

Senior Lawyers Conference

by John G. Mizell Jr., Chair



Spring Cleaning

AS WE NEAR THE END OF WINTER and think about spring cleaning, we should inventory our estate planning—for both our personal family and our legal office.

Important Documents and Funeral Arrangements

Each of us can give a very valuable gift to our loved ones by taking a few minutes to list and then find an appropriate place for important documents such as retirement information, life insurance policies, estate planning documents, and funeral arrangements and wishes. Checklists or forms are available to help with the process. Some of the important documents, such as the original will, should be kept in a bank safe deposit box. (Note that, upon the death of the sole lessee of a bank safe deposit box, Virginia Code § 6.1-332.1 authorizes a bank to permit access to a spouse, next of kin, court clerk, or other interested person for the limited purpose of looking for a will or other testamentary instrument; this same code section authorizes searches for powers of attorney and advance medical directives.) Since many important and sometimes difficult decisions have to be made so quickly at a very emotional time when a loved one dies, it can be very helpful to provide guidance and advance planning for your family.

Last Will and Testament

Review your will and encourage clients to review theirs every few years. Examine trust provisions with target dates for payout. Prioritize charitable organizations. Choose an executor carefully. Think about the complexity of the estate. Select a competent attorney from the outset. Some clients may choose an executor attorney who can

be more objective and neutral than children. For a review of the basics of estate administration, the Senior Lawyers Conference and the Virginia State Bar General Practice Section will present a ninety-minute continuing legal education program on Friday, June 18, 2010, at the VSB Annual Meeting in Virginia Beach.

Power of Attorney

The principal should choose an agent to exercise a general power of attorney and select how it is to be exercised. Many of us know horror stories about agents who exercised a general power of attorney in a manner that was contrary to the best interests of a principal. Significant changes are on the horizon in this area of the law. The 2009 Virginia General Assembly approved the Uniform Power of Attorney Act with a planned effective date of July 1, 2010. It was anticipated that further debate would be desirable. Revisions are expected during the 2010 Session of the General Assembly.

It may be advisable to use the standard power of attorney unless there are compelling reasons not to. However, it will still be important to understand the basic provisions of the general power of attorney and craft a document that meets the needs of the individual principal.

Advance Medical Directive

Significant changes have occurred recently with the advance medical directive. The Virginia General Assembly revised and enhanced the suggested outline of such a document. There is a trend to explain options that an individual may consider before signing such a document. Under federal law health care providers (especially hospitals) regularly ask patients whether they

have an advance medical directive and will often have a basic form available.

Designation of a Back-up Attorney

Comment [5] to Rule 1.3 of the Rules of Professional Conduct provides: “A lawyer should plan for client protection in the event of the lawyer’s death, disability, impairment, or incapacity. The plan should be in writing and should designate a responsible attorney capable of making, and who has agreed to make, arrangements for the protection of client interests in the event of the lawyer’s death, impairment, or incapacity.”

Most large and perhaps medium-size law firms build in systems with back-up attorneys in particular cases to provide a helpful safety net. On the other hand, for smaller firms or solo practitioners, it becomes critically important to try to establish a plan to designate a successor attorney.

Richmond attorney Frank O. Brown Jr. provides a one- or two-hour continuing legal education seminar, “Ethics: Protecting You and Your Clients’ Interests in the Event of Your Disability, Death, or Other Disaster.” If your local bar association has not availed itself of this resource in recent years, I strongly encourage you to extend an invitation to Frank. In addition, the Senior Lawyer’s Conference is working on a new project this year to make available an outline of important steps to be taken by an attorney who wishes to wind down a law practice in an orderly manner.

All attorneys—especially senior attorneys—can render a valuable service to their families and communities by using their experience and wisdom to make effective estate planning decisions and successor decisions about their own law practices.