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Estate Planning Seminar

Fall 2026

Agenda

6:00 p.m. – 6:05 p.m.	Welcome and Introduction
6:05 p.m. – 6:35 p.m.	Estate Planning Basics
	Powers of Attorney
6:35 p.m. – 7:00 p.m.	Generational Land Holdings
7:00 p.m. – 7:10 p.m.	<u>Break</u>
	Complimentary coffee, and cookies
7:10 p.m. – 7:50 p.m.	Long-Term Care Planning
7:50 p.m. – 8:00 p.m.	Questions

Seminar Presenters

Heather M. Huebner
hhuebner@andlaw.com

Attorney Huebner graduated from Lawrence University in 2011. She graduated from Vermont Law School in 2017, where she earned her Juris Doctor, Business Law Certificate, and Masters in Energy Regulation & Law.

Community involvement is important to Heather and she enjoys partnering with local non-profit organizations in Central Wisconsin.

She works closely with her clients to guide them as they develop and transfer businesses, settle estates, and prepare estate plans for their lasting legacy. Her areas of practice include estate planning, real estate, probate, trust settlements, and business law.



Ross R. Slovensky
rslovenksy@andlaw.com

Attorney Slovensky is a Wisconsin Rapids native. He graduated with honors from Mitchell Hamline School of Law in 2025.

Before pursuing a legal career, Ross spent several years in the marketing field, working with major organizations - including the Minnesota Vikings.

After living in the Twin Cities for several years, he's excited to now serve clients in the Central Wisconsin area. Ross developed a strong interest in employment law during his time as a law clerk at the firm. His areas of practice are employment law, business law, and estate planning.



Seminar Presenters

Steven H. Thompson
sthompson@andlaw.com

Attorney Thompson graduated with highest honors from the University of Wisconsin-Oshkosh in 2015. He went on to graduate with honors from the University of Wisconsin Law School in 2018. In law school, Steven became interested in business and estate planning law, and completed his concentration in Estate Planning, with honors.

He started as an associate at Anderson O'Brien in 2018 and was named a partner in 2026. His areas of practice include estate planning, real estate, and business law.



Katherine A. Young
kay@andlaw.com

Attorney Young graduated with highest honors from the University of Wisconsin-Madison in 2010. In May of 2013, she graduated with honors from the University of Wisconsin Law School. She started as an associate at Anderson O'Brien, in 2013 and was named a partner in 2022.

Her areas of practice are estate planning, wills, trusts, elder law, and probate. For Katie helping her clients with their estate plan is a chance to support their family's goals and contribute to the legacy they want to leave behind.



This outline is intended to provide general information regarding estate planning, insurance, nursing home, and Medicaid issues. It does not constitute legal advice. You should not act or refrain from acting on the basis of any content included in this outline, and presentation without seeking legal or other professional advice. Due to the rapidly changing nature of the law, information contained in the outline may become outdated.

UNDERSTANDING ESTATE PLANNING FUNDAMENTALS

PRESENTER: ATTORNEY HEATHER HUEBNER

I. INTRODUCTION: ESTATE PLANNING FUNDAMENTALS

- A. Estate planning is more than just preparing a Will. Estate planning includes the transfer of your property at death by Will, Trust, or probate avoidance tools. You should also plan for incapacity during your lifetime with a Durable General Power of Attorney and a Health Care Power of Attorney. Your estate planning should be tailored to your specific circumstances and goals. The Anderson O'Brien law firm is celebrating its 140th year of practice and our attorneys are proud to have this history of knowledge and expertise in estate planning.
- B. Estate planning is not a one-size fits all option. Our team at Anderson O'Brien reviews all of your options with you and helps to determine the best estate planning tools for your family. We make sure that you understand every word of what you signed and how your estate plan works. Our prices are competitive with other firms in our community and we do not charge annual fees for being named as trust protector.
- C. If you pass without any planning and your property does not have a beneficiary designation or joint title, your property will be distributed under the Wisconsin Statutes during a probate administration with the Courts. These statutes present a bracketed "family tree" to direct the distribution of your assets. You would not have any control over who is in charge of your estate or who receives your assets.

II. WILLS

- A. A Last Will and Testament, also known as a Will, states your wishes about how your property will be distributed at death. A Will names a personal representative to handle the administration of the estate. A Will provides instructions that are carried out during the probate process.
- B. A Will also designates who receives your personal property. You may leave a personal property memorandum to specifically name who receives certain assets. You may change this list at any time as long as you keep it with your original Will.
- C. If you have minor children, you nominate a guardian in your Will to provide care for your children if you pass away.

III. TRUSTS (CONTINGENT, REVOCABLE AND IRREVOCABLE)

- A. A Trust is a legal arrangement where a Trustee holds assets on behalf of beneficiaries. Trusts allow your property to pass privately to your beneficiaries during a trust administration and outside of the probate Court. Your beneficiaries will obtain the assets more quickly than if the assets were transferred using a Will.
- B. A Settlor is the person who transfers assets to the Trust. A beneficiary is who receives trust assets. A Trustee is who is in charge of managing and distributing trust assets. You should name Trustee that you trust to manage the assets properly and for the best interest of your beneficiaries.

