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A Potpourri of Elder Law Practice Tips By Howard S. Krooks, JD, CELA

When I attend seminars, I always feel that I have spent my time wisely if I get that one “nugget” that completely alters my thinking on a subject I otherwise knew well, or opens up a new level of understanding in areas I did not. For this column, I have included several pieces of information and, hopefully, at least one of them will be a nugget for you:

1. Homestead Assessments – be aware that your clients may add the name of a son or daughter (or anyone else) to their deeds with respect to homestead property without causing a change of ownership, triggering a new assessment for tax purposes, provided that the owner is listed as both a grantor and a grantee in addition to the child. Clients may find this an attractive option in order to avoid probate. One word of caution if your clients choose to do this: if the person that was added subsequently files for homestead protection on the property, this will cause a change of ownership that will result in a new tax assessment. F.S. 193.155(3)(a)(3). You also need to be careful to monitor actions taken by the Property Appraiser. Recently, there have been a number of instances in Broward and Palm Beach Counties where the Property Appraiser’s Office has increased taxes on a home where such an increase was not warranted, forcing the homeowner to challenge the increased assessment.
2. Guardianship Involving Non-Resident Petitioner – Where your client is a non-resident Petitioner in a guardianship proceeding, consider requesting that s/he “attend” the hearing and provide testimony via telephone. General Magistrate Methelis has allowed this in Broward County. If you choose to recommend this approach to your client, be sure to call the Judicial Assistant in advance to verify that the guardianship part in your county is receptive to telephonic testimony. If so, it can save your client valuable time and expense related to attending the hearing.

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3. Reverse Mortgages – Typically, reverse mortgages require that the property subject to the mortgage be sold if the owner is absent for a specified period of time (usually about one year). Where a person is in declining health and requires a higher level of care than can be provided in the home, it can force the sale of the property against the wishes of your client. Consider adding a provision into the mortgage contract which provides that the one year period is “tolled” with a 24-hour stay at the home within that one-year period. This way, your client can return home for a brief period with appropriate arrangements, protect the home from a forced sale, and then return to the setting most appropriate for his/her care needs.
4. Power of Attorney: To Include a Power to Create or Amend a Trust or Not? – It is always a good idea to revisit your documents from time to time to see if clauses that made sense way back when still do. I recently had the opportunity to do that with our power of attorney document. I should mention that I have struggled with including authority in the power of attorney, which authorizes the agent to create or amend a trust. On the one hand, I find it problematic for an agent to be able to unilaterally alter a principal’s testamentary scheme by creating and funding a new trust or by amending an existing trust. That is a broad authority, which may not be consistent with the principal’s intentions. On the other hand, I recently represented a client where this authority was included in the power of attorney granted to her by her father. Her father, who had a taxable estate, became hospitalized during the estate planning process and was unable to sign a new trust providing for credit shelter planning and generation skipping tax planning. If the power of attorney lacked the authority for the agent to create a trust, I would not have been able to assist this client in achieving hundreds of thousands of dollars in estate tax savings. You will need to decide which direction to take on this issue, but the nugget here is to review your documents from time to time to be sure you like what they say.
5. Submission of DCF Forms – be sure to use the DCF web site (www.state.fl.us/cf_web) to obtain copies of the most current version of forms to be provided to DCF every time you submit a Medicaid application. I recently had a caseworker in Palm Beach County reject the submission of a spousal refusal form because it failed to contain the “current” DCF logo! I pointed out that the language of the document was verbatim identical to the form on the DCF web site. The only difference was that the prior logo appeared on the form. I ultimately prevailed on this issue, but not before spending several hours going up the chain of command at DCF.

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