PASADENA LAW GROUP

THIRD QUARTER 2015

LAWYER FOR *Life*

KEEPING YOUR FAMILY HEALTHY, WEALTHY & WISE

IN THIS ISSUE

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PROTECTING YOUR ONLINE ACCOUNTS IN AN ESTATE PLAN

Two hundred years ago, if you had visited your estate planning attorney and asked him to protect your Facebook, you might have caught a confused look beneath the flicker of a wicker candle before he inked his quill and scribbled down something about a photo album.

The world has changed.

Everything is digital today. Even if you choose to rely primarily on hard-copy bank statements and paper mailings, chances are good that your affairs are thoroughly digitized somewhere. Most people today have at least an online bank account and a few folders of important files on a laptop.

Today's estate planners need to take digital assets into account. Too few attorneys have updated their "standard practice and procedure" to comprehensively account for the modern world's evolving digital landscape.

Our firm takes digital asset estate planning seriously, but we understand that it poses some unique challenges. After all, if we ask you where your essential hard-copy documents are, you can probably point to a box or a drawer

and find everything you need. That isn't so easy with a web crawler or a hard drive.

The goal of digital asset estate planning is to ensure that, should anything happen to you unexpectedly, your family won't be left with the burden of combing through thousands of folders, files, and websites in order to prevent identity theft, protect your social media accounts, rectify your online financial accounts, and finalize your estate.

So how do you translate the digital to your documents? Because everyone's digital life looks so different, the best advice is to meet directly with your estate planning attorney. One size does not fit all. That said, there are a few preparatory steps that make sense in just about every case:

(CONT.)

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Protecting Your Online Accounts in an Estate Plan (cont.)

• **Inventory** — Make a list of every digital asset you can think of. This might take a while. We're talking files, the folders they're in, and instructions for accessing them. Online accounts (everything from Facebook and Twitter to eBay and Amazon), bank accounts, blogs, emails, hardware, software… the works.

• **Interview** — Talk to your family members and friends to get a sense of whom among them might be the tech-savviest. (Or maybe you already know who the web wizard in your family is.) Those people might make better candidates for appointments as executor or trustee.

• **Authorize** — For at least some of your accounts, it's a good idea to leave behind not only instructions for what is to become of those accounts but also a list of passwords and "secret question answers" so that survivors can secure access when they need it. It is possible to secure this information until you pass away, and even then, you can tightly control how it's used.

Ask our office how we can help protect your digital assets today.

Improving Your Worst-Case Scenario

As humans, we are all vulnerable to the myth of invincibility. It's why some people bike without helmets, eat food well beyond its expiration date, dangle their feet over the Grand Canyon, or do a million other things they shouldn't do.

Invincibility plays a part in people's approach to estate planning too. In fact, a lot of people never even make a will ("I'll do it later," they say for years, until it's too late and their family is left with a huge headache in the midst of grief). And even among those that do, many fail to adequately plan for other late-in-life concerns, like long-term care.

The odds are not in those people's favor. About 70% of Americans will require some sort of assisted living, senior care, or long-term care in old age. Those services are very expensive, and paying for them on a retirement budget can prove very difficult… disastrous, even, in a worst-case scenario.

That begs the question — if you're one of those people — **why are you waiting for the worst worst-case scenario?**

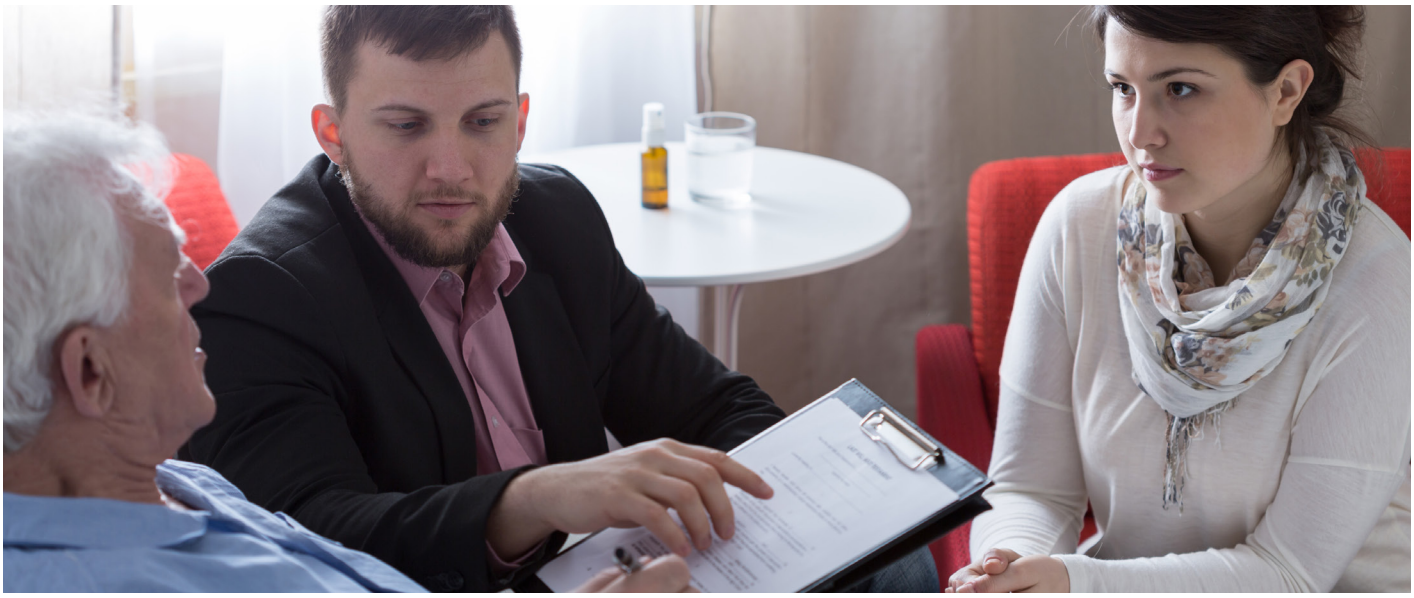
Leave the gambling for Las Vegas and secure your future with peace of mind instead. Rather than assume that you'll be in the fortunate 30% who won't have to shell out tens or hundreds of thousands of dollars a year, why not take proactive steps to ensure that you'll be financially sound even if you don't get the luck of the draw? Imagine this: you're middle-aged, healthy, and have no idea what the future holds — but even if Lady Life deals you her worst hand, you know you have a plan in place to handle it in stride. How's that for a worst-case scenario? Here's how to make it your scenario:

