# FF THE CLOCK

# A False Sense of Security

Contributed by Meagan L. Sekscinski

e meet with clients on a regular basis who feel a false sense of security because they already have a Will from years ago. "Will" becomes interchangeable with any type of planning they have completed—they 'already have an estate plan' or they 'already have long term care insurance' so they feel protected. It's easy to understand the relief that they felt upon completing a phase of planning, but instead of considering the task done 'for now', they consider everything to be officially finished, not to be revisited, checked off the list.

Any type of legal and financial plan requires maintenance and a continued sense of understanding and education.

#### IT'S IMPORTANT TO REREAD YOUR ESTATE PLAN EVERY THREE TO FIVE YEARS AT MINIMUM.

Similar to maintaining our vehicles with routine oil changes, our estate plan should be considered every time we meet milestones in life or experience significant changes.

#### "I already have a Power of Attorney."

A Power of Attorney (POA) is the legal document that allows the Principal, the creator of the document, to name an Agent(s) to make legal and financial decisions for them if they cannot make those decisions for themselves.

The most recent changes to the laws affecting Powers of Attorney in DE and MD happened in 2010. The Uniform Power of Attorney Act was adopted in our states and changed the authorities that are given to the Agent(s). If a Power of Attorney was created before 2010 it should be reviewed by an attorney specialized in elder law to confirm its thoroughness. But even Powers of Attorney created since 2010 still require regular review.

First, we often see POAs that limit the authority of the Agent. It seems that these choices result from a

misunderstanding. For example, Bob is completing a form POA, naming his trusted son Mark to be his Agent. When Bob comes to the section of the POA listing the powers he wants to give Mark he quickly initials the authorities to handle banking accounts or real estate transactions, but he hesitates at the authority to create Trusts. In the moment, Bob is thinking Mark will never need that authority because he doesn't have a Trust and doesn't ever expect to have a Trust. But without realizing it, Bob has now limited Mark from the ability to shelter Bob's assets from the costs of long term care if Bob ever needs it in the future. With the guidance of a specialized elder law attorney, Bob would have understood the importance of creating the most thorough Power of Attorney possible.

Second, we see so many Powers of Attorney that skip the spouse as the first Agent. In the majority of marriages, most assets are jointly owned, so it feels like the spouse has power, but that power is based on joint ownership, not marriage. Retirement accounts are prime examples of when a spouse is limited because these accounts always have a single owner. At death, the spouse is likely the first named beneficiary, but during the owner's lifetime the account may need management. Without a Power of Attorney naming the spouse as Agent, they would not have access to any of the other spouse's individually owned assets.

Third, the lives of Agents change too. What if the Agent or Successor Agent named in your POA passes away, develops a disability, becomes imprisoned, suffers a personal crisis, or if the dynamics of your relationship

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change? It's important to reevaluate the trusted people named in these roles, and always ensure that there is a named Agent and Successor Agent that's right for the job.

#### "I have a Will, so I don't need an estate plan."

A Last Will and Testament is an excellent and foundational piece of end of life estate planning. Too often though, clients have a false sense of security that they have a complete and thorough estate plan that will serve them during their lifetime, because they have a Will written. Additionally, they are unconvinced that they should consider any other tools.

An estate plan is comparable to a tool box. If I own a hammer there are several jobs that I am prepared for. But if I come across a screw, I'm suddenly wishing I stocked my tool box with a screw driver too. The creation of a thorough estate plan should at least consider lifetime tools like a Power of Attorney and Advance Health Care Directive, end of life tools like a Will, Revocable Living Trust, Supplemental Needs Trust and Retirement Account Trust, and asset protection planning tools like an Asset Protection Trust. The blend of estate planning documents will be different for every family, but the plan likely isn't complete and thorough if a client hasn't received counsel regarding the best combination of tools to use.

We meet with a great deal of clients who retrieve their twenty-year-old Will from their safe and are shocked by what it says. They have forgotten who they named as Executor or what percentage of their estate they planned to leave to certain family members. In addition to wanting to change their old wishes they also want to include a new charity or new grandchildren when their planning is revisited. It's important to reread your estate plan every three to five years at minimum.

