

Planning Partners Press™

RANDALL LAW OFFICES, P.C.

Volume 15, Issue 6

3/20/2013

Controlling The “Inevitable” Loss Of Control Planning for Disability - Part 1 of 3

Do your clients plan for a period of extended mental disability? Many would respond “I encourage my clients to sign a power of attorney” But, is signing a power of attorney *planning*? Often clients sign a power of attorney with little or no counseling about when it will become effective, who will be acting on their behalf, and the responsibility the helper will take on.

This series explores a counseling based, planning approach to preparing for mental disability from a “when-who-what” point of view.

“When” are your clients comfortable giving up decision making control? Most would say “when I can’t do it.” No one can control when they will loose decision capacity; but clients can control *who should make that decision!* We’ve developed a “disability panel” through which the client decides who will be entrusted with the important disability determination decision.

Members of the National Network Of Estate Planning Attorneys have created The *Disability Determination Developer™* to facilitate this critical discussion. The tool supports *planning* for disability and the client’s naming a panel of family members and trusted medical advisors who will make the “when” decision.

Family members are usually the key to the panel. A client’s giving up control is not a cold, clinical decision. The people closest to the client are best positioned to see how a client’s condition differs from “normal”. The client picks who they’re most comfortable with to make the decision of *when* control shifts. It can be multiple family members, with majority or unanimous control.

Physicians can verify the client’s lack of capacity, and also provide information on how that situation is likely to proceed. A disability resulting from an accident raises very different scenarios than from a degenerative disorder like Alzheimer’s or Parkinson’s.

When counselling clients about the medical input desired, we ask the simple question, “*what’s your relationship with your Doctor?*” This elicits responses ranging from “what doctor” (those who never see one, or are participants in HMOs) to a direct positive or

negative response. Important insight can be gleaned from the client’s reaction to this open-ended question.

Questions like “*How about requiring a second medical opinion—does that sound more like protection or complexity to you?*” helps clients envision the giving up control process.

Client’s envisioning the situation and describing what they see—who’s there, how do they conduct themselves, what are their feelings, etc.—can result in a clear understanding of not only who should make the disability determination, but also the challenges the family will face during this emotional time.

We’ll begin our next installment by describing the mechanical process followed when the disability panel has determined that the client can no longer effectively manage property or financial affairs.

Feel free to contact me if you would like to know more about our disability counselling process and the *Disability Determination Developer™*.



ATTORNEYS & COUNSELLORS AT LAW

Richard L. Randall
Jennifer E. Norton

Truth About Estate Planning™ Client Orientation Workshop

Tuesday, April 9th, 2013 from 7-9pm

*Limited Space, Reservations Required (317) 803-4180

Location

3500 DePauw Blvd., Suite 2090
Pyramid Two, 9th Floor
Indianapolis, Indiana 46268-6139
www.lifespanusa.com

“An unreasonable commitment to CoCreating plans that work.”

Planning Partners Press™

RANDALL LAW OFFICES, P.C.

Volume 15, Issue 7

4/3/2013

Controlling The “Inevitable” Loss Of Control *Planning for Disability - Part 2 of 3*

Part 1 explored a counselling oriented approach to determining “when” a client will give up control, and using a Disability Panel to make that decision. Part 2 explores “who” control should transfer to “when” the time has come.

In practice, clients usually name “helpers” with little professional counselling. Married couples usually name their spouse to serve as the agent under the power of attorney or successor trustee of a revocable trust. Single clients usually name adult children, often in the order of their age. After a counselling experience though, few clients take this approach.

Effective disability counselling “transports” the client into the disability experience. This is done through questions such as: “*Would you tell me who’s there with you in that situation?*” and the follow-up, “*Would you describe what types of things they’re doing?*” The key perspective altering question is, “*What is life like—for you and for those around you?*”

Clients realize the burden a disabled person’s helper takes on to provide care *and* properly manage financial resources. Clients who proactively “experience” the disability situation quickly conclude that their spouse will need help. The glib response “My spouse will handle it—don’t know how, but that’s what they’re there for!” is quickly revealed as fantasy thinking! How many spouses are prepared to handle both the caregiver and financial steward roles, and have the stamina to do so—*by themselves?*

Through this thinking exercise, clients realize their spouse will need help. This raises two more issues. One is loss of control—this time on the part of the spouse. The second is the capability and availability of adult children “helpers.”

