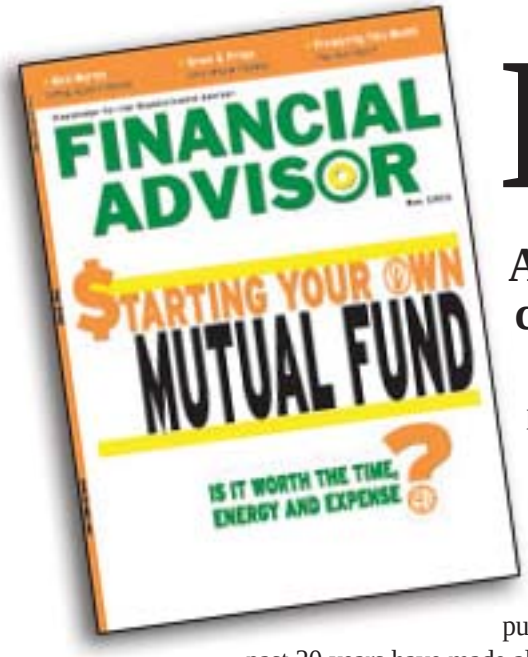

Life Decisions

By Karen DeMasters

Advisors must tackle the toughest of issues to guide clients through decisions such as living wills.

The sad and well-publicized cases of Karen Ann Quinlan, Nancy Cruzan and, more recently, Terri Schiavo, that have played out on the public stage over the past 30 years have made almost everyone aware of the possibility for modern medicine to keep a person alive beyond what he or she might desire. These days, even financial planners are being asked to consider their roles in these end-of-life decisions.

Among financial planners and estate consultants, conversations with client about such issues of living wills, medical directives and medical powers of attorney, the consequences each of these might have for long-term care and estate planning, are becoming increasingly important. The issues can be complicated to start with, and they are made more complex because it is sometimes a difficult subject to raise.

"People do not like to confront their own mortality or infirmity, but the further in advance you consider these issues the better off you will be," notes Bernard A. Krooks, founding partner of Littman Krooks LLP, a law firm with offices in New York City and White Plains, N.Y., and an expert in elder law. Krooks has conducted seminars on elder law and long-term-care planning for the Financial Planning Association.

Financial planners should, first of all, advise clients to consider how they will pay for care at the end stages of their lives, either with long-term-care insurance or savings, to protect their assets for their spouses and children. Long-term-care insurance, which can pay all or part of the bills for nursing home care, is usually a tax-deductible medical expense. Long-term care now averages $70,000 a year nationally, and can reach $150,000 a year in New York City. Recent changes in federal law make it harder to protect assets when entering a nursing home, making long-term-care insurance more desirable.

"Beyond that, the financial planner is in a unique position to have constant communication with a client and should make sure the client has designated power of attorney and medical power of attorney or health-care proxy, and that the client has a living will and medical directive," Brooks advises. How much responsibility the financial planner takes on can vary. "But you are not just looking at their stocks. You do not draft the documents, but you can perform a terrific service by reminding clients of the need for these items. Many financial planners are integrally involved with their clients and the client values their input on these matters. Your role as a financial planner depends on the nature of the relationship with each client."

The various choices that face a person before a medical emergency presents itself can create some confusion and misunderstanding.

"There is a huge amount of misunderstanding about what is needed and what the different forms mean," warns Dr. Ferdinando L. Mirarchi, an emergency medicine physician in western Pennsylvania and an expert on living wills. Mirarchi is the author of "What's the Patient's Code Status?" published in 2000 by P.A.E.R. Inc. in Erie, Pa., and "Understanding Your Living Will," to be published soon. His Web site, www.livingwillconsultants.com, provides further information. "There are several problems that can come up. The forms that people sign often lack individualization. For instance, the decisions a person makes at 30 are not the same as those made at 80. A person's marital status has to be taken into consideration.

