

**Estate and Related Planning
for Clients Living with Cancer**

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A KEY ESTATE
PLANNING GUIDE

ChronicIllnessPlanning.org

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**Estate and Related Planning
for Clients Living with Cancer**

Introduction

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Planning is Difficult, But Important

- A cancer diagnosis alters health and life itself.
- For survivors a fear of recurrence can be immobilizing, for others survival is all that may be sought.
- Cancer impacts not just the patient but the entire family and other loved ones.
- Financial security may be affected dramatically, or even destroyed.
- Recognizing these incredible challenges, this program will endeavor to educate both the cancer patient and family/loved ones on steps that can be taken to preserve or gain control over the aspects of life subsumed under the moniker "estate planning." This work is important to address, but in no way intended to minimize the many much greater challenges.

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What are estate and financial planning?

- The process of providing peace of mind for you and your loved ones (however you define the term).
- It should address both the issues you may face while you're alive, before and after retirement, and those that might occur after your death, and even during the later lives of your loved ones.
- It is an integrated plan that coordinates your investments, insurance, emergency and disability planning, retirement and other needs.
- Define what "estate planning" means to you.

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What is different about estate and financial planning if you or a loved one are dealing with Cancer?

- Similar to the process as planning for everyone, but tailored to fit your client's post-cancer diagnosis circumstances.
- It may require addressing difficult issues, or even impossible issues, but addressing them to the extent feasible, will keep your client in more control and assure a better result.
- Your client likely needs an integrated plan that coordinates your investments, insurance, emergency and disability planning, retirement and other needs, and legal documents, with each component modified as required.
- "Cancer" covers a very wide spectrum, so what is appropriate for your client's circumstances must be the focus. Different diagnoses require different planning.
- Define what "estate planning" means to your client in light of living with the challenges of cancer.

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Estate and Related Planning for Clients Living with Cancer

Steps to Consider

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Cancer Impact on Client

- The emotional impact can be dramatic and may make it difficult for the client to consider, let alone actually address, any type of planning.
- This is particularly problematic because the most important time for the client to plan may be at the point he is diagnosed. Later, there may not be time for those difficult (physically, emotionally and otherwise) conversations.
- Will the client's health insurance cover most or only some of these costs?
- Who will assist the client with the paperwork, forms, insurance submissions and other documentation? Can the client afford a care manager to assist? Even if the client can afford a care manager, will the client hire one? Will a spouse or other family caregiver be willing to permit a care manager to assist, or will he view it as his responsibility or domain to handle these matters?
- Practitioners need to be empathetic about the myriad of new and often difficult circumstances the client with cancer is grappling with.

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Introduction

- Every client is unique – it has to be the specific client's plan and address that client's cancer challenges and how that particular client, and family and other loved ones respond.
- Reflect the client's personal wishes and circumstances.
- Create a strong foundation of documents, steps and a plan, to build upon.
- Consider involving a care manager (social worker or other mental health professional) if one is not involved. If a social worker or similar professional is already on the client's medical team see if it is feasible to coordinate and collaborate with that professional.
- The emotional aspects of planning will be difficult as would be expected, so plan accordingly.

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Phase the Planning Process

- Educate the client that planning is a **process**, not merely signing a document. Understand that given the health and financial challenges most clients who have received a cancer diagnosis face there may be a desire by them to sign a document and "get it over with."
- Divide the planning and implementation process into phases or steps that are digestible for the particular client.
- Each phase or step will have to be tailored to the particular client's circumstances and time frame. The time frame may be dictated by your client's disease course. If your client has been diagnosed with acute Leukemia and has a short time span of anticipated life expectancy you need to accelerate the process in terms of both calendar time and the imposition on your client's limited energy and abilities. In other cases the client may have a strong anticipation of recovery, or at least a long anticipated time frame.
- You will require input from the client about the diagnosis to address the above.

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Before the First Meeting

- Gather information.
- Explain to the client the merits of a collaborative team approach and help the client coordinate existing advisers and select new advisers as necessary. Given the challenges the client faces, a coordinated team is vital:
 - Attorney.
 - CPA.
 - Investment advisor or financial planner.
 - Insurance consultant.
 - Care manager or counselor.
- Which advisers may be helpful to include in the initial meeting? This may depend on the time frame, size of the estate, complexity, etc.
- Educate the client about the planning process.

