

## **ATTORNEY CHECKLIST**

- Make sure participant's estate is less than \$600,000, including life insurance proceeds. If they have more than this amount, they may need more advanced estate planning. You may give them the Alabama State Bar Lawyer Referral number if you wish 1-800-392-5660.
- Make sure the participant dates and signs the Questionnaire and that their name, address and remaining information is filled in. The Questionnaire is the only record we will have of who takes part in the program. **We MUST keep a copy of the Questionnaire.** Give the completed questionnaire to Linda Lund or your clinic coordinator.
- Remind participant that the bulk of most people's estate is often their life insurance. Have they named the right person to receive the benefit on life insurance and 401ks? Has the spouse/beneficiary changed since joining the Department?
- Ensure participant is not currently involved in any type of litigation. If they are, make sure you or your firm is not conflicted out.
- Is the participant married? If so, and they select to leave all of their estate to their children or to another person or organization, the surviving spouse has a right to "elect" to receive 1/3 of the estate if the spouse is not included.
- Do they have a child with "special needs"? If so, a basic will is not the right will for them. You may give them the Alabama State Bar Lawyer Referral number if you wish 1-800-392-5660.
- Do they have children from a current or former marriage/relationship? If so, make sure you define children to include or exclude the children the participant desires.

Adopted children: This option includes adopted grandchildren. So, even if the participant has not adopted a child, suppose the participant's natural child adopts a child. Does that participant want the adopted grandchild to take under the Will? If not, then exclude the adopted children by name.

Step Children. Remind the participant that stepchildren will not inherit from their estate unless they are specifically included.

- Guardianship: Under AL law, the surviving parent will automatically get custody of the deceased participant's child, unless their parental rights have previously been terminated. Therefore, the participant's choice for guardian comes into effect only if the child's other parent is deceased or had parental rights terminated at the time the Will is probated.
- We do not keep a copy of the Will or any other documents for the participant. We do not "file" the documents for them. Advise them to keep all the documents in a safe place, such as a safe deposit box or fire proof box, and review it with their Personal Representative. Remind them that safe deposit boxes are only available to those on the account card, not those that have a key.
- On the Advance Directive for Health Care **be sure to have the participant initial in the appropriate spaces** no "X's" or check marks. Have the participant hand write his/her name.

- Explain to the participant that if they name a Health Care Proxy to act on their behalf that they will need to have the proxy sign the Advance Health Care Directive indicating that they are willing to serve as the proxy. Please use the post-it note tabs (if available) to indicate where the proxy should sign.
  
- Explain to the participant that they will probably want to retain the Power of Attorney and let the attorney-in-fact know where it is located should it be needed. Point out advantage of HIPAA language. They should note that a guardian for minor children is named (though usually only in a Will) in case of a catastrophic event where the participant is missing and not known to be dead or alive. The conservator/ guardian appointment must be court ordered, but the POA allows the person to name whom they would prefer to hold these positions if needed. The participant's choice for guardian comes into effect only if the child's other parent is deceased or had parental rights terminated at the time the Will is probated.

Also explain that if they choose to execute the exhibits attached to the Power of Attorney, their named attorney-in-fact (and successor attorney-in-fact in the event that your attorney-in-fact is unable to serve) will immediately have the power to act on your behalf. Thus, by signing the exhibits, the Power of Attorney is immediately effective. If you choose not to sign the Exhibit, then your Power of Attorney will not be effective until a medical examination has been performed and you are deemed incapacitated by two physicians.

They will still need the exhibits to attach to the POA even if they do not execute them onsite. For example, if they are going into the hospital for a procedure or they are called to duty then they can choose to execute the POA at that time.

Note and explain to the participant how the attorney-in-fact is instructed to sign the Power of Attorney documents.