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Your Trusted Planning Advisor Through Life

**Estate & Incapacity
Planning**

- ◆ Probate & Trust Administration
- ◆ Last Will & Testament
- ◆ Revocable Trust
- ◆ Durable Power of Attorney
- ◆ Designation of Healthcare Surrogate
- ◆ Quit Claim Deed
- ◆ Living Will

Advocacy Services

- ◆ Guardianship & Guardian Advocate
- ◆ Facility Residents' Rights
- ◆ Medicaid Applications & Appeals
- ◆ Veterans Benefits Counseling

Government Assistance

- ◆ Special Needs Trusts
- ◆ Representation of Trustees
- ◆ Protecting Proceeds & Inheritances to Preserve Medicaid & SSI Eligibility
- ◆ Exceptions to Medicaid Lien Recovery

*Proper Planning
May Create Peace
of Mind*

Advance Estate & Long Term Care Planning for Domestic Partners & Same Sex Couples

It is human nature to avoid issues of illness, death and mortality. Yet, procrastination can result in fewer options or less desirable options for resolving those issues. The laws in Florida as well as the United States generally do not provide same sex and heterosexual partners with the same rights as married couples. Therefore, it is even more important that advance planning be undertaken by domestic partners.

Three major issues arise in all people's lives and at any age. They are: (A) obtaining the best possible health insurance coverage (including prescription coverage), (B) developing a plan that allows a selected person to make medical and financial decisions in the event of a person's incapacity, and (C) properly planning one's estate. It is important that domestic partners be educated about their options to maximize available resources and benefits by:

1. **Ensuring that the domestic partner has legal authority as the Designated Health Care Surrogate to Make the Other Partner's Medical Decisions During Incapacity.**

Designating the domestic partner as the health care surrogate maintains privacy, avoids legal guardianship or the need for a health care proxy. It assures the ill person that their partner will make their medical decisions if they are incapacitated and cannot give informed consent.

2. **Assuring that the domestic partner has legal authority as agent under a Durable Power of Attorney.** Designating the domestic partner as the agent to make financial decisions in the event of the other partner's incapacity maintains privacy, avoids legal guardianship, and assures the ill partner that their partner will administer their assets and investment plan.

3. **Assuring that both domestic partners have taken advantage of all possible benefits available by purchasing long term care insurance offered through employment.** Many people underestimate the risk of becoming unable to care for themselves and have misconceptions about who will pay for their medical expenses. Long term care insurance can provide the option of having care and services provided in their home. It can help individuals avoid exhausting their retirement assets or personal savings. The domestic partner may be considered as "family" of the employee and therefore eligible for coverage. This is extremely beneficial from a financial perspective.

4. **Assuring that both domestic partners maximize health care benefits available under both employees' health plans, where permitted.** Some privately owned companies offer health care benefits to domestic partners of employees. Employee contracts and/or company policies should be carefully reviewed in order to fully understand the scope and limitations of those benefits, as well as enrollment requirements. It may be possible for a

domestic partner to be enrolled in a partner's group health insurance plan and have it serve as a secondary source of coverage.

5. **Ensure that you have taken advantage by arranging maximum benefits available under employee benefit packages prior to retirement.** Most private retirement packages permit the employee to designate a beneficiary of their choosing for benefits such as life insurance, IRA's, 401(k) plans. They may also permit the naming of a survivor (other than a spouse) to receive retirement income. With certain government sponsored plans there may or may not be limitations on whether the named survivor must have a legal recognized marital relationship to the employee in order to be entitled to receive retirement income.
6. **Ensure that your estate is organized by a properly drafted estate plan that protects the surviving partner.** An estate plan must be created and specifically identify what property is left to the surviving partner. Florida laws that govern an estate when a person dies without a Last Will & Testament provide for distribution of assets to family and not to a significant other, friend or, domestic partner. If the partners have shared in the purchase and maintenance of the home then each should have an ownership interest reflected in the deed. If only one partner owns the home but wants to provide the other partner with the right to live there or, an ownership interest, then it needs to be designated in the Will or trust document.

Advance planning provides individuals with choices and promotes independent decision-making. Since no one can predict what our future needs may be, we all need to develop a plan that will provide us with as many options as possible. Working together, medical and legal professionals can effectively provide expert guidance to empower people we serve to create solutions that fulfill their needs.

*Stephanie L. Schneider is a Board Certified Elder Law Attorney in Plantation, Florida.
In addition to providing elder law services to our clients, Stephanie conducts onsite educational seminars that support the healthcare professional. Ms. Schneider can be contacted at 954-382-1997 or sschneider@fl-elderlaw.com. Visit our website at www.fl-elderlaw.com.*