IV. REVOCABLE TRUST

- A. A Revocable Trust (or sometimes as a “Living Trust” or “Intervivos Trust”) is the most common type of trust. It is created during your lifetime and may be amended or revoked by you at any time as long as you are competent. You may add or remove assets from the trust at any time until your incapacity. You would serve as Trustee during your lifetime until your incapacity or death.
- B. With a “Joint Revocable Trust,” a Wisconsin married couple may jointly manage their assets in trust. The surviving spouse will continue to manage the Trust upon the passing of their spouse. More advanced Revocable Trusts contain tax planning provisions for large estates.
- C. A Trust is funded by beneficiary designations to the Trust or by retitling assets in the name of the Trust during lifetime.
- D. Trusts are used for many estate planning reasons, such as managing assets for younger beneficiaries. For example, a Trust may hold a share for a child in Trust until that child turns 25. The Trustee may use the money to pay for their health, education, maintenance, and support needs until the stated payout age.
- E. Trusts are also used to hold and administer property for a child with special needs or receives public benefits, to protect assets from creditors and divorce, and to manage assets for a beneficiary with a substance abuse or gambling problem.
- F. Trusts are also used for various tax planning reasons and charitable giving. Trusts are very helpful in planning for blended families (his, hers, and ours). Finally, many Trusts are used primarily for the purpose of avoiding probate.
- G. You will still have a Will if you have a Trust. This “Pour-Over Will” captures any property that is not already titled in your Trust and pour-over those assets to your Trust.

V. WILL WITH A CONTINGENT TRUST

Some Wills include a Contingent Trust meaning that your Will passes through a probate administration and the Court establishes the Trust after your passing. This planning is very common with young families. The Trust will hold assets until the children reach a certain age. If the children are older than the listed payout age when the parents pass, then the Trust terms are bypassed, and the probate Court distributes the assets directly to the beneficiaries.

VI. IRREVOCABLE TRUSTS

Irrevocable Trusts are used for different tax and family planning goals. Irrevocable Trusts are often used for “long-term care planning” meaning that Settlers transfer assets to an irrevocable trust to take them out of their assets list in the event they need to apply for Medicaid. For example, parents may transfer their residence to an Irrevocable Trust to protect the residence for their children in the event both parents need to fund nursing home costs. Funding Irrevocable Trusts during your life requires irrevocably giving up control over assets, meaning that your trust owns the assets and you no longer have access to the assets.

VII. PROBATE

- A. Probate is the most traditional form of estate settlement. During a probate administration, your personal representative administers your estate with the Court. Your personal representative will inventory the assets that you own on your date of death, pay your final debts from estate assets, and make final distributions to the beneficiaries of your estate. Depending on the type of the assets, a probate is completed within seven to eight months. If there are complicated issues, probate can last much longer.
- B. Wisconsin has a threshold of \$50,000 to trigger a probate. If the total of your assets that do not have a joint owner or beneficiary designations is greater than \$50,000, your estate will be subject to a probate administration. If your estate is less than \$50,000, a small estates form will be used.
- C. Your Will only controls your property that does not have a beneficiary designation, joint owner, or other method of non-probate transfer. For example, if you own a life insurance policy, you should complete a beneficiary designation form which directs who will receive the benefits of your policy when you die. This beneficiary designation form controls the payment of the life insurance benefits and the policy will bypass your Will. Your Will does not govern the life insurance proceeds unless the beneficiary form designates your “estate” as the beneficiary.
- D. A trust may hold funds for a beneficiary under a set age, with the Trustee paying for health, education, and support needs. The Trustee can approve necessary payments (tuition, rent) but deny frivolous requests. If the beneficiary is sued or divorces before receiving the funds, the Trustee can withhold assets from creditors.

VIII. PAYABLE ON DEATH BENEFICIARY DESIGNATIONS

- A. If your account has a beneficiary designation or POD, the account will pass directly to the listed beneficiaries and bypass your Will and a probate administration. Beneficiary designations may be used with your bank accounts, life insurance policies, investment accounts, and retirement accounts.

