

Law Office of Eileen R. Fitzgerald

An Elder Law Newsletter

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www.efitzlaw.com

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NEWS FROM EILEEN

This is my last year on the board of directors for the DuPage Senior Citizens Council. I will continue to be involved in their fundraising, such as the *Aging Gracefully Wine Tasting and Benefit Auction* at Northern Illinois University, Naperville Campus on November 18, 2011 at 6:00 p.m. See www.dupageseniorcouncil.org for additional information.

ILLINOIS POWER OF ATTORNEY CHANGES

On July 22, 2010 the governor signed into law a comprehensive update of the Illinois Power of Attorney laws. Those changes went into effect on July 1, 2011. You will notice that the form looks a little bit different. The first page requires initials at the bottom to indicate that the person signing the form has read the Notice on the first page. A Notice to Agent at the back of the form is also included. The Notice tells the agent what to do and what not to do with the Power of Attorney. The new form also

provides for an additional second witness. Illinois only requires one witness on its Power of Attorney but other states may require two witnesses, therefore the form includes that provision in the event the principal wants two witnesses.

The standard of care that the agent must use when acting on behalf of the principal has become more strict. The thought behind that change is to prevent potential abuse by the agent.

The new statute also names additional persons who may not act as witnesses in order to prevent potential conflicts of interest. As with the prior law, co-agents are not allowed. If co-agents are named, the form is not an Illinois statutory short form power of attorney.

The following may not act as a witness under the health care power of attorney:

1. Your doctor or a relative of your doctor.
2. The owner or operator or a relative of the owner or operator of a health care facility where the principal is a patient.
3. A parent, sibling or descendant, or the spouse of a parent, sibling or descendant regardless if the relation is by blood, marriage or adoption.
4. The agent or successor agent.

REASONS TO CREATE AN ESTATE PLAN NOW!

Many people think that estate plans are for someone else, not them. They may rationalize that they are too young or don't have enough money to reap the tax benefits of a plan. But as the following list makes clear, estate planning is for everyone, regardless of age or net worth.

1. Loss of capacity. What if you become incompetent and unable to manage your own affairs? *Without a plan* the courts will select the person to manage your affairs. *With a plan*, you pick that person (through a [power of attorney](#)).

2. Minor children. Who will raise your children if you die? *Without a plan*, a court will make that decision. *With a plan*, you are able to nominate the guardian of your choice.

3. Dying without a will. Who will inherit your assets? *Without a plan*, your assets pass to your heirs according to your state's laws of intestacy (dying without a will). Your family members (and perhaps not the ones you would choose) will receive your assets without benefit of your direction or of trust protection. *With a plan*, you decide who gets your assets, and when and how they receive them.

4. Blended families. What if your family is the result of multiple marriages? *Without a plan*, children from different marriages may not be treated as you would wish. *With a*

plan, you determine what goes to your current spouse and to the children from a prior marriage or marriages.

5. Children with special needs. *Without a plan*, a child with special needs risks being disqualified from receiving Medicaid or SSI benefits, and may have to use his or her inheritance to pay for care. *With a plan*, you can set up a [Supplemental Needs Trust](#) that will allow the child to remain eligible for government benefits while using the trust assets to pay for non-covered expenses.

6. Keeping assets in the family. Would you prefer that your assets stay in your own family? *Without a plan*, your child's spouse may wind up with your money if your child passes away prematurely. If your child divorces his or her current spouse, half of your assets could go to the spouse. *With a plan*, you can set up a trust that ensures that your assets will stay in your family and, for example, pass to your grandchildren.

7. Financial security. Will your spouse and children be able to survive financially? *Without a plan* and the income replacement provided by life insurance, your family may be unable to maintain its current living standard. *With a plan*, life insurance can mean that your family will enjoy financial security.

8. Retirement accounts. Do you have an IRA or similar retirement account? *Without a plan*, your designated beneficiary for the retirement account funds may not reflect your current wishes and may result in burdensome tax consequences for your heirs (although the rules regarding the

designation of a beneficiary have been eased considerably). *With a plan*, you can choose the optimal beneficiary.

9. Business ownership. Do you own a business? *Without a plan*, you don't name a successor, thus risking that your family could lose control of the business. *With a plan*, you choose who will own and control the business after you are gone.

10. Avoiding probate. *Without a plan*, your estate may be subject to delays and excess fees (depending on the state), and your assets will be a matter of public record. *With a plan*, you can structure things so that probate can be avoided entirely.

ILLINOIS PUBLIC AID

There are changes coming to Illinois Public Aid. Illinois Health Care and Family Services has proposed rules to implement the Federal Deficit Reduction Act, which went into effect February, 2006. There have been many objections to the proposed rules by various groups, including elder law attorneys. If the rules don't pass at the October, 2011 meeting, then the Department must start over again with new proposed rules. The big change that is coming to Illinois is a five year look-back rather than the current three year look-back. Be sure to keep your bank statements! Also the penalties for gifting are much more strict under the new rules. More to come

WHO IS YOUR BENEFICIARY?

Typically life insurance, IRAs and other retirement accounts have a beneficiary. The asset passes to the beneficiary upon the death of the owner of the asset. A person's Will has no effect on the beneficiary designation. Many clients cannot remember who their beneficiary is, or if they have named a beneficiary.

Not naming a beneficiary or not updating the beneficiary may cause problems. If an asset does not have a beneficiary, it passes to the owner's estate and goes through probate. A probate estate is not a designated beneficiary of a retirement account and would cause the account to be taxed within five years, rather than deferring the income tax for a longer period of time. If a beneficiary designation is not updated it could cause a later born child to be excluded, which could cause family problems or hurt feelings. Events that may prompt a person to change or update a beneficiary designation include marriage, divorce, birth of a child and death of a beneficiary.

A banker, human resources clerk or financial planner can usually assist with checking on beneficiary designations of your assets. It is wise to check the beneficiaries every so often and keep them up to date so that the assets will be distributed according to your wishes in the event of your death.

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RESPONSIBILITY FOR A DECEASED RELATIVES DEBTS

The loss of a loved one is tough to begin with, but if the loved one left debts behind, it can be even tougher. Family members generally should not have to pay for a decedent's debts, but it is important to know your rights because collection agencies may target the decedent's relatives.

Usually the loved one's estate is responsible for paying any debts. If the estate does not have enough money, the debts will go unpaid. The debt collectors may not collect payment from relatives (unless they were co-signers or guarantors). However, if you are the spouse of the decedent, you may have responsibility for any debts that were jointly held. Depending on state law, some assets -- such as a house or car -- may be exempt from debt collection. You should talk to an attorney to determine your responsibility, if any.

If a debt collector contacts you, give the collector the contact information for the personal representative (also called the "[executor](#)") who is handling the estate.

It is the personal representative's responsibility to make sure all bills are paid. Whatever you do, do not give any personal information to debt collectors. Scam artists sometimes pose as debt collectors to prey on relatives.

If a debt collector won't stop contacting you, send a certified letter to the collector saying you do not want to be contacted again. Once the collector receives the letter, the collector can contact you only to tell you that there will be no further contact or to inform you of a lawsuit. Report any problems with debt collectors to your state's [attorney general](#) or to the [Federal Trade Commission](#).

POWER OF ATTORNEY

It is important to know how to sign as an agent under a power of attorney. If John Doe is the agent and he is signing for Mary Doe, John signs as follows:

Mary Doe, by John Doe, Agent
