

*“Let our advance worrying become advance thinking and planning” – Sir Winston Churchill*

C. DAN CAMPBELL, P. C.

# ELDER LAW TODAY

4245 Kemp Blvd., Suite 800 • Wichita Falls, Texas • (940) 696-5015

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As I write this letter, I am thinking about all of the blessings which I have experienced in my life. First, the blessings of simply being born in this wonderful, amazing country. Having been born to a hardworking farm family, gave me the example of learning hard work and that has also been a blessing. Accompanying medical missionary trips to Haiti after the earthquake made me appreciate more than ever what I took for granted: such basic things as clean water, medical care, food, shelter. The freedom from fear to be able to worship our God as we desire. These are blessings all of us have. My family, my wife, our children and grandchildren are a huge part of my blessings. And, finally, the ladies who have been with me through thick and thin in our law practice, Cindy Lamb, Hope Butterfield, and Danna West are truly amazing and a wonderful blessing to not only me but our many clients whom we have been privileged to serve over the years. And, yes, you our clients who have allowed us to be of service since 1975 are a huge blessing!

Changing gears. Let's talk about the 5 or 6 most important legal documents you have undoubtedly heard about and hopefully signed. By the way these documents need to be reviewed periodically – at least every 3 to 5 years and more often if there has been a significant change in your life – perhaps marriage; birth of a child or grandchild; divorce; death; change in estate tax situation).

1. Your Will;
2. Your “statutory” (financial) durable power of attorney;
3. Your Medical durable power of attorney;
4. Your HIPAA Release;
5. Your Directive to Physicians (“Living Will”);
6. Your Revocable Trust.

A “refresher course” on why these documents are so very important: **The Will** (without it your assets may pass to someone you never intended; with it, your assets will pass exactly as you determine). **The “statutory” (financial) durable power of attorney.** This may be the most important legal document, in some cases, even more important than a Will. But it needs to be the *RIGHT KIND of Statutory Durable Power of*

*Attorney.* **The Medical Durable Power of Attorney** (this gives you the power to appoint whom you want to be able to make medical treatment decisions should you become incapacitated and unable to make those decisions. **The HIPAA Release** (this allows you to appoint persons you want to be able to talk to health care providers such as doctors, nurses, pharmacists – without its Federal privacy laws will prevent anyone other than yourself from talking to these folks). Your **Directive to Physicians** a/k/a “living will”. (this allows you to make the decision as to whether you want to be allowed to die naturally if you are terminally ill –or if you want heroic medical treatment even if terminal). **The Revocable Trust** (a/k/a Intervivos Trust). This type of trust allows you to establish a trust that can manage your assets and, in some cases, avoid probate –particularly important if you own out-of-state real estate.

Now let's address three “asset protection” topics which I have previously discussed, but feel they bear repeating. If a client is interested in protecting assets and is concerned that he or she may need nursing home care in the future, these are a few important strategies to consider (this, by the way, is not an all-encompassing list, there are others as well):

1. In case of a married couple where one spouse is in a nursing home and the other spouse is either at home or in an assisted living facility (what we call the “community spouse”), as part of the Medicaid planning strategy, all “countable” assets will be transferred to the community spouse and it is critically important that the community spouse make sure that none of the assets will pass to the nursing home spouse should the community spouse predecease the nursing home spouse. **Usually, we will recommend the community spouse (the spouse at home) establish a “spousal care trust” in his or her Will for the nursing home spouse** thereby preserving Medicaid for the nursing home spouse should the spouse at home die first. At the death of the nursing home spouse, the assets will pass as the “spousal care trust” specifies, quite often to the children, grandchildren or other beneficiaries.

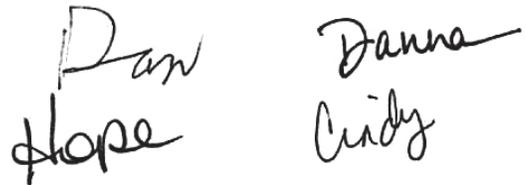
2. Another asset protection strategy where a client is concerned about Medicaid eligibility in the future is to **establish a "Legacy Trust"** (also known as an IDGT Trust or 5-year trust). The assets are transferred to the trustee (quite often a child or other family member) and the client retains the right to income from the trust BUT NOT PRINCIPAL. After 5 years, if this trust is properly structured, the assets in the trust would be protected in case Medicaid is needed. At the death of the Medicaid recipient, the trust will usually terminate and the assets distributed to the "remainder beneficiaries" (such as the children).
3. Another asset protection strategy is where a **client has a business, farm or ranch**. This may very well be an exempt asset and not countable for Medicaid. Here is an example: wife is in a nursing home; husband living at home; they have farm land, ranch land, agricultural or business bank accounts; business/ farm equipment; cattle herd. There might be multiple farms/ranches or some other type of business. The exemption is referred to as **"assets essential for self-support."**

These assets should be exempt for Medicaid purposes plus the income would be paid to the

husband in this example and it would be exempt! Recently the Medicaid authorities ruled (in a very favorable ruling) that assets in an LLC can qualify for this exemption (whereas previously we would have to have the LLC "collapsed" and the assets transferred to the community spouse) – now we don't have to do that! FINALLY, IT WOULD BE VERY IMPORTANT FOR THESE ASSETS TO BE PROTECTED FROM "ESTATE RECOVERY" AT THE DEATH OF THE MEDICAID RECIPIENT.

**We are offering our clients who receive this newsletter a 30-minute free estate review with the goal of determining that your estate planning documents are up-to-date. This free estate review expires February 28, 2022. If interested, you will need to provide your documents in advance of your 30-minute conference. Call Danna (940) 696-5015 if you want to take advantage of this "no obligation" offer.**

**That's it for now! Hope you and yours have a Merry Christmas and a Happy New Year!**



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advice. Before taking any action referred to in this newsletter you should consult with an attorney who is knowledgeable in this area

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Elder Law Today is written by C. Dan Campbell, Attorney at Law, who is Board Certified by the Texas Board of Legal Specialization in Estate

Address Service Requested

**C. DAN CAMPBELL, P.C.  
ATTORNEY AT LAW  
4245 KEMP BLVD., SUITE 800  
WICHITA FALLS, TX 76308**

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