- B. To establish these beneficiary designations, you should work directly with your bank, financial advisor, or insurance agent.
- C. People often state that they “willed” their account to a beneficiary because they have a beneficiary on their account. Please remember that a beneficiary designation refers specifically only to the account listed and that the Will or Trust only controls the assets that do not have a beneficiary designation on file.
- D. If you list your minor children as beneficiaries and they are still minors at the time of your passing, the funds will be placed in a Uniform Gifts to Minors Act account until the children are 18 years old. The custodian of the account is usually a next of kin and controls the funds for the minor. When the children turn 18 years old, they will receive the entire amount and will be able to do anything they wish with the money.
- E. If you do not have a beneficiary on your account or if your beneficiary is to “my estate,” the account will pass via your Will to your beneficiaries. If your estate plan includes a Revocable Trust, the beneficiary designation form for certain accounts that you own should typically list your Revocable Trust as the beneficiary.
- F. Contingent Beneficiaries: You should list a contingent or a second beneficiary on your various accounts. If you name your spouse as your primary or first beneficiary, you should name a backup beneficiary in the event that your spouse predeceases you.
- G. Joint Owners
 - 1. Another way to transfer your assets directly to your beneficiaries and avoid probate is by having a joint owner on an account. For example, if you add another person as a joint owner on a bank account, that person will take over ownership on that bank account when you pass.
 - 2. Please note that the joint owner takes ownership of the account when you add them to the account. If you add a child to your account to help you manage finances during your lifetime, that child may close your account at any time and use those funds as they please.
 - 3. If you add a child to your bank account during your lifetime with the intention that the child will split the account with their siblings, that child has no legal requirement to do so and it would be considered a gift.
- H. Retirement Accounts
 - 1. You may list direct beneficiaries on your retirement accounts. A qualified retirement account is an account that was funded with pre-tax dollars, such as IRAs and 401(k)s. A non-qualified account is an account that was funded with post-tax dollars, meaning that the income tax was paid prior to funding the account, such as Roth IRAs and Roth 401(k)s. Your spouse would be able to rollover your retirement account over their lifetime. For other beneficiaries, with many nuances, the accounts will need to be withdrawn within a ten year period.

The qualified accounts would be taxed the individual tax rates of your beneficiaries.

2. If your estate plan includes a Trust, it is important to properly name your beneficiaries to meet with your estate planning goals. If you name your Trust as the beneficiary of your pre-tax retirement account, your Trust may need to pay the income tax at the federal estates and trusts income tax rates which is currently likely higher than the individual tax rate of your beneficiaries. Often, you should name direct beneficiary designations on your pre-tax retirement accounts so that your beneficiaries are taxed on the income at their individual tax brackets, instead of the higher estates and trusts rates. If you have a post-tax retirement account (Roth 401(k)s and Roth IRAs), your beneficiaries will not need to pay income tax because you paid the income tax prior to funding the post-tax account.

(Those rates for 2026 are 24% for income from \$3,300 – \$11,700, 35% for income \$11,700 – \$16,000, and 37% for any income over \$16,000.)

3. The SECURE Act treats the age of majority of a minor child beneficiary as 21 years old, meaning that the minor child is not subject to the ten-year rule until that child reaches the age of 21 years. You should ensure that your Trust includes the proper language to avoid paying taxes at the higher trust tax rate and carefully plans for specific payout ages.
4. If you have charitable intentions, naming a charity as a beneficiary of your pre-tax retirement account will allow you to maximize your bequest. The charity may withdraw the funds tax-free.

IX. TRANSFER ON DEATH DEED

- A. You may transfer your Wisconsin real estate to a specific individual with a Transfer on Death Deed. A Transfer on Death Deed is similar to a bank account beneficiary designation, but it applies specifically to real estate.
- B. A Transfer on Death Deed does not transfer interest in real estate at the time the deed is executed and recorded. The transfer to the beneficiary on the deed only becomes effective when the owner of the real estate dies.
- C. Unlike a life estate, the Transfer on Death Deed can be revoked at any time prior to death of the grantor/owner. No consent of the grantee/beneficiary is required to transfer title because they do not yet own the property. If the grantor/owner sells the property, the Transfer on Death Deed automatically becomes void.
- D. You may name multiple beneficiaries on a Transfer on Death Deed for your real estate. However, you should be mindful of the risks associated with naming multiple beneficiaries.

X. MARITAL PROPERTY AGREEMENTS

- A. A marital property agreement makes sure that your assets are classified according to Wisconsin Statutes so that your assets transfer properly at your passing. Wisconsin is a marital property state, meaning that it treats assets as marital versus husband's assets and wife's asset as most states do.
- B. Assets are classified as survivorship marital property (residence), marital property (most assets), and individual property (inheritance, life insurance on your own life, and individual retirement accounts).
- C. Classification of an asset is different than title of an asset. For example, a bank account is titled in wife's name only, but it is classified as a marital asset. Meaning that the husband actually owns one-half of the account.
- D. A marital property agreement will make sure that there is not a probate administration upon the passing of the first spouse.

