate taxes.

Estate planning may be as simple as executing a Will (the cornerstone of any estate plans) 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
- Special property, such as artwork or collectibles

PROBATE

Probate is the court process of proving a deceased's Will and/or supervising the administration of a deceased's estate even if there is no Will. Proceedings are initiated by someone who petitions the court.

Anyone who has custody or control of a will must file the will with the Superior Court, or give it to the person named within the will as personal executor, within 30 days after learning of the deceased's death. An executor having such custody or control of a will has 40 days from learning of the death to file the will with the court. If there is no valid Will, or the name executor cannot or will not serve, the court appoints a personal representative (administrator) to settle the estate and distribute property according to state law. Typically there is greater supervision by the courts in situations where a person died without a Will because of the "nonintervention powers" often recited in Wills. Generally the extent of supervision depends on the terms stated in the Will. It is quite common for the court to give very little scrutiny to process if the Will says the personal representative is to serve with "nonintervention powers." Also, if the debts of the estate do not exceed its assets, the personal representative may petition for an "Order of Solvency," which allows the settlement of the estate without court intervention unless some interested party files an objection with the Court.

The probate process can take between six months and two years or longer if there is litigation. Probate also makes the Will a public document. Probate expenses can include some or all of the following: court costs, publication costs for legal notices, attorney fees, personal representative fees, bond premiums (unless the Will says no bond is required), and accounting and appraisal fees. Total costs for probating an estate can range from a few hundred dollars to many thousands of dollars. The estate pays the probate costs, thereby reducing the amount of money going to the heirs. The probate process is wisely used to cut off claims from creditors who might otherwise surface years later.

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, such as the distribution of property, the disposition of remains, the nomination of a guardian for minor children, and the nomination of an executor.

If there is No Will (Intestacy)

Without a Will, there are no legal instructions from the deceased 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 (RCW 11.04.015 details distribution under Washington's intestacy laws). A typical pattern, in community property states is that the surviving spouse receives the deceased's share of the net community estate along with one-half of the deceased's net separate estate if the deceased is survived by issue (children, grandchildren, etc.). If the deceased is not survived by issue, the surviving spouse receives, along with the net community estate, at least three-quarters of the net separate estate depending on whether the deceased is survived by a parent or an issue of a parent. The disadvantage of not having a Will is that the property will be distributed based on state laws and may not be distributed according to the deceased's wishes. For example, the person may be estranged from a parent, siblings, children, or other relatives. Yet these relatives may be entitled to receive some or all of the estate if the person dies without a Will. This may be particularly significant if the deceased is single and in a committed relationship. In addition, special matters, such as who settles an estate or who takes care of minor children will also be decided by the state with no voice by the deceased.

How to Prepare a Will

Legally, a Will may be prepared without an attorney. A person may draft a Will (even by hand, if it is properly witnessed), or a preprinted form may be purchased in an office supply store or obtained online. It is legally effective if the person is 18 years or older, is mentally competent (of sound mind), and executes it properly. If possible the will should be made while the maker is in good health and not under emotional stress. The maker should understand such things as what property he or she owns, its value, and to whom he or she is leaving it. Proper execution includes the step that the maker signs, dates, and acknowledges the Will in the presence of two legally competent adult witnesses (one of whom may be a notary public) who will not benefit by anything under the Will.

Most people feel uncomfortable with a do-it-yourself Will. An experienced estate-planning attorney can help ensure that your intentions are clearly communicated to avoid questions after death and ensure the court will declare the Will valid. 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
- Ownership of real property in another state
- Desire that certain heirs be disinherited

Disinheritance

Disinheritance is intentionally depriving someone who would otherwise be a rightful heir of receiving the proceeds of the estate the person died without a Will. Typically heirs include a spouse, parents, siblings, children, and possibly other relatives.

Simply leaving a child out of a Will may not succeed in disinheriting that child. It is best to consult an attorney.

Failure to include a new spouse in a Will may greatly affect how an old Will is actually followed by the Court. A new spouse, i.e., one who the person married since last executing a Will, cannot be disinherited by simply omitting his or her name.