# "I have long term care insurance, so I don't need to shelter my assets."

Long term care insurance is a great asset, however most people either can't afford this benefit or were unqualified for health reasons by the time they applied. Pre-planning for healthcare concerns with a thorough estate plan is a terrific and affordable alternative.

When we encounter clients with these policies, they can rarely explain their benefits. When we help interpret the details for them, they are often surprised to find that the policy covers \$150 per day but that the care needed costs \$350 per day, for example. In several cases we have helped families use their long term care insurance policies toward their care costs, and then still taken the steps to shelter their assets and provide other payer sources for the balance of the care costs. Those families typically would have had even more positive results had they created a thorough estate plan earlier, rather than having a false sense of security because they had a long term care policy in place.

Don't see planning as a task to check off the list. Consider planning an ongoing process of education and maintenance to meet your goals as efficiently and economically as possible.

## BELLA'S BRIEF

#### The Office from a Dog's Perspective



My premonition last year that the PWW family would be growing wasn't far off. The only thing I didn't consider is that members the new would have four legs and be so cute! This creates a bit

of a problem for me because I relish my role as dame (not to be confused with dam -these new beings are not my whelps) and I simply do not intend to give up the title. It is unimaginable to me that these creatures will ever be in the office, but I've marked my territory just in case.



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Off The Clock











Name: Cayenne & Chilla







### TIME OUT — STAFF PROFILE

Nancy C. Smith Estate Administration Coordinator

ON THE CLOCK: Nancy is originally from Delaware County, Pennsylvania. She moved to Sussex County in 1998 to live closer to her

three nieces. Nancy earned her paralegal certification in 1987 and associate's degree in Health Administration in 2009. She joined PWW in July of 2018 as an Estate Administration



Coordinator in the Lewes office. She is a member of the team that utilizes her knowledge and experience to guide our firm's families through the complicated probate process after the loss of a loved one. She has worked at various law firms in Pennsylvania and Delaware since 1985 concentrating the majority of those years in the trusts and estates area of legal practice.

OFF THE CLOCK: Nancy and her fiancé Sam live in Lincoln with their dachshund Buddy. During the week they take Buddy to local beaches and parks for walks after work. On the weekends they enjoy home improvement projects, landscaping, gardening, and entertaining friends and neighbors. A few weeks each year are spent visiting family in Marco Island, Florida and Denver, Colorado.

# **UPCOMING EVENTS**

8 Jan	2019 Elder Law Series 2 <sup>nd</sup> Tuesday of every month, 10:00 - 11:00 am MAC Inc. Area on Aging, Salisbury, MD
18 Jan	Elder Law Basics Continuing Education 8:00 am - 12:00 pm <i>(For Professionals Only)</i> The Restaurant at Lighthouse Sound, Bishopville, MD
22 Jan	Three Part Elder Law Series (also on 1/29 & 2/5) 10:00 - 11:30 am Nanticoke Senior Center, Seaford, DE
5 Feb	Veterans Planning Workshop 4:00 - 5:30 pm Gull Creek Senior Living, Berlin, MD
11 Feb	Elder Law Workshop 5:30 - 7:00 pm Milford Public Library, Milford, DE
26 Mar	Elder Law Workshop 5:30 - 7:00 pm Worcester Technical High School, Newark, MD
28 Mar	Off the Clock 6:00 - 7:00 pm Milford Place, Milford, DE

# LEGAL MUMBO JUMBO

Legal Language in Layman's Terms

#### DURABLE

A designation within a Power of Attorney that allows the Agent(s) to continue acting on the principal's behalf, even if the Principal becomes incapacitated.

#### A note from the attorneys...

We look back on the last year with pride, but are anxiously anticipating the start of a new year and all that's to come. Many of the greatest moments of 2018 included personal new beginnings for members of our team. That couldn't make us happier! So, what's in store for 2019 for our firm? We are taking yet another leap by purchasing a property on Savannah Road in Lewes that will become the new home of our Lewes office. This is an exciting next step and we look forward to sharing more details soon.

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#### We would like to thank our featured referrer of the month:



JEFFERSON, URIAN, DOANE & STERNER, P.A. CERTIFIED PUBLIC ACCOUNTANTS

Offices in Georgetown, Ocean View and Dover 302-856-3900

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