

5 Florida legal documents adults need regardless of age

- BY WILLIAM EDY • CAPEELDERLAW@AOL.COM • APRIL 26, 2009

Let me again thank the many readers who called in financial questions to the Financial Planning Association, or FPA, hotline, sponsored jointly by The News-Press and the Southwest Florida chapter of the Financial Planning Association.

Twice a year, Jim Applegate, CFP, organizes volunteer FPA members in two shifts to sit from 9 a.m. to 3 p.m. at The News-Press headquarters in Fort Myers. The hotline is hosted by staff writer Tim Engstrom, using News-Press phone lines to randomly rotate financial planning questions called in by our readers.

As I have mentioned in past articles, these volunteers do not solicit your business, but help provide a brief general answer to your question to help educate you about your financial choices. Under the Certified Financial Planner rules of ethics, they cannot provide you with a specific investment recommendation, because they do not know your background, your risk profile, or your other specific financial investments. Each person answering questions must be a Certified Financial Planner, or CFP, attorney or CPA, who are members of the local FPA. Anyone wanting a referral to a CFP may phone any of those pictured in last Sunday's edition of The News-Press, although there are many more listed in the phone book.

What makes the CFP generally more educated than the person who merely lists themselves as a financial planner is that the CFP must have completed a college degree and taken six difficult courses in fundamentals of financial planning, investment planning, insurance planning, estate planning, retirement planning and tax planning.

After passing all six course tests, the CFP candidate must take a difficult national comprehensive 10-hour written test over two days, covering 89 issues, of which the pass rate is only about 50 percent. They must also complete a three-year approved work experience. Attorneys and CPAs may be exempted from some of the requirements, other than the 10-hour test. All CFPs must also complete continuing education courses approved by the CFP Board of Standards. They are also subject to a very strict code of Ethics. I always encourage anyone providing financial services to complete this valuable designation.

A CFP will understand the importance of doing estate planning and the options, but he or she will never try to prepare legal documents or substitute their advice for the advice of the client's attorney. So again I thank Applegate and the many FPA members who spent last Sunday providing basic education to those who called the hotline. Most CFPs do offer a free initial consultation.

When a caller asks legal questions, the financial planner usually refers the call to either me, in the morning, or to attorney Wendy Morris, in the afternoon. One caller I spoke to asked a question that is so often asked by snowbirds. She asked if her legal documents would be valid here in Florida.

Basic estate planning documents that every adult should sign include, at least, a last will and testament, a durable power of attorney, a health care surrogate designation, a pre-need guardian designation, and a living will, not to be confused with a living trust. Legal documents prepared and signed up north, often many years before moving to Florida, may be valid, although trying to use them here may be more expensive. No attorney can provide an opinion of their validity or usefulness without examining and reading the documents.

Even documents prepared and signed in Florida many years ago should be reviewed with an attorney every

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few years. A specific law may have changed or your situation or desires may have changed.

Almost any document can be downloaded from the Internet or printed from software purchased at a store, but the downloaded or purchased documents drafted for another state may not be valid or properly executed in Florida. These documents not prepared under the supervision of an attorney, in violation of the Florida Bar rules, can create problems that may only become known after the person who signed the documents is deceased. Most attorneys can prepare those five documents for a reasonable fee.

The living will is a document that is based on the Declaration Pursuant to Life Prolonging Procedures Act, a Florida statute. It may reflect your desire to not be connected to a life support machine in order to be kept alive artificially, if you are determined by your doctors to be brain-dead, terminally ill, with no chance of recovery. You may also express in your living will that disconnection is not to be done until after you have had the chance to transplant or to donate your organs. Your organ donor status should also be noted on your driver's license.

You can designate in a health care surrogate document the person that will make medical decisions for you, in the event you are unable to make them for yourself. Your durable power of attorney will be governed under FS 709.08, while the health care surrogate document will be governed under FS 765.202. Living wills, or life prolonging procedures, are governed by FS 765.302. Documents prepared in another state may reference their statutes, which may not be understood by those interpreting the document here in Florida.

Generally, the spouse is named as the primary health care surrogate or medical decision maker, but an adult child with a medical background might be preferred. Second marriage situations and unmarried couple situations raise additional issues for discussion with your attorney.

You should also sign a durable power of attorney. This will allow someone else to make financial decisions or act on your behalf while you are alive, but incapacitated. The powers granted should be specifically set forth in the 4 or 5 page document.

You may also want to sign a pre-need guardian designation that will nominate a spouse or adult child or friend to serve as your court appointed guardian, should such an appointment become necessary.

If you have older parents or grandparents, you will want them to have these documents signed while they are still competent to understand and sign these five documents.

But since anyone, regardless of age can become sick or become involved in a fatal accident, everyone should have made these choices in writing.

Finally, everyone should have a last will or trust agreement, which I will discuss next week.

William Edy is a Certified Elder Law Attorney and Certified Financial Planner. You may ask him for his free booklet on Estate Planning by calling 772-5800 or online at CapeElderLaw@aol.com. He may be contacted on-line for article ideas and questions. Since email is not secured, do not send confidential information by email. This article should not be a substitute for advice from your own attorney.