

THE ESSENTIALS OF ESTATE PLANNING AND ELDER LAW

By: Stephen R. Elville – Managing Principal and Lead Attorney
Elville and Associates, P.C.

In Partnership with Timmick Financial Group

Tuesday, January 23, 2024



1

DISCLAIMER

The following presentation is meant for education only and is not intended as, nor can it be construed as, legal advice, or as a substitute for legal counseling.

Copyright 2023, Elville and Associates, P.C.



2

GOALS FOR THIS EVENING'S PRESENTATION – WHAT WE WILL COVER

- 1) What is an Estate Plan and what is the process?
- 2) Why most Estate Plans fail and what you can do to avoid planning failure
- 3) Wills versus Trusts and understanding probate and non-probate concepts
- 4) Elder Law, Taxation, and Asset Protection - what these concepts mean in today's planning
- 5) Getting started - how to take the next steps



3

Understanding the Estate Planning Process

WHY PLAN?

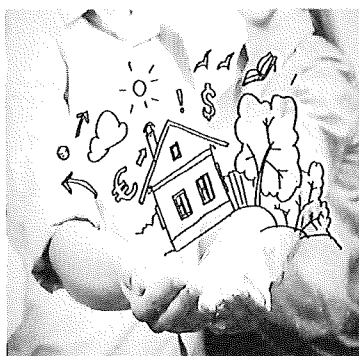
WHY DO MOST
ESTATE PLANS FAIL?



4

The Purpose of Estate Planning

- All Planning is Goal-Driven
- Have a Goal, Have a Purpose



5

Why Plan?

Provide certainty for loved ones

Facilitate smooth administration of estate

Minimize cost of administration

Asset protection – for spouse, children or grandchildren

Minimize or eliminate taxes

Achieve your special purposes

To attain your definition of Estate Planning



6

Why Do Most Estate Plans Fail?

ATTORNEYS AND CLIENTS
TEND TO TREAT ESTATE
PLANNING AS A SET OF
DOCUMENTS AND NOT AS
A LIFETIME PROCESS.

THIS IS WHAT WE CALL
"TRADITIONAL ESTATE
PLANNING" OR TEP

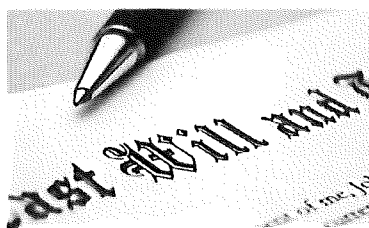
____ YEARS BETWEEN
FOLLOW UP VISITS?



7

Two Major Types of Estate Planning

1. Traditional Estate Planning [TEP]
2. Process-driven Educational Estate Planning
(Legacy Process and Caring for Clients Model)



8

Traditional Estate Planning



- Limited to one [1] planning phase
- Typically no education – strictly a document transaction
- Documents are the plan
- No maintenance or updating, average client revisits planning approximately every 19 years, high likelihood plan will fail
- Actual cost of estate planning not accounted for, high likelihood that cost of planning much more expensive
- Clients usually never contacted again, leading to plan failure



9

Avoiding Estate Plan Failure

VIEW ESTATE PLANNING AS A THREE-STEP PROCESS

I. DESIGN AND IMPLEMENTATION

II. MAINTENANCE AND UPDATING

III. FINAL ADMINISTRATION



10

Process-driven Educational Estate Planning (Legacy Planning and Caring for Clients Model)

- Incorporates the three [3] major phases of planning
- Emphasis on Education
- Life process is the plan
- Maintenance, updating, and continuing education critical to success
- Incorporates, accounts for, and controls the cost of estate planning
- Caring for Clients Model, regular client contact ensures plan success, partnership with client



11

Definition of Estate Planning

Estate planning is about: _____
of your property the way that you want, to the
_____ or _____ of your
choice, at the lowest possible _____.



