

Get Your House in Order: Estate Planning

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Cancer Legal Resource Center Mission

- To provide information & resources on cancer-related legal issues to cancer patients, survivors, caregivers, health care professionals, employers, and others coping with cancer



Overview of the CLRC

- Founded in 1997, as joint program of Disability Rights Legal Center & Loyola Law School Los Angeles
- Confidential services
- English & Spanish
- Education model – not litigation



CLRC Services Are Free!



National Education & Outreach

In 2010:

- Over 23,000 people at over 150 seminars & cancer community events
- National Cancer Rights Conferences

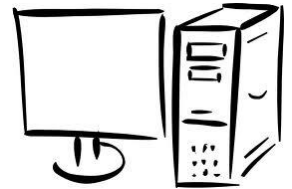


2012 CANCER RIGHTS CONFERENCES

- Stay tuned for more information on CLRC's 2012 Conferences in:
 - Boston, MA (5/29/12)
 - Los Angeles, CA
 - Chicago, IL
 - Houston, TX (10/19-20/12)



Teleconferences & Webinars



- Free!
- Participate by phone or online
- Learn about issues that matter to you
- Ask questions on cancer-related legal issues
- In English and Spanish
- Register at www.CancerLegalResourceCenter.org
“Events” tab
- Upcoming events:
 - **Tues., 11/16/11** - 5pm Pacific – *Cancer & the Law (en Español)*
 - **Wed., 11/30/11** - 5pm Pacific - *Life Insurance*

Online Resources



www.CancerLegalResourceCenter.org

- Educational Materials: National, State-Specific
- Seminars: National, State-Specific
- Spanish Language Materials & Seminars
- The Manual: A Legal Resource Guide for People with Cancer in California – **2nd Edition**
- The HCP Manual: A Legal Resource Guide for Oncology Health Care Professionals – **2nd Edition**
- The Manual: A Legal Resource Guide for People with Cancer in Illinois – **Available 2/2012**

Disability Rights Legal Center

CLRC

Cancer Legal Resource Center

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The CLRC is a joint program of the Disability Rights Legal Center & Loyola Law School Los Angeles

The HCP Manual:
A Legal Resource Guide
for Oncology
Health Care Professionals



2nd Edition - 2011

Helping You and Your Patients
Navigate Through
Cancer-Related Legal Issues

Chapters:

- Introduction & Table of Contents
- **Part I: Employment Rights**
- Part II: Taking Time Off Work
- **Part III: Disability Insurance**
- Part IV: Health Insurance
- **Part V: Health Care Reform**
- Part VI: Genetics and Cancer
- **Part VII: Managing the Financial Aspects of Treatment and Costs of Cancer**
- Part VIII: Estate Planning
- **Part IX: Legislative Advocacy**
- Summary & Appendices
- **State-Specific Appendices**

National Telephone

Assistance Line

2010: 4,245 individuals assisted

1. Phone Calls

- California
 - 38%
- Other states
 - 62%

2. Emails

3. Letters

4. Faxes

5. Online Intake Form



CLRC Professional Panel

- Attorneys, Insurance Agents, Accountants
- Provide more in depth legal counsel as needed
- Letters to insurance companies or employers, help with severance packages, drafting wills
- Community-based
- Numerous specialties



Disability Rights Legal Center

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Cancer Legal Resource Center

How CLRC is Funded

Grants & Donations

LOYOLA

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Cancer Legal Resource Center

National Office

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Midwest Regional Office

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Chicago, IL 60631

What are cancer-related legal issues?



- We provide information and resources on cancer-related legal issues:
 - Health Insurance
 - Employment
 - Disability Insurance
 - Life Insurance
 - Government Benefits
 - Estate Planning
 - Landlord/Tenant
 - Financial Resources
 - Custody/Guardianship of Minor Children
 - Real Estate
 - Family Law
 - Immigration
 - Toxic Torts
 - Genetic Discrimination
 - Consumer Law

What is Estate Planning?



- It is a process that involves:
 - Who . . . your family, individuals, charitable organizations
 - What . . . your assets
 - When . . . today or at some point in the future
 - Why . . . your wishes
- As you plan your estate, consider:
 - How can you plan for your own personal affairs and health care in the event you become unable to care for yourself?
 - How will your assets be managed for your benefit?
 - When will certain assets be transferred to others (during your life, at your death, or sometime later)?
 - To whom will these assets pass?

