Seniors – Planning ahead is key to financial stability

Recently, there was a case in the news of a Brooks Astor, a New York socialite, who is now 104 years old. Her grandson is in a heated battle to remove his dad as Mrs. Astor's caregiver. In court papers that were filed, the grandson accused his father of ignoring Mrs. Astor's health and personal needs and requested a friend of Mrs. Astor's be appointed as her guardian.

While we may not all be in Mrs. Astor's social or economic position, senior custody battles are being propelled by a number of demographic shifts. As the population ages and more people live longer, more seniors are likely to eventually lose their mental or physical capacity, leaving decisions over their finances and personal care to others. With divorce and second and third marriages leading to tension among children and stepfamilies, there is even more tension over the care of aging relatives. The ensuing custody battles are driven many times by long-standing family rifts and the desire to control the family assets.

Today many family members live far away from each other, making it more difficult to monitor the condition and care of elderly relatives. Sometimes family members are not even aware of the needs of the elderly relatives or the current condition of their care. For all of these reasons, it is important to have seniors take proactive steps ahead of time to minimize the chances of guardianship proceedings or custody battles later.

In Illinois, a person who is of sound mind and memory may designate a person or a bank trust company to act as a guardian (and may designate successor guardians) in the event that he or she is found to be a disabled person by the courts in Illinois. The designation needs to be in a written document and signed in the same manner as a will. The court will determine if the appointment of the designated guardian will be in the best interests of the person at the time the court determines that the person is considered disabled under the law. A person is considered disabled under the law if that person, because of mental deterioration or physical incapacity is not able to manage his personal or financial needs.

There are several other steps that a senior should consider taking. First, the senior should have a current financial power of attorney in which the senior appoints a trustworthy agent, often a spouse, another family member, or an adviser, to make financial decisions if the senior becomes unable to make them. The senior should also consider the use of a living trust. The senior transfers the title to all of their assets into that trust. The senior manages the trust until the senior is no longer able to do so, and is then succeeded by a successor trustee appointed by them in their trust document. In the event that the senior is again able to manage his financial affairs, the senior can again control and manage the trust.

The use of the financial power of attorney and living trusts which hold the title to all of the assets may preclude a fierce family battle later. In many circumstances, there will not be any need for a court appointed guardian. Instead, the trustee that was appointed by the disabled senior handles all of the financial matters for the disabled senior and the agent appointed by the financial power of attorney handles financial and other items that are not owned by the trust. In that case, all of the decisions have already been made by the senior before he or she is unable to do so.

Currently, few people plan ahead. The survey done by AARP in 2003 which reviewed 1,500 people age 45 and older found that only 27 percent had created a financial power of attorney document. So, if you don't want to be like Mrs. Astor as a pawn in a custody battle, you had better plan ahead!

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