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DON'T BE A JOE or HELEN! PROTECT YOUR ASSETS AND WISHES NOW!

Elect Non-crisis planning for you or your loved one.

Are you getting older? Are your parents? Do you and/or they have a plan?

Consider Joe and Helen. They met just after he was discharged from the Army. They married, raised two boys and a girl, worked hard their entire lives, retired with a nice nest egg of funds and looked forward to time with their daughter's children who they loved deeply and that lived a few hours away. Their first son lived out of state, had a well-paying job and was married with no children but separated from his wife whom Helen was never very fond of. Their second son had never quite "launched", was not married, had a hard time holding a job and was currently on governmental low income assistance.

Joe managed the family assets and finances. Their home and a small checking account were held in Joe and Helen's name, but all investment accounts were in his name alone. Joe did fairly well in the stock market and he was certain that the assets would not only provide for he and Helen but provide a nice inheritance for their children and especially their beloved grandchildren.

Helen's memory had been on the decline for some time but the children didn't realize how bad it was until Joe slipped while shoveling snow, broke his hip and had to stay in a rehabilitation facility. Helen could not be left alone and was not going to be able to care for Joe when he came home. Helen came to stay with her daughter who temporarily reduced her full time employment to part time so that she and Helen could visit Joe 3-4 times a week. Daughter had to hire home healthcare aides to be with Helen when she had to be at work. Joe was recovering well but suddenly developed a blood clot and died.

Neither Joe or Helen had executed a will, a power of attorney or an advance healthcare directive. None of the children ever wanted to talk

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about the “what if’s” and now the family was in crisis. They had failed to plan.

1. **Fact/Question:** Joe and Helen’s house and bank account are titled jointly but the assets in the investment accounts were held in Joe’s name alone. With no Will in place providing direction on who should receive these assets, how will they be distributed?

Answer: When a loved one dies without leaving a will, he or she is said to have died intestate. When this happens, any assets held in the decedent’s name alone will be distributed according to the intestate laws of the state where the decedent lived. Warning: such distribution may or may not accord with that person’s wishes.

Unintended result:

- Helen will only inherit a portion of the investment assets (under Pennsylvania law: \$30,000 plus ½ of the balance of the funds) and the children will receive equal shares of the remainder of funds.
 - Should the son that is separated get divorced, the daughter-in-law, who Helen doesn’t care for, could receive a portion of Joe’s estate in the divorce settlement.
 - If the son on governmental assistance accepts the inheritance money, he will most likely be disqualified from his governmental assistance and have to reapply after the inheritance money is used up; or he may need to utilize a portion of those funds to establish a type of trust for the funds so that he may continue to receive the governmental assistance and have the inheritance funds supplement not replace his governmental assistance.
2. **Fact/Question:** Helen no longer has the mental capacity to execute a power of attorney. What is a power of attorney and why is it so important to have one in place?

Answer: A power of attorney is a legal document that allows one person (the "principal") to grant to another person (the "agent") the legal authority to make decisions and enter into transactions on the principal's behalf. The legal authority granted can be significant, including the ability to sell or

purchase real estate, transfer money, buy or sell securities, make gifts, and the like.

A durable power of attorney allows the person you appoint to act in your place now and when and if you ever becomes incapacitated. Without a durable power of attorney, no one can represent you unless a court appoints a guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship, your representative may have to seek court permission (which might not be granted) to take planning steps that you could implement immediately under a simple durable power of attorney.

Unintended result:

- Instead of Helen choosing an agent to manage her financial, real estate and other matters via a power of attorney, a court appointed guardian will be needed. Although Helen's daughter may be appointed by the court as her guardian, Helen could have designated her daughter as her agent and saved thousands of dollars in legal fees.
3. **Fact/Question:** Helen no longer has the capacity to execute an advance healthcare directive. What is an advance healthcare directive and why is it so important to have one in place?

Answer: An advance healthcare directive is an instruction given by you concerning the medical treatment or care that you would want - or would not want - should circumstances arise where you are no longer capable or competent to give such an instruction. Advance healthcare directives are the best way to ensure that your express wishes for health care are known and honored.

Unintended result: Helen's wishes for her medical treatment and end of life decision may not be followed.

4. **Fact/Question:** Helen no longer has the capacity to execute a Will. What are the ramifications of her failure to do so?

Answer: Helen will not be able designate who will inherit her assets when she passes. Although her guardian will be authorized to utilize her assets for

her while she is alive, any assets remaining at her death will pass under state intestate laws, resulting in some of the same unintended results as occurred when Joe passed.

5. **Fact/Question:** Daughter provided caregiver services and expended (and continued to expend) personal funds for the benefit of Helen without documenting the arrangement. Can daughter be reimbursed?

Answer: Yes, but if daughter accepts payment(s) for services and expenditures without a properly documented caregiver agreement and then if Medicaid is needed as a source of funding for skilled nursing care for Helen, such payment(s) may be determined to be an inappropriate transfer of funds and cause an ineligibility period of Medicaid benefits resulting in the family having to pay for skilled nursing services that Medicaid would have otherwise covered.

Joe and Helen failed to put in place a “SENIOR PLAN” – what’s your SENIOR PLAN?

We all want peace of mind about our welfare and our assets. You are the only one who can make important decisions about how you would like to live. Those decisions MUST be documented. In this case, information is power! Anyone who is aging, or has elder parents should engage in non-crisis planning and review their SENIOR PLAN with an experienced elder law attorney. Don’t be a Joe and Helen!

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