

It's Never Too Late to Give

If you are in a giving mood, there are many different options available to you, including gifts of cash, appreciated property, and real estate. You can make gifts while you are alive, or you can make gifts after you pass away. Watching someone else enjoy your gift and tax considerations are some of the reasons why many of us make lifetime gifts. However, the truth is many of us hesitate to part with our assets while we are alive for fear of outliving our money.

Gifts after death may be made in several ways, including gifts in a will, revocable trust or via a beneficiary designation. These options are all revocable decisions, which means that you can change your mind or adjust amounts and beneficiaries up to the point that you die or become legally incapacitated. This flexibility enables you to enjoy full use of the assets during your lifetime and to distribute these assets after your death in a way that is advantageous to your beneficiaries. However, keep in mind that keeping assets in your name during your lifetime will affect your ability to obtain governmental assistance in connection with long-term care for Alzheimer's disease or other chronic illnesses.

A Special Bequest

Assuming you decide that a testamentary (after death) gift is right for you, one option is the traditional bequest in either a will or a revocable living trust. A bequest is achieved by naming a specific



Bequests make sense for those looking to let their assets benefit others after they pass away.

party, which can be a charitable organization or another individual, in your will along with an amount or item to be given to that charity or person. Bequests can be of any asset that you own, and can be made for a specific item, amount, percentage of your estate, or can be of the “rest, residue and remainder” of your estate. This is the value of your estate that is left after all of your debts

and taxes have been paid and your other wishes have been carried out. Bequests to charitable organizations can be either restricted or unrestricted, meaning that they can be designated to be used for a stated purpose or can be given to the organization to use in a way that the organization deems best.

Bequests can be made outright to others or in trust for their benefit. If



An elder-law attorney can help you navigate the many legal considerations that come with aging.

you make a gift outright to someone, then they may do as they choose with those assets after you pass away. While this may sound like a good idea at first blush, consider the following: (1) We live in a litigious society and any outright gifts you make to others will be subject to the claims of their creditors. So, your hard-earned assets may potentially be used to satisfy your loved one's legal obligations and debts if they are a defendant in a lawsuit and have a judgment against them. (2) The divorce rate in our country is over 50%. By leaving assets outright to someone, they may be subject to a matrimonial action now or in the future. Now, I know we all love our sons- and daughters-in-law, but how comfortable would we be knowing that

they received some of our assets and were no longer married to our children? Get the picture?

There are other reasons, including taxes, for not leaving assets outright to others. For many of us, the preferred way of making a bequest is to make the bequest in trust. You don't have to be rich to set up a trust to protect your assets for you and your family. This is not a technique reserved for the Rockefellers. Trusts have become a truly effective part of mainstream estate planning for the middle class. There are different kinds of trusts, and one size does not fit all. So, make sure you work with an experienced elder law attorney in your area who understands the nuances of trust and estate planning.

Getting an Attorney's Help

Selecting an attorney for any purpose can be challenging. Selecting an attorney in a field as specialized as elder law can be overwhelming, since you will likely be dealing with many more pressing non-legal issues at the same time. In addition to being an expert in wills, trusts and estate planning, an elder-law attorney must be knowledgeable in Medicare, Medicaid, senior housing, tax law and health care decision-making, to name a few. Elder-law attorneys take a holistic approach when representing their clients and focus on the needs of the elderly client as opposed to one particular area of the law.

While there is no shortage of attorneys, in general, it may not be so simple

to find the right law firm for you in your area.

You need to make sure you select an elder-law specialist. People go to specialists for a very good reason: Specialists limit their practice to one or a couple of practice areas. The legal field has become very specialized in recent years and elder law is a very narrow niche within the trusts and estates bar—so narrow that many lawyers hire an elder-law specialist when it comes to their own family's elder law issues. The law firm you select may impact not only your legal affairs, but also those of your spouse and other family members.

In fact, the American Bar Association has recognized the need for specialization in elder law by accrediting the National Elder Law Foundation (NELF) as the only certifying entity for elder-law attorneys in the coun-

try. There are currently approximately 450 certified elder-law attorneys in the United States. NELF is a non-profit organization dedicated to the development and improvement of the professional competence of lawyers in the area of elder law. The certification process attempts to identify those lawyers who have the enhanced knowledge, skills, experience and proficiency to be properly identified to the public as certified elder-law attorneys (CELAs). There are substantial practice and experience requirements that must be met in order to become certified, including an exam that must be passed. Moreover, CELAs must be re-certified every five years. While certification does not necessary mean that a particular attorney will be more qualified than someone who is not, it is certainly something for you to consider in making your decision. You

can go to www.nelf.org to see if your attorney is a certified elder-law attorney.

As you can see, there is a lot to think about when making bequests to your family members or others, including selecting the right attorney. For your benefit, the attorney should be selected prior to a crisis and while the family is not under stress. This will allow you to develop a relationship with the law firm so that when a crisis strikes, all parties will be in a position to move swiftly so that assets can be protected and your wishes carried out. ■

Bernard A. Krooks, J.D., CPA, LL.M (in taxation), CELA, is past president of the National Academy of Elder Law Attorneys and past president of the Special Needs Alliance and is a nationally known, widely quoted expert on elder law. For more information, visit the firm's website at www.littmankrooks.com.

Benefactor Makes Generous Bequest to Fisher Center

Sara Jane Owen Torquato made doing good a priority for her life. Her beneficence extends to the Fisher Center for Alzheimer's Research Foundation, as well, to whom she has given a very generous bequest to continue the search for a cure and more effective treatments for Alzheimer's disease.

A lifelong educator, Sara Jane Torquato (known as "Sally" to friends) taught at Johnstown High School and later went on to work in the office of the Director of Guidance, where she influenced thousands of young people over the years.

Along with her sister, the late Elvina Jane Owen, and her husband, the late John Torquato, Mrs. Torquato's generosity was already well known in her native Johnstown, Pa. The Elvina Jane and Sara Jane Owen Library at the University of Pittsburgh at Johnstown bears both their names, thanks in part to a very generous donation from her sister. In 1985, Mrs. Torquato founded the Sara Jane and John Torquato Scholarship Fund at UPJ through a charitable remainder trust agreement.

Mrs. Torquato provided care for her sister Elvina, who was afflicted with Alzheimer's disease, for years before she passed away about 8 years ago. Mrs. Torquato's giving nature extended beyond her own life, as she bequeathed almost everything she accumulated during her life to charitable institutions, primarily those like the Fisher Center Foundation, that are engaged in Alzheimer's research.



Sara Jane Torquato and friend.