

Michele Procino-Wells[†][◇]
Amber B. Woodland[†][◇]
Jessica L. Whaley[◇]
Attorneys at Law

Tel. 302.628.4140
Fax 302.628.4150

[†] *Licensed in Delaware*
[◇] *Licensed in Maryland*



**PROCINO-WELLS
& WOODLAND, llc**

www.pwwlaw.com

TOP 10 TRIGGER POINTS FOR REFERRING TO AN ELDER LAW ATTORNEY

Client Says: I'm healthy and still able to make my own decisions, do I need a Power of Attorney?

Response: Yes. Everyone over 18 should have a basic estate plan. Incapacity can occur at any time and having a thorough, up-to-date Power of Attorney ensures someone else (e.g. the client's spouse or children) can step in to make legal and financial decisions. Without a Power of Attorney, a Court proceeding to appoint a guardian would be required. That process is both expensive and time consuming.

Note: Be on the lookout for insufficient Powers of Attorney. If it has been signed after 2010, it should include an Agent's Certification. Also, none of the authorities should be blank or crossed out because this can detrimentally limit what the Agent can do on behalf of the Principal.

Client Says: I just moved here from out-of-state. Do I need to have my estate plan reviewed?

Response: Yes. Revocable Trusts are utilized more than traditional Wills. If the client is interested in reducing the publicity, cost, and paperwork of probate, then he/she should consider utilizing a Revocable Trust.

Client Says: Does an attorney need to create my estate plan or can I just download forms off the internet?

Response: Good estate planning involves a discussion with a qualified professional to weigh all the planning options, not just filling in blanks in form documents. Besides, the cost of fixing a "home-made" estate plan is usually much greater than the cost of creating the estate plan.

Note: Avoid witnessing and/or notarizing homemade estate planning documents.

Client Says: I want to add my son/daughter's name to my account.

Response: Why? If it's because the client is worried about future incapacity, then a Power of Attorney is better. If it's because the client wants to make it easy at his/her death, then a Will or Trust is better. If it's because the client is worried about the nursing home taking it, then asset protection planning is better.

Planning today to protect your family's tomorrow.

Client Says: I want to add a POD/TOD/beneficiary to my account.

Response: Why? If it's because the client wants to avoid probate, then a Revocable Trust is better tool as it provides much more flexibility and protection than beneficiary designations. If it's because the client wants to save taxes, then this may not even be a concern because only estates valued over \$11.2M (\$ 5M for Maryland residents) are taxable.

Client Says: Do I have to disinherit my special needs child? I don't want him/her to lose his/her public benefits.

Response: No. A stand-alone third-party Supplemental Needs Trust can provide for a loved one with special needs without impacting eligibility for government benefits. This type of planning ensures that the beneficiary is provided for after the parent's gone.

Client Says: A large part of my wealth is built up in tax-deferred retirement accounts. How can I leave this to my children without triggering substantial taxes at my death?

Response: A Retirement Account Trust (RAT) can be created to receive the balance in the client's accounts at his/her death. The RAT's provisions control how and when distributions will be made and stretches the taxation of the accounts over the beneficiaries' lifetimes.

Client Says: I don't want my family to be burdened with wrapping up my affairs after my death. How can I make sure everything is taken care of efficiently?

Response: A professional advisor (e.g. attorney or accountant) may be a good choice when selecting your Executor and/or Trustee. Naming a professional relieves the family during an otherwise emotional time. It also ensures that the administration is handled efficiently and professionally.

Client Says: I was told I can do annual gifting to my family members. Will this impact future Medicaid eligibility?

Response: Yes. Up to \$15,000 per person per year can be given away for tax purposes. But, for Medicaid purpose, dollar one effects eligibility.

Note: If a client is experiencing a decline in his/her health, then he/she should receive guidance before making any substantial gifts.

Client Says: My loved one needs nursing home care now. Is there anything I can do to shelter some of the remaining assets? If I shelter assets, will my loved one receive subpar care?

Response: Even at the last minute, nearly 50-60% of the remaining assets can be protected. It's never too late to plan. Federal and state law require facilities to provide the same care, regardless of payor source.