

Attorney Timothy P. Crawford, CPA, CELA*, CAP**
wanted to share this information with you.

I Do, But I Don't -Modifying Estate Plans in the Face of Catastrophic Illness

GREATER MILWAUKEE AREA OFFICES IN BROOKFIELD, GLENDALE, MILWAUKEE, OAK CREEK & RACINE

Your Asset Protection Law Firm

840 Lake Avenue, Suite 200
Racine, WI 53403
(262) 634-6659

E-mail: tpc@execpc.com
Website: www.TpcLaw.com

By far, the most popular estate plan that I draft is what I refer to as the "I Love You" plan. Husband executes a will leaving everything to wife. Wife executes a will leaving everything to husband. Everything is left to children in equal shares when both parents die. For good measure, we title the assets jointly with right of survivorship (house, bank accounts, stocks, bonds) or designate the spouse as beneficiary (IRA's, life insurance, annuities) so that there isn't even a probate estate when the first spouse dies. Simple, effective and so popular that the "I Love You" plan is the one chosen by Wisconsin's descent and distribution statute for those who never got around to writing a will. Why is this plan so popular? It's because that is what most people want.

The problem comes when one spouse becomes ill or debilitated to the point he cannot care for himself. The spouse may become so ill as to require nursing home care now or in the future, especially if the caregiver spouse passes away first. Then, the "I Love You" plan becomes the worst of all possible plans because leaving everything to the ill spouse, in essence, means leaving everything to the nursing home to pay for the spouse's care. Planning ahead is essential to protect assets for the family.

Even more important than a will, which distributes assets at death, each spouse should execute health care and financial powers of attorney. These documents, prepared when both spouses are competent, appoint someone (usually the husband or wife with a child named as backup) to direct medical care and manage finances when an individual loses capacity.

In planning for potential nursing home placement, it is important to give the financial agent the power to transfer assets within the rules of Medicaid. With such a document, assets can be moved into the name of the healthy spouse as required for Medicaid qualification. To qualify for Medicaid, a nursing home patient can keep only \$2,000 in countable assets. This is usually kept in the checking account where the patient's pension

and Social Security checks are deposited. The healthy spouse may keep considerably more countable assets (with a minimum of \$52,000 and a maximum of \$_____ in 2008). These assets should be placed in the name of the healthy spouse alone “payable on death” to the children.

In Wisconsin an additional document needs to be signed by husband and wife to make sure that at wife’s death, the husband does not need to go off of government benefits.

Planning also needs to be done to protect the home.

It seems only natural for most married couples to establish an “I Love You” estate plan, but the financial burdens of a catastrophic illness can quickly change both our lives and the type of will we need. Be prepared. Review your estate plan with your attorney every two to five years and whenever you have a major life change such as a birth, death, divorce, major illness or disability in the family. It’s the best way to say, “I Love You”.

**“Those Who Plan Ahead Win.
Those Who Don’t Plan Ahead Lose.”**

This article is for informational purpose only and is not intended as legal advice. It is recommended that you call Timothy P. Crawford for a free conference to discuss your situation in more detail. Attorney Crawford can be reached at 1-262-634-6659. Please refer to this article when you call.

*Attorney Timothy P. Crawford is a Nationally Board Certified Elder Law Attorney (CELA). He has been Board Certified by the National Elder Law Foundation which has been approved as the Sole Certifying Organization for Elder Law Attorneys by the American Bar Association.

**Timothy P. Crawford was invited to join the Council of Advanced Practitioners (CAP) of the National Academy of Elder Law Attorneys (NAELA) in August of 2005. CAP is a small group of premier elder law attorneys, all of whom have been members of NAELA for at least 10 years, are certified as elder law attorneys by the National Elder Law Foundation, and are AV rated by Martindale Hubbell, a service that provides an independent rating of the quality of attorneys, as one of the top attorneys in the nation.

Attorney Timothy P. Crawford has been selected as a **Fellow** of NAELA. **Fellow** is the highest honor bestowed by the Academy. Selection as a **Fellow** signifies that his peers recognize the lawyer as a model for others and as an exceptional lawyer and leader.

Attorney Timothy P. Crawford has a superb rating of 10 out of 10 with A V V O.

A V V O has awarded to Attorney Timothy P. Crawford the A V V O Client’s Choice Award.

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