Why Should I Plan? How Do I Plan?

- Planning is necessary if you want to make sure that your wishes are carried out.
 - Estate planning can be a difficult topic to talk about or even think about, but planning can prevent problems down the road.

- Document your wishes.
 - Even if you think that everyone knows what you want, if it is not in writing, then it may not be sufficient.
 - Consider your medical and financial needs, and also your personal, emotional, and spiritual needs.

Why is it important to be prepared?

- To avoid . . .
 - Anguish for you and your loved ones
 - Significant others may not have any legal rights
 - Being found legally incompetent
 - Conservatorships
 - Someone else making decisions for you that are against your wishes
 - Organ donation
 - Worst case scenario – family conflict
 - Family heirlooms

Why is it important to be prepared?

A more serious example:

Terry Schiavo collapsed in her home in 1990. By 2005. . .

- 14 appeals and numerous motions and hearings in Florida courts
- 5 suits in [Federal District Court](#)
- Florida legislation struck down by the [Supreme Court of Florida](#)
- Congressional committee [subpoena](#) to qualify her for witness protection
- Federal legislation
- 4 denials of cert from the [Supreme Court of the United States](#)

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CLRC's Estate Planning Motto

Be Prepared!

Things to think about before planning your estate:

Do I need . . .

1. A will?
2. A living trust?
3. An advanced health care directive?
4. A durable power of attorney for financial affairs?



What do all of those terms mean?

- **Will:** Allows you to transfer your property after your death.
- **Living Trust:** Owns property for the purpose of holding it for a third party (beneficiary) until after your death.
- **Beneficiary:** An individual who receives income or assets from a trust, life insurance policy, a will, etc.
- **Probate:** Court-supervised process to transfer your assets to beneficiaries according to your will
- **Estate:** The property that is the subject of a trust or probate proceeding.

What do all of those terms mean? Cont'd...

- **Guardian of the Person:** A person appointed by the court to take care of a child under 18 years old.
- **Guardian of the Estate:** A person appointed by the court to manage the assets and finances of a child under 18 years old. This person can be the same person who is appointed the Guardian of the Person.
- **Health Care Agent:** A person appointed by you to make your health care decisions if you are unable to do so.
- **Advanced Health Care Directives:** Set of written instructions communicating your wishes about the medical care and treatment you would like to receive if you become unable to make decisions. These include living wills, powers of attorney for health care, organ donation and primary physician choices.

Where to start?

- Use CLRC's Personal Record File & Taking Care of Business Packet to make a list of your assets & debts
 - Bank accounts
 - Safe deposit boxes
 - Stocks, bonds, real estate
 - Other property and financial accounts
 - Life insurance policies
 - Retirement accounts
 - Anyone you owe money/anyone who owes you
 - General instructions to surviving spouse or children



Differences state to state

- Many estate planning rules and principles vary from state to state, meaning that some of the following options are only available in some states, or are available in different forms:
 1. Types of wills
 2. Advanced Health Care Directives
 3. Conservatorships

What Do You Own & How Do You Own It?

- How is type of ownership established?
 - You decide at time of acquisition
 - Automatic under the law
- Different types of ownership
 - Sole ownership
 - Joint ownership
 - Joint ownership that becomes sole ownership upon one person's death
 - Common example: house

Assets with a Beneficiary Already Named

- Life insurance
- IRAs
- Qualified retirement plans
- Annuities

- Not included in will
- Be sure to coordinate with the rest of your estate plan

3 Ways to Create a Will

1. Holographic will:

- completely in your own handwriting; must be legible
- signed and dated
- must clearly state what you are leaving and to whom
- doesn't have to be witnessed or notarized
- still a good idea to have 2 witnesses sign

2. Statutory will:

- some states provide a "fill-in-the-blanks" will form
- ask your state bar association for more information
- usually must be signed by two witnesses

Types of Wills (continued)

3. Wills prepared by an attorney:
 - Can ensure that your will complies with the law
 - Can offer suggestions and help you understand the many ways that property can be transferred to or benefit your beneficiaries
 - Can help you develop a complete estate plan and offer alternatives which may save money on taxes
 - Signed by you and two witnesses who are not beneficiaries of your estate

Can you change your will?