LIVING TRUST

There is more than one type of "Trust." A living trust becomes operative during your lifetime (as opposed to a "testamentary trust" created in a person's Will). You may transfer property to an individual or a corporation – such as a bank or trust company – (the "trustee"), which will "own" that property, such as a house, boat, jewelry or mutual funds for the benefit of you and others. You may name yourself as trustee and someone else as successor trustee. At incapacity or death, the successor trustee steps in to manage the property according to the terms of the trust agreement.

A living trust may be "revocable" -- that is, it generally can be changed while you are alive – or it may be "irrevocable" – that is, it may not be changed. In Washington State, a living trust is automatically irrevocable unless the document creating it specifically says that it is revocable. If the trust is revocable, 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 when incapacity occurs, as defined in the trust document.
- Assets do not pass through the Will upon death.
- Typically avoids a guardianship court hearing upon incapacity 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

Other Trusts

During lifetime, a person may create irrevocable trusts as part of a plan to reduce estate taxes or to benefit charities.

Testamentary trusts are created in a person's Will, do not become operative until death, and do not avoid probate. They are important tools used to manage assets on behalf of trust beneficiaries and to reduce estate taxes.

MEETING FINANCIAL NEEDS

Many individuals and their families experience a significant change in their financial situation as a result of the 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 an individual's and survivors' financial situation should be considered carefully.

WITHDRAWING FUNDS FROM AN INDIVIDUAL RETIREMENT ACCOUNT (IRA)

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

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

Also 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
- 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 person 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 person may:

Stay at home and rent out rooms in the rest of the house through a house-sharing arrangement. This provides income and a possible tax advantage.

Rent out residence and move to a relative's home or apartment. This provides income and possible tax advantage.

Sell the home if the home is declining in value or neighborhood is unsafe or to take advantage of possible tax savings. Generally, a single person may avoid capital gains tax on \$250,000 of gain when a principle residence is sold. A married couple generally may avoid capital gains tax on \$500,000 of gain when the home is sold.

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 a person to sell the home but remain as a lifetime tenant.

Drawbacks include:

- Increasing legal complexity
- Impact on Medicaid eligibility
- Elimination of benefit from future gain in property value (long term)

SUPPLEMENTAL SECURITY INCOME –SSI

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

Maximum monthly payments are \$637 per person or \$956 per couple (2008 rate)

Person 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 you may have substantial assets, you may still qualify for Medicaid if you give those assets away or hold them in certain types of trusts. This is because assets that are inaccessible to you are not counted for Medicaid purposes. However, although a proper transfer of assets will preserve those assets for a your loved ones, the transfer may also create a period of ineligibility, 60 months in Washington, before a you 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: Washington State Dept. of Social & Health Services, 1115 Washington St. SE, Olympia, WA 98504 360-902-8400

You can also obtain general information on Medicaid through the Center for Medicare and Medicaid Services website, run by the U.S. DHHS, <http://www.cms.hhs.gov/home/medicaid.asp>

MEDICARE

Medicare is health insurance for people age 65 and older and people with disabilities. Medicare has two parts:

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 disability 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. The benefit premium ranges from \$96.40 to \$166.40 per month (2008) depending on yearly income.

Medicare Medical Insurance (Part D) is available to people with Part A or Part B coverage, or both. It consists of plans that help pay for prescription medicine costs. There are many plans to chose among, eligibility and costs and benefits per program vary.

MEDICARE HOSPICE BENEFIT

Medicare and Medicaid

Both Medicare and Medicaid have a hospice benefit and between them cover most of the patients receiving hospice care. 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 promote the value of providing care to patients regardless of ability to pay. Fundraising efforts are conducted to defray some of that expense.

