ESTATE PLANNING INFORMATION

GENERAL PURPOSE

The general purpose of our discussion today is for you to become familiar with some basic concepts of Estate Planning, so that you may be able to obtain an understanding of what you may wish to do with your own individual planning. Please be aware that much of what we discuss today may not be relevant or useful to your particular needs; therefore, before proceeding with particular plans, you should consult your own professional estate planner.

METHODS OF TRANSFERRING ASSETS (SEE LATER DISCUSSION ON THESE)

(a) **Wills**. Wills are documents that leave your assets, at death, to the beneficiaries you name in the Will.

(b) **Intestate.** This term means that you die without a Will. In such case, State law decides who gets your assets; in general, however, the beneficiaries under State law are those to whom you are most likely to leave your assets.

(c) **Living Trusts.** In our context, I am referring to "Revocable Living Trusts". These are documents you create during your life to set forth a plan to transfer your assets when you die. One reason people use these is to avoid Probate; however, there are also other reasons why these are used.

(d) **Community Property Agreements.** These are documents between spouses that on death automatically transfer assets of a deceased spouse to the survivor. These are very useful in most cases, but there are some situations in which they should not be used.

(e) **Other Methods.**

(1) Gifting. Giving a large portion of your assets to your beneficiaries is sometimes used; but it's probably not a good idea during your lifetime unless you have a very large amount of assets.

(2) Joint Tenants with Right of Survivorship. In this context I am referring to non-married persons who hold real estate or money accounts as joint tenants. This can be very useful, but should not be done without consulting an attorney.

(3) Beneficiary Designation. This is commonly done with life insurance, money accounts, 401k, etc. It is very useful within the overall context of your estate plan.

(4) Transfer on Death Deeds. Works like a "beneficiary designation" in that you will prepare a record a deed to your real estate, and have it recorded with the County. The deed is revocable up to the time of your death, and is not effective until that time. This an effective estate planning device in many circumstances. Don't do it, however, without competent legal advice.

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WILLS

Wills are the most commonly used method to transfer assets when you die. They can be revoked any time up to your death (or incapacity); they are very versatile to the extent they can include other documents within them (e.g., various types of trusts); however, Wills generally require a probate upon death. You should keep the originals of your Wills (and other important estate planning documents) in some safe place, and provide a copy to your most trusted heir.

Does Everyone Need a Will? In general, the answer is probably yes. This particularly applies to various categories of persons, for example: those with minor children, those with incapacitated beneficiaries, those that don't want State law to determine their beneficiaries, those with large and/or complicated estates, various other reasons.

Do you have minor children? If you have minor children, you should have a Will; the Will names a guardian, and, if you (and your spouse) die before the children turn 18, the guardian will raise the children. The Will would also name a "Trustee"; this person will administer the assets until your children become more mature (usually beyond age 18).

Do you have an incapacitated spouse or children (or other incapacitated persons to whom you wish to provide some support)? If you have an incapacitated spouse or children, it is generally a good idea to have a Will which contains a so-called "Special Needs Trust"; which could allow the beneficiary to receive government benefits (e.g., Medicaid) and still retain the benefit of their inheritance.

REVOCABLE LIVING TRUSTS

As the phrase states, you can revoke these and they are relatively common (don't do an "irrevocable living trust" unless you know exactly what you are doing). The primary purpose of these is to avoid probate. Probate is a process, whereby you file a petition in Court to "prove" the Will.

Should I Have a Revocable Living Trust? As stated above, a primary reason is to avoid probate; however, the majority of people shouldn't be overly concerned about this. People that definitely should think about having one, though, include the following: (a) those that are older, in relatively poor health, and have some significant assets; (b) that own real estate in more than one State (you generally must do a separate probate in each State where you own real estate); (c) that wish to maintain privacy (all documents in probate are a public record, whereas living trusts often are not filed anywhere); (d) are in a 2nd marriage and want to make some provision for their children from the 1st marriage; (e) you have a contentious group of heirs (living trusts are more difficult to overturn than are Wills – though its difficult to overturn either).

Do I Really Need One? Some negatives in doing a living trust are that they are more expensive than Wills, and there are administrative issues in setting up and maintaining them. Those relatively young persons probably do not need them. In any event, get professional advice before doing a living trust.

WHAT IS PROBATE?

Probate is a process, whereby you file a petition in Court to "prove" the Will. In some States probate is a very expensive process that is especially beneficial to attorneys; however, in many States (including Washington) the fees are reasonable. In a relatively uncomplicated estate, Probate generally takes about 6 months before you can close it; however, within that time frame you are generally able to access and distribute many of the assets. Probate is also usually (but not always) necessary for persons who die intestate (without a Will). In this case the process is similar, but instead of distributing the assets as per the directions in the Will, you distribute them according to State law. In general, it goes as follows: to spouse; if none to children; if none to parents; if none to siblings. There are others, but if you get this far there will be problems.