- Yes – through a codicil
 - Codicils must be drafted and executed in accordance with the same state laws that apply to wills
 - Can't change a will by crossing out words or sentences or making any notes or written corrections on it
- You should review your will periodically
 - Changes in your family membership
 - Substantial changes in your assets
- You should have your will reviewed by an attorney when moving to another state

How is a will carried out?

- Location

- Should be known by your executor, close friends or relatives

- Probate

- Starts with a petition filed with the court by the executor
- Notice is given, hearing is held, will is admitted to probate, and executor is appointed
- Determines validity of any claims by creditors against your assets



Probate Costs

- Attorney's and executor's fees are set by law in some states
- Court costs
 - Filing fees
 - Legal notice
 - Estate inventory by probate referee
- "Extraordinary fees" for other work not usual for an estate

What happens if you don't have a will?

- If you die intestate (without a will) your property will be distributed based on state law – “intestate succession”
 - Does not automatically go to the state
 - Generally, your property is distributed to your spouse and children
 - If you do not have a spouse or children, your assets will be distributed to your closest kin by statute (Ex: grandchildren, parents, etc.)
- Intestate succession may not get your property distributed the way you wanted

Types of Trusts

Many types of trusts:

- Charitable Remainder trust: remainder of trust goes to charity
- Testamentary trust: set forth in your will to provide for children or others who need management of their assets
- Irrevocable trust: cannot be changed during your life
- **Living trust** = Most common

What is a Living Trust?



- A written agreement between the individual creating the trust (the trustor) and the person named to manage the assets held in the trust (the trustee)
- Can be revoked/amended during lifetime (if competent)
- Can be your own trustee until death
- Terms are irrevocable at death
- Eliminates probate of your will if assets were held in trust at death
- Typically for more complicated or larger estates

Other Living Trust Issues

- Once your trust is signed, you must transfer assets into the trust - “funding the trust”
 - Change deeds, titles, etc.
- If you have a living trust, you still need a pour-over will
- May have tax implications
 - A living trust does not pay income taxes during your lifetime
- Creation of trust can be expensive, but can be less expensive than probate

Example of a Living Trust

- Mom decides to set up a living trust
- She puts all of her property into the trust
- She wants to continue using her property to pay for all of her living expenses while she is alive = trust purpose, showing intent to create trust
- She makes a pour-over will
- She wants her property to go to her children upon her death

Advanced Health Care Directives

Designation of Health Care Agent

I: (insert your name) _____

appoint: Name: _____

Address: _____

Phone: _____

as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This Durable Power of Attorney for Health Care takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

LIMITATIONS ON THE DECISION MAKING AUTHORITY OF MY AGENT ARE AS FOLLOWS:

Designation of Alternate Agent

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is

- Written document (form)
- Signed and dated
- Signed by 2 knowledgeable witnesses or notary
- Discuss with your health care agent & doctor(s)
- Revocable

Types of AHCD



○ Part 1: Power of Attorney for Healthcare

- Name an individual as your agent to make healthcare decisions for you if you become incapable of making your own decisions
- Can name an alternate agent; can limit any agent's authority
- May not be an operator or employee of facility where you receive care
- Your agent has the authority to:
 - Consent or refuse consent to any healthcare
 - Select or discharge healthcare providers
 - Approve or disapprove tests
 - Direct provision or withholding of artificial nutrition and hydration
 - Donation of organs

What is an AHCD?

