

MFS Heritage Planning® News

Helping Yourself • Helping Your Parents • Helping Your Children®

The Importance of a Living Will

by Bernard A. Krooks,
Certified Elder Law Attorney (CELA)

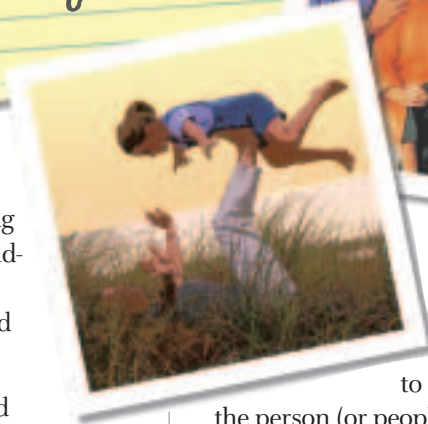
There has been a great deal of media attention on end-of-life health care decisions. The tragic cases of Terri Schiavo and others have caused the nation to focus on complex medical issues such as whether or not the government should get involved and who should have the right to make decisions for those who are incapacitated. The subject raises tough questions about morality, politics, and society. Fortunately, the complexities of life-and-death decisions can be made easier to address with a living will.

A living will details the specific type of medical interventions you do and do not want to receive in the event that you become too sick to make them for yourself. While many fill-in-the-blank forms for living wills are available in bookstores and online, it is advisable to consult an elder law attorney, who is uniquely qualified to assist individuals

and their families with difficult decisions regarding the dispensing or withholding of medical treatment in addition to feeding and resuscitation procedures.

Although court-appointed guardians may have the authority to make health care decisions, including end-of-life decisions, an individual is far better served by executing an advance health care directive that can be in the form of a living will, health care proxy, or both. As the number of cases that have attracted widespread media attention have demonstrated, the process of deciding what to do medically — and when to do it — can be a time-consuming and emotional task for caregivers, family members, friends, and health care providers.

Two health care directives play a crucial role in the preparation and planning for end-of-life choices — a health care power of attorney and a living will. Both are important documents to help ensure that physicians and family members understand an individual's wishes in the event that he or she is faced with an end-of-life



decision. A power of attorney allows you to select in advance

the person (or people) most trusted as your agent to make health care decisions on your behalf if you can't do so yourself. A living will is an expression of how you want to be treated during end-of-life care. It generally applies if you are in a persistent vegetative state or you are terminally ill. The health care proxy and power of attorney are delegations of authority to a third party to make health care decisions for you when you are unable to do so. All states and the District of Columbia impose legal requirements on the content and execution of these documents for them to be valid.

Once you have made the decision to have advance health care directives, there are many issues for you to consider, including:

Continued on page 5



Using retirement assets to fund charitable gifts

Tax-saving strategies



by Marjorie Suisman, Esq.

When making a lifetime gift to a charity, it is important to weigh the various charitable giving techniques and choose one that best serves both the charity and your family circumstances. If you plan to incorporate philanthropy into your estate planning, consider naming a charity as the beneficiary of your Individual Retirement Account (IRA) to reduce income and estate taxes.

As an example, consider Max Reset, a widower who is devoted to two things in life — his daughter, Ingrid, and his local community foundation. Max knows that charitable gifts are deductible from income for income tax purposes and reduce estate taxes if given at death. What he does not know is how much Ingrid would benefit if he coordinated his charitable giving with his estate and tax planning. The legacy that he passes to Ingrid will be greatly increased if he uses his retirement plan assets for his charitable giving.

To understand this, we should first review the tax treatment of retirement accounts. It is well known that assets in a retirement account grow tax deferred. The funds Max would ordinarily pay in income taxes each year continue instead to work for him. This tax deferral is available until the retirement assets are withdrawn from the account.

Less well known are the tax consequences of owning a retirement account at death. First, the retirement

account is subject to estate tax if Max's estate exceeds the amount of the estate tax exclusion (currently \$1.5 million, rising to \$2 million in 2006). The estate tax is payable on the whole amount in the retirement account including the portion that represents unpaid income taxes. Second, because withdrawals from the account are treated as taxable income, the retirement account is effectively reduced by the built-in income tax liability. To illustrate, say Max dies in 2005 with \$4 million worth of assets — \$1 million in an IRA and \$3 million in a brokerage account.

In his last will and testament, Max bequeaths a \$1 million gift to his local charitable foundation with the remainder of his estate passing to Ingrid, who is also named as the beneficiary of his IRA. In this scenario, the overall estate tax on Max's estate will be \$695,000. Ingrid will receive a total of \$2,119,500. The foundation will receive \$1 million.