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:

- **Is the person working?**

Monthly earning must be below \$940 per month (2008)

- **Is the medical condition severe?**

- **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

- **Can the person do the work he or she did before?**

- **Can the person do any other type of work that is substantial and gainful?**

There may be SSD benefits payable to the family in certain situations. 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.homeloans.va.gov/>

Income Verification and Means Testing: 800-929-8387

Military records: <http://www.archives.gov/index.html>

Spanish version: <http://www.va.gov/opa/feature/>

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: 800-827-1000 or <http://www.va.gov/vbs/health/>

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 Servicemembers 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

Headstones and Markers

- May be furnished by government, inscription is regulated
- In a national cemetery, the marker must be consistent with other markers and it is ordered through the cemetery
- If burial is in a private cemetery, an application can be made to the VA. Information and the application instructions: <http://www.cem.va.gov>
- To check headstone and marker status call (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 (402E)

National Cemetery Administration

810 Vermont Avenue NW

Washington, DC 20420-0001

- 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.htm>

Burial Flag

Available if deceased 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 <http://www.militaryfuneralhonors.osd.mil/>

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 changes in 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.

Use credit as a last resort.

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.

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 to try to repair poor credit reports. This information may also be helpful for people trying to complete the comprehensive list of liabilities.

- **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.

- **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>

- **Check the report carefully for any errors and make sure that all the information contained in the report is correct.**

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.

- **Once an 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.

- **If 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.

Finally, one can always choose to wait out credit problems. With some minor exceptions, derogatory credit will be purged from a credit report within seven years. If, however, one can show income stability and prompt payment patterns, the situation will improve within one to three years. Avoid incurring any more derogatory credit while trying to repair poor credit. If one does incur derogatory credit, the seven-year clock resets and starts ticking again! In some cases, filing for bankruptcy may be appropriate. To investigate this option, consult a competent professional advisor.

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.

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
- The decisions you make in advance are binding on the survivors and cannot be substantially changed after death by the Next of Kin. (RCW 68.50.160)

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. Washington State allows payment for pre-arrangements in only two ways – Life Insurance or a Funeral Trust account.*
- What happens to the interest income on money that is prepaid and put into a trust account? *In Washington, the interest earned on a Funeral Trust is required to be deposited with the principal.*
- Are you protected if the firm you dealt with goes out of business? *In Washington, there are provisions in the Funeral Trust Laws to protect the funeral trust funds in case the funeral home goes out of business. The funds can be used at any funeral home.*

- Can you cancel the contract and get a full refund if you change your mind? *Washington Funeral Trust Laws allow the purchaser or the beneficiary – the person the funeral is for – to cancel and receive a refund of 100% of the money placed in trust, including the interest, at anytime prior to death.*
- 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. In Washington, funeral trust funds belong to the purchaser, not the funeral home, and can be used at any funeral home in any state. Some funeral homes may charge less than you had set aside in Washington, or some may charge more. Be sure to compare prices before any funeral is arranged for.*

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. Most funeral homes may offer services that differ 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.

Direct Burial

The body is buried after the death certificate is filed and burial permit is obtained, 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 at the family's church, home, or at the funeral home. Direct burial 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, 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 after the death certificate is filed and the cremation permit is obtained, usually 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 with the permission of the property owner. 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 added 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:

I. 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 a copy filing a copy of death certificate with the State of Washington through the County Registrar , 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 certified copies of the death certificate, 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, certified copies of death certificates, 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 between less than \$1,000 and 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 leave the room and allow the family to select the casket on their own.
- Third party dealers are selling caskets more frequently. Funeral Rule requires directors 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 rigid container, a non metal enclosure – pressboard or cardboard - 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 used when burial is selected. The vault or liner is placed in the ground before burial, and the casket is lowered into it. 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. 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. 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 deceased was a veteran, see page 28. For individuals 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.
- Endowment care on a cemetery plot is maintenance and grounds keeping and is a state requirement for most private cemeteries.
- 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

This section lists some of the issues related to financial affairs facing survivors. Some issues are immediate or short-term; others may arise months after the death, or even a year or more later. The timeframes suggested below are meant only as guidelines to help a bereaved person set some priorities when the number of required tasks may seem overwhelming. Many of the tasks are the responsibility of the personal representative named in the Will. Often the personal representative is the surviving spouse or partner.