POWERS OF ATTORNEY

PRESENTER: ATTORNEY ROSS SLOVENSKY

I. POWERS OF ATTORNEY

- A. A power of attorney lets you choose, while you are healthy and competent, who will handle your affairs if you cannot. You are the “principal.” The person you choose is your “agent.” Your agent steps into your shoes, but only for the matters the document covers.
- B. Your estate plan includes three of these documents: a Durable General Power of Attorney for your finances, a Health Care Power of Attorney for your medical decisions, and a HIPAA Authorization that lets your agents and family access your medical information.
- C. Wisconsin does not have a “family consent” law. Your spouse, your adult children, and your parents have no automatic right to make financial or medical decisions for you. Without these documents, the only alternative is a court guardianship, where a judge decides who is in charge of you and your money.
- D. New in 2026: If you are hospitalized, incapacitated, and have no health care power of attorney, a family member chosen by statutory priority may act as your “patient’s representative” to move you to a nursing home or assisted living facility and make related care decisions. This authority is narrow and temporary, ending if you go home, regain capacity, or a guardian or health care power of attorney is found, so it is a safety net and not a substitute for naming your own agent.

II. DURABLE GENERAL POWER OF ATTORNEY (FINANCES)

- A. Your Durable General Power of Attorney authorizes your agent to manage your finances: pay your bills, deposit and write checks, file your tax returns, manage your investments and retirement accounts, buy, sell, or mortgage your real estate, and deal with insurance companies, Social Security, and Medicare.
- B. “Durable” means the document keeps working after you become incapacitated. A power of attorney that is not durable fails at exactly the moment you need it.
- C. Your document may be effective the day you sign it, or only after you are determined to be incapacitated. At Anderson O’Brien, LLP our usual approach is effective immediately for your spouse and effective upon incapacity for your alternate agents.
- D. Our standard document includes gifting authority so that your agent can continue your pattern of gifts to family and charity and can respond to planning needs if your health changes. An agent may make gifts only if the document expressly says so.

III. HEALTH CARE POWER OF ATTORNEY

- A. Your Health Care Power of Attorney authorizes your agent to make medical decisions for you when you cannot: consenting to or refusing treatment, choosing doctors and facilities, accessing your medical records, and deciding where you receive care.

- B. It takes effect only after two physicians, or one physician and one licensed advanced practice clinician, examine you and determine that you are incapacitated. Until that happens, every medical decision is yours. If you recover, the authority to decide returns to you.
- C. Your “agent” signs the document too. By signing, your “agent” accepts the role and confirms that you have talked about your wishes. The document gives your “agent” the authority to decide; it does not list your wishes. That conversation is your task, and it is the most important part of this document.
- D. Admission to a nursing home or community-based residential facility for long-term care requires a specific authorization inside the document. Our form includes it, while a hospital or clinic form may not.

IV. HIPAA AUTHORIZATION

- A. Federal privacy law prevents your doctors and hospitals from sharing your medical information with anyone you have not authorized in writing, including your spouse and children.
- B. The HIPAA Authorization lets the people you name receive your medical information and updates on your condition. It grants access to information only. It does not give anyone the power to make decisions for you.
- C. Your financial agent needs it to apply for benefits and handle insurance claims. Your family members need it to get updates from the hospital when they are not your health care agent.

V. COMMON MISTAKES

- A. Signing the hospital’s Power of Attorney Form after our law firm has drafted yours. Under Wisconsin law, a later Health Care Power of Attorney revokes the earlier one. The hospital’s form replaces the document we prepared, along with your alternate agents, your nursing home authorization, and the choices we made together. Tell the hospital you already have a Health Care Power of Attorney and give them a copy.
- B. Assuming your spouse can “just handle it.” Wisconsin has no family consent law. Without a Health Care Power of Attorney, your spouse has no more legal authority than a stranger.
- C. Expecting your “agent” to act after your death. Every power of attorney ends at death. Your “agent” cannot pay bills, sell property, or distribute assets after you die. Your personal representative or successor trustee takes over at that point.
- D. Choosing an “agent” for the wrong reason: For example, the oldest child, the one who lives closest, or the one who would be hurt if not chosen. Choose the person who is trustworthy, available, organized, and willing to follow your wishes even under pressure from other family members.

- E. Naming only one “agent,” or never updating the document after your agent dies, moves away, or you divorce. You should name at least one alternate.
- F. Assuming a bank will accept a photocopy or a decades-old document without question. Financial institutions review these documents closely and may require the original or a recent date.

VI. WHAT TO DO WITH YOUR DOCUMENTS

- A. Keep the originals where your “agent” can find them, and tell your “agent” where they are. Give each agent a copy of the document that names them.
- B. Give a copy of your Health Care Power of Attorney and HIPAA Authorization to your primary care clinic and your local hospital so they are in your chart before an emergency happens.
- C. Review your documents every three to five years and after any major life event: marriage, divorce, the death of an agent, a move, or a significant change in your health.

**GENERATIONAL LAND HOLDINGS
KEEPING FAMILY LAND FROM BECOMING A FAMILY
FEUD**

PRESENTER: ATTORNEY STEVEN THOMPSON

I. GENERATIONAL LAND HOLDINGS

Land that is going to stay in your family for a long time (many generations) needs special planning.

