



Willson & Pechacek, P.L.C.

Newsletter



General Issue

AUGUST 2015

Planning for Diminished Capacity and Illness

By Lonny L. Kolln II

Using the ability to manage one's finances may be something you would rather not think about. We often think about our financial capabilities as an important measure of our independence. Planning ahead may help you stay in control of your finances, even if diminished financial capacity becomes a serious problem. Diminished financial capacity is a term used to describe a decline in a person's ability to manage money and financial assets to serve his or her best interests, including the inability to understand the consequences of investment decisions. While the inability to manage one's money is clearly a problem in itself, when people of any age lose the capacity to manage their finances, they may also become more vulnerable to investment fraud and other forms of financial abuse. Taking the steps listed below now may help avoid or minimize problems for you and your family.

Organize your important documents. Organize and store important documents in a safe, easily accessible location. That way, they are readily available in an emergency. Give copies to trusted loved ones or let them know where to find the documents. Typically, the following documents will be the most relevant to finances:

1. Bank and brokerage statements and account information. Make a list of your accounts with account numbers. Keep a separate list of online bank and brokerage passwords and pins and keep this list in safe place. In addition,

make a list of locations of your safe deposit boxes, including where the keys to the safe deposit boxes are located. Also, keep your recent bank and brokerage statements available, as well as information on how to get those statements online if you access them electronically.

2. Mortgage and credit information.
3. Insurance policies.
4. Pension and other retirement benefit summaries.
5. Social Security information.
6. Contact information for financial and medical professionals, such as doctors, lawyers, accountants, and securities professionals.

If you have a financial professional such as broker or investment advisor, provide that person with emergency or alternate contact information in case he or she cannot contact you and suspects something is wrong. You may wish to discuss with your financial professional what you would consider to be an emergency and specify when he or she may contact someone on your behalf. Discuss what information can be shared with your emergency contact. Providing an emergency contact generally will not enable the person to make investment decisions on your behalf, so make sure to take other steps if you want someone else to manage your funds if you cannot. Create a Durable Financial Power of Attorney. A financial power of attorney gives someone the legal authority to make fi-

ancial decisions for you if you cannot. That person is called your agent. The document is called Durable because it remains in effect even if you are incapacitated. You retain the ability to change it or cancel it as long as you are still able to make decisions. A financial power of attorney differs from healthcare power of attorney which only covers healthcare decisions. You may want to consult with your attorney to determine whether a durable financial power of attorney is right for you. After signing a durable financial power of attorney, you can still manage your money and property as long as you have the ability to make decisions. Also, it is important to remember that you always have the option to change who you choose to act as an appointed representative and the individuals you allow to access your financial information. As you are essentially giving financial decision making authority to your agent, it is critical that he or she must be someone you can trust.

Be sure that if something changes you keep your information as current as possible. Keep your financial professionals informed of changes regarding who has authority to review your account and to whom they should contact in case of an emergency.

Although this is not an exhaustive list, these are items to consider when planning for potential diminished capacity, either for yourself or if you believe a family member may be going through or getting close to diminished capacity. If you need assistance in planning for diminished capacity, please do not hesitate to contact our office.

Avoid the Home Wrecker: How to Deal with Home Improvements Contractors

By Jamie L. Cox

Adding a room, renovating a basement, or doing some much-needed repairs? Finding a good contractor is crucial to making sure you get the job done right — a home improvement project gone wrong can really cost you. This article offers a few tips on dealing with home improvements contractors.

Make your plan clear. Before looking for a contractor, think about your project. Consider writing down a proposed project description, including the quality of materials that you expect the contractor to use. Make sure the contractor is clear about the scope of project and the type of materials.

Get estimates, but beware of low bids. Get written estimates from several contractors, keeping in mind the lowest bidder may not be the best choice. Be sure a written estimate reflects your vision of the project. We all like to save money, but sometimes a low bid can signal a contractor cutting corners in materials or workmanship. If a contractor provides an estimate that is far below others, ask why it is so low.

