

Estate Planning

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First, the pro bono volunteer must meet with the family to find out where the cancer patient is in the treatment process and to understand the diagnosis and ultimate odds of survival. This will be a difficult conversation and the volunteer must muster all the professionalism, compassion and honest concern he/she has in order to gain the family's trust and to improve the odds of them acting on the recommendations that will come out of these conversations. Remember that over half of all Americans have no will or other end-of-life planning documents, and one should expect the statistics to be similar in the cancer patient population.

Find out if there are any existing estate planning documents and, if so, review to see if they are up to date and accurate. Discuss the different family members who will be impacted by the cancer patient's illness or death and find out how the patient would like them to be treated. Understand that at this incredibly difficult time, families may not always communicate well, get along or agree on decisions. Understand that, at times when people are expected of dying, distant family members who feel they might be entitled to estate assets may surface. Again, this is a very difficult time for a family.

Once the volunteer has a good general understanding of the family situation, it is time to begin taking steps to put certain estate planning documents and steps in place. Remember that time is of the essence here, and finding ways to gently nudge the patient and family into action is important. Some of the specific documents that should be discussed and put into place include:

Advanced Care Directives

- Healthcare power of attorney – This document grants authority to another individual to make care decisions on behalf of the patient. Many states have standard forms that can be used without the need for an attorney. The hospital or hospice where the patient is being looked after will generally have versions of these documents available as well.

- Do not resuscitate – Commonly referred to as a “DNR” in the medical world, this document allows a patient to specifically state whether he or she wishes to be resuscitated in the event of the stopping of breathing or the stopping of a heart.
- Living will – This document more broadly allows the patient to describe the situations where he or she wants to receive, or does not want to receive, life-sustaining measures such as feeding tubes, intubation or oxygen.
- Advanced directive for mental health - Similar to the above documents which address physical health issues, this document allows the patient to state his/her wishes in the event of a mental illness.

Taking Care of Minor Children

- Selecting a guardian for children – This is a difficult decision for many people, and it can be even more difficult for a cancer patient who is facing the real possibility of imminent death. If they are married, the surviving spouse is assumed to be the guardian, but it is important to state this in the will so that no intestate proceedings are necessary to name the survivor. Help both spouses think through who would be good selections as alternate or successor guardians. Often, parents, siblings or other family members are named, but don't rule out trusted friends or neighbors. Whoever is named needs to be informed of this and told of the specific desires of the parents for how they wish the children to be raised.
- Emergency medical care for children – Clients can grant authority in a separate document as to who is authorized to seek emergency care for minor children if the parent(s) are unable to.
- Children adoption – Legally adopted children are generally treated the same as biological children in the absence of a will, but they should be specifically name and included in any trusts or will regardless of their treatment versus biological children.

Wills

- **Ethical wills** – Some people like to leave behind a “final letter” to family and loved ones expressing their hope and desires for each, and to pass on legacies, life lessons and ethical beliefs to the next generation.
- **Living wills** (described above)
- **Last will and testament** – This document grants the patient’s wishes for how their assets and debts are to be administered in the event of death and names those granted authority for carrying out their wishes.
 - Requirements - There are four main requirements to the formation of a valid will:
 1. The will must have been executed with testamentary intent (“I declare this as my last will and testament”)
 2. The testator must have had testamentary capacity (he or she must be of sound mind)
 3. The will must have been executed free of fraud, duress, undue influence or mistake
 4. The will must have been duly executed through a proper ceremony (i.e., a notary and/or witnesses)
 - Protecting against challenges – Multiple witnesses, a notary and a self-proving affidavit can protect against challenges as well as including language that disinherits any heir who challenges the will. Also, naming all potential heirs, even if the intent is to not leave them anything, can eliminate questions about whether someone was left out by mistake.
 - Storing the will - There should be one original document stored in the safest location, like a bank safe deposit box, a home safe or in the estate planning attorney’s vault. If stored in a home safe, make sure the combination is made available to the executor. If stored in a safe deposit box, make sure the executor is a signer on the box and has a key. The executor and any named guardians should have copies.
 - While you cannot recommend this, the family can be made aware that standard will forms are available in many states that provide for fill-in-the-blank completion of a simple will to include guardianships and sometimes trust for minor children.

Trusts

To the extent that the patient's financial situation justifies more advanced planning, you should immediately seek the services of a qualified estate planning attorney to discuss the following possible trusts. These trusts can be testamentary (established in the decedent's will) or inter-vivos (set up during the patient's life).