II. GENERATIONAL PLANNING IS IMPORTANT IF:

- A. More than one person will receive the land
- B. The land is emotionally significant. i.e., “worth” more than its fair market value.
- C. If you want to restrict the use of the land in a way that your heirs might not otherwise desire.
- D. Most common for cabins, farms, and hunting land.

III. THE “DEFAULT”: TENANCY IN COMMON

- A. “Default” here assumes you have at least taken steps to get ownership to the right people.
- B. Ownership with multiple unmarried people is held as “Tenants in Common” unless specified to the contrary.
- C. Each owner holds their percentage independently, can use the property without contribution and can transfer their interest freely.
- D. Tenancy in Common is not a democracy – no voting on decisions.
- E. Co-owners can force “partition”, often ending in a court-ordered sale.

IV. LESS COMMON: JOINT TENANTS

- A. Wisconsin law assumes silence means Tenants in Common, but Joint Tenancy can be specified.
- B. The owners hold “identical undivided shares” of the property.
- C. Two people do not each own “50%” – they each own all of it.
- D. Other owners do not “get” a deceased’s share, but they no longer own it “with” the other – so effectively “Last Man Standing.”
- E. If five kids are named joint owners, whoever lives longest likely has their family receiving 100% of it in the long run.
- F. Disputes still often end in partition.

V. PARTITION

- A. A co-owner may state the owners cannot agree on use and ask a court to divide real estate among them or order its sale and division of proceeds.
- B. Partition in kind: The property is physically divided among the co-owners. This is rare – most property is too unique to just “cut into X equal slices” – structures, road access, views, waterfront, etc.
- C. Partition by sale: If a fair physical division is impractical, a court may order the property sold and the proceeds distributed according to ownership interests.
- D. Forced judicial sales rarely get close to market value for the land – when this is inevitable, our firm typically recommends cooperation with a voluntary sale to avoid it.

VI. FAMILY DISPUTE EXAMPLES:

- A. Part Owner allows their unemployed drug using child to move in and not pay rent. Child has permission from an owner to be there – difficult to get rid of.
- B. Part Owner dies and interest goes to their estranged child who is non-responsive to messages, does not contribute towards expenses but whose signature is now required to do almost anything with the property.
- C. Part Owner starts remodeling without permission or input from others.
- D. Part Owner moves in full time and starts making others using it feel unwelcome.
- E. Part owner is getting divorced and family farm is a divisible asset.
- F. Part Owner rents the property to others without sharing the income or taking steps to adequately protect property.
- G. Siblings share ownership of farmland but only one owns the Operational Entity that does the farming. Dispute over fair value of land rent.
- H. Solar Development offers to buy land; owners cannot agree on whether to cash out or keep land in family.
- I. Family Cabin has turned into one owner’s weekend party house and its constantly being trashed.
- J. Part owner demands to be bought out for exorbitant amount because they know the threat of judicial sale in partition will force siblings' hands.

VII. PLANNING OPTIONS

- A. Trust the kids will “figure it out” – risky but low effort.
- B. Leave sale or share funding instructions in a Will or Trust.
- C. Easements/Restrictive Covenants.
- D. Tenancy in Common Agreements.
- E. Limited Liability Company.

VIII. SALE/FUNDING INSTRUCTIONS IN DOCUMENTS

Rather than just stating the property gets divided among kids, specify:

- A. Whether the personal representative or trustee should sell the property and split the money or distribute the land outright.
- B. Whether to offer to sell the land to one of the kids, and how to deal with multiple interested parties.
- C. Direct the property to be made part of one of the kid’s shares (with other kids receiving more in other assets).
- D. Sales or allocations to kids should describe how to set the price – best offer, by appraisal, deliberately below market rates?
- E. This method works best if only one will receive it – does not address long term shared ownership issues.

IX. RESTRICTING USE: CONSERVATION EASEMENT

- A. An easement is a right held by a party other than an owner over land.
- B. Conservation easements are permanent restriction on development, held by a land trust or government entity.
- C. Locks in the intent at the time of the grant.
- D. Devalues land and means the kids cannot sell out to a developer when they inherit it.
- E. May produce a tax deduction, but the IRS scrutinizes these claims.

X. PRESERVING USE: RECREATIONAL EASEMENT

- A. Rather than giving a Land Trust a right to prevent development of a property, rights can be granted to certain individuals to ensure their access to certain land.
- B. A Recreational Easement can be drafted to cover (or exclude) things like motor sports, hunting, camping etc.
- C. Even if the land goes to one child or is sold to third parties, the easement holder retains those rights.
- D. Fairly uncommon, but occasionally this is the right tool.

XI. TENANCY IN COMMON AGREEMENTS

- A. The traditional method of governing multi-party ownership of real estate.
- B. Written agreement recorded on the property records and attaches to the ownership of the land. Ownership rights become “subject to” the recorded rules.
- C. Can establish rules for contributions, decision making, waiving partition, transfer procedures, etc.
- D. Is a publicly recorded document and can be difficult to amend.
- E. Has largely been replaced with the Family LLC structure which will be described next.