DURABLE POWERS OF ATTORNEY.

Distinguish a "durable" power of attorney from other types of powers of attorney: To be "durable" it means that the power of attorney continues through any period of incapacity or disability. Things such as general or special powers of attorney terminate upon proof of incapacity, and usually are time limited. For example, if you are away from home and are in the process of selling your home, you could give a "Special Power of Attorney" to some trusted person to complete the sale. In general, durable powers of attorney only become effective upon proof of incapacity, and can be revoked if you regain capacity. The most important concerns in these are designating a person(s) you trust implicitly to have the "power"; if the person you choose abuses that power, the remedy is for some other concerned person to go to Court and file for a guardianship; this would result in major problems! There are basically two types of durable powers of attorney; one for financial matters, and the other for health care.

Health Care Durable Power of Attorney (HCPA). This is a durable power of attorney that covers a wide range of matters relating to care of the "person". Besides covering all health care matters, it also covers issues as to the type of facility in which the "incapacitated" person would live (i.e., home, adult family home, nursing home, etc.), and more generally gives the "attorney-in-fact" authority to decide any issues concerning the care of the person – including carrying out the provisions.

Financial Durable Power of Attorney. Your Agent in this case would make any decisions on financial matters. This includes basically anything you could do if competent; including, paying bills, filing tax returns, handling your assets and investments, etc. The Agent is a "fiduciary", and his duty is to do what is in your best interests. In handling your assets, investments should be made in such a manner to preserve assets for the purpose of paying for your needs. Do not choose an Agent who has their own financial problems; and do choose one who is somewhat experienced in handling money.

ADVANCED DIRECTIVES

This refers to documents that are particularly necessary for us as we age. Advanced directives include the following: Health Care Directives, and, for those very senior, Physician Orders for Life Sustaining Treatment (POLST).

Health Care Directive (HCD). This document (commonly referred to as a "living will") provides direction as to what you want done in situations where: (1) you are unconscious (or otherwise severely cognitively impaired); and (2) you are in a terminal condition where death is immanent or you are in a permanently (and severely) incapacitated condition where there is no chance of recovery. In such a state you can direct that no extraordinary treatment (e.g., feeding tubes, antibiotics to treat secondary conditions, etc.) not be given to you, but rather you be allowed to die naturally.

POLST. Studies have shown that health care directives are sometimes ignored by physicians (and virtually always by paramedics); in many cases this is because the HCD's are not seen by the health care provider, unless you place a copy in your medical provided and the person providing treatment has access to it. A more "advanced" type of "directive" that can alleviate this problem is called a "POLST". It is a document that you, in concert with your physician, specify the exact conditions (generally similar to the living will) under which you want to decline treatment. It must be signed by you and your physician; and, in addition to placing a copy in your medical file, you may also wish to post a copy on your refrigerator (to eliminate the issue of a paramedic arriving at your house to treat you for a heart attack, or something similar). In general, these probably should be used only by elderly persons, or otherwise by persons in very poor health who do not wish to be revived.

Assisted Suicide Law. This is not an "advanced directive" but is something of which you should at least be aware. Washington is one of the States in the Country that authorize assisted suicide. It may not be something that Ananda persons would choose to do; however, an increasing percentage of our population elects to do this when and if the appropriate occasion arises. There are an increasing number of States and countries that currently authorize this. Currently there are very strong procedural safeguards in this States that protect against the potential abuse of this law; among these are that only "you" can consent to its use; and you **must** be competent (and not suffering from depression) before it can be done. That being said, though, there seems to be an increasingly strong movement to lessen the "safeguarding", and many countries around the world (including Canada) have increasingly moved in this direction.

TAX ISSUES

The type of taxes associated with death and gifting include the following: estate tax, gift tax, and income tax. I will cover these very briefly.

Estate taxes are those associated with a tax assessed on the value of the total estate when a person dies. This tax is assessed on the estate (not the recipients). The vast majority of persons do not need to be concerned about these. There is a federal estate tax, that provides very large exemption per person; and there is a Washington state inheritance tax that provides a two million dollar+ exemption per person. Effective tax planning can be particularly useful for joint marital estates higher than these amounts.

Income Taxes are generally not particularly relevant for most of us in basic estate planning; however, one area in which they can be an issue is when one inherits some type of deferred compensation, such as IRAs or 401Ks, from a decedent. This issue is somewhat complicated, but the basic point is that you will almost certainly have to pay income tax at some point if you inherit these.

ELDER LAW ISSUES

Elder Law covers all the basic estate planning areas of law; however, it also includes other areas, such as planning for incapacity, and potential long-term care cost issues

Do I need to Plan for Incapacity? The general answer is yes, and for many the answer is **YES!** People for whom proper planning is essential include those: with a family history of medical problems such as Heart, Stroke, Dementia, etc.; with special needs beneficiaries; and/or those with inadequate resources to cover incapacity if it arises later in life.