12

Probate vs. Non-Probate Analysis

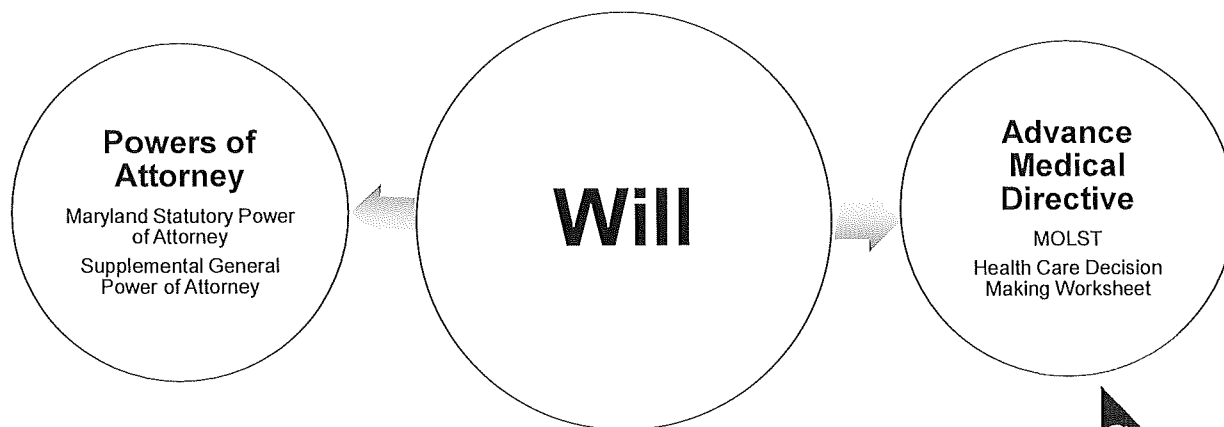
WILL

- Subject to Probate Process
- Public Oversight
- What Assets are Subject to Probate?
- Probate Process
 - Open Estate
 - Inventory (3 months)
 - Claims to Creditors (6 months from DOD)
 - Accounting – Income, Expenses, Debts, Taxes
 - First Administration Account (Final?)
- Cost of Probate - (4 – 7%)*
- Will Structure



13

Will-Based Structure



14

Probate vs. Non-Probate Analysis

REVOCABLE LIVING TRUST



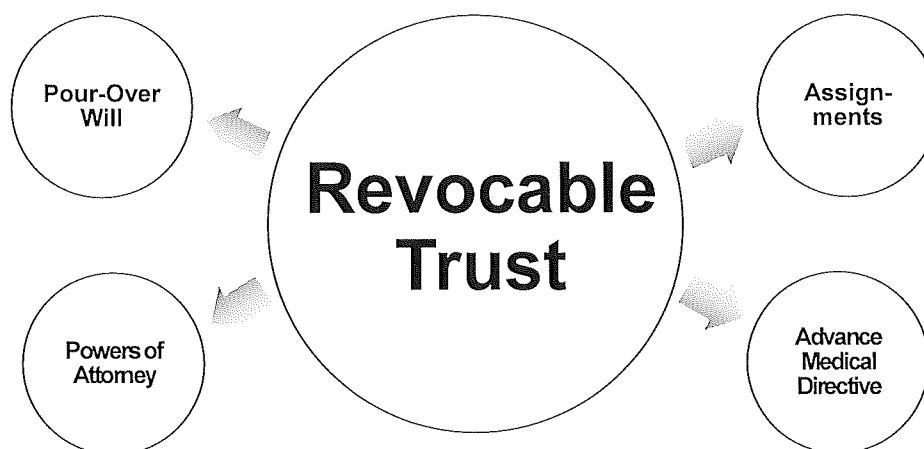
- Avoidance of Probate*
- What is a Revocable Living Trust?
 - Private Document (contract)
 - Development/Implementation
- Funding
- What a Revocable Trust is Not
 - No Creditor/Asset Protection
 - No Tax Savings
- Trust Administration
- Cost of Revocable Trust (1–2%)
- Revocable Trust Structure



15

Revocable Trust-Based Structure

Revocable Living Trust



16

Understanding Non-Probate Transfers (Devices)

JOINT OWNERSHIP

BENEFICIARY
DESIGNATIONS

LIFE ESTATE DEEDS

TRANSFER ON DEATH
DESIGNATIONS (TOD)

PAYABLE ON DEATH
DESIGNATIONS (POD)

ITF ACCOUNTS (IN TRUST
FOR)