The section on Assessment Tools (see page 5) 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 CHECKLISTS OF TASKS

Immediately After Death

- Arrange for care of children or dependents with special needs
- Arrange for care of pets
- Arrange for perishable food, plants, and disposables
- Arrange for security of the home, car, motor home, property or business.
- Arrange for someone to watch the home during the funeral.
- Make funeral arrangements (see Funeral Section, page 34)
- Obtain several certified copies of the death certificate from the funeral home.
- Set up a phone and mail system to track interactions for the items listed in this section
- Be aware of the following potential pitfalls:

Thinking about moving from your current home before you are able to make a decision based upon reason, not just emotion.

Spending money impulsively.

Caving in to pressure to sell or give away possessions before you are ready to let them go.

Giving or lending money to others without first reviewing finances and perhaps going over the decision with a competent advisor.

Within Two Weeks

- Find the Will or letter of instruction, if any
- Advise personal representative or executor of the death

- Locate all important documents (see assets and liabilities worksheets)
- Make an appointment with an attorney to discuss the estate
- Notify life insurance companies of the 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 the death
- Cancel credit cards on which the deceased was the only signer
- Notify all other credit card companies
- Contact post office to change mail delivery as necessary
- Obtain bill for last illness from hospital
- Cancel or redirect newspapers, subscriptions and other home deliveries
- Be aware of insurance payments due on any of the property
- Consult a competent advisor before requesting distribution of retirement benefits

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
- You may be able to negotiate with creditors to postpone payment for 30 days

Within One Month

- 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
- Change title on real property if held in joint tenancy. If a trust is involved, consult a competent advisor.
- Do not pay off deceased's debts until discussed with attorney and/or executor
- Investigate whether any debts are covered by credit life insurance
- Obtain valuations of assets as appropriate. This is ordinarily a duty of the personal representative
- Evaluate business and partnership obligations. If illness was of short duration, notify the decedent's employer and talk to the employee benefits office. Find out about the last paycheck, company life insurance, pension benefits, money in deferred compensation, or profit sharing accounts.

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 deceased'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 deceased person'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 school full time
- Age 18 or older and severely disabled (disability started before 22 years old)

Parents can receive benefits if they were dependent 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 deceased
- Survivor's birth certificate
- Marriage certificate if a spouse
- Divorce papers if applicable
- Children's Social Security numbers if available

- W-2 forms or federal self-employment tax return for most recent year for the deceased
- 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 generally not subject to income tax. Usually the beneficiary has the ability to choose payment options.

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.

OTHER BENEFITS

If the deceased 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 deceased was a veteran, contact the Department of Veterans Affairs for possible benefits (see page 28).

TAX STATUS

Tax returns and filing status will be issues for a survivor after the end of the year in which the person died. It is essential for the survivor to work with the personal representative, and it also may be necessary to work with a tax consultant. Here are some guidelines for this process.

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.
- Usually have to file in cooperation with executor or administrator of estate
- If no personal representative is appointed:

Write name of deceased 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 the person'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

After death the issues of tracking assets and liabilities, adjusting to altered sources of revenue, care of dependents, managing financial affairs, and accessing available resources and benefits may shift to one or more loved ones. This booklet contains the framework and structure to help smoothly accomplish this transfer of responsibilities. 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 following the death.

Resources

COMPETENT ADVISORS: An attorney, certified public accountant, financial planner or insurance agent that has specific knowledge and experience 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 complicated 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 areas of expertise, including Elder Care Services, to assure that the care goals of family members are achieved when elderly family members are no longer able to act independently.

Washington Society of CPAs (WSCPAs): With more than 8,000 members representing the accounting profession in Washington the Washington Society of Certified Public Accountants (WSCPAs) offers consumers access to practicing CPAs offering a variety of services. To locate a CPA visit: <http://www.wscpa.org> or call (425) 644-4800.

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://www.abanet.org/rppt/public/home.html> 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.

Washington State Bar Association

The WSBA offers a Lawyer Referral Service to assist the public in selecting a lawyer that matches their needs.

Washington State Bar Association
2101 4th Ave- 4th floor
Seattle, WA 98121
(206) 727-8200 or 800-945-WSBA (9722)
<http://www.wsba.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.com/applications/ConsumerDirectory/>

For information and FAQ's, go to <http://www.naela.com/public/QA.htm>

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.