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Factors to Consider

- Cancer affects every aspect of estate, financial and related planning for your client. This will make the process even more difficult and challenging, especially when coupled with the challenges of the cancer diagnosis.
- You must understand your client's circumstances to be able to properly guide your client and to meet the client's needs and expectations.
- You must understand the symptoms, disease course, and variability between diseases/conditions among those affected.
- You have to be proactive – if the client is emotionally traumatized, overwhelmed by medical protocols, dealing with a range of family issues triggered (or existing issues exacerbated) by the cancer diagnosis, a proactive adviser will achieve more.

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Cancer Challenges are Common: General Stats

- 1 in 2 men will develop cancer in their lifetime and 1 in 4 men will die from cancer.
- 1 in 3 women will develop cancer in their lifetime and 1 in 5 women will die from cancer.
- Around 1.7M new cancer cases will be diagnosed in 2017.
- Around 600,920 Americans are expected to die from cancer in 2017. That translates to 1,650 people per day.
- Still, we've seen a 23% decline in cancer death rates since 1991.
- There are more than 15.5 Million survivors alive today.
- Nearly half (46%) of all cancer survivors are 70 years or older.

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Cancer Challenges are Common: Disease Stats

10 Most Common Cancers Diagnosed each Year:

- Non-melanoma skin cancer. 5.4 million new diagnosed cancers every year.
- Lung cancer. 220,000 people. Two primary types: small cell and non-small cell. Lung cancer claims nearly 155,870 lives annually.
- Breast cancer. The most common cancer in women. Invasive breast cancer: 255,180; non-invasive (in situ): 63,410.
- Prostate cancer. 161,360 people. The most common cancer in men, most over age 50.
- Colorectal cancer. 135,000 people.
- Bladder cancer. 79,030 people.
- Melanoma. 87,110 invasive; 74,680 non-invasive (in situ) people.
- Non-Hodgkin lymphoma. 72,240 people.
- Kidney cancer. 63,990 people. Mainly people over 40, but one type of kidney tumor usually affects young children.
- Leukemia. 62,130 people. It affects both adults and children, and kills more children under age 20 than any other cancer.

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Example: What Information to Seek from a Client with a Cancer Diagnosis

- What cancer diagnosis do you have? What stage? Is it advanced? Is it localized?
- What is the time frame so they can understand how urgent planning might be, or whether there is sufficient time to plan with less pressure.
- What is your prognosis? What is the anticipated disease course and treatment? This can be difficult as some patients do not assimilate information from their physicians or are uncomfortable. This information, even if difficult, can be essential for you to plan.
- What are the likely consequences of the treatments? What are side effects? Will it impact your ability to function? Will treatments affect cognition?
- What is the anticipated financial costs of the treatment course? What insurance coverage do you have and how much of the costs might it cover or not? Some treatments are so costly that the phrase "financial toxicity" has been used to describe the consequences. Have you discussed costs of care with your medical professionals?
- Having tough conversations with your financial and legal advisers may be essential to your getting the help you need.

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Plan Flexibly - Circumstances Change

- For most of those with prostate cancer or breast cancer survival for many years after diagnosis is likely. So financial and estate planning for the long term may be critical.
- Those with pancreatic cancer may only survive less than a year after diagnosis, so financial and estate planning on an urgent basis is critical. Planning must address your client's realities, not generalizations.
- Be flexible, someone with metastatic melanoma might nonetheless do well and survive for years so you have to plan for the continuum of eventualities, not only for the likely prognosis.
- Sometimes bad situations turn out better than anticipated.
- Sometimes situations that do not seem as bad, turn out worse than anticipated.

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If Your Client Can No Longer Sign Legal Documents

- If cancer has progressed, or the side effects of treatment are so impactful (e.g., pain control impacts decision processes) to the point where the client no longer has legal ability (capacity) to sign documents review existing documents for options.
- Your client's agent might be able to use an existing power of attorney to change ownership (title) to assets, make gifts and take other actions to improve or correct existing planning.
- The successor trustee under a revocable trust may be able to take actions under that instrument.
- Trust protectors under revocable or irrevocable trusts might be able to effectuate desirable plan modifications.
- If there are irrevocable trusts evaluate any powers of appointment in light of the new circumstances. For example, a lifetime limited power of appointment coupled with trust protector actions, might in aggregate be able to revise a no longer optimal plan.
- Discuss the pros/cons of a guardianship and whether it is necessary or advisable.

