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Planning for Later Life

Trusts & Estates

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Beyond the preparation of traditional documents

Many clients create or revisit their estate plans when they're in their mid-60s. Events in those years can prompt the desire to arrange one's affairs. Retirement, enrolling in Medicare and qualifying for Social Security all remind our clients that they're growing older and that they won't be middle aged forever. Attorneys and other advisors also need to consider whether their clients are "ready" to enter old age.

Attorneys who counsel clients in late middle age know the clients need up-to-date estate plans consisting of a will, perhaps an inter vivos trust, a power of attorney and an advance health care directive that appoints a surrogate health care decision maker. As important as those documents are, there are other matters that clients should think about. We call this "planning for later life."

Confronting the Realities

The first rule of planning for later life is for clients to face up to the realities of growing older. Like much of life, you have to hope for the best and plan for the worst. Everyone ages in their own way, but the reality of growing older is the inevitable decline in physical ability and the effects of normal aging on mental capacity.

Physical Decline

Let's start with the physical decline. Even if your client remains free of chronic disease or avoids acute illnesses, he'll grow weaker and less fit. Climbing steps will become more difficult, his balance will decline and he'll tire more easily. All of this is predictable; just how fast and far your client will decline is unknown.

Your client can't avoid physical decline, but he can plan for it. First, your client should think seriously about where he lives—both what kind of house or dwelling he lives in and where it's located. Your client needs to evaluate whether where he lives now will be a good place to live at age 75, 85 or even 95. Riding his John Deere mower around, lugging fertilizer bags and raking leaves may be fine at 65, but will he still want to be doing that at 80? Sure, he can carry that laundry basket down the basement steps today, but will that be a safe thing to do when he's 85? Our clients need an exit plan for the house that they bought back in the day. They need to start thinking about how to avoid steps, stop shoveling snow, cease maintaining a yard and not be stressed finding repairmen to handle an aging house owned by an aging owner.

Where the house or apartment is located also merits some thought. Having to drive three miles for a loaf of bread or having to drive on a freeway to get to the doctor is feasible today, but may not be in the years to come. It's time for your client to consider moving closer to goods and services—living near routine medical care, being near the grocery

store and, of course, close to a good cup of coffee.

Social Security Benefits

At 62, your client can claim his Social Security retirement benefits. Of course, if he does, he permanently reduces them by 25 percent compared to the amount he would have received at his full retirement age, currently 66. If your client waits until he's 70 to claim the benefits, the amount rises by 32 percent, at 8 percent for each year he defers. At 70, there's no reason to delay further because the amount is set for life—except for possible annual cost-of-living increases. For many, deferring claiming Social Security past 66 makes sense.

If your client is married, when he claims his benefits becomes more complex. A spouse can claim benefits based on the amount paid to the other spouse while allowing her benefits to rise as she ages. For example, Adam, 70, and Eve, 66, are married. They're both attorneys, and neither is retired. Having turned 70, Adam claims his benefits. He doesn't have to be retired to do so. Beginning at 66, he could have claimed benefits even though he was still employed. When she turned 66, Eve filed a restricted application, meaning that she wasn't filing for benefits on her work record but only for her spousal benefits based on Adam's benefits. If she'd filed for her benefits at 66, she would have received $30,000. Instead, by filing a restricted application, she receives her spousal benefit, which is equal to 50 percent of the benefits paid to Adam. If Adam's annual benefit is $40,000, Eve will receive $20,000 a year for the next four years. At age 70, Eve will start her benefits, which will be 32 percent more than if she'd claimed them at 66, or $39,600. But, she'll also have received a spousal benefit of $20,000 for four years or $80,000. Of course, she gave up four years of her own benefits from 66 to 70 at $30,000 a year or $120,000 ($40,000 more than she actually received), but by waiting to claim them at 70, she'll receive $9,600 more a year for life. At 70, Eve has a life expectancy of at least 20 years, so she can anticipate receiving an additional $192,000, which far exceeds the $40,000 that she gave up by not receiving her benefits at 66.

But wait—there's more, as they say. When and how to claim Social Security benefits is complicated and deserves your client's attention. You must analyze every scenario based on individual circumstances and assumptions. Of course, maximizing benefits requires that your client lives a long time. So, it's time for your client to think about how to stay healthy and how to pay for his health care.

Medicare

At 65, your client is eligible for Medicare, but Medicare is a secondary payer for most who are still employed and covered by health insurance. The employer insurance is the primary payer, meaning that it pays first, up to the limits of its coverage; only then does Medicare pay for costs not covered by the primary insurer, if Medicare covers those costs.

Still, your client should apply for Medicare in the months before he turns 65. It costs nothing to be enrolled in Part A, which pays for hospitalization. It's Part B, which pays the doctor and part D, which pays for prescription drugs, which have monthly premiums. But, your client doesn't have to elect to enroll in them until after he retires, as long as he has employer-provided, comprehensive medical insurance. The only exception is if your client's employer or, if your client's coverage is provided by his spouse's employer group health plan, his spouse's employer, has fewer than 20 employees. If so, even if that employer offers health insurance, Medicare is the primary payer if the employee has enrolled. If that's true for your client, or may be true, he should speak to his employer's or his spouse's employer's human resources department and find out if he should sign up for Medicare—all of it—Parts A, B and D.