• **Create a comprehensive estate plan.** A will is great, but it's just the beginning. Healthcare directives, living wills, powers of attorney, digital asset protection, and revocable trusts are all important for preventing worst-case scenarios.

• **Plan for long-term care.** Schedule a meeting with your estate planning or elder law attorney to talk about your options for long-term care — insurance, Medicaid, savings accounts, etc. The earlier you start, the better. This isn't just an elder law issue! There are measures you can take in your estate planning to significantly soften the sting of long-term care costs.

These are just a few first steps. There's a lot you can do to replace uncertainty about the future with peace of mind. What a nice feeling that would be! Give us a call to learn more about making your worst-case scenario a much better-case scenario.

When Can Someone Challenge a Will?



Emotions run high when a loved one dies. Family members (and other beneficiaries) want to make sure that the deceased's true intentions are adequately honored, and that their own inheritances haven't been wrongfully reduced or denied.

Generally speaking, challenging a will isn't easy. That's especially true if there is an apparently valid document in place, drafted by an experienced attorney, signed by the deceased, and duly executed according to state law. Even in cases without all those dotted "i"s and crossed "t"s, successfully overcoming a will can prove difficult. It does happen, though, and there are successful challengers in this country every day.

Wills must be challenged in a formal process called a will **contes**t, or **caveat**. Caveat proceedings are most common in cases where more than one document exists and the beneficiaries disagree as to which is the "true will." Contests may also arise when there are holographic (i.e. handwritten) wills, confusing written statements, uncertain verbal statements, surprising or grossly unfair provisions, apparent deathbed revisions, or questions about the circumstances under which a will was made.

As a general rule, beneficiaries must allege one of the following in order to initiate a will contest:

• **Lack of Testamentary Capacity** — The testator (i.e. the deceased) was not of sound mind when the will was made, did not know the value of his or her estate, or otherwise did not understand the consequences and effects of the will.

• **Invalid Execution** — The will was not executed according to the laws of the state. This argument is raised when there are questions about the capacity and/or signatures of either the testator or the witnesses. The court will typically presume that the will was properly executed, so the caveator (the person challenging the will) must overcome that presumption, usually with the help of his or her attorney.

• **Negligent Execution** — A clerk or attorney made a mistake when drafting or executing the will, thereby accidentally contradicting the testator's intentions.

• **Undue Influence** — The testator was coerced, wrongfully pressured, or subjected to duress when making the will.

• **Fraud** — The will is fraudulent or a forgery. Caveators may also argue that the testator's intentions were colored by fraud (for example, an elderly aunt disinherits her nephew because her niece falsely accuses him of stealing the aunt's money).

• **A Second Will** — The caveator believes there is another document that supplements or supersedes the purported will.

If you have questions about challenging a will — or if you want to ensure that your own will is airtight and not vulnerable to caveat — our office can help.

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A Personal Note From Jan

Welcome to our newsletter for the Third Quarter of 2015! I hope all of my readers have had a wonderful summer.

Our first article is about planning for your digital assets — something that was not an issue when I first started working with estate planning clients. Facebook didn't exist in 1996! We all have a digital presence on the Internet now, and we need to be able to control our digital assets while we are alive, as well as upon our incapacity and on our deaths. The trusts and powers of attorney I draft now include paragraphs giving your trustee/agent the power to manage your digital presence. If you haven't looked at your plan for five or so years, you might consider updating it to take controlling these assets into consideration.

Our second article is about what we call "worst-case scenario" planning, involving your need for long-term care (and paying for it). I hope this never happens to any of you, but statistically, 70% of us are going to need some sort of care during our lifetimes. Have you done any planning for this? You should have provisions in your documents naming the right people to make decisions for you and to pay your bills if you are not able to do so. However, there may be additional steps you can take. If you're interested in exploring some options, just give us a call.

Our third article is about will contests. As a general rule, someone can challenge your estate plan based upon a claim that you (a) did not have the capacity to make planning decisions and/or (b) were subject to undue influence when you created your plan. California law is also suspicious of plans involving gifts to caretakers or the attorney who drafted the plan.

Have a wonderful Fourth Quarter. Of course, if you have questions about any of this, please give me a call.

Jan Copley, Attorney at Law