PLANNING FOR THE PEOPLE YOU LOVE

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Disclaimer

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Bridget Eichinger's clients are individuals and couples who need estate planning documents. She drafts wills, trusts, powers of attorney, and health care documents (such as health care proxies and HIPAA designations), and documents to appoint agents for the disposition of remains. She regularly assists clients in creating irrevocable trusts to protect beneficiaries, for Medicaid asset protection purposes, and/or to reduce estate taxes.

Ms. Eichinger's clients benefit from her knowledge in the areas of estate planning and estate administration; she offers practical and competent counsel regarding her clients' future estate plans. She is known for her compassion in working with clients in planning for their own death or incapacity. Her clients are based in Rockland, Westchester, Orange and New York Counties.

Bridget's prior experience includes estate planning and estate administration at the firms of Hollis Laidlaw & Simon P.C., Falcon Rappaport & Berkman LLP, and Cane & Boniface P.C., and serving as an Assistant Corporation Counsel for the New York City Law Department.

Areas of Concentration

- Estate Planning
- Elder Law
- Probate and Trust Administration

Overview of Presentation

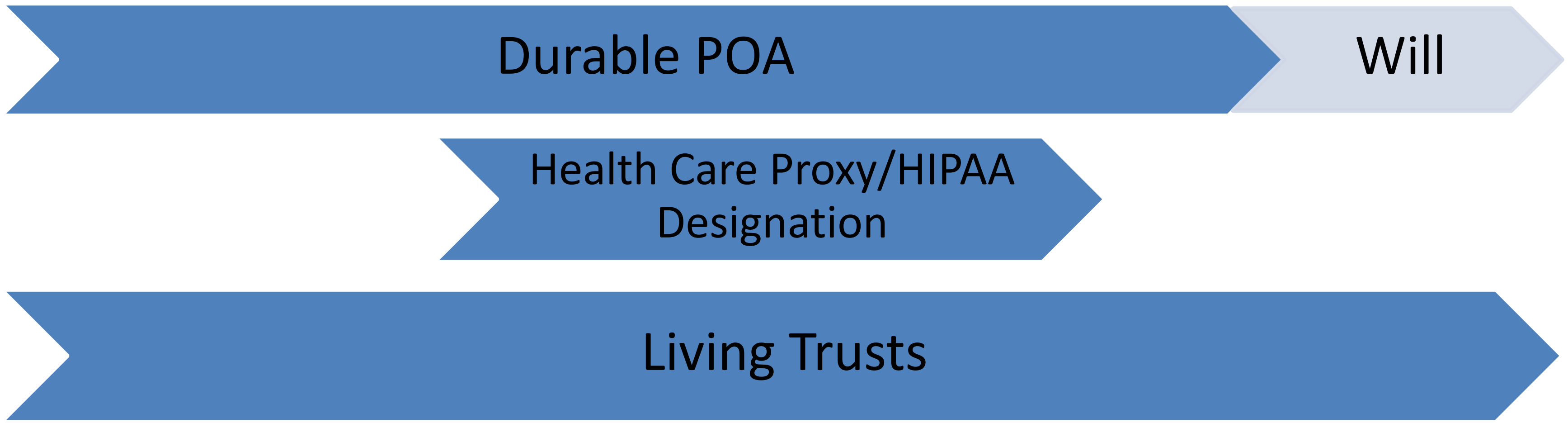
- Advance Directives
- Types of assets: probate vs. non-probate assets
- Probating a Will
- Distributees and Intestacy in New York
- Estate Taxes and avoiding them
- Using Trusts to protect loved ones
- Medicaid Planning

NY Advance Directives Types and Effectiveness

Effective Immediately Upon Signing

Effective Upon Disability or Loss of Competence

Effective After Death



Power of Attorney

- Use a Power of Attorney instead of co-owning bank accounts with one or more of your children
- Prevents loss of funds due to child's liability
- Avoids sibling issues with respect to the funds remaining in the convenience account upon death of the parent
- Allows gifting authority for Agent so assets can be removed from your estate if needed

