

# legal lines

from  
MOORE, SUSLER, MCNUTT & WRIGLEY  
Lawyers

## Health Care...An Opinion

Are you sick of hearing about health care? It seems that every newspaper or magazine article, or radio or television show that's not focused on Baseball, the Bulls or the Budget is about our bodies. From what we should and should not eat to things we should and should not do, there's no shortage of advice out there—and, yes, often contradictory.

But should we just tune out and go our own maybe-not-so-merry ways? The 1995 White House Conference on Aging (and aging isn't a respecter of age. We do it all life long) answered with a resounding NO. Wellness and Prevention were high-priority Resolutions coming out of the Conference. Observing statistics that we are living longer, the delegates concluded that, if we're going to live longer, we ought to live better, with better health.

Of course nobody comes with a lifetime guarantee of good health. Living by the best health rules doesn't always protect us from life-threatening (even terminating) illness or injury. But, healthful living certainly doesn't hurt! Preventive maintenance is just as good for our bodies as it is for our automobiles or our estate plans. Routine medical and dental check-ups may identify problems while they are easily and economically correctable.

But we shouldn't just passively leave it all in the doctor's hands. We need to be pro-active patients. Listen to your body and when you do see your primary care physician, tell him or her what you've heard. Form a partnership with your doctor. That will be the **best** Health Maintenance Organization. There is a good, easy-reading booklet out called "Talking

with your Doctor." It's a good way to learn more about how to help your doctor help you. Copies will be available at our April 26th seminar mentioned elsewhere in this LegalLines.

Regrettably there is no similar book about talking to your lawyer, but much of the advice in the doctor book is applicable to the client/lawyer relationship, too.

So, while our government seems uncontrollably stalemated as to Medicare, Medicaid and long-term care, the **best** care may be **self-care**. Even if you have already had a relapse from a New Year's resolution to stop or start this or that, don't despair. If you are reading this, it's not too late to renew your resolve. To paraphrase an old song "Take good care of yourself—you belong to YOU."

## Living Trusts...We Have the Answers

As you get your affairs shipshape so you can take that cruise or set sail for some other life adventure, you may want to consider the living trust if you do not already have one.

Here are some questions and answers we have developed as a way to steer you on the right course.

### **Just what is a Revocable Living Trust, and what can it do?**

1. As the first word "Revocable" suggests, you can revoke it at any time, altogether or merely changing certain provisions. Likewise, you can remove assets from your trust or add assets to it at any time.

2. It takes effect while you are **living**, and, of course, it is a **trust**. That means there will be a trustee, but to start off at least you can be your own trustee. Regardless of who is acting as trustee, the trustee's duties normally will be to manage your property in the trust for your health, comfort and welfare.

3. The trust can also provide for similar care of other persons in whom you are interested, either at the same time, or after your death. A husband and wife may be more comfortable with a single joint and survivor trust.

4. Finally, your trust can direct the distribution of your remaining property after death (or after the termination of the trust continuing for the benefit of any other person for whom you may wish it to be extended) to such beneficiaries as you name in the trust.

5. The trust must spell out the circumstances under which the successor trustee is to take the reins, either because **you** no longer want to be trustee, or should not be. The latter can be the decision of other named family members and your physician jointly.

6. While an individual may act as your successor trustee, this can, depending upon your assets and needs, become a rather substantial and continuing burden, for which a bank is better equipped and suited to serve.

### ***If I put all of my property in a revocable living trust, do I still need to have a Will?***

Yes, you probably should still have a Will. In this case it is called a "pour over" Will, because it serves to gather together any property which happens not to be in the Trust at the time of your death, and pour it over into your trust.

### ***What are the advantages of a Revocable Living Trust over just having a Will?***

1. Probably the greatest advantage is that as its name implies, the Living Trust can do something for you during your lifetime. Should you become physically or mentally disabled, or just not want to take care of your own business anymore, the successor trustee you have named will be able to do these things for your benefit, expressly as you have directed, rather than to subject your property to the expensive, and often embarrassing, State controlled authority and public knowledge of a court guardianship.

Continued

2. The trust avoids the probate of your estate upon death if properly drafted and implemented. Not only could this save court costs, executors fees and some attorneys fees, but it would mean that your estate administration would be private, not becoming a part of the public records in the Courthouse. If your heirship would be very complex (such as where there is no surviving spouse, children or grandchildren), the trust will avoid the need to notify heirs you do not desire to benefit from your property.