XII. THE “FAMILY LLC”

- A. A Limited Liability Company is formed, and the Land is contributed into it. This can be set up during life and transferred at death or set up after death according to instructions in a will or trust.
- B. Includes small percentages of ownership often gifted during lifetime. The kids can start “practicing” how meetings are held, votes cast etc. while you retain a majority vote.
- C. Individuals do not own the land – they own an interest in the Company that owns the land.
- D. Ownership by the LLC is public, but the terms of the agreement are private.
- E. “Operating Agreement” creates clear enforceable rules for all the issues that plague Tenancy in Common. This planning tool typically covers governance, financials, transfers, and use rights.

- F. Ownership transfers of LLC interests are be easier to track and administer than changing the deeded title for every change.
- G. As a legally distinct entity, the LLC can establish its own bank accounts and enter into contracts itself rather than everything through individual owners seeking contributions and refunds.
- H. Owners have limited liability to help shield them from personal financial responsibility if the property is the source of a lawsuit.

XIII. OPERATING AGREEMENT

A. Governance

- 1. How decisions are made (vs. free for all tenancy in common).
- 2. Typically imposes a majority vote arrangement. Sometimes names “Managers” to oversee making day-to-day decisions.
- 3. Some big decisions should require higher vote thresholds. Supermajority votes can also be used as hurdles to enforce your desires with the property (i.e. unanimous consent is required to sell to a third party).
- 4. Your planning needs to “think” multi-generationally. If you start with three kids make structure work for two generations later when there are 10 owners.

B. Financials

- 1. For Land that produces profit (i.e. productive farmland), discuss how that profit is to be shared, invested or spent.
- 2. Consider minimally requiring that if any tax burden will pass through to a member because they own some of the Company, that the Company at least distribute enough money to cover the tax.
- 3. For Land that costs money to maintain (i.e. most family Cabins), include rules about assessing fees to Members to cover maintenance, insurance and property taxes and the less frequent larger expenses/upgrades.
- 4. Rules should clarify what non-payment means (loss of rights, expulsion, etc.)

C. Transfers

- 1. Rules can restrict who is allowed to be an owner. Typically limited to family (consider blood relatives or allowing adoptions).
- 2. Address the issue of a spouse’s rights to the Property.

3. Include terms for rights of first refusal, forced sales, “put” rights (essentially a forced purchase).
4. The price and method of payment set in advance instead of argued over.
5. These provisions control and use of partition is prohibited.

D. Use of Land

1. Establish fair procedures to share the use of a limited resource.
2. Rules for hunting limited acreage.
3. Rules for rotating weekend and holiday use of lake cabin.
4. Rules for maintenance, cleaning, and storage expectations.
5. For property rented to an owner, a lease with rules for how votes to renew/amend the lease are handled.

LONG-TERM CARE COSTS

PRESENTER: ATTORNEY KATHERINE YOUNG

I. MEDICAL ASSISTANCE LAW

A. What is Medical Assistance?

Medical Assistance (M.A.) or Medicaid is a health care program for lower income and disabled individuals.

B. Objectives

1. Provide payments for M.A. to low-income persons who are age 65 or older, blind, disabled, or members of families with dependent children or qualified pregnant women or children.
2. Designed to pay for skilled nursing facility expenses and other medical expenses for individuals who have minimal assets and inadequate income to pay for these expenses. M.A. supplements the individual's own payments.

C. Medical Assistance, Marital Property, and Tax Law

Medical Assistance law, marital property law, and tax law are not consistent, so it is important to understand how the different laws interact.

D. Married Couples

For married couples where one spouse resides in a nursing home and needs M.A., there are income and asset protections for the spouse still living in the community.

II. ELIGIBILITY REQUIREMENTS AND SPOUSAL PROTECTIONS

A. Non-Financial Eligibility Requirements

1. U.S. citizen or qualifying immigrant.
2. Age (65 or older), blind or disabled.

B. Financial Eligibility Requirements

1. Income Test

- (a) "Categorically Needy." Receipt of Supplemental Security Income (SSI), or income below the SSI federal benefit rate, will qualify an individual for the program.
- (b) "Medically Needy." Non-institutionalized individuals with income above the SSI federal benefit rate, but whose excess income is consumed by medical costs, and institutionalized individuals whose income is lower than the monthly private pay rate at the institution qualify for the program.

2. Asset Test

- (c) An individual cannot retain more than \$2,000 in “countable assets,” plus certain exempt assets.
- (d) The total countable assets are determined as of the earlier of the first date of institutionalization or hospitalization for more than thirty days or the date the person was first determined functionally eligible for the Home and Community-Based Waivers program.
- (e) “Exempt assets” include a vehicle, personal property, certain pre-paid funeral arrangements and life insurance if the death benefit is less than \$1,500.
- (f) If an individual applying for M.A. is married to a spouse still living at home, there are certain “spousal impoverishment protections” for the non-institutionalized spouse, who is referred to as the “Community Spouse.”