Health Care Proxy and HIPAA Designation

- As long as you are able to make your own health care decisions, the medical personnel will listen to you
- Use a Health Care Proxy to name an Agent (and successor Agents) to make decisions if you are unable to
- The HIPAA Designation of Agents allows those you designate to request your medical records and speak to medical personnel

Probate/Administration Assets = Require Court Involvement

- Financial Assets that are titled only to the decedent

- Real Property that is titled only to the decedent or held by the decedent and others as <u>tenants-in-common</u>

- Tangible Personal Property

- Business Interests
  - LLC interests, C or S Corp. shares, general partnerships and sole proprietorships
  - **Note:** Business agreements with co-owners may dictate valuation and transfer upon death or disability

Non-Probate Assets
= No Court Involvement Required

- IRAs or Qualified Retirement Accounts
- Life Insurance
- Annuities (Qualified or Non-Qualified)
- Certain Bank Accounts
  - JTWROS, POD OR TOD
- Real Property
  - Tenancy by the Entirely
  - Join Tenancy with Rights of Survivorship
  - Life Estate
- Trust Assets
- Any other assets with a “Designated Beneficiary”

Probating a Will

- Original Will with Affidavit (self-proving or of attesting witnesses)
- Original Death Certificate
- Affidavit of Comparison and Copy of Will
- Probate Petition disclosing value of estate and Oath and Designation
- Waivers of Process; Consents to Probate from every Distributee (sent for signature with copy of Will)
  - OR Citations served with copy of Will and appearance in Court
- Notice of Probate (non-distribute beneficiaries and successor Executors and Trustees) and Affidavit of Mailing
- Sometimes Affidavit of Heirship
- Filing Fee and fee for Certificates; SASE

Distributees and Law of Intestacy

- Spouse and children
- Parents
- Siblings, or children of predeceased siblings
- Grandparents, or issue of grandparents if both on one side have predeceased (no more remote than grandchildren of grandparents)
- Aunts and Uncles, or issue of predeceased aunts and uncles
- See EPTL 4-1.1 for full description

Avoid Creating Probate Assets out of Nonprobate Assets

- Never name "my estate" as the beneficiary of a qualified retirement account
- The IRS requires an ascertainable beneficiary (or a designated beneficiary), which needs to be an individual or a trust with very specific provisions; these trusts are commonly referred to as conduit or accumulation trusts.
- If name (1) an "estate" or (2) a trust with a charitable beneficiary, beneficiaries may owe all income taxes within five years of the date of death.

Beneficiary Designations

Beneficiary designations should coordinate with your Will or Trust. Think about these designations if you update your Will or amend your Trust.

Estate Taxes - what is included in the calculation?

- Estate taxes are based on a calculation of all of your assets at the time of your death

- Your taxable estate is generally comprised of your probate **and** your non-probate assets, including insurance and retirement accounts that are owned or controlled by you

Estate Tax Exemptions in 2025

- Federal: $15,000,000, with the highest rate, a 40% tax, <u>on amounts above $16,000,000</u>

- New York: $7,350,000, with the highest rate, 16%, on estates over $10,100,000.
  - "Cliff" Tax: If exceed exemption by more than 5%, tax imposed on <u>entire</u> estate;
  - Over cliff if estate more than $7,717,500

Reducing your Taxable Estate with Annual Exclusion Gifts

Current Federal annual exclusion is $19k

Interplay between Gift & Estate Taxes

- Example:
  - Mrs. Smith gifts $219,000 to her niece
  - Mrs. Smith will need to file a gift tax return to report the amount in excess of the annual exclusion
  - Mrs. Smith's federal estate exclusion amount will be reduced by $200,000 – bringing her exclusion amount down from $15MM to $14.8MM

Income Tax Treatment

- **Gift:** Cost basis for gift recipient is the original cost basis of the donor.

- **Estate**: Cost basis for estate beneficiary is the date of death value of the asset. Capital gains tax only paid if asset sold at a higher price than the date of death value.