(continued)



- **Part 2: Instructions for Your Healthcare (Living will)**
 - Give specific instructions about any aspect of your healthcare
 - You can complete this part even if you do not want to appoint an agent in Part 1
 - You can choose to not complete Part 2 if you want to leave all decisions to your agent named in Part 1
 - Provision, withholding, or withdrawal of life support or pain relief
- **Part 3: Donation of Organs**
 - Express intent to donate specific organs or tissue
- **Part 4: Primary Physician**

Patient Self-Determination Act

- The Patient Self-Determination Act (PSDA) is a federal law passed by Congress in 1990
- You have the right to make decisions regarding your medical care
 - Including the right to accept or refuse treatment and the right to make an advance directive
 - Health care institutions must notify you of your health care decision-making rights

Physician Orders for Life-Sustaining Treatment (POLST)

- Addresses pain management, resuscitation orders, feeding procedures, and other medical interventions
- Completed by the patient and their physician
- Different from an "advance directive" because it is a physician's medical order and goes with patients wherever they receive care

Do Not Resuscitate Order

- What is a Do Not Resuscitate (DNR) Form?
 - Official written order to medical personnel that resuscitation should not be attempted if an individual suffers from cardiac or respiratory arrest.

Measures include:

- Chest compressions (CPR)
- Assisted ventilation (breathing)
- Endotracheal intubation
- Defibrillation (electrical energy to the heart)
- Cardiotoxic drugs (drugs which stimulate the heart)

Do Not Resuscitate Order

- How to obtain a DNR form
 - Ask your doctor or hospital
 - Some states provide special DNR forms
 - Some states require a separate DNR order

**STOP
DO NOT
Resuscitate**

Effective Date: _____
Expiration Date, if any: _____
 Check box if no expiration

DO NOT RESUSCITATE ORDER

Patient's full name _____

In the event of cardiac and/or pulmonary arrest of the patient, efforts at cardiopulmonary resuscitation of the patient SHOULD NOT be initiated. This order does not affect other medically indicated and comfort care.

I have documented the basis for this order and the consent required by the NC General Statute 90-21.16(b) in the patient's records.

Signature of Attending Physician

Printed Name of Attending Physician

Address

City, State, Zip

Telephone Number (office)

Telephone Number (emergency)

Do Not Copy Do Not Alter

NC.DHHS.DSS.DF.SEMS Rev. 1/02 100,000 copies of this document were printed at a cost of \$3,000.00 or 3.03 per copy NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

Power of Attorney for Financial Affairs



- Appoint an agent to conduct financial transactions for you
- Durable = takes effect when signed and still in effect when incapacitated
- Non-durable = takes effect when signed and loses effect when incapacitated
- Springing = takes effect when you are incapacitated
- Generally, must be signed and notarized
- Ends when the person dies. Not a substitute for a will or trust.

Conservatorships



- What is a Conservatorship?
 - A court proceeding in which the court supervises the management of an incapacitated person's finances and/or personal care, including health care
 - Conservator is the person appointed by the court
 - Conservatee is the person who is not legally competent

Powers of Attorney vs. Conservatorship

- Power of Attorney
 - You choose who to give your decision-making authority to
 - Relatively easy, inexpensive to do
 - Flexibility, ease of use
- Conservatorship
 - Court oversight – less risk abuse

Conservatorships

- To create a conservatorship, a petition may be submitted to the court by the following:
 - Proposed conservator
 - Proposed conservatee
 - Spouse or relative or friend of proposed conservatee
 - Interested state or local agency
- Advantages: more protection and oversight
- Disadvantages: cost, time, public record

Conservator of the Person

- This type of conservator has the following responsibilities:
 - Make decisions about medical care, food, clothing and residence
 - In the case of a mental health facility placement, may be special requirements



Conservator of the Estate

- This type of conservator is responsible for:
 - Protecting conservatee's income & property
 - Making sure the conservatee's needs are met
 - Making sure conservatee gets all benefits he or she is eligible for
 - Making sure the bills are paid
 - Investing the money
 - Keeping exact financial records



Duties & Rights



- The conservator is responsible to the court
- The conservatee does not lose all rights
 - They can still have a say in important decisions
 - They have a right to:
 - Be treated with understanding and respect
 - Have their wishes considered, and
 - Be well cared for by their conservator

More on Estate Planning

- For more on Wills, Trusts, Powers of Attorney, Advanced Directives, Retirement benefits and tax considerations, and other estate planning topics:
- American Bar Association website:
 - <http://www.abanet.org/rpte/public/home.html>
- For information about Living Wills and Durable Powers of Attorney for Health Care, as well as to download state specific Advance Directives:
- Caring Connections
 - <http://www.caringinfo.org>

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Questions?

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