Check references before you sign a contract or make a down payment. A good advertisement is not proof a contractor does quality work. The best kind of reference comes from someone you know and

trust. Ask your family, friends, neighbors, or co-workers who they have hired for their projects and whether they were satisfied. Ask the contractor you are thinking of hiring for local references and contact them.

Check the contractor's legal background. Check for complaints filed with the Better Business Bureau's database at www.bbb.org. To see if a contractor has been sued or filed a lawsuit, go to www.iowacourts.state.ia.us. To verify a contractor's registration and bonding (which does not guarantee quality of work or payment of damages if a dispute arises), go to www.iowa.gov/workforce/ocg/labor. Ask the contractor for a copy of a liability insurance certificate.

Get the contract in writing. Before work begins, agree on a written contract. Include the work to be done, the start and completion dates, the brand of the materials to be used, the price, who is responsible for obtaining permits and scheduling inspections, that all change orders must be in writing, and establish who is responsible for clean-up. If you sign a contract somewhere other than the contractor's regular place of business, such as at your home, you have three business days to cancel the contract without penalty. Most importantly, read the contract before you sign it.

Limit up-front payments. Try to

limit the amount you pay up-front. If a contractor requires a partial advance payment for materials, make your check out to the supplier *and* the contractor. Insist on a "mechanic's lien waiver" in case the contractor fails to pay others for materials or labor. You can search to see who may have claimed the right to place a lien on your house through the Iowa Secretary of State website at sos.iowa.gov/mnlr. Do not pay the contractor in full until you verify that all the parties listed on the website have been paid in full.

Avoid contracting scams. A contractor who shows up at your door in an unmarked vehicle and claims he "happens to have materials left over" at a big discount is probably someone to avoid. How can you tell if a contractor might not be reputable? You may not want to do business with someone who knocks on your door for business, demands an immediate decision, only accepts cash, asks you to pay in full up front, suggests you borrow money from a lender the contractor knows, asks you to get the required building permits, offers a lifetime warranty or long-term guarantee, or does not list a business number in the local telephone directory.

You should contact your attorney if you have any questions or concerns, or if you would like more information about any of these matters.

Changes in Due Dates and Extension Due Dates for Income Tax Returns

By Lonny L. Kolln II

On July 31, 2015, President Obama signed into law the "Surface Transportation and Veterans Healthcare Choice Improvement Act of 2015." Although, you could not tell it from the name of the Bill, the bill included a number of important tax provisions, including revised due dates for Partnership/LLC and "C" corporation returns and revised extension due dates for some returns.

Domestic corporations (including "S" corporations) currently must file their returns by the 15th day of the third month after the end of their tax year. For example, corporations using a calendar year must file their returns by March 15th of the following year. A partnership return is due on the 15th day of the fourth month after the end of the partnership's tax year. Thus, partnerships using a calendar year must file their returns by April 15th of the following year. Since the due date for the partnership return is the same due date as the individual tax return, individuals holding partnership interests often must file an extension to file their returns because their Schedule K-1's may not arrive until the last minute.

Under the new law, in a major restructuring of entity return due dates, effective generally for returns for tax year

beginning after December 31, 2015:

1. Partnerships/LLCs and "S" corporations will have to file their returns by the 15th day of the 3rd month after the end of the tax year. Thus, entities using a calendar year will have to file by March 15th of the following year. In other words, the filing deadlines for partnerships and LLC's will be accelerated by one month; the filing deadline for "S" corporations stays the same. By having most partnership/LLC returns due one month before individual returns are due, taxpayers and practitioners will generally not have to extend or rush at the last minute to file the returns of individuals who are partners in the partnerships.
2. "C" corporations will have to file by the 15th day of the fourth month after the end of the tax year. Thus, "C" corporations using a calendar year will have to file by April 15th of the following year. In other words, the filing deadline for "C" corporations will be deferred for one month.

Keep in mind these changes to the filing deadlines generally will not go into effect until the 2016 returns have to be filed. Under a special rule for "C" corporations with fiscal years ending on June 30th, the change is deferred for 10 years and it will not apply

until tax years beginning after December 31, 2025.