The control issue can be handled by naming a “second helper.” Two or more co-trustees can be named in a living trust and if there is a disagreement the spouse-trustee controls. We call this “spousal control” language and have found clients appreciate it as a way to put the spouse in control while providing them with help when wanted or needed. The spouse can have helpers on

financial accounts “just in case” and can call on the appropriate amount of help when needed *with* no question about “who’s the boss.”

This disability counselling experience also works for single clients; the client looks at what life will be like for their children. The control language approach allows parents to name more than one child as helper while better assuring financial decisions will be made as they would prefer.

After the “what’s life like” and “spousal control” counselling discussions, we find that clients have a better grasp of how tough the disability situation can be on all concerned. We find they are more comfortable evaluating the strengths and weaknesses of potential “helpers,” and thus are better able to build more effective teams.

We have addressed the first two prongs of the “when/who/what” approach to disability planning. Our next installment will explore *what* the helpers can do with the disabled person’s financial assets, obviously



UPCOMING WORKSHOPS

ATTORNEYS & COUNSELLORS AT LAW

Richard L. Randall
Jennifer E. Norton

Maximizing Your Retirement Savings™ Client Orientation Workshop

Thursday, April 18th, 2013 from 6:30-9pm
Tuesday, April 23rd, 2013 from 6:30-9pm
*Limited Space, Reservations Required (317) 803-4180

Location

3500 DePauw Blvd., Suite 2090
Pyramid Two, 9th Floor
Indianapolis, Indiana 46268-6139
www.lifespanusa.com

“An unreasonable commitment to CoCreating plans that work.”

Planning Partners PressTM

RANDALL LAW OFFICES, P.C.

Volume 15, Issue 8

5/8/2013

Controlling The "Inevitable" Loss Of Control *Planning for Disability - Part 3 of 3*

In the first two parts of this series we explored a counseling centered approach clients can use to determine "when" they will give up control, and to "who" control will transfer. This final installment will look at "what" can the trustee or agent (your client's "helpers") do with the assets.

We find that many "stock" powers of attorney or revocable living trusts provide helpers no instructions of "what" to do to support the client. Most powers of attorney simply state "my agent may do whatever I could do if I was there." Revocable trusts state "during my disability my trustee shall distribute principal and income to me in my trustee's discretion." How is the helper supposed to know what the client wants or prefers?

A Definition Of Estate Planning adopted by many members of the National Network Of Estate Planning Attorneys includes; "plan for me *and my loved ones* if I become incapacitated." The client may assume that the helpers will be able to use assets to take care of a spouse, or other family members. But, with the limited language in "stock" documents, the helper may open themselves up to a lawsuit if they use client assets for the benefit of anyone other than the client!

Counseling for "what" the helpers may do could include questions such as "should your helpers be able to spend money on your spouse's care, your children's care, or grandchildren's care? Should distributions to family members be limited to health care needs, education needs, etc? Clients with young children may want helpers to be able to make distributions to children for education, until the child reaches a certain age.

Many clients want to leave instructions limiting "heroic" end of life measures, and are concerned that health care providers are biased toward continuing care for financial reasons. Clients express this desire in medical advance directives. But, there is often no direction for helpers regarding health care spending in either a powers of attorney or living trusts.

Is it important for the client to know that assets will be spent to keep them in their home as long as possible,

even if it is more expensive than moving to an assisted living center? Without instructions for that in the living trust, a helper may feel obliged to move the client and minimize costs, even though it is not what the client wanted.

Now that we have covered the whole "when-who-what" approach to disability planning, you have probably noticed that it supports (and is supported by) a strong relationship between the client, the client's advisors, and the family. We have found that client's desires for a smooth transition when they become disabled and a complete implementation of the "when-who-what" approach works best when clients engage an attorney through an ongoing maintenance and education program that includes family member involvement.

Hopefully this series has increased your awareness of the limitations of disability planning with "stock" powers of attorney or living trusts. The counseling based "when-who-what" approach leads to increased client understanding and making better choices regarding controlling the inevitable loss of control.



UPCOMING WORKSHOPS

ATTORNEYS & COUNSELLORS AT LAW

Richard L. Randall
Jennifer E. Norton

Truth About Estate PlanningTM Client Orientation Workshop

Tuesday, May 14th, 2013 from 6:30-9pm

*Limited Space, Reservations Required (317) 803-4180

Location

3500 DePauw Blvd., Suite 2090
Pyramid Two, 9th Floor
Indianapolis, Indiana 46268-6139
www.lifespanusa.com

"An unreasonable commitment to CoCreating plans that work."