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Estate and Related Planning for Clients Living with Cancer

Organize

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Guide the Client to Organize Emergency, Financial, and Other Information

- Passwords and Security Codes.
 - Consider advising the client to use an app to record all this information before the fatigue, pain and other complications make memory more difficult.
- Existing estate planning documents.
 - Not only for the client but for family members in which the client might hold a power of appointment or be named in a fiduciary capacity.
- Other legal documents.
 - E.g. review buy out and disability provisions in a shareholders' agreement.
- Income and expense information; Budget or financial planning information.
 - Cancer can be ruinous financially. Have all insurance and financial options reviewed.

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Organize Emergency, Financial, Information and Advisors Information

- Medical information.
 - Oncologist and other physician contact information
 - Current health records and status. Prepare a physical binder to take to all medical and other meetings.
- Emergency contact information.
 - Names, relationships, phone numbers, email addresses and relevance or relationship to plan.
- Specific financial information.
 - Account numbers, contact person, address, phone number.

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Investment and Financial Information is Critical to Organize

- Organize, consolidate and automate to minimize or even eliminate the need to handle paperwork or physically go to a financial institution.
- Title (ownership) of Accounts:
 - Consider implementing a revocable trust as a tool to manage assets, address cognitive and fatigue issues. Perhaps name a co-trustee and permit the settlor or the co-trustee to handle routine administrative matters individually.
 - Joint accounts are assumed by many clients to suffice to manage assets during an illness. Explain the issues and better options such as a power of attorney or revocable trust.
- Account Management
 - Consolidation and simplification to ease administrative burdens.
 - Arrange for duplicate account statements to be sent to the agent under the POA as a no cost protective tool.
 - Access to safe deposit box. Consider adding a name or retitling the box into the name of an LLC with additional signers.
- Automation
 - Organizing records, e.g. Quicken.
 - On line payments – this can relieve your client of a lot of administrative work and paperwork.
 - Set up on computer so can enlarge visually/auto-read – if necessary.
 - Automatic deposits can reduce paperwork and chance for error or financial abuse during the illness.

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Financial Planning is Essential

- Budget:
 - Reflect the possibilities of the cancer diagnosis in terms of uninsured cost, lost wages, and more.
 - Core of your financial plan.
 - Foundation of insurance decisions.
 - Prerequisite to gift and other planning.
 - Will you qualify for disability insurance or Social Security payments?
- Investment allocation:
 - Time horizon (should it be adjusted for the disease course).
 - Risk level may have to change to reflect financial impact of diagnosis.
 - Coordination of all accounts.

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Cancer Impact on Financial Security

- Many factors might affect the economic impact on the client of a cancer diagnosis.
- Insurance coverage, type of policy.
- Employer coverage tends to be more generous than private policies.
- Are there out-of-pocket limits, and what are they?
- Drug costs vary greatly.
- Patient costs are front loaded.
- Timing of the diagnosis and the insurance plan year.
- What non-covered treatments might the client need or want?
- Thus, for many clients, even those who viewed themselves as wealthy, the cancer journey may necessitate rethinking budgets, revising financial forecasts, curtailing an annual gift program to children and other steps. These financial challenges may serve to exacerbate the insecurities and angst the client is already feeling.

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Durable Powers of Attorney

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Review Existing Powers; Create Appropriate New Powers

- Review all existing powers of attorney. Clients are often not aware of what they have signed, e.g. with prior lawyers, at a bank, on line, etc. Create and inventory.
- Cancel inappropriate existing powers.
- Draft an appropriate new durable power considering a range of issues and matters.
 - Who should be agent? Consider whether the person named can handle financial matters as well as new responsibilities resulting from the cancer diagnosis, e.g. care giving.
 - Consider gift provisions in light of the diagnosis and also potential major tax changes after the 2020 election. Consider authorizing the agent to make gifts to use current high temporary exemption amounts.
 - Consider authorizing gifts to fund insurance premiums historically paid in light of the Sanders proposal to limit to \$20,000/donor/year.

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Tailoring Your Power to Address Cancer Challenges

- Your client's cancer challenges, especially possible cognitive issues, affect when effective and scope of powers granted your agent.
- Consider an immediate rather than springing power to avoid the difficulties of proving incapacity if that seems like a possibility.
- Consider naming co-agents to build in safeguards and to share work.
- Help the client realistically plan for, and organize finances to, facilitate management during a hospitalization.