With Ingrid as the sole beneficiary of the IRA, she will inherit a total of \$2,119,500.

	\$1M in IRA	\$3M in Brokerage Account
Estate tax	\$470,000	\$225,000
Income tax	\$185,500	\$0
Assets to charity	\$0	\$1,000,000
Assets to Ingrid	\$344,500	\$1,775,000

A much better result could be achieved for Ingrid with one small change: if Max names the community foundation as the beneficiary of his IRA and leaves his entire brokerage account to Ingrid. Because the community foundation is a charity, it will not have to pay the income tax liability. The charity will receive \$1 million, just as before. The good news is that those tax savings will

pass directly to Ingrid — the brokerage account does not carry the burden of any built-in income tax liability.

This one simple adjustment to Max's estate plan results in a 9% improvement for Ingrid with no adverse effect on the charity. By naming the charity as the beneficiary of his IRA, it should be noted that Max gives up the opportunity to do other types of advanced financial planning such as Stretch IRA. If you are considering a charitable gift, consult with an investment professional to ensure you apply the most tax-efficient way to leave your legacy.

With the charity as the sole beneficiary of the IRA, Ingrid will inherit a total of \$2,305,000.

	\$1M in IRA	\$3M in Brokerage Account
Estate tax	\$0	\$225,000
Income tax	\$0	\$0
Assets to charity	\$1,000,000	\$470,000
Assets to Ingrid	\$0	\$2,305,000

For a better understanding of estate planning, MFS Heritage Planning offers free infosheets on *Choosing beneficiaries for your IRA*, *Minimize taxes with estate planning and gifting*, *Understanding estate and inheritance taxes*, and *IRD: A tax rule beneficiaries need to know*. To learn more, simply visit mfs.com or ask your investment professional.

Marjorie Suisman is a shareholder at the Boston law firm of Davis, Malm & D'Agostine, P.C. She concentrates her practice in estate planning, estate and gift taxation, and trust and estate administration. For more information on Ms. Suisman, please visit www.davismalm.com.

Social Security as part of retirement security

A “progressive” solution

by MFS Chairman Robert C. Pozen

Social Security is currently faced with a long-term deficit of \$3.8 trillion because there will not be enough active workers to support the large number of baby boomers reaching retirement age. Is there a fair way to bring the system back toward solvency? Yes, through progressive indexing — an approach that I have developed and which has been favored by President Bush.

Progressive indexing would allow Social Security benefits to grow for the next generation of Americans, while establishing a differential benefit scale based on a worker’s average career earnings. All low-wage earners — as well as those in or near retirement — would receive the present schedule of Social Security benefits based on U.S. wage growth during their careers. By contrast, the initial benefits of high earners would be indexed to the rate at which U.S. prices rose during their working years. Initial benefits for middle earners would be based on a blend of wage and price indexing. Since wages grow more than 1% faster than prices per year, progressive indexing would close 70% of the long-term deficit of Social Security.

Progressive indexing is fair because it takes into account the large government subsidies to private retirement plans — more than \$100 billion per year in lost tax revenues. High and middle earners are very likely to supplement their Social Security benefits with income from these private retirement plans, including IRAs and 401(k)s. Since most low earners do not participate in these plans and depend entirely on Social Security benefits for retirement income, we need to preserve their benefits.

Yet progressive indexing has been criticized as a “cut” relative to scheduled benefits. This is misguided for three reasons. First, no one has a legal entitlement to the current schedule of Social Security benefits; Congress can change it at any time. Second, under progressive indexing, the purchasing power of the Social Security benefits received by most workers will rise substantially over



“...under progressive indexing, the purchasing power of the Social Security benefits received by most workers will rise substantially over the course of the next century.”

Robert Pozen

the course of the next century. Third, and most importantly, we simply cannot afford the current schedule of benefits. Absent major reforms, the system will default in 2041 and benefit levels will automatically be reduced by roughly 26% for all workers.

Nevertheless, if Congress wants a milder form of progressive indexing, it could be combined with other methods of improving solvency, such as:

Raising the retirement age

Under current law, the normal retirement age will move to age 67 by 2027. If Congress gradually increased the retirement age from 67 to 70, to account for longer average life expectancies, this would trim roughly one-third of the long-term deficit.

