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ESTATE PLANS CAN ADDRESS MENTAL HEALTH ISSUES

As the COVID-19 pandemic enters its second year, many are experiencing its psychological fallout.

Grief, fear, anxiety, depression. Mix in hope (dare we hope?) from the COVID vaccines, and our tear ducts continue to get a good workout.

For most of us, these are normal situational responses, which will hopefully lessen when the pandemic eventually recedes.

Not all psychological issues, however, are situational.

Some mental health issues

so harshly affect an individual's decision-making ability that the individual needs continuing supervision and attention.

What does this have to do with estate planning? Plenty.

An appropriately tailored estate plan can help prevent the potential financial and physical devastation that mental illness may cause, without the need for costly, lengthy, divisive, and public guardianship proceedings.

Powers of Attorney

If a person has mental health issues but is still legally competent—able to handle

his personal and/or financial affairs—a health care power of attorney is still a good protective step, in case the issues at some point become incapacitating.

In a health care power of attorney, the principal designates a trusted person as agent to make health care decisions on his behalf if he or she is unable to do so.

While this document is usually described in the context of an incapacitating physical condition, such as a coma, it also applies to an incapacitating mental illness.

The designated agent could obtain doctor visits, medica-

tions and, if needed, inpatient or outpatient mental health treatment for the principal.

Along with the health care power of attorney, family members should consider obtaining a financial power of attorney over the individual, naming a trusted and responsible person as his or her agent.

This document would provide a mechanism for the payment of the principal's medical treatment costs, medical and nonmedical bills, and account deposits and transfers.

Estate Plans, cont. on pg. 2

EQUAL IS IN THE EYE OF THE BEHOLDER

Your oldest child is a successful businessman with a high salary, a working wife and two teenage children. He lives in another state, calls once a week and visits once a year.

His younger brother, who is single and childless, left a modestly paying job to act as the unpaid live-in caregiver for your ailing spouse.

The next in line is married with three pre-teen children. She and her husband have

been unemployed since the COVID-19 pandemic began last year, and you are paying their expenses until they find work. They live in town and provide most of the meals for you and your spouse.

Your youngest married into a wealthy family in another state and is a stay-at-home mother to a young child. She also helps her sister financially, visits you three or four times a year, and

Zooms with your spouse almost every hour.

Four children, in different financial circumstances and with different relationships to you and your spouse. In other words, often a typical family.

Should these oh so different children receive equal shares of your and your spouses' estate? Would that be fair? To them? To you?

The *New York Times*, for its part, recently published an

article on the family discord sown from unequal inheritances: [nytimes.com/2021/02/19/business/estate-planning-inheritances-retirement.html](https://www.nytimes.com/2021/02/19/business/estate-planning-inheritances-retirement.html)

True, many parents divide their estate equally amongst their children. However, you don't have to.

These are hard questions with even harder answers. There is no right or wrong here.

Equal is in the Eye, cont. on pg. 3

REMINDER: GIFT TAX RETURNS

Gift tax returns are due on April 15th (unless extended), although most people won't pay any tax. The 2020 annual exemption for most gifts is \$15,000 per person, per recipient.

Some gifts are not taxable even over \$15,000, including gifts to U.S. citizen spouses, most gifts to charities, payments directly to health care providers for medical services for others and payments directly to schools and colleges for another person's tuition. The exclusions for medical services and tuition are available regardless of the relationship between the donor and the person benefiting from the payment.

Moreover, the lifetime gift tax exemption of a whopping \$11.58 million applies for any taxable gifts made in 2020. Most gifts to charities and payments for medical services or tuition do not need to be reported on a gift tax return.

All other gifts exceeding \$15,000 must be reported on a gift tax return, so the IRS can keep track of the use of your lifetime exemption.

Mental Health Issues, cont. from pg. 1

It would also, for example, allow the agent to stop any exorbitant purchases or financial "gifts" during a manic episode.

The alternative to voluntary powers of attorney is a guardianship, sometimes called a conservatorship.

Here, the court appoints a guardian for a legally incompetent person until the court determines the person can renew handling his affairs.

One example is the decades-long judicial conservatorship over the personal and financial affairs of singer Britney Spears.

There, many court fights occurred over whether Spears' father should remain conservator and how her finances should be managed.

Spears likely did not have a health care or financial power of attorney before the conservatorship.

If true, they might have

prevented the proceeding's pain, time, expense and publicity.

Powers of attorney, of course, cannot be created when the principal is not legally competent to sign them. And they are not a guaranty against future lawsuits.

Even so, they are workable tools to keep those we love safe and help them lead their best lives.

Trust Provisions

Some persons with mental illness receive government assistance such as SSI Disability payments.

These programs commonly prohibit a recipient from receiving over a designated amount of income.

A properly designed Special Needs Trust can provide some financial support to the recipient without running afoul of this designated maximum.

For one not receiving benefits, tailored trust language can ensure the individual receives funds for

his or her support and welfare as needed.

A trust may also provide that the individual receive specified amounts at different ages (i.e. \$10,000 at ages 40, 50...) or at different durational increments (i.e. \$10,000 every five years).

The specific distributional scheme will depend on the assets and preferences of the person creating the trust, in conjunction with the medical and financial needs of the recipient.

Mental health issues are hard enough to address without the court system's added intrusion.

An appropriately designed estate plan, including powers of attorney and tailored trust provisions, can help protect one suffering from mental illness, their friends and family.

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STICKY NOTES ARE NO SUBSTITUTE FOR AN ESTATE PLAN

Zappos.com is many shoppers' go-to online shoe store.

Tragically, Zappos founder and retired-CEO Tony Hsieh unexpectedly died from a house fire in November 2020.