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Coordinate Possibly Disparate Agent/Fiduciary Appointments

- Agent under power of attorney.
- Successor trustees under revocable trust.
- Social Security Representative.
- Lapse designee under long term care insurance.
- Signers on safe deposit box.
- Agents under bank standard powers of attorney.
- FINRA contact person named on financial accounts.
- Joint account holders on financial accounts.
- For a detailed discussion of agent conflicts to address see: Shenkman & Glazier "Lack of Coordination in Estate Planning Documents & the Potential for Best Laid Plans to Go Awry," LISI Estate Planning Newsletter #2576 (August 24, 2017) at <http://www.leimbergservices.com>

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for Clients Living with Cancer**

Health Proxy

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Health Care Decisions

- Review existing health care proxies, if any, and confirm they reflect the client's current wishes.
- Even if there is an existing health care proxy, clients often create these with little thought. Now with the client facing a cancer diagnosis the client might well wish to reconsider in more detail prior decisions.
- Who is named agent and successor?
- Are the medical related powers adequate and sufficiently detailed?
- Confirm that the witnesses and notary are not heirs, etc.
- Consider authorizing the agent to move the client to a new hospital in a new state if necessary to carry out the client's wishes.
- Religious Concerns should be addressed if they were not.

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**Tailor the Health Proxy and HIPAA Release to
Address your Client Cancer Diagnosis**

- Does the agent have sufficient knowledge of the client's cancer health challenges and the decisions that might be required?
- Is the agent geographically close enough to respond to a sudden emergency?
- Do your client's medical wishes contradict religious beliefs of the agent or family that should need to address (e.g. donation of organs for cancer research)?
- Are there specific powers or rights which your client does/doesn't want the agent to have?

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for Clients Living with Cancer**

Living Will

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Living Will

- Statement of health care wishes to guide/direct the health care agent.
- Address broad array of decisions:
 - Lifestyle (nursing facility or home).
 - Health (experimental treatments/clinical trials).
 - End of life (heroic measures).
 - Other (funeral, burial, etc.).
- What some call "heroic" may be essential to a particular client.
 - If the patient is age 90 should the decisions be different than someone who is 30?
 - Your client may wish to make a decision that he or she does not wish further treatment and that decision should be respected by the agent. What does the document provide for?

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Living Will to address Client's Cancer Challenges

- Differentiate level of treatments at different stages of your client's cancer disease course.
- Carefully modify quality of life decisions to reflect issues relevant to your client's changing condition.
 - Family should endeavor to support the patient in whatever decisions he or she makes.
- Does the client wish to mandate donation organs or tissues to further research?
- If your client experience pain you may wish to specific maximum pain relief even if it shortens life? What of religious implications?

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for Clients Living with Cancer**

POLST

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**Physician Order for Life
Sustaining Treatment (POLST)**

- POLST forms are completed by a doctor or nurse with the patient or a decision maker.
- New Jersey refers to it as the Practitioners Orders for Life Sustaining Treatment.
- A POLST can be used when a client is terminally ill to incorporate into the client/patient's medical record end of life wishes.
- The POLST form tells the medical team what to do for a patient who is seriously ill or approaching the end of life.
- The POLST form empowers the patient to indicate their preferences regarding life-sustaining treatment. This form, signed by a patient's attending physician, advanced practice nurse or physician's assistant, provides instructions for health care personnel to follow for a range of life-prolonging interventions. The form becomes part of a patient's medical records, following the patient from one healthcare setting to another, including hospital, nursing home or hospice.

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Assisted Suicide

**NJ Becomes the 8th
State to Permit**

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Assisted Suicide - Background

- The preamble to the bill proposed provides insights into the right to die movement and the realities of the legislation enacted in other states.
- *"Recognizing New Jersey's long-standing commitment to individual dignity, informed consent, and the fundamental right of competent adults to make health care decisions about whether to have life-prolonging medical or surgical means or procedures provided, withheld, or withdrawn, this State affirms the right of a qualified terminally ill patient, protected by appropriate safeguards, to obtain medication that the patient may choose to self-administer in order to bring about the patient's humane and dignified death;*

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Assisted Suicide - Background