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/states/michigan06.pdf>, for a printable version.

Low Income Legal Assistance

Available through Columbia Legal Services (800) 342-3872

Other Legal Information

Senior Rights Assistance

Seattle (206)448-5720

Toll free (800) 972-9990

**Ask for the Senior Rights Assistance*

Northwest Women's Law Center

Seattle (206) 621-7691

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.

Visit this website to help locate a financial planner:

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

The American College

<http://theamericancollege.edu>

Provide consumer information and referrals for financial advisors.

LIFE INSURANCE LINKS

Life and Health Insurance Foundation for Education

<http://www.life-line.org>

The Life and Health Insurance Foundation for Education (LIFE) is a non-profit organization dedicated to addressing the public's growing need for information and education about life, health, disability and long-term care insurance.

National Association of Insurance and Financial Advisors

www.naifa.org

Provide consumer information and referrals for financial and life insurance advisors.

Society of Financial Service Professionals

<http://financialpro.org>

Society members can provide consumers expert assistance with: estate, retirement and financial planning; employee benefits; business and compensation planning; and life, health, disability, and long-term care insurance.

OTHER INFORMATION SOURCES

Washington State Funeral Directors Association

Provide information on their website and a helpful guide called "Dealing with Death".

2115 South 56th St. Suite 401

Tacoma, WA 98409-6900

(253) 588-7111

www.wsfda.org

People's Memorial Association is a non profit that provides consumer information and funeral arrangements at www.peoplesmemorial.org

Social Security Administration

Toll Free (800) 772-1213

Medicaid

Contact your local Department of Social and Health Services (DSHS) office.

U.S. Veteran's Administration

Toll Free (800) 827-1000

Washington State Department of Veteran's Affairs

Toll Free (800) 562-2308

Industrial Insurance Compensation Crime Victims Compensation State of Washington Department of Labor and Industries

Toll Free (800) 762-3716

Life Center Northwest

Toll Free (877) 275-5269

<http://www.livinglegacyregistry.org>

Federal Trade Commission

Provides a free pamphlet "Consumer Guide to the FTC Funeral Rule". Available by writing to:

Federal Trade Commission

915 2nd Ave. Suite 2896

Seattle, WA 98174

Center for Health Statistics of the State Department of Health

Death Certificate Ordering Information

(360) 236-4313

PO Box 9709

Olympia, WA 98507-9709

<http://www.doh.wa.gov/EHSPHL/CHS/death.htm>

Glossary

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

Advance Directive –Signed legal documents giving medical care providers information about the signor’s wishes regarding medical treatment, especially life-sustaining treatment for terminal care; can designate whom a patient selects as substitute -medical decision-making if the signor becomes incapable of giving informed consent to medical treatment.

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 authorizing that person to act on behalf on the grantor for general or specific purposes, such as to transact business, execute documents, or make medical decisions on behalf of the grantor..

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

Bequest – A gift of personal property by Will.

Claim against Estate – A statement made by a requestor upon an estate requesting an action or forbearance of an action thought owed the requestor; typically a creditor’s claim to be paid.

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

Community Property – Classification of property, including earnings, equally owned by a husband and wife that was acquired during their marriage. This legal concept is recognized in Washington State and some other some western and southwestern states.

Conservator – A person that manages the affairs of an individual who may be physically or mentally incapacitated. In Washington this person is referred to as a “guardian.” Also, in Washington guardians of the estate are appointed, not conservators.

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 mistakably 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. Examples include a bank serving as, an executor, administrator, trustee, or guardian.

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 transfer 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 contributes a gift.

Durable Power of Attorney - A legal document that allows an individual to designate another person to make legal decisions on the individual’s behalf. The other person becomes the individual’s “attorney in fact.”

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 his or her lifetime and at their death; established in a Will and one or more trust agreements, and considers beneficiary designations in retirement plans and insurance policies.

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

Executor – A man named in a Will to manage and settle the estate; the personal representative. Also see *Last Will and Testament*.

