

# PLANNING *For Your* FUTURE

A newsletter about important estate planning and elder law issues

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In these troubling times, we are all looking for some peace of mind and control over our future. Well, one way to enjoy peace of mind is to plan in advance. Advance planning can help you maintain independence and control of your financial affairs, make your personal and healthcare decisions known, and ensure your estate is distributed the way you wish.

In this issue, we will discuss some of the ways we can work with you to help you not only control your future but also find some peace of mind by doing so. We will help you plan for the future and make sure your loved ones are taken care of – including the family pet.

I hope this issue finds you and your loved ones in the best of health!

*Bernard A. Krooks, Esq.  
Managing Partner, Littman Krooks LLP  
President of the National Academy of Elder Law Attorneys*

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### *In our next issue....*

#### **"But I Still Want to Live in My Own Home"**

by Robin Freimann, Esq.

This article will review the options available in New York State regarding Medicaid's Home Care Program. Getting proper care doesn't have to mean leaving your home.

## DO I NEED A WILL?

By Bernard A. Krooks, Esq.

*Anthony is a 27-year-old New Yorker with a wife and two children. Like many of us, Anthony doesn't like to think about his own mortality. He knows he should have a Will but he never seems to have the time to think about it.*

What happens if Anthony dies without a Will and is survived by his wife and two children?

New York State law directs that the surviving spouse is entitled to the first \$50,000 and one-half of the remaining balance held in Anthony's estate. His children would then be entitled to split the one-half that remains after the distribution to his spouse. While this might have been how Anthony intended to dispose of his property, it is likely that Anthony would have made other provisions in his Will.

*John is a 48-year-old New Yorker who has had a girlfriend for many years but they*

*never married. John loves his girlfriend and plans to leave his entire estate to her.*

What happens if John dies without a Will and is survived by his girlfriend?

Upon John's death, he has no surviving relatives since he was an only child and his parents (also only children) and grandparents both predeceased John. It was John's intent to leave all of his property to his girlfriend, however, since he never executed a Will, his property passes to New York State as he left no next-of-kin.

These two examples highlight some of the reasons we suggest you have a Will so that your wishes are known and carried out upon your demise.

As an attorney, when I meet with new clients they often ask me whether they will need a Last Will and Testament ("Will"). I almost always answer "yes."

*Why do I need a Will?*



A Will is a legal document that, among other things, directs how your property will pass upon your death. If you want to leave your baseball card collection to your nephew and your china collection to your sister, you state this in your Will.

If you die without a Will, you are considered to have died intestate and your property will pass in accordance with the law of the state in which you were domiciled.

In our examples both John and Anthony died without a Will and state laws, not John or Anthony, determined how their estates would be distributed.

*What can I use a Will for?*

A Will is also used to best ensure that

your loved ones are provided for. In our first example, Anthony's surviving spouse only received \$50,000 and one-half of the remaining balance of his estate. Without receiving Anthony's entire estate, the surviving spouse may have a difficult time living in the manner

through a difficult time immediately after your death. Why burden them with the uncertainty of who will raise them? By naming a guardian in your Will you can avoid these problems (and the costs involved in appointing a guardian) and ensure your estate assets

could be avoided. Further, the trust created by your Will can provide how and under what circumstances the trust funds should be used. Without this direction, the Court would decide. *How can I minimize my estate taxes?*

In 2003, an individual can die with \$1,000,000 and pay no estate taxes. Proper planning in a Will can save a married couple in excess of \$400,000 in taxes that might otherwise be incurred if the couple failed to have a Will. We can assist you in minimizing your estate tax burden and in ensuring that your estate assets are preserved for your beneficiaries.

#### *Benefits of Having a Will*

Having a Will allows you to ensure that your wishes are carried out as you planned. Whether that is knowing that your estate will be distributed according to your wishes, or that the guardian you select for your minor children will be

### **A Will can be used to name a guardian to care for your minor children in the event you and your spouse die together.**

appointed, or even that the person you want to have them will inherit your favorite possessions, a Will allows you to enjoy peace of mind about your future.



that she has become accustomed to. Or, perhaps Anthony has a sibling that for one reason or another has fallen on hard times. Anthony could provide for such sibling in his Will.