- *Statistics from other states that have enacted laws to provide compassionate aid in dying for terminally ill patients indicate that the great majority of patients who requested medication under the laws of those states, including more than 90% of patients in Oregon since 1998 and between 72% and 86% of patients in Washington in each year since 2009, were enrolled in hospice care at the time of death, suggesting that those patients had availed themselves of available treatment and comfort care options available to them at the time they requested compassionate aid in dying;*
- *The public welfare requires a defined and safeguarded process in order to effectuate the purposes of this act, which will.*

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Assisted Suicide – NJ Requirements

- Be an adult, defined as 18 or older.
- A resident of New Jersey. This might preclude a transfer of a patient from a state not permitting assisted suicide into New Jersey to avail herself of the New Jersey statute.
- Be mentally capable (means having the capacity to make health care decisions and to communicate them to a health care provider, including communication through persons familiar with the patient's manner of communicating if those persons are available).
- Be terminal which means that the patient is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less. A patient shall not be considered a qualified terminally ill patient until a consulting physician has: examined that patient and the patient's relevant medical records; confirmed, in writing, the attending physician's diagnosis that the patient is terminally ill...

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Assisted Suicide – NJ Requirements

- ...Verified that the patient is capable, is acting voluntarily, and has made an informed decision to request medication that, if prescribed, the patient may choose to self-administer.
- The attending physician has determined to be terminally ill as defined.
- Who has made an informed decision. This means a decision by a qualified terminally ill patient to request and obtain a prescription for medication that the patient may choose to self-administer to end the patient's life in a humane and dignified manner, which is based on an appreciation of the relevant facts and after being fully informed by the attending physician of...

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Assisted Suicide – NJ Requirements

- ...after being fully informed by the attending physician of:
 - The patient's medical diagnosis.
 - The patient's prognosis.
 - The potential risks associated with taking the medication to be prescribed;
 - The probable result of taking the medication to be prescribed; and
 - The feasible alternatives to taking the medication, including, but not limited to, additional treatment opportunities, palliative care, comfort care, hospice care, and pain control.
- To obtain self-administered medication to terminate her life.

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Estate and Related Planning for Clients Living with Cancer

Protect Minor Children

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When the Client/Parent is Ill Take Additional Steps to Protect Minor Children

- Naming a guardian is all most people do but your client's child may need formal care arrangements if your client is alive but ill, and a guardian appointment under a will won't accomplish this.
- Power of attorney should address expenditures for children not just your client.
- Your client's financial resources may be limited and disability and life insurance may not be available or limited to what you had pre-diagnosis – financial planning is vital.
- Name trustees under a revocable trust while your client is alive but ill or disabled and direct payments for care of children..
- Write a personal letter of instruction.

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Estate and Related Planning for Clients Living with Cancer

Last Will

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Review Client Wills

- Review who the client named as executors and guardians.
- Consider how assets are to be distributed in light of the new diagnosis and facts.
- Tax planning may have to be more flexible in the event laws change dramatically after the 2020 election and the client is not able to modify the plan then. Perhaps a Clayton QTIP, as but one example, may provide more flexibility to address dispositive provision flexibility then other options.

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Wills and a Cancer Diagnosis

- Don't delay signing – treatments and disease course can vary and may make it harder and subject the will signed to a greater risk of challenge.
- To change a client will consider, if advisable, using a codicil (amendment) which won't revoke the prior will, just change it.
- If client treatments (e.g. opioids for pain relief) could impact cognitive abilities. Have client physicians document treatments, that you are not experiencing disorientation or other effects, etc. to support the conclusion that the client has capacity to sign a will.
- Consider the potential for changes and the risk that your client may not be able to legally amend the will. Flexibility may give your executor and trustees greater ability to address new circumstances.

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Tailor Client's Will to Address Diagnosis

- Does it make sense for loved ones to name your client who is ill as an executor or guardian? If not suggest they revise their documents.
- If your client is named a beneficiary, suggest that the benefactors name a trust designed to protect your client, rather than naming your client for an outright bequest.

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Estate and Related Planning for Clients Living with Cancer

Revocable Trust

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Revocable Trust

- Name a trust protector to provide for a check and balance through the challenges of cancer.
- Use a trust tax ID number to insulate from identity theft.
- Transfer assets to the trust so that it has assets for the successor trustee to assist if the client needs require.
- Depending on your client's current and near term anticipated status (e.g., cognitive impairment) your client might serve as sole initial trustee, but serving as initial co-trustee may be preferable. In some instances, naming others from inception might be better.
- Include details on lifestyle your client wishes to have maintained.
- Address care for children and authorize trustee to distribute for them.
- Tailor trustee replacement, disability and other provisions to the nuances of your client's anticipated disease course.