Illustration of Capital Gains Treatment

Lifetime Gift

- $750,000 FMV House
- $50,000 original cost basis
- Gift Recipient pays capital gains tax if later resells for any **gain above $50,000**

Inheritance at Death

- $750,000 FMV House
- $50,000 original cost basis
- Beneficiary pays capital gains tax if later resells for any **gain above $750,000**

Trusts to Protect our Loved Ones

- Trusts for Minors
- Trusts for beneficiaries with special needs
- Trusts to avoid probate
- Trusts to avoid estate tax liability
- Trusts to protect spendthrift beneficiaries
- To qualify for Medicaid to cover long-term healthcare costs

What is a Trust?

- A **relationship** among:
  - <u>Grantor:</u> trustor, grantor or donor
  - <u>Trustee:</u> the fiduciary and manager of all trust assets
  - <u>Beneficiaries/Remaindermen:</u> designated recipients of income and principal

Revocable Trusts

- Avoid Probate and Accounting in Surrogate's Court
- Privacy
- Allow for immediate access to and transfer of assets upon death
- Can create continuing trusts within them (such as CSTs) when certain conditions apply

Credit Shelter Trust

- Preserves the first spouse's estate tax credit

- Prevents assets in the trust from being taxed upon the death of the second spouse, in essence allowing a married couple to double their estate tax exemption

- Allows first spouse to designate the ultimate beneficiaries or to delegate that decision to the second spouse.

Funding a Credit Shelter Trust

- **Option 1:** Up to maximum amount allowed by Federal Law (i.e. $15 million or more depending upon year of death)
- **Option 2:** Up to maximum amount without owing any State estate taxes (i.e. $7,350,000 or more depending on year of death)
- **Option 3:** QTIP Trust Election or Disclaimer Trust
  - Flexibility
  - Allow for post-mortem tax planning
  - Very important with estate tax exemption changes
  - Require surviving spouse or a trustee to seek advice and decide within 9 months for disclaimer trusts and 15 months for QTIP

Self Check-in

- Is your trust funded?
- How is your real estate titled?
- Are you still comfortable with the trustees you'd selected?
- Have you/the trustees been following the trust's rules re: distributions and its Crummey provisions, if applicable?

How we Can Afford Long-Term Care Costs – Medicare does not cover the expense (averaging around $430/day)

- Long-term care/hybrid life insurance/long-term care insurance
- Medicaid Law allows seniors to voluntarily impoverish themselves to qualify

  - Income will not disqualify a senior from Medicaid, only assets will

  - Five year "look back" for gifts currently only applies for nursing home care, not home care.

2026 Medicaid Asset and Income Limits

Asset Limits

- Single individual or only one spouse applying: $32,396
- Both Spouses applying: $43,781
- **Income Limits Once Qualified* - join pooled income trust for HC**
- Single individual or only one spouse receiving care: $1,800/month
- Both spouses applying: $2,433/month

*All income of a recipient of Medicaid NH coverage, other than $50/month personal needs allowance must go toward costs of NH care.

When one spouse is applying

In determining the community spouse resource allowance on and after January 1, 2026, the community spouse is permitted to retain resources in an amount equal to the greater of the following: **$74,820** or the amount of the spousal share **up to $162,660**. The spousal share is the amount equal to one-half of the total value of the countable resources of the couple as of the beginning of the most recent continuous period of institutionalization of the institutionalized spouse on or after September 30, 1989.

Allowable income for community spouse: **$4,066.50/mo**.
Allowable income for institutionalized spouse: $50

Functional Criteria Assessed for Medicaid Coverage

Home care:
The assessment determines that you need assistance with at least three of the Activities of Daily Living (ADLs), or, with a diagnosis or dementia, at least two ADLs (daily tasks of basic life):

1) Mobility (ambulating, transferring) – both inside and outside of home;
2) Dressing – including fastening buttons and zipping zippers;
3) Eating – utilizing utensils to get food to the mouth and the physical act of eating;
4) Personal Hygiene – safely getting in and out of bathtub or shower and cleaning oneself, shaving, nail clipping, brushing teeth;
5) Toileting (continence)

Nursing Facility Level of Care:
The assessment determines that you have a medical condition that requires a level of nursing care that is only available in an institution.

Conclusion

- Our laws and tax structure reward advance planning

- It is important to review your individual situation with an attorney who understands both estate tax and protection rules.

Questions & Answers

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