#### *Who will care for my children?*

Another important reason to have a Will is that in your Will you can name a guardian to care for your minor children. If you and your spouse die together leaving minor children, the court will appoint a guardian for your children. It could become quite contentious as family members fight over who is best qualified to raise your children. Your children will be going

are used to provide for your children and not for appointing a guardian.

#### *My children are minors, I know I need to appoint a guardian for them but what else do I need to include in my Will?*

Minors lack the legal capacity to accept money, so any assets that pass directly to a minor are held by the Court. In order to access such assets for your children's benefit, an application would have to be made to the Court. Obviously, there are fees associated with such application. If you had a Will directing that any money passing to a minor child be held in trust, these problems and expenses

## WHEN YOUR PET *Outlives* YOU

By Bernard A. Krooks, Esq.

Jill was 60 years of age and died unexpectedly in an automobile accident. Jill had two beagles, four Cheshire cats and two parrots. Jill had a Will, but overlooked making any provision for her pets. Jill's Executor had no access to Jill's money until the Will was probated and this would take a few weeks under the law. The Executor decided to put the animals in an animal shelter in hopes that someone would adopt them. One of the beagles was adopted. No one ever

checked on his care. The remaining pets were euthanized.

Bill had two Irish Setters and three cats. As part of Bill's estate plan he established a Pet Trust. Bill also selected a Caretaker for his Trust. He placed sufficient funds in the Pet Trust to provide for his pets on his death. Since the Trust did not have to be probated, the Trustee had immediate access to the funds in the Trust to provide for the animals' care.

Animal lovers fear what will happen



to their beloved pet once the owner dies. Will the animal be euthanized? Will their pet be properly cared for? Most pet owners assume that family or friends will care for the pets, but this frequently does not happen.

In a recent book by David Congalton and Charlotte Alexander, "When Your Pet Outlives You," the authors indicate that only about 20% of pet owners mention their animals

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# PLANNING *Wisely*

## How an Elder Law Attorney Can Contribute to Comprehensive Estate Planning

By Howard S. Krooks, J.D., CELA

It's something we all know we need to do. It's also something many of us don't like to think about. But by planning in advance for the future, we can make life easier for our loved ones. We can also then enjoy the peace of mind of knowing that a substantial portion of our life savings will be preserved, and that our loved ones (as well as us) will have the necessary care and support should a catastrophic illness arise.

### *What is Comprehensive Estate Planning?*

Comprehensive estate planning reviews your entire family, financial and health situation, and recommends a personalized strategy so that you can:

- maintain control over your personal and health care decisions while reducing the burden on your family or loved ones;
- meet the costs of long-term care while also protecting your assets;
- minimize estate taxes and any expenses associated with probate;
- address any special family circumstances, such as a child/spouse with disabilities who is receiving governmental benefits; and
- distribute your estate in accordance with your wishes.

A comprehensive estate plan should address personal, financial and health care issues, as well as any other factors which could affect your overall estate plan. Perhaps the most important, and potentially devastating, of these other factors is the effect of a catastrophic illness on your estate plan.

Let's look at the example of David, a 40-year-old single father of John, a child with disabilities. David's estate plan involves gifting to family members over time. David has suffered a catastrophic illness and is now disabled. Therefore, his estate potentially could be frustrated

now that David lacks the capacity to effectively complete such gifting. Also, in such a case, David's estate could be depleted significantly (if not totally) by his health care costs (e.g., home care, adult home or assisted living, or nursing home care).

Additionally, David, now incapacitated, has been the primary provider for John. A key concern is how John will be supported and cared for now that David has suffered a catastrophic illness.