C. Spousal Impoverishment Protections

A Community Spouse can retain certain assets in addition to the exempt assets listed above, as follows:

1. Community Spouse Resource Allowance (“CSRA”). This is the value of countable assets the Community Spouse is allowed to keep, determined as follows:
 - (g) If the couple’s combined countable (nonexempt) assets are \$100,000 or less, the Community Spouse may retain up to \$50,000.
 - (h) If the couple’s combined countable (nonexempt) assets are between \$100,000 and \$325,320, the Community Spouse may retain one-half of the countable assets.
 - (i) If the couple’s combined countable (nonexempt) assets are greater than \$325,320, the Community Spouse may retain \$162,660.
 - (j) These amounts are adjusted annually.
2. Additional Exempt Assets. Apart from the CSRA and in addition to the other exempt assets described above, the Community Spouse is allowed to retain the homestead and retirement assets in his or her name.

D. Treatment of Income

1. Income Rules for Single Individuals

All of the individual’s monthly income must be applied to the cost of care, with the following exceptions:

- (a) \$45 personal needs allowance;

- (b) Monthly cost of supplemental health insurance (this includes Medicare Supplement and Medicare Prescription Drug insurance premiums); and
- (c) Certain non-MA-covered medical expenses.

2. Income Rules for Married Individuals

As part of the spousal impoverishment protections, income in the name of one spouse alone is counted as his or her own income, and the Community Spouse generally will not be required to contribute his or her own income to the institutionalized spouse's cost of care. Furthermore, some of the institutionalized spouse's income may be allocated to the Community Spouse if such spouse's income does not meet the minimum level set by the program. The maximum allocation is the lesser of \$4,066.50, or \$3,606.66 plus an excess shelter allowance (shelter costs that are greater than \$1,082.00). These amounts are adjusted annually.

III. DIVESTMENT AND TRANSFER PENALTY PROVISIONS

A. Divestment

The disposing of assets for less than fair market value.

1. If an applicant for M.A. has divested assets within the five years before they apply, a disqualification period may result.
2. The transfer of assets between spouses is not a divestment.
3. The transfer of assets from one or both spouses to children is generally considered a divestment.

B. Assets

"All income and resources of the individual or the individual's spouse, including any income or resources which the individual or such individual's spouse is entitled to but does not receive. . . ." 42 U.S.C. § 1396p(e)(1).

C. Exceptions

There are a number of exceptions to the divestment rules, but eligibility for such exceptions depends on the specific facts and circumstances of the asset transfer. Three important exceptions include:

1. The institutionalized person or his/her spouse divests homestead property to his/her: (a) spouse, (b) child who is under 21 years of age or blind or permanently and totally disabled, or who has been residing in the institutionalized person's home for at least two years immediately before the person became institutionalized, and provided care to him/her which permitted him/her to reside at home rather than in the institution, or (c) sibling who was residing in the

institutionalized person's home for at least one year immediately before the date the person became institutionalized and has a verified equity interest in the home.

2. The institutionalized person or his/her spouse divests a non-homestead asset or assets to their spouse or a child of any age of either spouse who is either blind or permanently and totally disabled or both.
3. Income or assets determined to be exempt (except homestead property) are not subject to divestment rules. Assets can be permanently or temporarily exempt. The transfer of temporarily exempt assets is not subject to divestment rules during the time they are exempt.

D. Look-Back Period

The look-back period is a period of time prior to application.

1. A divestment that has occurred in the look-back period or any time thereafter can cause the applicant to be ineligible for coverage.
2. The current look-back period is five years (60 months).

E. Penalty Period

1. If there was a divestment during the look-back period or any time after, and if none of the above exceptions apply, the institutionalized person must be determined ineligible for a period of time.
2. During this penalty period M.A. will not pay the institutionalized person's daily care rate in the nursing home.
3. The penalty period is calculated by dividing the total divested amount by the statewide average nursing home cost of care (currently \$352.06 per day; increases annually) in effect at the time of the application. This number is the number of days of disqualification.

F. Start of Ineligibility Period

The start date for the period of ineligibility will only begin after the person: is institutionalized or is functionally eligible for Home and Community-Based Waiver programs, has applied for M.A., and is otherwise eligible for the program.

G. Restrictions on Gifts by Spouse of Medicaid Recipient

If the spouse of a recipient gives away assets within five years after the institutionalized spouse qualifies for Medicaid, it will be considered a divestment that will cause the institutionalized spouse to lose his or her benefits.

IV. ESTATE RECOVERY

A. What is Estate Recovery?

1. Federal law requires every state to have an estate recovery program allowing for recovery of amounts paid on behalf of recipients for certain benefits, including long-term care services, hospital services, and other benefits.
2. Federal law requires states to seek reimbursement from assets that pass through the recipient's probate estate.
3. Beyond that, federal law permits states to determine whether non-probate assets may also be subject to recovery and generally allows states to set the scope of the estate recovery program.