What Is Meant by Long-Term Care? This essentially refers to persons who are unable to care for themselves. Long-term care facilities can include: your residence, assisted living facility, adult family homes, nursing homes. Obviously, the more resources you have, the better the care you will receive.

How Does One Pay for Long-term Care? (1) Persons with very significant estates can self-pay (although even they should consider getting insurance). (2) Married couples can utilize estate planning techniques to qualify for "Medicaid" where one spouse needs long-term care and the other does not; this allows the ill spouse to receive Medicaid payments for long-term care while allowing the well spouse to retain much of the joint assets; (3) People in their 50's and early 60's should consider getting long-term care insurance; if you get this insurance make sure you have a good agent and that you obtain the right coverage; (4) If you don't have significant assets and do not have insurance, long-term care is paid for by Medicaid (distinguish from Medicare), which is essential a welfare program for persons needing long-term care and have no way of paying for it. Medicaid pays for basic coverage, but it is not the best way to spend your last few years.

Adult Family Home. This type of facility will have some importance to perhaps many Ananda members as we age; and it would be useful for us at some point to establish business/facility of this nature.

GIFTING

You can make gifts to individuals and/or charities. Gifts can be made during your lifetime, or after death via your Will (or other such document); we have already discussed gifting to Ananda. One suggestion I would make when making charitable gifts is that you make this as a percentage of your estate rather than a flat amount. The reason for this is that say when you make your Will your estate is 500k; you give 50k to charity, and the balance to your children; thus the gift to charity would be 50k and 450 to children. Consider though if when you die your estate is 250k, Charity still gets 50k but your children only 200K. If you made the gift by percentage, say 10%, in the second case you insure a larger amount goes to your children. There can be tax benefits in making gifts; and, with some exceptions, no taxes are incurred in making a gift. There are, however, some significant pitfalls in making gifts during your lifetime. In any event, you should talk to a competent estate planner before making any relatively large gifts.

BASIC AUTOMOBILE ISSURANCE ISSUES

This is not something normally addressed in an estate planning presentation; however, there is an important concern that is appropriate to consider. As you know, we have auto insurance for at least two reasons; one to protect us against liability for our negligence, and the other is to provide benefits for us if we are injured due to the negligence of someone else. If we are the injured party, we can collect from the liability insurance of the other party. For example, if the responsible party had $100,000.00 in liability coverage and that is not sufficient to cover damages, our insurance policies provide us additional coverage. This is called "UIM" coverage (uninsured or under-insured) protection. Our insurance policies include this coverage unless we affirmatively elect not to include it; those who reject this coverage violate Ben Franklin's proverb about being "penny wise and pound foolish". If I had 100K UIM coverage and I were in an accident causing me severe injuries (and the other party had 100K of coverage, or less), this would not be sufficient to cover my injuries. We should all take a look at the amount of our UIM coverage; if you don't have it, get it. If you have 100K in coverage, increase it to 250K (the premium increase for this is about not that much).

SOCIAL SECURITY/BASIC ISSUES AND COMMENTS

Will Social Security Benefits be There When I Retire? There should be no concern for persons in their 50's; however, there may be problems for younger generations. That being said, there are relatively simple reforms are should be implemented that will strengthen and make the system safer. All we need for this to occur is for our "leaders" to commit be dirty deed of "compromise".

How Do I Determine What My Benefits Will Be? The simpler answer to this is to go to the social security website (ssa.gov); once there go ahead and set up your account. This allows you to access your work payment records, and shows you what your monthly benefits will be when you retire. The amount of your benefits will depend on the amount you earned over your working career and the age at which you apply for benefits.

When Should I Retire? This question is unique to each individual, so the following is a general purpose answer. An eligible person can "retire" at age 62; however, most of us may not want to retire then, and an early retirement means a significant reduction in lifetime benefits. Full retirement for anyone born prior to 1954 is 66 (this slowly increases for younger person), and the "mandatory" retirement age is 70. NOTE: BY THE TERM "RETIRE" I MEAN THE AGE AT WHICH YOU APPLY FOR SOCIAL SECURITY BENEFITS. For every year you delay retirement after age 62, your monthly benefits increase significantly. So if you retire at age 66 instead of 62, your benefits will be about 23% higher. Also, for each year you delay retirement after 66 your benefits increase by about 7-8% per year (up to age 70).

Can I Continue to Work While Receiving SS Benefits? Yes; however, if you retire before 66+ (currently full retirement age), you will lose some of the SS benefits for amounts earned over about $16-18,000.00. If you take social security at fully retirement age and continue to work, you will not lose any of your SS benefits.