Elder law planning could have helped David. For instance, an elder law attorney may have suggested that David prepare a Trust for John. The Trustee could manage David's assets and ensure John is continued to be supported and cared for. Also, the attorney may have recommended that David sign a Power of Attorney which

## **A comprehensive estate plan can help you plan for your future, including personal, financial and health care issues**

would allow for continued managing of his affairs while he is incapacitated.

### *What is involved in creating a comprehensive estate plan?*

• **Last Will and Testament** – in addition to providing for the distribution of your estate upon death also can provide for such circumstances as that of a beneficiary with disabilities in receipt of government benefits (e.g., Medicaid). Without a properly drafted Will, the inheritance could interfere with the disabled beneficiary's continuing Medicaid eligibility; or, it could end up going to the local department of social services as reimbursement for benefits paid.

• **Durable General Power of Attorney** – allows you to name an agent (i.e.,

attorney-in-fact) to “stand in your shoes” and manage your financial affairs.

• **Health Care Proxy** – enables you to designate an agent who will make health care decisions in the event that you can no longer make such decisions yourself.

• **Living Will** – a written directive specifying and defining the type of treatment that you wish and under what circumstances the treatment should be administered (or withheld).

• **Supplemental Needs Trust (“SNT”)** – wherein assets are held and managed for the benefit of the person with a disability. The funds in the SNT are available to enhance the person with disabilities' quality of life by providing for his or her supplemental needs (i.e., items not otherwise provided for by government programs such as Medicaid), without negatively affecting the disabled person's eligibility for continuing governmental benefits.

• **Asset Protection Plan** – is designed to protect your assets in the event that you (or your spouse) should ever

require long-term care (home care or institutional). An Asset Protection Plan will evaluate your overall situation and recommend the implementation of certain asset protection tools, so that you will be in a position to meet the expense of long-term care and protect your estate for the benefit of loved ones.

When you are considering a comprehensive estate plan, be sure to incorporate the services of a qualified elder law attorney. An elder law attorney will provide you with strategic elder law planning advice.

It is never too early or too late to start planning. Enjoy the peace of mind that comes from knowing that your comprehensive estate plan is prepared for you and for your loved ones.

WHEN YOUR PET OUTLIVES YOU  
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in their Wills, and less than 2% of pet owners actually fund the future care for their pets. Ten to 15 million pets are abandoned in the United States each year. According to the authors, if every dog or cat in the United States had a home, then every man, woman and child in this country would have eight dogs and 41 cats. For this reason more than 15 million dogs and cats are euthanized in animal shelters each year.

Pet owners should have a Pet Trust to provide for their pet upon death. The Trust would spell out the owner's expectations with respect to a standard of living for the pet, including care and grooming. Arrangements would be made with an appropriate Veterinarian. The owner's wishes with respect to euthanasia should be spelled out.

New York has a statute authorizing

Pet Trusts. There are ten steps to establishing a Pet Trust:

1. Select a Trustee.
2. Select a Pet Caretaker.
3. Bequeath the animals to the Trustee.
4. Avoid excessive funding so that the Trust is not invalidated by the Court.
5. Request a desired standard of living.
6. Set time limits on the Trust. In New York, the Trust must terminate upon the death of the last animal or within 21 years, whichever occurs first.
7. Use the Trustee as a watchdog for the Caretaker. The Trustee should be a different person from the Caretaker.
8. Provide complete identification of the pet(s).
9. Select a remainder beneficiary – who gets the money in the Trust after the pets die.
10. Provide instructions for final disposition of pets.

Our web site contains a library of firm newsletters, articles, and information on Medicaid, Estate Planning and Guardianship. Our web site also contains information on our upcoming speaking engagements, information on our field of expertise and important information regarding Elder Law issues.

If you are interested in having an Elder Law Attorney from Littman Krooks LLP speak at an event, please contact Nicole Garcia at (914) 684-2100.

Visit our web site at  
[www.elderlawnewyork.com](http://www.elderlawnewyork.com).

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