Hsieh was not married and is believed to have had no children.

When he died at age 46, he had built a fortune estimated at \$840 million.*

As part of his fortune, he held interests in hundreds of companies.

After Hsieh's death, thousands of sticky notes were found on the walls of his residence (unaffected by the fire), with each note representing a possible business deal, promise or loan.**

Hsieh, however, left no master list of his assets, including his companies, contracts and loans, or his obligations.

He also left no will, trust, or

other estate plan.

What he did leave was a huge mess.

Lawsuits have already been filed against Hsieh's estate seeking chunk after chunk of his assets.

It will take months, if not years, to validate or invalidate these claims.

To begin to clean up this mess, Hsieh's father and brother had to go to court to open a public probate case and be appointed executors of his estate.

They could have avoided obtaining court approval for their roles, had Hsieh named them as trustees in a trust.

They would not have had to go to court at all, had Hsieh created an estate plan.

Hsieh could have then directed the transfer of his assets outside of court.

Did Hsieh think about which

individuals, organizations or charities he wanted to receive part or all of his assets when he died?

Probably not.

Had he done so, he could have created a will, trust, beneficiary designations and other related documents, to make sure that happened.

Instead, Hsieh and any intended beneficiaries will be bound by Nevada's intestacy laws.

Under them, his assets will likely pass only to his parents.

Hsieh may never have thought about any estate plan, much less his.

Or he may have believed that, at his relatively young age, he had time to create one.

Either way, his inaction will cost his family mon-

ey, time, and certainly frustration.

It is rumored that Hsieh suffered from mental health issues.

If so, Hsieh and/or his family could have used some of the tools described in this newsletter's article "Estate Plans Can Address Mental Health Issues" to protect individuals with mental health issues.

Don't be like Hsieh.

Create or update your estate plan.

[*wgno.com/news/whats-next-for-zappos-ceo-tony-hsiehs-fortune-longtime-friend-files-lawsuits/](http://wgno.com/news/whats-next-for-zappos-ceo-tony-hsiehs-fortune-longtime-friend-files-lawsuits/)

[**nypost.com/2020/12/14/tony-hsieh-left-behind-sticky-notes-complicating-estate-mess/](http://nypost.com/2020/12/14/tony-hsieh-left-behind-sticky-notes-complicating-estate-mess/)

Equal is in the Eye, cont. from pg. 1

Maybe you want to give an extra share to your caregiver son, to acknowledge the earnings he gave up to come home, his modest circumstances, and his extraordinary kindness to his mother.

And it could be that your oldest son, who seems to be financially set for life, doesn't need any more money. He might be just as happy to have the portrait hanging in the living room.

On the other hand, your youngest who, while finan-

cially okay for now, hasn't even hit 30. Her marriage has never been solid and divorce may be in her future. Even if it's not, she's always been needy and would never get over receiving a "lesser share."

That leaves your financially troubled daughter. You love her, of course. But giving her an equal share may be unfair to your other children, given the substantial sums you've already given her. Fairness, however, may not matter if she never regains her financial footing.

Hard questions, indeed.

In the end, how to divide your estate is up to you.

If you do decide to divide your assets unequally, you can take some steps to lessen the fallout.

For example, consider explaining your decision-making in a short paragraph of your will or trust or in a memorandum kept with the rest of your estate planning documents.

This could help prevent

misunderstandings and sibling rivalries.

Better yet, consider disclosing your dispositional scheme to your children early on--and often, if they need it.

Having these hard conversations will let you explain your reasoning, answer their questions, and hopefully forestall hurt feelings (justified or not).

And assure you that you made the right decisions for you and your family.



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IN THIS ISSUE

**Page 1 Mental Health Issues/
Equal is in the Eye of...**

**Page 2 Reminder: Gift Tax
Returns**

**Page 3 Sticky Notes are No
Substitute for an Estate Plan**

**Page 4 Do You Really Want
Aunt Kaye to Know...**

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DO YOU REALLY WANT AUNT KAYE TO KNOW YOU'RE LEAVING NOTHING TO UNCLE BERNIE?

Some people don't care if their bequests become public. Others want to keep them private but don't know how to do so. Or, if they do, don't know how to avoid disclosure.

These estates often end up in probate court. Their public wills can, at times, yield "good celebrity gossip."

Legendary comedian Jerry Stiller ("Serenity now!") for example, bequested \$150,000 to his assistant, for aiding the growth of the careers of Stiller and fellow-comedian wife Anne Meara.

In addition to his family, he also left funds to his alma mater Syracuse University and a

youth program in his childhood neighborhood.

On the other hand, The Cars' Ric Ocasek expressly excluded estranged wife, Model Paulina Porizkova, from his will for supposedly abandoning him during his illness.

Porizkova denies this claim and has challenged the will in court.

These public documents, which allow us to be voyeurs into others' lives and deaths, raise a fundamental estate planning question.

Would *you* want the world to know to whom *you* bequeath your assets? And whom *you*

want to exclude?

For many, the answer is a resounding no.

The key to keeping your dispositional scheme private is to create a proper estate plan.

Instead of describing specific bequests in a will, which is filed with the court, you can use a trust, which is not usually filed and so avoid public disclosures.

Real estate, if not titled in the trust's name, can be titled jointly with your spouse or under a "payable on death" deed. On the first death the property will automatically become property of the survi-

vor.

Similar results can be obtained for financial accounts through "payable on death" designations.

For retirement accounts and insurance policies, proper beneficiary designations can prevent them from becoming part of a probated estate.

These are just a few examples of how an appropriately crafted estate plan can keep the public's prying eyes away from your dispositional scheme.

And save your family the time and expense of a formal probate proceeding.