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Estate and Related Planning for Clients Living with Cancer

Irrevocable Trusts

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Irrevocable Trusts

- Inventory client and family existing irrevocable trusts.
- Does your client serve in fiduciary positions that might be appropriate to renounce because of the cancer diagnosis.
- Does your client hold powers of appointment that might warrant exercise?
- Do others hold powers of appointment that might warrant exercising to cause estate inclusion in your client's estate?

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**Estate and Related Planning
for Clients Living with Cancer**

Planning
Considerations

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**Overview of Cancer Impact on
Planning - 1**

- The nature of your planning might have to change depending on your diagnosis and life expectancy.
- If the prognosis is for a much-shortened life expectancy, there may be an urgency to complete documents and take other steps. Your diagnosis might warrant a different type of planning altogether might be warranted. Perhaps interests in a closely held or family business you own might require addressing succession planning and estate tax planning. Perhaps you might wish to transfer business interests to trusts for children. Depending on the circumstances the opposite approach might be better, e.g. retaining the appreciated business interests (or other assets) in your name to achieve a step-up in income tax basis on death. That might avoid capital gains tax if your heirs sell the business.

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**Overview of Cancer Impact on
Planning - 2**

- If the prognosis is for several years of remaining life expectancy, perhaps your spouse should consider shifting assets to you to secure an increase in the income tax basis of the assets without violating the 1-year requirement of Internal Revenue Code Section 1014(e). If the prognosis is for a shortened life expectancy, but there's a likelihood of surviving more than 18 months, a sale for a private annuity might be worth evaluating. This is all complex tax planning that will require guidance of tax counsel.
- If the prognosis is optimistic based on the cancer and other factors, perhaps traditional planning will continue to be appropriate.

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Upstream Planning

- Review upstream planning. If your client was provided a general power of appointment (GPOA) to cause assets included in his or her estate to gain a basis step up, what if the law changes?
- Will the plan work as intended or create an unintended estate tax?
- If your client had granted other family members GPOAs in anticipation of a basis step up, but now if the client is likely to die before the powerholder, should those powers be modified or eliminated?

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1014(e) and Basis Step Up

- Code Sec. 1014(e) reads as follows:
 - Appreciated property acquired by decedent by gift within 1 year of death
 - (1) In general In the case of a decedent dying after December 31, 1981, if—
 - (A) appreciated property was acquired by the decedent by gift during the 1-year period ending on the date of the decedent's death, and
 - (B) such property is acquired from the decedent by (or passes from the decedent to) the donor of such property (or the spouse of such donor),
 - the basis of such property in the hands of such donor (or spouse) shall be the adjusted basis of such property in the hands of the decedent immediately before the death of the decedent.

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1014(e) and Basis Step Up

- First determine the impact on life expectancy of the client living with cancer. If life expectancy is short consider possible transfers of assets to the client/patient for basis step up.
- Before transfers also evaluate the risks that the costs of cancer care may impose on the assets so transferred (and similarly if state law permits a creditor to reach an unexercised GPOA, consider that impact on such planning).
- Consider having the other spouse (or another person given the large \$11.4 million gift tax exemption) transfer property to the client. The client's will or revocable trust may transfer assets on death back to the donor indirectly, as directly will assure the spoiler affect of Code Sec. 1014(e).
- For example, if husband has been diagnosed with an aggressive terminal cancer wife might transfer assets to husband that will pass under his will to a sprinkle credit shelter trust that includes spouse and all descendants. The donor spouse may benefit from trust assets, but will the inclusion of many beneficiaries, a trust as beneficiary rather than the donor spouse, and perhaps an independent trustee, suffice to avoid the impact of Code Sec. 1014(e)?