- Bypass trust - This is used for estate tax planning purposes. Given the new, very substantial estate tax exemptions and the portability of such without advanced planning, most people will not need these trusts.
- Charitable remainder trust – This allows for the patient to grant a charitable bequest while retaining an income stream for a set period of time.
- Revocable trust – These trusts can serve in place of a will and effectively settle the grantor's estate while living and avoid the probate process entirely. They can be revoked or changed by the grantor while living and become irrevocable at death. All assets owned by the grantor must be re-titled into the name of the trust in order for the trust provisions to be effective and to avoid ancillary probate.
 - Benefits of a Living Revocable Trust
 - Can be created during the client's lifetime and extends after death
 - Terms can be changed during the client's lifetime
 - Avoids guardianship proceedings if the client becomes incapacitated
 - No probate
- Supplemental needs trusts – These trusts are special ones set up to protect the assets and government assistance programs of a trust beneficiary who is physically or mentally incapacitated or unable to care for themselves.
- Minors trust – When leaving assets to children under age 18 (in most cases) in the will, a trustee must be named. Often, in the case of a surviving spouse, the survivor will be named but a successor and any alternates should also be named to administer the assets of the minor children for their benefit, expressly. To help insure this is the case, a separate party can be named to be guardian of the child and to serve as trustee. Sometime, it is OK to name the same person to both roles, but a discussion should be held about the qualifications of a named guardian to also serve as the one overseeing financial affairs.

Non-probate Assets

- Immediately gather all life insurance policies and other death benefit plans (Auto insurance policies often carry a small benefit. Also check with any membership organizations or benevolent societies the patient may belong to). Be sure to check any employer benefit plans. Any proceeds here will pass outside of any will or trust, and it is important to confirm that the coverage remains in place, that premiums are paid and that the beneficiary designations are correct and coordinated with the will and/or trusts.

Staying in Control During Incapacity

There are several ways that your client can stay in control of their health and assets if they become unable to make decisions. Guide your client to:

- Complete a Health Care Advanced Directive (see Advance Care Directive above)
- Complete a Power of Attorney to name someone to handle personal financial and business matters.
- Take care of their children by:
 - Assigning a guardian for children/trustee for minors trust(s)
 - Considering adoption
 - Considering foster care

Other Estate Planning Issues

Guide your client to:

- Make sure that important papers are gathered and can be easily retrieved.
- Ensure that passwords for online accounts easily accessible. Consider the use of a password manager, like LastPass, that can handle all logins/passwords under on master password that can then be provided to the executor or family member.
- Make arrangements for pets and consider whether funding arrangements or a special bequest is needed to pay for pet care.

- In your client's will or revocable trust, he/she will also distribute his/her personal property (jewelry, clothing, automobiles, collections, guns, artwork, furniture, etc.). Your client should be specific about his/her intent for these items and prepare a handwritten or typed instruction letter listing these items and naming the individual who they intend to receive them. Some of the biggest family squabbles after a death can revolve around items cherished by multiple family members because of the emotional attachment that item carries with it.

Funerals

Two good resources for information on funerals are www.Funerals360.com and the Neptune Society www.neptunesociety.com. Other considerations for funeral planning are:

- Encourage your client to be specific about his/her wishes. The more specific one can be in their wishes, the better for the family. Your client may be able to participate in decisions about cremation versus burial, service type and location, church or funeral home, open or closed casket, etc.
- Calculating the cost of a funeral. Funeral costs for caskets and services vary greatly. Encourage your client to do some research and make some calls before deciding which funeral options work best.
- Many cities, states and some federal government entities offer funeral financial assistance. If the decedent was a veteran or on SSI or Medicaid, assistance may be available from those sources.

Checklist for the Person who will be in Charge

1. Keep paying bills
2. Check with workplace for benefits
3. File life insurance claims
4. Notify Social Security
5. Close credit cards
6. Retitle assets (cars, securities, real property)
7. End miscellaneous accounts (for example, social media, subscriptions, and memberships)

Other Resources

There are many, many resources for estate planning on the Internet and available through organizations like the American Cancer Society, the ALS Association and others. Also, financial institutions and estate planning organization will have resources. Two excellent resources for your client are:

- <https://whealthcareplan.com/education>
 - This is the new site of FPA member and frequent conference speaker, Carolyn McClanahan, MD, CFP
- “A Guide to Financial Decisions – Implementing an End of Life Plan”
 - This is available in the Family Reach financial planning toolbox prepared by the AICPA.