Raising taxes

If Congress opted for increasing revenue flow into the system, it could raise the cap on earnings subject to the 12.4% Americans pay annually in FICA taxes. Some have suggested raising the current cap level of

\$90,000 per year to \$130,000 in today’s dollars (\$150,000 by 2012). This would close the long-term deficit by one-quarter but would be unfair to those workers earning between \$90,000 and \$200,000 per year. They would see most of their earnings subject to the 12.4% payroll tax, while most of the earnings of millionaires would be exempt.

Fast Fact

By 2017, actuaries project, Social Security's annual surpluses — from payroll taxes, taxes on some benefits, and interest earned on trust-fund reserves — will turn to deficits as the ranks of retirees swell. Social Security will begin using reserve funds to pay full benefits until those are exhausted in 2041. Then, benefits will be limited to what can be paid with payroll-tax revenues.

Source: U.S. Small Business Administration

Instead, a surcharge

An equivalent impact on the long-term deficit could be achieved by placing a surcharge of 2.9% on all earnings above \$90,000. This structure, which would be loosely based on the Medicare tax model, would spread the burden more evenly among all high-wage earners. Moreover, part of this surcharge could be allocated to a personal account in lieu of traditional Social Security benefits.

As part of his reform plan, President Bush has proposed allowing workers the choice of allocating to a “carve-out” personal account a few percentage points of the 12.4% they currently pay in FICA taxes. While such personal

accounts could be combined with progressive indexing, another alternative could be “add-on” accounts. For example, Congress could enhance the tax credits available for IRA contributions by workers with earnings just above \$25,000 per year, whose Social Security benefits would be subject to a mix of wage and price indexing. Congress could also allow Roth IRAs to be utilized by the highest-earning workers, who would face the slowest future growth of Social Security benefits under progressive indexing.

Whatever the package of Social Security reforms, they must be enacted before 2008. President Bush has shown great political courage in taking

on this controversial issue, which only a second-term president can afford. No president is likely to tackle such a political hot potato in the face of a reelection contest. If both Democrats and Republicans show flexibility in working together, we have a fighting chance to solve the Social Security problem before it becomes a crisis. Once the baby boomers begin to retire in 2012, it may be too late to modify their benefit formulas. The window for Social Security reform is open right now, but it's closing fast.

Talk to an investment professional about retirement planning opportunities to ensure that you are prepared for retirement.

Robert C. Pozen is Chairman of MFS Investment Management® in Boston and was a member of the President's Commission to Strengthen Social Security from 2001 to 2002.

Progressive Indexing

Progressive indexing would commence in 2012, the year in which the first wave of America's baby boomers reach normal retirement age. The plan would ensure that Social Security benefits continue to grow for all American workers but would slow the growth rate for the highest wage earners by indexing their initial benefits to price inflation rather than wage growth, the latter of which is embodied in the current formula.

Here's how progressive indexing would work:

- Low wage earners (average annual career earnings of \$25,000 and below) would have their initial benefits indexed to U.S. wage growth.
- Middle wage earners (average career earnings between \$25,000 and \$113,000) would continue to have their initial benefits indexed to a combination of wages and prices.
- Initial benefits for high wage earners (those with average annual career earnings of \$113,000 and above) would be indexed to rate of U.S. price inflation.

Since wages rise approximately 1.1% faster than prices over time, progressive indexing would close 70% of the Social Security deficit over the next 75 years.

The importance of a living will

Continued from page 1

- Who will serve as your health care agent and successor agent?
- Under what conditions, if any, do you want to authorize the withdrawal of life-sustaining medical treatment?
- Does your authorization to withhold or withdraw life-sustaining medical treatment extend to artificial nutrition or hydration (feeding tube)?
- Do you have specific preferences concerning health care facilities or providers?
- Do you have any moral or religious convictions that dictate the use or rejection of certain forms of medical treatment?
- Do you want to make anatomical gifts (organ donation) or give the agent the power and authority to make these gifts?

In light of the privacy rules in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related regulations, the advance directive should also include a specific, immediate authorization under HIPAA for your health care agent to obtain confidential information concerning your medical condition. This will allow the agent to talk with your physicians and review your medical records. Although many individuals are accompanied by their children to routine medical appointments, in an emergency situation the children need to know that they will be able to talk with the treating medical professionals about their parent's condition.

You want to make sure that your agent, family, and health care providers know that you have advance

medical directives. At a minimum, you should have a candid and frank discussion of the advance directive

regarding care, and there was not a living will in place, your physician would be forced to make all decisions for you.