"Secondly, many people sign forms that lack informed consent. They do not really know what they are signing," Mirarchi says. "Just as importantly, living wills and medical directives are often misinterpreted. A living will is often misinterpreted as a 'do not resuscitate' order. The person creating the document needs to know the person's code status, which tells the physician and medical staff how aggressive to be in treatment in a medical emergency. A person can start with a basic form but then individualize it, and know that it needs to keep evolving."

Most people are going to have the same or similar concerns, and everyone needs to know that the living will does not come into play until a person is in a terminal condition or is in a persistent vegetative state. "A person can start with the financial planner in making these decisions, then go to the family doctor and talk it over, and then go back to the financial planner. Then everyone should have a copy of all documents," he advises.

Another area of confusion arises over disability or incapacity, which are not the same thing, says Keith Fevurly, an estate planning attorney and financial planner in Littleton, Colo. Fevurly is executive director of the Kaplan College Certificate in Financial Planning, a CFP board-registered online educational program. In the case of incapacity, which means a person's legal ability to act, estate planning should include both property management and planning for a person's personal care, he advises.

"One of the most overlooked issues in the planning of an individual's estate is not what happens to the client's assets in the

event of his or her death, but what happens to the client in the event of his or her disability or incapacity during life," Fevurly warns. "Financial planners should incorporate questions regarding incapacity planning as a part of their data-gathering process, if they have not done so already."

Clients should be advised of the need for advanced medical directives in the form of a living will or a durable power of attorney for health care, also referred to as a medical durable power of attorney or a medical proxy, which are allowed in some form in all states. Although the living will comes into play only when a person is terminally ill or in a persistent vegetative state, the durable power of attorney can address any number of medical questions when an individual cannot make the decisions personally.

Some financial planners do not feel their job is complete until they have discussed each of these medical directives with their clients and made decisions regarding them. "I am proactive with my clients if I am doing comprehensive planning in that I ask them if they have a will, which serves them after they die, and a power of attorney and a health-care proxy, which works for them while they are alive but incapacitated. The power of attorney and health-care proxy are two separate documents," says G. Joseph Votava Jr., president of Peabody Financial Advisors LLC in Washington, D.C. "If you do not have a health-care proxy, doctors do not know who to take direction from and a family can frequently complicate the matter. Hospitals will use their own documents or policies that are slanted to protect their liability."

Any health-care directives should be relatively fresh and should take into consideration new medical privacy laws, he adds. Boilerplate documents taken from a Web site will not provide instructions with specific language each person may want, he warns. "As a financial planner, you need to encourage your client to talk to the proxy and talk to his physician. Draft a document and then take it to the doctor and see what he thinks. Then you can make changes if needed before it is final," Votava advises. "But put this on a rolling agenda to discuss with your client each time you meet until the issue is resolved. A planner who is astute also will have permission to talk to a client's lawyer, if necessary, to work out details."

Another issue to consider, according to the law firm Votava is associated with, Nixon Peabody LLP, is that the person assigned as medical proxy should share the client's moral, ethical and religious views and should be strong enough to carry out the client's wishes. Carl Bailey, a founder of Bailey & Beatty Financial Services Inc. in Danbury, Conn., which is affiliated with Commonwealth Financial Network, says he is a "huge advocate of including medical decisions as part of proper financial planning. It is important to talk about this as a part of full financial planning. Terri Schiavo has made us all aware that anyone can become dependent on machinery at any time. Without a living will you are leaving you medical decisions to others.

"I am particularly aware of this issue because my dad died with Alzheimer's and Parkinson's disease. At some point, a family has to make some very difficult decisions. You want as much control as possible over what happens at the end of your life. Do you want the state or a medical institution to make those decisions? A living will does not make the decision making easy, but it makes it clear," Bailey recounts. "I advise people to go to an attorney who understands estate planning and elder care law. Many people, when you ask who drafted these documents, it is the attorney who did their real estate closing. There is more here than meets the eye, so you need someone who specializes in these areas.

"Someone has to coordinate the investment advice, the end-of-life decisions and the estate planning," Bailey says. "I think you are being negligent as a financial planner if you do not discuss these issues, and discussing them makes you a greater value to the client. It will make you a critical part of their family and keep them around when the stock market does a downturn."