17

Non-Probate Devices

Will or
Revocable
Trust

Joint Ownership	→	Passes to Surviving Joint Owner
Payable on Death (POD)	→	Passes to Beneficiary
Transfer on Death (TOD)	→	Passes to Beneficiary
Beneficiary Designation (retirement plans, annuities, life insurance)	→	Passes to Beneficiary
In Trust for Accounts (ITF)	→	Passes to Beneficiary
Life Estate Deeds	→	Passes to Remainderman



18

Best Plan in the World

Joint Ownership

Surviving Joint Owner

- Payable on Death (POD)
- Transfer on Death (TOD)
- Beneficiary Designation
- In Trust for Accounts (ITF)
- Life Estate Deeds

**Will or
Revocable
Trust**

Beneficiary/Remainderman

FUNDING IS KEY to Estate and Elder Law Planning



19

Understanding the Nuances of Incapacity Planning

POWERS OF ATTORNEY

**ADVANCE MEDICAL
DIRECTIVE**

**MOLST – MEDICAL
ORDERS FOR LIFE
SUSTAINING TREATMENT**



20

Incapacity Planning

Powers of Attorney

Maryland Statutory Power of Attorney
Durable General Power of Attorney

Advance Medical Directive

MOLST
Healthcare Decision Making Worksheet



21

Why is the Maryland Statutory Power of Attorney “Not Enough”?

- Special instructions portion not sufficient
- “Substantially Similar” requirement too onerous and ambiguous
- Enhanced fiduciary powers necessary for contemporary estate planning
- Elder law concerns
- Planning for loved ones with special needs



22

Enhancing the Maryland Statutory Power of Attorney

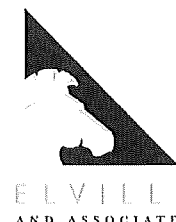
- Utilize a two-tiered approach – two powers of attorney
- Personal financial power of attorney, along with a general durable power of attorney
- Utilize revocable trust powers in coordination with powers of attorney
- Builds a broad platform of flexibility
- Utilize special agent and trust protector powers
- Counseling is key
- Potential problems



23

Utilizing Enhanced Powers

- Power to establish revocable and irrevocable trusts
- Customized further powers to fund trusts
- Customized further powers concerning ability to change beneficiary designations
- Power to manage digital assets
- Power to manage government benefits
- Power to perform a Medicaid spend down of assets
- Power to care for and deal with pets
- Customized further powers to gift assets
- Powers to manage and receive compensation



24

Utilizing Enhanced Powers (contd ...)

- Powers to provide companionship
- Customized further powers specific to operate a business or businesses
- Customized further powers regarding safe deposit boxes
- Powers to fund a First-Party Special Needs Trust
- Design limitations on powers via special agent authority (or trust protector)



25

Effectiveness of Power of Attorney Access to Power of Attorney

Durable General Power of Attorney ---- Effective Immediately

You (Principal) → Your Attorney-in-fact ---- Power Immediate →

Durable General Power of Attorney with Escrow

You (Principal) → Your Attorney-in-fact ---- Power Immediate →

Springing or Contingent General Power of Attorney

You (Principal) → Your Attorney-in-fact ---- Power Not Effective Until Principal's Disability →

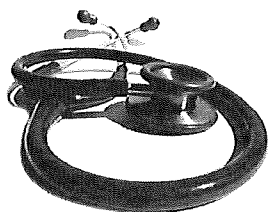


26

Health Care Decision Making

ADVANCE MEDICAL DIRECTIVE

- Attorney General's Form: recommended only
- No required format: no limitations
- Personal Input: important considerations
 - Personal preferences
 - Food, entertainment, visitations, communications, lifestyle
 - Appointment of agents
 - Effectiveness of power
 - End of life decisions (living will)
 - Flexibility options – can my agent change my decisions? (if they think another option is better?)
 - Organ donation options
 - Final arrangements (celebration of life options)

