

# Ask the Lawyer

**By Sanford J. Mall,  
Counselor at Law**

Mall, Hamilton and Associates, P.C.



*Ask the Lawyer is a new regular feature for Quality Lifestyle magazine. Each issue will address your questions in areas relating to estate, probate, elder law, Medicaid, Medicare, and eldercare legal advocacy and counseling. If you wish to have your questions answered, please send them to Sanford J. Mall, 31000 Northwestern Highway, Suite 220, Farmington Hills, MI 48334. The questions below came from recent meetings at the law offices of Mall, Hamilton & Associates, P.C.*

## **Isn't estate planning only for rich people?**

No! Estate planning is really essential for everyone who is concerned about maintaining control throughout their lifetime. With proper planning you can live with peace of mind – maximizing your resources and knowing that things are properly arranged for you and your loved ones. Estate planning is *essential planning* for virtually everyone.

## **When is the best time to get my essential planning done?**

Ideally, the best time to plan is when you have the most planning options available. There are 3 time periods in our lives – 1) when we are alive & well; 2) when we are alive and “not-so-well”; and 3) when we are gone “not-so-alive”. Generally speaking, early planning provides more options and costs less overall. However, wherever you are on your timeline – putting your essential planning in place (*or reviewing your existing plan to make sure it will still work the way you want*) is best done now. Waiting to do essential planning until some time in the future typically results in fewer planning options and more costs (in terms of money and emotions) to you and your family.

## **What happens if someone doesn't do their essential estate planning?**

There are 2 sets of rules that can apply to you and your loved ones – 1) the rules for those who plan properly; and 2) the rules for everyone else. Without essential planning in place exactly what will happen is uncertain. However, the less favorable rules will be applied. Ironically, most people do some form of planning – whether they realize it or not. Even doing nothing creates a plan. No essential planning, incomplete planning or failing to keep your plan up-to-date will usually result in the wrong set of rules being applied.

## **With so many confusing rules and laws how can I learn what planning is best for me and my family?**

Read, research and attend workshops. Most important - find someone you trust with the necessary experience to help you learn the rules and apply them to your personal circumstances. Depending on your needs you may be best served bringing together the expertise of a qualified team of professionals that may include a financial advisor, an insurance professional, your accountant and an estate planning / eldercare attorney. No matter what, you should feel comfortable with your advisors. Developing a good relationship with advisors you trust is invaluable for you and your loved ones.

## **Is my 1988 Will still good?**

Maybe. To know that would require the answers to some important questions.  
Does it arrange for post-death probate administration the way you want?  
For that matter, do you want Probate involved with the process?  
Is everyone named in the Will still living?  
Are any specific assets identified in the Will?  
Do you still have them?  
Were you planning for minor children in the old Will?  
Are you the guardian of any minor(s) presently?  
Have your financial or family circumstances changed since 1988?  
The Will may be technically correct in that it could be enforceable. The real question is, “does it still meet your essential planning goals?”

## **My father gave me power of attorney, before he was diagnosed with dementia. Can I transfer some or all of his money to protect it from nursing home expenses?**

If the power of attorney is currently effective and contains all the necessary provisions you may be legally authorized to do the planning. Power of attorney documents can be very effective essential planning tools. However, they must be properly designed to meet the client's wishes and to specifically grant all needed author-

# CROSSWORD SOLUTION

## PELLETIZING

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**Ask the lawyer...continued**

ities of this sort to the Agent. Even though your father has been diagnosed with dementia, he still may have sufficient "capacity" to execute new essential planning documents. You should consult with an attorney with experience in this type of planning to help you by: 1) reviewing your father's existing legal documents, 2) determining your father's present state of competency to do essential planning (if needed), and 3) advising you about the planning you are contemplating.

***My husband died without a Will and we didn't have to go to Probate Court, can't I plan the same way?***

Every case is different – even cases in the same family. You and your husband probably owned all of your property jointly so when he passed away everything automatically transferred to you without the need for Probate Court. I cannot tell from your question, but your husband probably did not require a long-term care stay (i.e., in a nursing home). If he had, you might have been required to go to Probate Court during his lifetime to seek Guardianship and/or Conservatorship (asking a judge to give you permission to act on his behalf!). Or, you may have wanted to plan to protect your estate from the high cost of nursing care. Such planning would have either required him to have the proper essential planning in place or Court approval. As the surviving spouse there are too many changes in your circumstances to rely on changing title to your assets as a proper plan. It may work, but should you put yourself and your loved ones at risk if it doesn't work? I suggest you seek the advice and guidance of a qualified, trusted professional to help you do proper essential planning.

***I'm confused. There are estate planning attorneys, elder law attorneys and now eldercare attorneys – what's the difference?***

Generally, all attorneys that work in this area of the law have at least a working knowledge of basic estate planning and the related legal documents. Many attorneys have very broad practices and do a lot of different things (outside of the estate and elder areas). Those lawyers who identify themselves as estate planning attorneys will presumably have an added degree of experience or concentration in their practice. Similarly, an elder law attorney may use estate planning as an effective set of essential planning tools to meet the needs of his or her aging client population. Finally, an attorney that specifies ElderCare as a practice area will be focused more holistically on the planning objectives and how the essential plan will help assure maximum quality of life and quality of care (in addition to all the other planning goals).

**Sanford J. Mall, is a partner in the Farmington Hills law firm of Mall, Hamilton & Associates, P.C. specializing in ElderCare & Disability Law. To contact Mr. Mall call toll free 1-866-699-1800.**

**What's Cookin'?**

**HAAB'S EVENING SPECIALS**

**Monday**

**Broiled Pork Chop  
with Delmonico Potatoes**

**Tuesday**

**Buttermilk-Cider Chicken Breast  
with Spätzle & Asparagus**

**Wednesday**

**Country-Fried Steak  
with Mashed Potatoes and Sweet Corn**

**Thursday**

**Potato-Encrusted Walleye  
with Sweet-and-Sour Red Cabbage**

**All served with Cole Slaw**

**\$8.95**

**HAAB'S RESTAURANT**

18 West Michigan Avenue • Ypsilanti, Michigan  
734-483-8200 for reservations