Taxpayers who cannot file a tax return on time can ask that IRS for an extension to file. Effective for tax returns for the tax year beginning after December 31, 2015, the new law directs the IRS to modify its regulations to provide for a longer extension to file a number of forms, including the following:

1. Form 1065 (Partnerships/LLC returns) will have a maximum extension of six months. The extension will end on September 15th for the calendar year taxpayers.
2. Form 1041 (Fiduciary returns for Estates and Trusts) will have a maximum extension of 5½ months (currently a five month extension applies). The extension will end on September 30th for calendar year taxpayers.

Although this law changes many of the due dates, the changes will not be felt until the filing of the 2016 returns, which for most returns will be in the 2017 calendar year.

If you have questions how these rules affect the due dates of your income tax returns, please contact us for assistance.

Iowa Legislature Amends Guardianship Law

On April 24, 2015, Governor Branstad signed into law S.F. 306, changing guardianship law in significant ways. The new amendments, which can be found in Iowa Code Chapter 633, confirm that adult wards have the right to communication, visitation, and interaction with individuals of their choice, subject to limited restrictions that may be put in place by guardians. Those guidelines can take the form of reasonable time, place, or manner limitations. To deny access to a ward against the ward's wishes, a guardian must make a showing of "good cause" to the Court. The new law,

which goes into effect July 1, 2015, is largely seen as an attempt to prevent legal guardians from hindering family members' access to a ward in poor health. Importantly, if the ward is unable "to give express consent to such communication, visitation, or interaction with a person due to a physical or mental condition, consent of an adult ward *may be presumed* by a guardian or a court based on an adult ward's prior relationship with such person" (emphasis added).

While the amendments represent a consequential change in guardianship law, it is important to maintain a broad perspective of this area of law as a whole. Even in the

wake of these amendments, the law continues to provide guardians with extensive legal authority over persons subject to guardianships. In this respect, the choice of a guardian, as well as the scope of the guardian's powers, remains a paramount consideration. Above all, the changes are best seen as offering an additional legal argument for family members who are seeking to enforce a ward's visitation wishes, even where those wishes may run contrary to the guardian's judgment.

Willson & Pechacek, P.L.C.
Newsletter

Willson & Pechacek, P.L.C.
421 West Broadway, Suite 200
P.O. Box 2029
Council Bluffs, Iowa 51502
(712) 322-6000

Website: www.willsonpechacek.com
Email: info@willsonpechacek.com

Branch Offices:

Carroll, Iowa (712) 792-0001
Harlan, Iowa (712) 755-1111
Oakland, Iowa (712) 482-6999
Treynor, Iowa (712) 487-3444
Clarinda, Iowa (712) 542-2141

Long Term Care Partnership Programs

By Lee Rankin

A growing misconception is that the Affordable Care Act, or as commonly referred to as Obamacare, will cover costs for long-term care. Currently, this is not the case as Obamacare generally did not change anything related to the provision of long-term care. For someone entering a nursing home or assisted living facility, there are basically three options. Somebody privately pays for the costs, the costs are paid under a long-term care insurance plan, or the person has sufficiently few assets and income to be eligible for government assistance under Medicaid.

For people considering Medicaid as their option to long-term care,

the asset and income limitations are frequently overestimated for eligibility, not to mention the impact on a spouse to “spend down” their assets to be eligible.

A Long-Term Care Partnership program provides an alternative to “spending down” assets by forming a partnership between Medicaid and private long-term care providers. A Long-Term Care Partnership Policy is a long-term care insurance plan which meets certain state and federal requirements and is generally available among most major insurers. The benefit it provides is dollar-for-dollar asset protection. For example, if your Partnership Policy pays \$250,000 in benefits, Medicaid would exempt \$250,000 of assets (in addition to any other exempt assets)

in determining eligibility for assistance and also exempts those assets from any kind of estate recovery.

Partnership Policies, like other long-term care policies are tax qualified and are generally available in both Iowa and Nebraska. Most states (not all) provide for reciprocity if you decide to move. Owning a Partnership Policy does not guarantee Medicaid eligibility, but it does exclude the protected assets as a countable resource.

A Long-Term Care Partnership policy is worth consideration as it provides the unique benefit of asset protection at a time when asset protection is what is on peoples’ minds.