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Private Annuities

- Consider the possible use of private annuities if the client receiving the cancer diagnosis has a life expectancy that is sufficient to apply these techniques but shorter than anticipated so that these techniques may be viable.
- If the annuitant has a shortened life expectancy the IRS can argue that the tables normally used to calculate the annuity amount are inappropriate to use. See Rev. Rul. 66-307, 1966-2 C.B. 429; See Treas. Reg. Sec. 1.7520-3; 20.7520-3(b)(3).
- The IRS could assert that the right to receive the annuity payments from a trust is an interest retained by the seller in the trust that does not meet the requirements of a "qualified interest" under Code Section 2702.
- The regulations provide that for purposes of valuing an annuity for life, it must be assumed that the annuitant's life expectancy is 110 years. If a trust acts as purchaser of the assets and obligor for the annuity, that the trust has sufficient cash to pay the annuitant the annuity payment if the annuitant should survive to age 110. While some commentators argue that the Regulation is invalid, that argument would be a costly one to advocate, with no assurance of success. Treas. Reg. Sec. 1.7520-3(b)(2)(i).

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Insurance

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Insurance Coverage Review

- Health insurance. Have an appropriate expert review all coverage and advise the client as to what steps might be appropriate.
- Long term care coverage. Review any existing policy for reporting requirements, an indication of what and when benefits may be received, etc.
- Disability income. Review any existing policy for reporting requirements, whether receipt of benefits is feasible and what steps to take.
- Life insurance. Review coverage and options. Evaluate whether there are any accelerated options, etc.
- Liability Coverage. Review in the event health or cognitive issues are more likely to result in an accident or other event precipitating a claim.

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Tailor/Plan Insurance to Address Cancer Challenges

- Review all medical coverage and options. What will your client's health coverage cover? What won't it cover? What will the impact be on your client's finances?
- Does homeowner's insurance cover home health aids for injury or liability?
- If your client has disability coverage are you collecting; are payments correct.
- If your client drives consider recommending obtaining additional excess liability coverage in case you health status is raised after an accident.
- If your client has life insurance can the client or trust borrow against it, convert it to permanent coverage if it is term, can your client benefit from a viatical settlement.

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Beneficiary Designations

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Review all Beneficiary Designations

- What powers should agent have.
- Consider all beneficiary designations: life insurance, pensions, IRAs, brokerage accounts and more.
- Obtain copies of the forms your client filed, and blank forms to facilitate revision.

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**Estate and Related Planning
for Clients Living with Cancer**

**Charitable
Giving**

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Step 10: Give Back

- Demonstrate important values to heirs.
- The client can use these to thank those that have helped.
- Inspire others to give.

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**Estate and Related Planning
for Clients Living with Cancer**

Communicate

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Communicate

- When a client is in crisis following a cancer diagnosis, you have to take control, be direct in what information you need and guide the next steps. Clients with a cancer diagnosis, and their family members, don't know what they need.
- Cancer impacts not just the patient but also the entire family and other loved ones. The conversations an advisor should have need to be broader than the mundane questions necessary to complete a living will or health proxy. Empathy, hearing and understanding the client's personal concerns and responding to them can be reassuring to the client on this journey.
- Your client should explain finances, family, care, disease, and other relevant matters to all advisors.
- Encourage the client to discuss the cancer diagnoses and prognosis, and estate plan, with family, friends or others involved in your client's life and especially what help might be needed.
- Can those your client expects to rely on really help – does your client have alternatives.
- Consider a consultation/evaluation by a licensed independent care manager.

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Communicate

- After a client receives a diagnosis, all parties will likely feel anxiety, sadness, anger and uncertainty about what their lives will look like moving forward. Getting support is essential to coping in a healthier way. Some resources your client may consider are friends, other relatives, mental health professionals and support groups. Although the client may feel guilt around hiring someone, it's OK for her to hire someone because she may not have the physical, mental or emotional capacity to take on everything.
- If this occurs, you need to be alert to possible issues of undue influence. Who's the individual helping? Will that individual benefit from the process? Is there any risk or evidence of overreaching? In the opposite situations, if it becomes apparent that the client is overwhelmed, consider suggesting: "You're one person and can't do it all. It's OK to get help."

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Conclusions

Additional Information

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Conclusion

- Planning for clients (or family members) diagnosed with cancer is common.
- Every aspect of the client's planning will be affected and most significantly, the emotional impact on the client.
- Make no assumptions, plan flexibly.
- While most planning will be based on traditional planning each document or planning step might have to be modified to reflect the realities of the client's diagnosis.
- Tax planning may take on a different and urgent air.

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Additional information

- Contact Martin M. Shenkman via email at shenkman@shenkmanlaw.com

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