### **Is a Living Trust costly?**

1. It will be more expensive in start up costs than simply the planning, drafting and execution of a Will. There are two reasons for this. First, you would be making a present transfer of your assets to the Trust, whereas the Will is only intended to take effect at your death. Second, the Living Trust will provide for your care during lifetime, an important function which is no part of a Will. Unlike a trustee, your executor does not act until your death. Start up costs will vary, depending upon the complexity of your assets and of your desires for use and gifting of your property.

2. When you are not acting as your own trustee, the trust may incur expenses for trustee's fees, and certainly will in the event a bank is acting as trustee, since that is one of the services for which banks are in business. It is frequently said by banks, and can be the case, that trustee's fees will more than be made up by their professional investment practices.

3. The start-up expenses saved by avoiding a living trust could quickly be lost should a Court guardianship be needed by reason of your physical or mental infirmity. Also, as stated above, some expenses involved with probate

proceedings could be saved or reduced if all, or nearly all, of your assets are in a living trust.

### **What effect does the revocable living trust have on my tax picture?**

1. Virtually none. It has neither advantage nor disadvantage as far as your income tax liability or the Federal Estate or Illinois Estate Tax liability of your estate may be concerned. Incidentally, there is no longer an Illinois inheritance tax and no Illinois Estate Tax unless a Federal Estate Tax Return is necessary and tax due. A Federal Return would not normally be due, unless your taxable assets exceed \$600,000 and no tax-incurring gifts had been made during your lifetime.

2. The trust's income will still be treated as your income, taxable to you. There will be an additional step to your income tax returns only when you are not acting as your own trustee. In that event, the trustee will prepare a Fiduciary income tax return, both Federal and State, in addition to your individual tax returns; however, normally no additional tax results.

3. For estate tax purposes, the trust assets are still a part of your taxable estate. You can, with the trust as with a Will, take advantage of any available marital or charitable deductions and make maximum use of the unified credit against estate tax.

Living trusts are not for everyone, but they can serve more effectively and economically a number of life and estate planning needs. Properly drafted and funded they can care for you and your loved ones during disability, provide for minor beneficiaries, avoid probate and take advantage of estate tax saving techniques.

## **The Ultimate Recycling**

When discussing health care powers of attorney with clients, the subject of organ and body donations comes up. The agent, of course, should know the principal's wishes about such things. If the question is put to one who has been a long time inhabitant of the planet, the answer often comes back "Oh, my organs are all just about used up."

Well, it turns out that just isn't a good enough excuse. Whole bodies are always useful as cadavers in medical schools and unless damaged through eye-surgery, our corneas are transplantable, regardless of age. Even other vital organs and tissues of very mature adults may be appropriate for transplant harvesting.

As of a year ago, 40,000 people nationwide and over 2,000 in Illinois alone awaited some organ vital to their continuing life. It is a sad fact that the demand for transplantable organs and tissue far exceeds the supply.

How important this need is viewed to be, is attested by the fact all fifty states and the District of Columbia have adopted the Unified Anatomical Gift Act. Under this act a donor 18 years of age or older or the donor's next of kin may make such a gift. You can do it by will, or your driver's license, by a donor card, or a combination of these. Key, though, is the understanding of your relatives. They can scotch your plans if they don't agree.

What a way to exit; giving another person the chance for continued life! If you're interested, more information is available through the Regional Organ Bank of Illinois, 1-800-545-4438.

### **Founding Partnership: Denz & Buckner**

Refurbished portraits of the founding partners, Raymond E. Denz and Edward Buckner, are prominently displayed in our entry foyer. We trace our partnership's beginning to the original firm of Denz & Buckner, formed out of the friendship of these two gentlemen, who were both graduates of Harvard Law School. Their partnership lasted from 1923 to the death of Mr. Buckner in 1948. Mr. Denz continued to practice law in Decatur until his death in 1981. Mr. Lowe, now deceased, practiced with the firm from about 1951 until his retirement in 1988. His portrait is also displayed.

Moore, Susler, McNutt & Wrigley  
3071 North Water Street  
Decatur, IL 62526  
(217) 872-1600

Vol. I, Issue 8 - April 1997

*This publication is distributed with the understanding that neither any author nor the law firm is rendering legal or other professional advice or opinions on specific facts or matters, and accordingly neither assumes any liability whatsoever in connection with its use.*

© Copyright, 1997