

Lifetime Planning for Mature Single Individuals

Estate planning generally addresses three primary goals: keeping the client in control of his or her person and property while he or she is alive and well; taking care of the client and his or her loved ones if the client becomes incapacitated; and carrying out the client's wishes after death. Clients in different life stages tend to give different priorities to these goals. Younger clients without children seem inclined to favor the first goal over the latter two. For those with a spouse and/or children, effecting post-mortem goals becomes much more important. Older clients tend to be more concerned with incapacity and post-mortem goals because the threats posed by these life stages seem closer at hand. In fact, with lengthening mortality rates, incapacity planning is taking on increasing importance for everyone.

Mature Single Individuals and the Problem of the "Short Bench"

For those who are not married and who have no children ("i.e., *Mature Single Individuals*"), planning for the disposition of property after death may not be as important as it is for those with closer family ties. The potential costs of such planning often encourage one to delay or avoid such planning. With greater importance attached to the designation of surrogates in the event of incapacity, life planning for the Mature Single Individual can actually be more challenging than for the married couple with children.

The basic problem for Mature Single Individuals in planning for their incapacity (or death) is the recognition that while surrogates are understood to be needed, fewer trusted fiduciary alternatives seem available. In our society, incapacity care tends to be rooted in close familial connections built over lifetimes. Where such close familial connections are not available or are available only to a limited extent, the question becomes how to find suitable surrogates to act for the incapacitated client while assuring fidelity and proper attention to these fiduciary duties. Without close family ties, the goal is often also to postpone the designation and implementation of surrogacy until the last possible moment when it becomes necessary.

Court-Supervised Guardianship – The Default Nobody Wants

In the absence of planning, the State provides a default means of determining such surrogacy. Under Maryland law, a court may appoint a guardian to act for a "disabled person" who is unable to manage his property or unable to provide for the person's daily needs to protect his health or safety. Once such an appointment is made (following a mandated procedure intended to protect the alleged disabled person from unneeded interference), the court stays involved in the guardianship by supervising the guardian's activities for as long as the incapacity continues. Such court participation inherently requires use of the disabled person's resources to pay for this process and the guardians involved.

The choice of who serves as the disabled person's guardian is made in the court's discretionary determination of what is best for the disabled person and in accordance with a statutory priority list of possible surrogates ranging from a spouse, parents, or the disabled person's children to heirs at law or any other person, agency, or corporation nominated by a person caring for the disabled person or otherwise considered appropriate by the court. Importantly, however, the statutory priorities list is topped by a person, agency, or corporation nominated by the disabled person if he had the foresight to do so while he has (or had) sufficient mental capacity to make an intelligent choice. As a result, even if a guardianship is not deemed to be objectionable and regardless of the age of the individual involved and the length of the potential "bench" of potential surrogates, it becomes quite important to address the issue of surrogacy by planning well before the onset of any "physical or mental disability, disease, habitual drunkenness, addiction to drugs, . . . compulsory hospitalization, or disappearance".

The Importance of Addressing Lifetime Planning Issues

A court-supervised guardianship of a disabled person generally means that either the person failed to plan effectively for his incapacity or that he or she had no available potential surrogates from which to choose. This is unfortunate because it is relatively easy to designate a surrogate by means of two types of documents: financial powers of attorney and revocable trusts for the management of an incapacitated person's property and money; and health care powers of attorney and advance directives to manage his or her health and personal well-being. (We intend to cover these types of documents in greater detail in upcoming articles.)

The primary point here is that the Mature Single Individual should not put off addressing incapacity issues that may have a great impact on his future quality of life. Inertia should not be allowed to control just because the Mature Single Individual does not particularly care about post-mortem planning or because his "short bench" of potential surrogates makes decisions difficult. Most will not want these issues resolved by the discretion of a disinterested court acting at the request of some distant heir or other person nominated by a care agency or otherwise considered appropriate by the court. "Estate" planning involves both lifetime planning and post-mortem planning. Lower prioritization for one does not preclude the importance of the other. And talking through difficult decisions with an experienced professional will often clarify potential resolutions. The critical step in this process is the first one: picking up the phone to make the initial appointment. Once one begins, the rest is easy.