If your client has reached 65 and has retired, it's time to fully enroll in Medicare. Even if your client's employer provides a health care plan for retirees, Medicare is the primary payer. The big choice your client faces is whether to stay with original Medicare, Parts A, B and D, or enroll in Medicare Advantage, which supplants Parts A, B and D. It's not an easy choice. Your client needs to investigate what Medicare Advantage plans are available where he lives and how they compare in benefits, providers and cost with original Medicare. This

investigation will take some time, so your client shouldn't wait until the last day to delve into it. The place to start is the Medicare website (*www.medicare.gov*), which will direct your client to the annually revised 150-page pamphlet, "Medicare and You." It contains a wealth of information and should enable your client to work his way through the Medicare maze. For more details on Medicare, see "Advising Clients on Medicare," by Christopher W. Smith, in this issue, p. 24.

Medigap Policy

In addition to Medicare, your client will need a Medigap policy. Medigap policies—Medicare Supplement Insurance—are sold by private companies but are heavily regulated by federal law. The policies pay some or all of the health care costs that Medicare Parts A and B don't cover, such as copayments, coinsurance and deductibles. Some Medigap policies also offer coverage for services that original Medicare doesn't cover, like medical care when your client is traveling outside the United States. Medigap policies don't cover the cost of long-term care (LTC), dental care, hearing aids, eyeglasses or private duty nursing.

Because a Medigap policy is a supplemental insurance for the original Medicare benefits, to qualify for a Medigap plan, your client must have Medicare Part A and Part B. If your client purchases a Medigap policy within six months after enrolling in Medicare Part B (even if that's long after he turned 65), he can't be denied for a previously existing medical condition. After that, the insurer can deny his application for insurance. If your client has a Medicare Advantage plan, however, he isn't eligible for a Medigap policy.

There are over a dozen Medigap policies labelled A, B, C and so forth. By virtue of federal law, every Medigap A policy is identical, though the premium may vary depending on the issuer. Because of the coverage differences among the policy categories, you'll need to review with your client what each type of policy covers and decide what's best for him. Your client can buy a Medigap policy from any insurance company that's licensed in his state to sell one. If your client is married, he'll need a policy for himself and one for his spouse. Medigap policies aren't allowed to include prescription drug coverage. Your client can get that either through a Medicare Advantage plan or by joining and paying for a Part D Medicare Prescription Drug plan. And finally, if your client has a Medicare Medical Saving Account plan, it's illegal for anyone to sell your client a Medigap policy.

LTC

Medicare pays for acute care, not LTC. Medicare may pay for up to 100 days in a nursing home (with significant copays for days 21 to 100), but that's it. After that, your client is on his own. With a nursing home costing between $6,000 and $20,000 (in some states, the cost can actually exceed $20,000) a month, your client needs to plan for how he'll pay for it should the need arise. And, it may well arise because over a third of those 80 and older suffer some degree of dementia, and many others suffer from chronic physical conditions that necessitate LTC. There are generally three ways to pay: (1) LTC insurance; (2) out of your client's income and savings; and (3) Medicaid. LTC insurance is expensive and not for everyone.[1] Another form of "insurance" is to move to a continuing care retirement community (CCRC) that provides a range of housing, including independent living, assisted living and skilled nursing care. Many CCRCs charge a high admission fee—$300,000 to $1 million is common—but part of that fee helps pay for the increasing level of care provided to residents whose monthly fee doesn't increase, even if they have to move into the CCRC's skilled nursing facility. CCRC fees and what they provide vary greatly, so your client needs to shop around before he commits.

Paying for LTC out of income and savings is possible, but if your client plans on doing that, he must recognize that the size of his estate when he passes away may become significantly smaller. So, your client needs to create an estate plan that still makes sense, even if his estate diminishes in value. And, while your client may be able to afford paying for himself, that outflow of funds can greatly reduce the income of his spouse. It's not enough just to have sufficient funds to pay for LTC; your client needs a plan to protect the financial well-being of his healthy spouse.

Deferred Annuity

One approach is the later life, deferred annuity to assure that the couple or the surviving spouse will have an adequate income during the last years of life. For example, at 70, a couple could purchase a lifetime, two-life annuity to begin to pay when the older or surviving spouse turns 85. With 15 years of deferral, a modest purchase price could result in a stream of income at
85, which when combined with Social Security, would adequately maintain the couple or a surviving spouse, even if the couple's savings had been drastically depleted by paying for LTC.

Medicaid

The final payment source is Medicaid, the federal and state program that pays for nursing home care and increasingly for care in the home. Unfortunately, Medicaid is a means-tested program; its rules require a recipient to become impoverished to gain benefits. To be eligible, your client must essentially exhaust his savings and devote all his income to the cost of his care before he qualifies. Couples have a little more leeway to retain income and assets to keep the healthy spouse from being destitute.

Endnote

1. For an analysis of who should purchase long-term care insurance, *see* Gregory D. Singer and Michael Schmid, "The Financial Sweet Spot for Long-Term Care Insurance," *Trusts & Estates* (July 2014) at p. 48.

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