




Tarzan swings on the vine to gain entrance to his tree house where Jane is waiting impatiently for his return home after a very long day.







“Jane, Jane, please mix me a martini.” Tarzan chugs the drink down in one gulp and then repeats, “Jane, Jane, mix me another martini.” He immediately chugs the second drink down.



Jane looks at him, aghast, and asks “Tarzan, what’s the story with you?”







Tarzan replies, “It’s a jungle out there!”








13th Annual Elder Law 2010 Institute

Preparing the Essential Documents: Beyond the Basics

Presented by
Leslie H. Wizelman, CELA & Tammy Weber, CELA

It Can Be a Jungle Out There!

Wills

Who are the jungle animals and how are they related?

Complete Information a Must Client Workbook

See Attachment "A"

Identify any Elephants in the Room

- Medical Conditions
- Credit Problems
- Bad Relationships Among Children and/or Spouses
- Drug/Alcohol Dependencies

See Attachment "B"

Client Education

- Review Workbook in Detail
(Learn about the family)
- Explain Differences between Probate and Non-Probate Assets;
(Beneficiary Discussion)
- Explain Taxes

Process Begins the Relationship

Real Estate

When you go out in the woods today,
you are in for a big surprise!

No teddy bear picnic anymore!

Got Gas?

Chesapeake
Jalisco
Womac
Geokinetics
Range Resources

Non-Probate Assets

Elective Share Planning



Special Needs Planning



Will Checklist

(See Attachment "C")



Personal Property
Specific Gifts
Real Estate
Cemetery Lots

Catastrophic Clause
Charitable Gifts
Minor Children
Pets

Residue (Usual Source of Inheritance Tax)



Will Checklist (cont)



- Tax Clause
- Executor



Always Meet with Client Alone



Establishing a Relationship

- WOWS

ID Wallet Card

Photo

Attend & Supervise Signings

Medical & Legal Notebook

Yearly Follow Up Letters

(See Attachment "D")



IS THERE ANYTHING ELSE I CAN DO FOR YOU TODAY?



Financial Power of Attorney

- Agent
 - Independent, Joint or Successor
 - Should there be Power to appoint a Substitute Agent?



Financial Power of Attorney

Substitute Agent Language:

Unless a Successor Agent is named above, my Agent is authorized to appoint a Substitute Agent by a writing executed with the formalities of this document. The writing naming the Substitute Agent shall be attached to a copy of this Power of Attorney. Such Substitute Agent shall have all of the powers as described in this Power of Attorney unless otherwise limited in this document or in the document appointing the Substitute Agent.



Financial Power of Attorney

Statutory Acknowledgment

“I shall exercise the powers for the benefit of the Principal.”

When does the agent sign?



Financial Power of Attorney

Long Term Care Planning Use:

- Family / Agent as Caregiver
- Authorization of Asset Protection



Financial Power of Attorney

■ Gifting

- Unlimited v. Limited
- To whom?
- Agreement of other beneficiaries?
- New restrictions?



Financial Power of Attorney

- Should any Powers be excluded?
- Binding Arbitration



Advance Health Care Directives

- Living Will
- Health Care Power of Attorney
- Do Not Resuscitate Order (DNR)
- Mental Health Power of Attorney
- POLST



What is a Living Will?

- Instructions for end of life care.

When is a Living Will Operative?

- Must be given to the attending physician
- Maker (principal) must be:
 - Incompetent, and
 - End stage medical condition or permanently unconscious.



Health Care Agents

- **Health Care Power of Attorney – the preferred advance directive**

- Names Agent to make decisions.
- Broader applicability than Living Will.
- Can include instructions.
- Statutory example form is HCPOA with LW instructions.



Health Care Power of Attorney

- **When operative?**
 - Usually “springing.”
- **Multiple or successor agents?**
 - Successor method usually preferred.
- **Authority of Agent.**
 - Very broad unless limited in document.



Agent’s End of Life Decisions

- **Must consult with health care providers.**
- **Must make EOL decisions based on:**
 - Principal’s instructions, if none then...
 - Principal’s beliefs & preferences, if unknown then...
 - Agent’s assessment of best interests
- **Act 169 specifies methodology to be followed.**
- **Presumption in favor of nutrition & hydration.**



Health Care Representative: Who is Authorized to Act?

Default – in following order of priority.



- (1) The spouse and the adult children of the principal who are not the children of the spouse
- (2) An adult child
- (3) A parent
- (4) An adult brother or sister
- (5) An adult grandchild
- (6) An adult who has knowledge of the principal's preferences & values

Out-of-Hospital DNR

■ Prior Out of hospital DNR law has been incorporated into Act 169 with minor changes.




■ Prior regulations are still valid.

HIPAA Release

- Information is released to designated individuals
- Release does not give authority to make decisions
- Why have this document?



POLST

- **Physician's Order for Life Sustaining Treatment.** 
- **Next step beyond advance directives.**
- **Physician's order** (*unlike LW and HCPOA*).
- **Advantages of POLST.**
 - Requires discussion between physician and patient.
 - Patient wishes are incorporated into a doctor's order.
 - POLST document travels with the patient.

Mental Health Advance Directive

- **Declaration**
 - Wishes and instructions for mental health care
 - Perhaps specific directions and preferences
- **Mental Health Power of Attorney**
 - Designates individual to make health care decisions for principal
 - Renewed every two years





Beware of the Dangers In the Jungle!



**Thank You For Your
Attention**

&

Have A Nice Day!

**Presented by
Leslie H. Wizelman, CELA &
Tammy Weber, CELA**