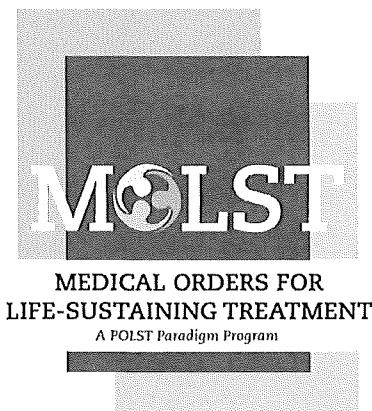


Most Important Document for Some Clients

27

MOLST

Medical Orders for Life-Sustaining Treatment



- Effective July 2013
- Relates To *Current* Medical Condition
- Health Care Decision Making Worksheet
- Attorney General's Publications
- www.marylandattorneygeneral.gov

Continuing Relevance
and Importance



28

Estate Planning in the Current Environment of Rising Taxes and Potentially Decreasing Exemption Amounts

CURRENT TAX ENVIRONMENT

**TEMPORARY BUT STILL
UNPRECEDENTED EXEMPTION
AMOUNTS**

**MARYLAND PLANNING – IN
FLUX**

**PORTABILITY AND USE OF THE
DECEASED SPOUSE'S UNUSED
EXEMPTION AMOUNT
(UNDERSTANDING THE DSUE)**

MARITAL CONTROL?

REMARRIAGE PROTECTION?



29

Long-Term Care and Medicaid Considerations in Estate Planning and Elder Law Myth vs. Fact

**ESTATE PLANNING VS.
ELDER CARE PLANNING–
WHAT IS THE DIFFERENCE?**

ASSET PRESERVATION?

FLEXIBILITY?

DIVESTMENT OF ASSETS?

**INCOME, CONTROL, AND
HITTING SEVERAL BIRDS
WITH ONE STONE**

MEDICAID

VETERANS BENEFITS



30

Asset Protection

LIFETIME ASSET
PROTECTION

LONG-TERM CARE
ASSET PROTECTION

ASSET PROTECTION
AT DEATH



31

Lifetime Asset Protection

(Not usually at the
forefront of elder care
concerns)

TENANTS BY THE ENTIRETY

LIFE INSURANCE

ANNUITIES

QUALIFIED PLANS AND IRAS

PROBLEMS FOR INHERITED IRAS

DOMESTIC ASSET PROTECTION
TRUSTS



32

Asset Preservation in the Long-Term Care Context (The Heart of Elder Law)

**USE OF MEDICAID ASSET PROTECTION
TRUSTS – POWERFUL TOOL**

**USE OF VETERANS ASSET PROTECTION
TRUSTS – POWERFUL TOOL**

**USE OF TRUSTS ESTABLISHED UNDER
WILLS – ESSENTIAL STRATEGY**

**AUGMENTED ESTATE – HUGE
ADVANTAGE FOR MARRIED COUPLES**

**CRISIS PLANNING – THE 5-YEAR
LOOKBACK PERIOD**

**RULE OF HALVES – CRITICAL
KNOWLEDGE**

LIFE ESTATE DEEDS



33

Asset Protection at Death – Protecting the Shares of Spouses, Children, and Grandchildren (Ancillary tools for Elder Law planning)

**TRUST PLANNING FOR
SPOUSES**

**TRUST PLANNING FOR
CHILDREN AND
GRANDCHILDREN**

SPENDTHRIFT PROTECTION

BENEFICIARY CONTROL?

STRUCTURING TRUSTEES

USE A TRUST PROTECTOR?

POWERS OF APPOINTMENT

**SPECIAL NEEDS
BENEFICIARIES**



34

SECURE Act: “Setting Every Community Up for Retirement Enhancement Act”

- Signed into law January 1, 2020
 - Affects most estate plans
 - Ended the “stretch” IRA
 - Some exceptions
 - All plans need to be reviewed



35

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM



The mission of Elville and Associates' Client Care Program (“planning that works”) is to provide our clients with the comfort and assurance that their estate and elder law plans will work no matter how their goals and situations may change, and to ensure planning remains consistent with changes in the law.

Elville and Associates is one of only two law firms in Maryland to have its Client Care Program accredited by the Client Care Academy in Boston.

36

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM

Client Care Program (CCP) membership benefits include:

► **Asset Alignment Review, Tracking and Updating**

Annual review of your asset alignment to help ensure that your assets continue to be properly funded and aligned with and into your estate plan.

► **Copies of Documents**

Additional copies of your documents provided upon request in PDF or in CD or thumb drive format.