Advance directives allow you to select in advance the person most trusted as your agent to make health care decisions in case you can't do it yourself.

and your health care preferences with your immediate family, health care agents, and primary care physician and provide each of them with a copy of the advance directives. You may also want to mail a copy of the advance directive to your doctors so that they have it in your file. You may also wish to have a wallet-sized card that informs third parties of the existence of your advance directive and the names and telephone numbers of your health care agents.

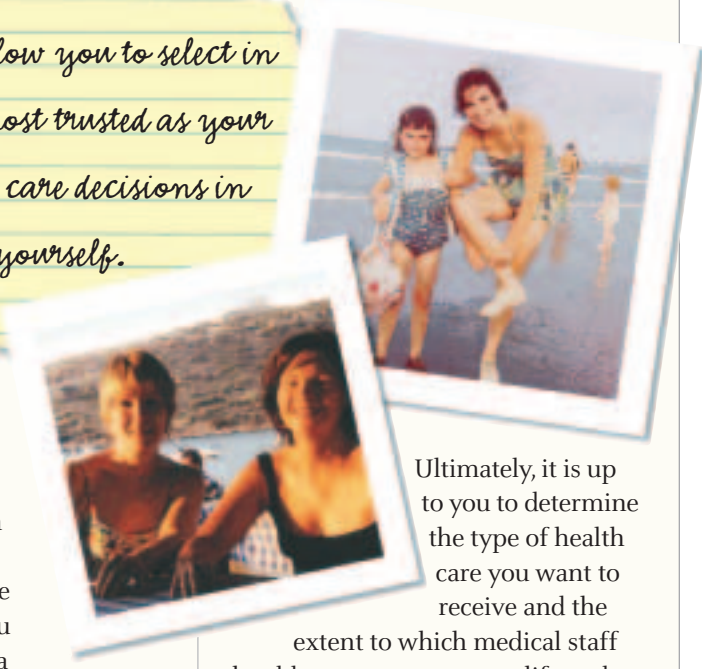
Few people like to think about advance directives and end-of-life care. However, everyone should have a living will to specify desired medical treatment in the event he or she is unable to communicate. Living wills also relieve family members of the difficult and agonizing life-or-death choices concerning prolonged medical treatment. They also prevent physicians from being placed in a position of having to make crucial life-and-death decisions for their patients.

For example, if there were a difference in opinion among family members

Ultimately, it is up to you to determine the type of health care you want to receive and the extent to which medical staff should go to preserve your life and when to stop sustaining medical treatment. By documenting your medical care wishes, you take control of your own destiny and make it easier for those who are left behind.

Talk with an investment professional to get more information about how you can plan ahead to make sure your wishes are carried out. MFS Heritage Planning offers free information, including an organizational checklist, a comprehensive infosheet *What your survivors need to know*, and a helpful brochure *Put it in writing*.

Bernard A. Krooks, J.D., CPA, LL.M (in taxation), CELA, is the managing partner of the law firm Littman Krooks LLP with offices in New York City and White Plains, N.Y. Visit Littman Krooks LLP on the Web at www.elderlawnewyork.com. Mr. Krooks is not affiliated with MFS or any of its subsidiaries.



place
stamp
here

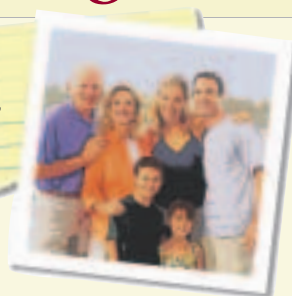
MFS Investment Management®
500 Boylston Street
Boston, MA 02116



MFS Heritage Planning® News

In this issue:

The Importance of a Living Will
page 1



Also in this issue

Using retirement assets to fund charitable gifts p. 2
Social Security as part of retirement security p. 3

Make your wishes known with advance health care directives

The Terri Schiavo case brought the need to plan one's medical wishes to the forefront. By writing down your wishes and instructions in a living will, you can detail the specific type of medical interventions you do and don't want to receive in the event that you become terminally ill, unconscious, or otherwise unable to speak for yourself.

Advance health care directives: Signing the paperwork is only a first step

- Choose a health care proxy/agent who can make medical decisions for you if you are too sick to make them yourself.
- Document your wishes and provide copies to family members, your physician, and your attorney.

This material is not intended to replace the advice of a qualified attorney, tax adviser, investment professional, or insurance agent. Before making any financial commitment regarding the issues discussed here, consult with the appropriate professional adviser.

© 2005 MFS Investment Management®. MFS® investment products are offered through MFS Fund Distributors, Inc., 500 Boylston Street, Boston, MA 02116.