B. Wisconsin's Estate Recovery Program

1. Wisconsin law provides that any property of a decedent that is transferred by a person who has possession of the property at the time of the decedent's death is subject to the right of the Department of Health Services (DHS) to recover the value of the decedent's interest in the property. The interest in the property or value equal to the same is to be transmitted to the DHS.
2. "Property of a decedent" includes all real and personal property to which the recipient held any legal title or in which the recipient had any legal interest immediately before death, to the extent of that title or interest, including assets transferred to a survivor, heir, or assignee through joint tenancy, tenancy in common, survivorship, life estate, revocable trust, or any other arrangement, excluding an irrevocable trust.
3. There is a presumption, which may be rebutted, that all property of a deceased surviving spouse was marital, and therefore, a deceased surviving spouse's property is also subject to these requirements.

C. Life Estates

1. While life estates were previously considered exempt from estate recovery, life estates created after August 1, 2014 are now subject to a claim by DHS upon the transfer of the property.
2. The fractional value of the claim will be based on the life estate-remainderman tables used by the DHS to value life estates.
3. The value will be determined as of the Medicaid recipient's date of death, as though he or she is still alive.

V. PLANNING OPPORTUNITIES

A. Early Planning

Since the current look-back period is five years, individuals and couples should begin the planning process early, so as to accomplish any desired gifts well before M.A. is needed.

B. Irrevocable Trusts

One way to reduce countable assets is to transfer them to a properly drafted irrevocable trust.

1. A trust is an arrangement where funds or property of a person (referred to as a "settlor") are delivered to a trustee and the trustee is to manage the funds or property for the benefit of one or more trust beneficiaries. A trust is normally in the form of a written agreement between the settlors and one or more trustees. An "irrevocable trust" is a trust created by settlors while living that may not be revoked or modified by the settlors once signed.
2. An irrevocable trust for M.A. planning is very different from another common type of trust, a "revocable" trust. A revocable trust is a trust created by a settlor while living that may be revoked or modified by the settlor at any time, acting without the consent of any other person. Revocable trusts are often used to avoid the need for a probate proceeding upon death, but do not protect the assets transferred to the trust in the event the settlor needs long-term care.
3. To protect assets for M.A. purposes, an irrevocable trust must restrict the settlor's ability to withdraw the assets once they are transferred to the trust.
4. Since the trust legally owns the assets rather than the underlying trust beneficiaries directly, the assets are protected if the trust beneficiaries experience creditor issues, divorce or other liability concerns.

C. Long-Term Care Insurance

1. As more stringent income and asset eligibility requirements continue to be put in place, long-term care insurance may be an option for some individuals to provide funds to pay for their long-term care.
2. However, due to factors such as a person's health and financial status, such insurance policies may be prohibitively expensive and are not appropriate for all individuals.
3. When considering long-term care insurance, it is important to carefully evaluate the policy and the company issuing it to determine its financial soundness and its ability to meet the individual's potential care needs.

D. Asset Spend-Down

1. One method that is often used to reduce the amount of countable assets in order to qualify for the program is to purchase assets that do not count for eligibility purposes.
2. As indicated above, certain pre-paid funeral plans are not countable, nor are a vehicle and personal property. Funds can also be used to improve non-countable assets, such as the residence if the Community Spouse resides there.

E. Contractual Payments

1. Gifts to family members may be replaced by contractual payments for services performed by family or friends.
2. Most long-term care is provided by family members, friends and neighbors.
3. However, in order to not be considered a divestment, such payments must be made pursuant to a written contract that meets certain M.A. requirements.

F. Increase the Community Spouse Resource Allowance

1. As discussed above, if a Community Spouse's income is below a certain level (the "minimum monthly maintenance needs allowance"), some or all of the institutionalized spouse's income may be allocated to that spouse to raise his or her income up to that level.
2. If that income allocation is not sufficient, then either spouse may request an increase in the community spouse resource allowance (CSRA) above the standard allowance for the purpose of protecting assets that generate income.
3. This increase can only be accomplished through a fair hearing before a state administrative law judge.
4. While the protected assets must be income producing, this planning technique can be used to shelter additional assets for a Community Spouse.

G. Planned Divestment

1. Transferring assets for less than fair market value during the look-back period may result in a period of ineligibility.
2. However, if the actual cost of the applicant's long-term care is less than the statewide average nursing home cost of care (currently \$352.06 per day) used to determine the length of the penalty period, divestment prior to applying for M.A. may result in a net benefit to the applicant.
3. This planning technique is not appropriate for everyone and is dependent on an individual's particular circumstances at the time they are considering applying for M.A. It should only be undertaken after careful consultation with a knowledgeable professional.

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