

BENEFIT THE PRIMARY BENEFICIARY

Published in the February 1996 Issue of *The NAELA News*

Author: LEE M. HOLMES

Often times when we are counseling with clients about preparing wills, the client has several friends, relatives or charitable organizations that they want to benefit, in addition to the primary beneficiaries. Therefore, wills are frequently drawn with special bequests, leaving the residue of the estate to the primary beneficiary.

A recent experience with one of my clients suggests that we need to be sure that the primary beneficiary is benefitted. A will was drafted for a lady who had approximately \$80,000 of assets. The will left approximately \$10,000 of special bequests to some relatives and a church. The expected remainder, approximately \$70,000, was left to a granddaughter (her primary beneficiary). The lady spent many years in a nursing home and had quite a few expenses which consumed all her assets except for an approximate \$10,000 equity in real estate. As a result of the special bequests under the will, the primary beneficiary under the decedent's estate will not receive any of the \$10,000 of assets that are left.

In drafting documents for our clients, we need to point out that through adversities, expenses, spend-down, etc., the assets they may own at death may be considerably different than the assets they own at the time the will is drafted. A good solution to this problem would be to make a special bequest to the primary beneficiary with language similar to the following:

"I give and bequeath the first \$50,000 of my estate and/or my assets to my favorite beneficiary, Jan Smith. If my estate exceeds \$50,000, then I give and bequeath the next portion of my estate as follows:"

Then make the list of your special bequests. Follow that with "I devise, give and bequeath all the rest, residue and remainder of my estate to my favorite beneficiary, Jan Smith."

With this type of arrangement in the decedent's will, the primary beneficiary is not disinherited by circumstances that were not planned for when the will was originally drafted.

CAREGIVERS IN THE HOME

Often our clients will employ caregivers that come into the home to assist an elderly person. Recent experiences of my clients suggests that we need to be more careful in the arrangements we make with the caregivers and with the relationship **with** the caregivers.

Elderly persons become quite dependent on the caregivers and form bonds and relationships which make the elderly person want to make gifts to the paid caregivers. In addition, caregivers start believing they are part of the elderly person's family and, therefore, have some rights in the elderly person's possessions and assets.

To avoid problems of this nature, some suggestions are as follows:

1. Every caregiver should sign a contract where they recognize that they will be **paid** for performing services for the elderly person, and verify that they recognize that, because of day to day contact, the elderly person may feel obligated and charitable toward the caregiver. The caregiver recognizes, **IN WRITING**, they are there in a professional capacity and they are to accept no gifts, loans or other remuneration from the elderly person unless it is approved in writing by the elderly person's relative.

2. The caregivers have access to all the items of personal property in the home; it is therefore important that there be agreements as to those assets. At the time the paid caregiver goes into the home, a complete detailed inventory of every item in the home should be made. In addition to the written inventory, numerous photographs should be taken and the items on the inventory should be numbered and correspond with the (numbered) pictures. This will take some time, but it is worthwhile.

3. Expensive jewelry and other valuable items, such as silver, should be removed from the home to avoid temptation and inadvertent loss. The primary caregiver may be honest but the weekend help may not be.

4. Have a scheduled time (i.e., every 3 months, or every 6 months) to review the contents of the home against the list to be sure that the items are still there. If items are missing, those matters can be discussed immediately, instead of waiting until the elderly person moves out of the home or dies.

© Lee M. Holmes, 1996, 2004

Holmes, Holmes & Neisent, P.L.L.C.
Providing Legal Services for the Elderly, Disabled and Medicaid Advocacy
501 N.W. 13th, Oklahoma City, OK 73103
(405) 235-8455
www.medicaidoklahoma.com
ELDER LAW•MEDICAID•WILLS•TRUSTS•PROBATE•SPECIAL NEEDS
TRUSTS•GUARDIANSHIP