Executrix – A woman named in a Will to manage and settle the estate; the personal representative. Also see *Last Will and Testament*.

Fair Market Value – The price that a property is transferred in an arms length transaction 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 the personal representative named in a Will and the trustee named in a trust.

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 401k investment choices selected by their employer. Employers may contribute to their employee’s 401k by matching a portion of the investment.

Gift Tax – This is a federal and state tax imposed on the transfer of property; 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 either minors or persons whom the courts have declared legally incapacitated (formerly known as incompetent) as to their ability to make particular decisions on their own behalf. Guardians can be appointed for the person (to address care needs) or for the estate of the person (to address finances), or both.

Guardian Ad Litem - A qualified person appointed by the court to represent the best interests of a minor or an alleged incapacitated person during in court proceedings.

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 has died without creating a valid Will. These heirs inherit the property of the deceased.

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.

Incapacitated Person – A person who is legally not capable of managing his/her affairs because of a mental (not physical) handicap; mentally incompetent

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 – The condition of dying without leaving a valid Will.

Intestate – Having died without leaving a valid will (as opposed to testate). 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 current 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 if male, or the testatrix if female), 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 valid Will and testament.

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 Guardianship – Letters of Guardianship – A document showing the authorization for an individual or other source to act as a guardian of an incapacitated person's financial and/or personal affairs.

Letters Testamentary – A legal document by a court giving an executor power to take control of and distribute property.

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. For example, the Will might say, "My residence is granted to Terry to use for Terry's life."

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

Living Will— A living Will is a directive to physicians wherein an individual expresses his or her desire regarding the use of life-sustaining treatment when he or she is determined to be in a terminal condition. This document directs the physician to give or withhold life-sustaining medical care. See Advance directive.

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 and administrator.

Pour-over -Refers to transferring property from one estate or trust to another estate or trust based on the occurrence of an event; what is left in one "pours over" into the other

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 advanced directives.

Probate (verb) – Strictly speaking it refers to proving the validity of a Will. It generally refers, also, to the legal process in which 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. In Washington State the Superior Court serves as the probate court.

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 (informally known as “Quick” Claim Deed) - The simplest manner of conveying real property without warranting the validity of the chain of title. The person conveying the property is simply quitting all interest he or she has in the 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 voiding a Will, a trust instrument, power of attorney, or other such legal document.

Rollover - Repeated investments of the profits of short-term securities upon maturing; placing the funds from one type of retirement account into another qualified retirement account.

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; significant in determining which of the two inherits from the other.

Subchapter S Corporation – An eligible corporation whose shareholders elect to be treated to have income pass through directly to the shareholders for purposes of income taxation, thus providing one layer of taxation. By contrast, a C Corporation pays taxes and its shareholders pay taxes, thus providing with two layers of taxation. Among the eligibility factors a Subchapter S Corporation can have no more than 100 shareholders and none of the shareholders can be non-citizens of the United States.

Successor Trustee – When an original trustee dies or becomes incapable of managing his/her own trust, this person becomes responsible for management of the trust. For example, a person who creates a trust might choose to designate himself or herself as trustee but will want a successor trustee to carry on the duties if he or she is no longer available or capable.

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 necessary to be legally competent to make a valid Will.; to be aware of the nature and extent of one's estate and the objects of one's bounty (know one's close relatives and loved-ones).

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, and is not contingent upon the person's duration of employment.

Ward There is a legal relationship between a ward and a guardian. Wards are either minors or persons whom the courts have declared legally incapacitated (formerly known as incompetent) as to their ability to make particular decisions on their own behalf. Court appointed guardians act as surrogate decision makers for the ward. – In Washington a “ward” is referred to as an “incapacitated person.”

Warranty Deed - A deed in which the seller guarantees the title is good; the deed contains covenants of title. A “statutory warranty deed” sets out the warranties or guarantees required by state statute.

Will – A legal document stating a person's intentions and desires regarding how and to whom they want their property distributed after they die, who should be appointed as personal representative to wind up their financial affairs and make distributions, and whether the court should closely supervise the personal representative.

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