Estate Planning FAQ

Why should I pay a lawyer a lot of money for some simple documents?

You can buy software that produces most of the estate planning documents an attorney will prepare for you. Using such documents could turn out all right for you and your heirs, but things could go horribly wrong as well, and you'll never know if you did it right until it's too late. You could end up paying a nursing home unnecessarily or your heirs could pay unnecessary taxes or expend legal fees fighting each other.

Only a qualified attorney can educate clients on what issues they should be aware of in their individual circumstances and then recommend appropriate language to deal with the client's specific situation. Do you have a taxable estate? Do you own significant amounts of tax-deferred retirement plans? Do you know how to fund the revocable trust provided on the computer program? Is there anything about your estate that is unusual, such as having a disabled child? In short, if there's anything about your situation that's not plain vanilla, you need to see a lawyer. And only a lawyer can determine whether your situation qualifies as "plain vanilla." As with joint accounts, the problems you may create by not getting competent legal advice probably won't be yours, but may well be your children's. Do you want to risk leaving that legacy?

For more on this subject, see my article, "Should You Do It Yourself?"

Can the attorney-in-fact be

compensated for his or her work?

Yes, if the principal has agreed to pay the attorney-in-fact. In general, the attorney-in-fact is entitled to "reasonable" compensation for his or her services. However, in most cases, the attorney-in-fact is a family member and does not expect to be paid. If an attorney-in-fact would like to be paid, it is best that he or she discuss this with the principal, agree on a reasonable rate of payment, and put that agreement in writing. That is the only way to avoid misunderstandings in the future.

How does one draw up a health care power of attorney or advance directive?

People should contact an attorney who is skilled and experienced in this area. Although many hospitals and nursing homes also provide forms, as do some public agencies, these forms are often inadequate.

Can I move my Individual Retirement Account (IRA) from one financial institution to another?

You may withdraw the funds tax-free if you roll them over into a new IRA within 60 days. If you fail to complete the rollover in time, you will have to pay income taxes on the amount withdrawn and, if you are under 59 ½, a 10 percent penalty. But you may only do this once a year unless the transfer is effected from institution to institution without the funds passing through your hands. If the transaction is purely between institutions, you may move your IRA as often as you like without incurring any penalty. The 60-day rollover offers an opportunity for people who want to consolidate accounts, are moving, or expect to get a better return with a new institution. It can also be used in the event of a short-term cash shortage. But be careful to complete the rollover. If you do not, taxes and a penalty will be due on the amount withdrawn.

How do I find a good financial planner?

The best way (as with any professional) is to ask your friends, colleagues and relatives if they have worked with anyone they can recommend. Also, ask your lawyer or accountant, since they often work with financial planners. If these inquiries don't turn up someone appropriate for you, check the Yellow Pages, call your Chamber of Commerce, or call 800-282-PLAN (7526) for the name of a Certified Financial Planner (CFP) in your area. Some planners charge a fee, while others provide the service without charge, hoping to make commissions on your investments. You may be able to find a fee-only financial planner by calling 888-FEE-ONLY (333-6659), which lists members of the National Association of Personal Financial Advisors. Interview your candidates over the phone to learn their approach to planning and investments. Ask for references, and make sure you follow up and call the references. After you have narrowed your field of prospects, meet at least two in person before you make your final selection.

Does it matter whether the financial planner has any particular credentials?

Many financial planners have initials after their names, such as CFP (Certified Financial Planner), CLU (Certified Life

Underwriter), or PFS (Personal Financial Specialist). There are about 300,000 people in the United States who call themselves financial planners. Of these, about 32,000 are CFPs and about 1,600 PFSs. The fact that a planner is certified indicates that he or she has enough interest and training in the field to take the required courses and pass the appropriate tests for certification. That’s important. But it’s no guarantee that the financial planner will do a good job for you, or that someone without the certification will not.

Can a person object to a proposed guardianship for him- or herself or for someone else?

While the rules differ from state to state, someone who is the object of a proposed guardianship has the right to object to the appointment of a guardian. Generally, next-of-kin also has the right to object. In many states, the proposed ward has the right to a court-appointed attorney if she cannot afford one on her own.

How does the SSA calculate a retired worker’s monthly benefit?

The Social Security Administration (SSA) bases its benefit calculation on the retiree’s highest 35 years of earnings up to the amount subject to Social Security withholding each year. If necessary, it will use years in which the retiree has low earnings or no earnings to bring the total years of earnings up to 35. The SSA then calculates the retiree’s average monthly earnings over those 35 years adjusted for inflation. The retiree’s monthly Social Security check is arrived at by adding together 90 percent of the first $627 of the average monthly earnings, 32 percent of the next $3,152 and 15 percent of any average monthly earnings above $3,779. (These are the figures for 2005; they are adjusted each year to reflect inflation.) As you can see, the formula is weighted to favor those who earned less during their working lives, giving them a 90 percent retirement benefit on most of their earnings, while giving the highest earners only a 15 percent benefit on a large portion of their working income (and no benefit on earnings above what was subject to tax, which in 2005 is $90,000). You can calculate your future Social Security benefit based on your current and projected earnings by using the SSA's online Benefits Calculator.