

# CARE GIVERS: THEY NEED TO PLAN, TOO!

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Throughout our lifetime, many women are consumed with the tasks of raising a family, pursuing an education or a career, and helping a spouse build security and financial wealth for retirement. In the meantime, many women fail to establish an estate plan for themselves and their family.

According to the U.S. Census Bureau, widows over the age of 65 typically outnumber widowers by five to one. In fact, the Older Women's League completed a study that reported that the average age a woman becomes a widow is at age 56. A Michigan study reported that of the seniors age 65 and older, 61% were female. For seniors age 85 and older, nearly 75% were female. This pattern reflects national trends in the senior population as well.

## **Women Live Longer**

Since women statistically live longer and tend to fill the role of care giver, there is a good chance they will have to deal with a husband or family member's disability or death. A wife is three times more likely to be the healthy spouse that is coping with a family member's life threatening illness. The responsibility of caring for a loved one is made even more difficult when there are no estate planning documents in place to help guide or direct the care giver.

For example, a Designation of Patient of Advocate and Living Will (Health Care Power of Attorney) appoints a care giver to make medical decisions if you are unable to and it provides the care giver with specific instructions regarding your medical care. The Patient Advocate and Living Will gives the care giver the legal clout to act, even to the point of removing an individual from life support.

## **Financial Authority**

Preparing for a medical emergency is only the beginning. Without a Durable Power of Attorney, you may not have authority over a spouse's legal affairs. In today's world, second marriages with separately held assets are very common. What would happen if your husband became incapacitated and you could not access any of his accounts to pay his bills and expenses? Without the right legal documents in place, you will be forced to go through "Living Probate".

Living Probate is the process of appointing a guardian and conservator for an incapacitated individual. The purpose of this proceeding is to get the probate court to determine that your spouse is no longer competent to make medical decisions or handle his medical decisions or his financial affairs. Before this determination can be made, your spouse must be evaluated by a physician and by an outside third party called a guardian ad litem. Once the court is convinced that your spouse is incapacitated, a guardian and conservator is appointed. While a spouse is typically appointed as the guardian and conservator of the incapacitated spouse, there are no guarantees. If this is a first marriage for both spouses, it is unlikely that your children will object to your financial involvement. However, if this is a second or third marriage, you may meet some resistance from your spouse's

children. Your spouse's children may object to your involvement and the children may ask the probate court to appoint them as the guardian and conservator. Keep in mind that guardian and conservator proceedings are not only time consuming, but these proceedings are public, emotionally draining and many times financially draining as well.

### **Family Members Disinherited**

When an individual dies without a Will, they have died *intestate*. The division of the decedent's assets is left to the discretion of the probate court. The court is required to follow the laws of the state where the decedent resides at the time of death. The probate laws in Michigan dictate how much is left to the spouse and children. For example, if your husband dies *intestate* and he is survived by children (either of this marriage or a prior marriage), you may not inherit your spouse's entire estate. Instead, you may only receive a portion of your spouse's estate. This portion may not be enough to live on for the rest of your lifetime. Not only could you lose control of the assets you once enjoyed together, in many situations, you may find yourself owning a home or a business with your step-children.

In many marriages, the husband may wish for his adult children to receive a gift at death, with the balance to be held for the benefit of the surviving spouse. At the surviving spouse's death, the husband's intent may be to leave the remaining assets to his children. Without a well thought out estate plan, the husband may end up disinheriting his children or denying his surviving spouse the funds she may need to live on.

### **Everyone's Protected**

With proper estate planning, a husband and wife can provide for each other at the time of death. Proper estate planning includes setting up a revocable Living Trust. A Trust gives you the control that you desire, whether it be control over money left for a spouse or control over money left for children.

For example, a Trust can give your surviving spouse the right to take lifetime income or principal for health and support, but ensure that at the death of both spouses the remaining principal of your Trust passes to your children or grandchildren. Not only can the Trust provide for the control desired at death, the Trust can also give the surviving spouse authority to handle financial affairs at a spouse's incapacity.

Estate planning will not mitigate the loss of your loved one. It will however, ensure that things run smoothly and that the surviving spouse or loved ones are financially protected. If you don't take the time to make these decisions and put them into binding legal documents, the court will make these decisions for you.