► **Family Care Meeting**

Family Care Meeting with your loved ones and helpers in order to review and discuss your estate plan while you are alive and well so that your wishes are known and understood.



37

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM

► **Access to Attorneys and Staff for Document Updates**

Ability to update your estate plan to adjust for changes in your life, such as a desire to change trustees, beneficiaries, powers of attorney, health care agents, or terms of asset distribution upon your death, and in order to keep your plan current in light of any changes to applicable law. *****CCP membership includes 2 hours of attorney time annually. Discussions, updates, or changes to your estate plan that exceed 2 hours of attorney time in one calendar year will be billed at our normal hourly rates.*****

► **Exclusive Continuing Legal Education Workshops**

Educational workshops open to you, your family members, helpers and trusted advisors on various estate planning topics that may be relevant to you and your family.



38

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM

► Additional Legal Counseling

Availability for counseling on legal matters involving your estate plan and advice on additional planning options as financial circumstances or laws change. Examples of such additional planning may include revising your documents in the case of divorce or remarriage, or the counseling for and preparation of additional estate planning techniques such as charitable remainder trusts, life insurance trusts, family limited partnerships and family LLCs. ****CCP membership includes 2 hours of attorney time annually. Discussions, updates, or changes to your estate plan that exceed 2 hours of attorney time in one calendar year will be billed at our normal hourly rates.****

► Access to Network of Attorneys

Access to a network of attorneys to help address additional legal matters.

► Collaborations with Your Advisors (Your Planning Team)

Collaboration with your financial advisors, accountants and insurance professionals in order to properly integrate your estate plan and address on-going changing circumstances in your life.



39

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM

► Discounted Preparation of Deeds

Preparation of additional deeds at two thirds (2/3) of the price the Firm usually charges.

► Enrollment in DocuBank

Enrollment in DocuBank, a 24-hour health care document retrieval service that allows emergency access to your health care documents, and personal medical card.

► Enrollment in Everplans

Access to Everplans, a state-of-the-art secure, digital archive of everything your loved ones will need should something happen to you. It contains wills, trusts, insurance policies, important accounts and passwords, health and medical information, advance directives, and much more.

► Family Heritage Video

Members are encouraged to participate in their own archival family video production at the Elville Creative Studio. They may express themselves and share whatever they want future generations to remember – their wishes for family, values important to them, old stories they want to pass down for generations to come, and much more. There are no limits and the creative possibilities are endless.



40

ELVILLE AND ASSOCIATES' CLIENT CARE PROGRAM

► MIDEO (™) Consultation and Card

In the first-of-its-kind partnership in the country, Elville and Associates and The Institute on Healthcare Directives have partnered to offer MIDEO® (My Informed Decisions on Video) to our members. MIDEO® is a personalized card with your critical healthcare information on the front that also hosts by video, accessible by a QR code scan, your prerecorded wishes for resuscitation and other healthcare choices. By providing an accurate, up-to-date, easy to review video of you speaking, your personal MIDEO® card will accurately allow your wishes and choices to be carried out correctly by medical professionals. For more information about MIDEO® and The Institute on Healthcare Directives, please contact Community Relations Director Jeff Stauffer, visit www.institutehcd.com or contact Ms. Brandi Monroe, Client Relations Manager at the Institute at monroe@institutehcd.com.

To learn more about the CCP, please contact Community Relations Director Jeff Stauffer at 443-937-3720 x117 or at jeff@elvilleassociates.com.



41

What We Suggest You Do Now – A Path Forward

- Set a consultation with Elville and Associates
- Complete an estate planning questionnaire
- Relax and understand there is nothing to fear
- Bring your current estate planning documents for a complete review
- Consider whether you have an advisory team which includes your financial advisor and CPA
- Prepare any questions or concerns you may have for discussion
- Take the *time to think* - decide what is important to you and what your goals are



42

Thank you!!

If you have any questions whatsoever, please contact Steve or Jeff at:
443-393-7696, or email at
steve@elvilleassociates.com or jeff@elvilleassociates.com

Elville and Associates Presents: The Essentials of Estate Planning and Elder Law
Presented by: Stephen R. Elville – Managing Principal and Lead Attorney
Elville and Associates, P.C.
Tuesday, January 23, 2024



Client Education | Collaboration | Compassion