

Legal Perspective Quarterly

Willingham & Côté, P.C.
attorneys & counselors at law

My Mother's Blue Folder

Article by Attorney Tara Bachner



Every time my mother travels out of town, she has gotten into the habit of pulling out her blue folder from the desk drawer and going over the contents with me. Being an only child, she wants me to know where everything is and what to do in case of an emergency because the responsibility is ultimately mine. After going through this ritual numerous times, I can recite every single document inside the folder: *her life insurance policy, social security information, medical directives, the passwords to online accounts and the estate planning documents which are for my grandmother and uncle.* By keeping all of these important documents in one location, I will be able to find them when the need arises.

It is easy to forget that one of the main functions of your estate planning documents is to inform your loved ones of your wishes and give them authority to act on your behalf. This is why it is important not only to have estate planning documents prepared but to

also **make sure that all of your important documents are kept together so your loved ones**

can find them. If your loved ones cannot find these important documents, then there is no point in having them drafted in the first place. These documents will be needed by your loved ones if you are incapacitated, deceased or decide to take a month-long vacation out of the United States.

There are many important documents that should be kept safe and made easily available to your loved ones. Some of these documents are:

Last Will and Testament informs your loved ones on how to distribute your assets upon your death;

Durable Power of Attorney allows your loved ones to transact business for you if you are unable to;

Medical Power of Attorney empowers your loved ones to discuss your medical condition with the doctors and make medical decisions according to your wishes;

Life Insurance Policies make it easier for your beneficiaries to receive the money so that it does not go unclaimed;

Passwords to any online accounts allows your loved ones to pay your bills in case you are unable; and

Estate planning documents where you are the Successor Trustee, Beneficiary, Agent or Patient Advocate— So your loved ones will be made aware of any additional responsibilities you may have or other assets to which you may be entitled.

To protect the estate planning documents, while still allowing easy reference, we provide you with the original set of documents, as well as a set of copies, after signing. The originals are to be kept in a fireproof, safe location. The copies may be kept in a convenient place where you and your loved ones can start your own ritual of referencing your important documents before vacations.

Estate Planning Documents Checklist

- ✓ Are your original documents in a fire-safe receptacle?
- ✓ Does someone know the location of your original documents?
- ✓ Have you informed the appropriate parties you want them to act on your behalf?

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Protecting Family Property For Future Generations

Article by Attorney Scott Breen

There is often a great deal of emotional and sentimental attachment to family cottages and hunting land. This type of property produces some of life's best memories, especially for children.

Because of the prized nature of the cottage or hunting land, families often attempt to protect this property, so that it is not simply sold after the death of its owner. In most instances, the situation involves parents attempting to transfer the family cottage to their children or grandchildren, so that it may be enjoyed for generations to come.

Many parents will pass the family cottage to their children through their wills or revocable living trusts. In some instances, the children will develop a plan to protect and maintain the property. However, in most instances, the children will simply end up selling the family cottage because it creates too much complexity and dissension between them.

It is very important to understand that the preservation of family cottages (and hunting land) creates a number of complex questions, such as: (1) How are the property taxes, insurance, and utilities going to be paid; (2) Who is going to



physically maintain the cottage/land; (3) When will each child/grandchild be permitted to use the property; and (4) What are the rules for use of the property? In many families, children live in different cities/states, and their level of commitment to the preser-

vation of the cottage varies. In addition, some children simply do not have the financial resources to pay their portion of the property taxes, insurance and other expenses associated with a second home.

Fortunately, the parents can create a better chance of keeping this property in the family. This is usually done by the use of a "cottage trust" or a limited liability company ("LLC"). After creation of a cottage trust or LLC, the property is conveyed into this entity by deed. The property is then subject to the terms of the cottage trust or LLC operating agreement, which should address all of the previously mentioned questions.

The cottage trust or LLC specifies the people who will manage the property and its usage. It is very important that tasks be delegated to the most responsible, able and willing people. Generally, it will be important for the trustees and managers to establish a schedule of usage and rules for the cottage. For example, many families will have a meeting at the beginning of each year to determine the weeks that each child/grandchild will use the cottage. The trustees or managers are responsible for enforcing this schedule.

The trust instrument or LLC operating agreement will generally specify the rules for the future use of the property. For example, a family may wish to limit smoking, alcohol, number of guests, etc. There would be

consequences for breaking those rules that are enforced by the trustees or managers.

One of the most important issues to consider is whether a cottage trust or LLC is economically feasible. The costs of taxes, insurances, utilities, maintenance and other expenses are extremely expensive. Without the financial resources, the project is sure to eventually fail. Many children simply do not have the funds to contribute to the project. In most instances, the best way to fund the cottage trust or LLC is for the parents to set aside cash or liquid securities specifically for these expenses. The amount of necessary cash or securities must be carefully determined.



There are many issues to consider when attempting to transfer a family cottage, hunting land or any other valuable parcel of real estate to the next generation. That is why it is important to speak with an attorney and other professionals to assist you. With solid planning, you can alleviate a great deal of stress and, hopefully, the property can be protected and enjoyed by many future generations.

Scott A. Breen is a shareholder at *Willingham & Cote*, P.C. He specializes in the areas of business and real estate transactions. Mr. Breen may be reached at 517-324-1021 or sbreen@willinghamcote.com.

Firm Announcements

Website Makeover

www.willinghamcote.com

Our website received a substantial makeover recently. Please visit us to view photos from our recent client and community events, read attorney blogs & articles, and see our improved overall layout.

Trial Court

John Yeager and *Troy Clarke* obtained an order dismissing a lawsuit in favor of our client, holding that it had no duty to defend or provide coverage to an insured.

Torree Breen obtained an order dismissing a lawsuit in which a claimant was seeking recovery for claims that he had previously settled with our client. *Dave Nelson* successfully obtained a judgment against a debtor in favor of our client.

Appellate Court

Kimberly Hillock and *John Yeager* convinced the Michigan Supreme Court to grant leave to hear arguments regarding whether a no-fault carrier is responsible to provide reimbursement for the purchase of a motor vehicle for injured persons as a result of injuries sustained as a result of an auto accident or whether such expense shall be allocated to the claimant as a quotidian expense.

Estate Planning Q & A

by Attorney Lee Reimann

In this newsletter and blog posts on the Willingham & Coté, P.C. website (www.willinghamcote.com), client questions (and legal answers) relating to Estate Planning will be posed. In addition, if you have suggested questions, or a specific question about this topic, please contact Lee Reimann.

The Effects of Do Not Resuscitate and 911

Death, however sad, is a part of life.

Unfortunately, in our culture there is often a reluctance to talk about issues regarding our eventual deaths. In my practice, many "end-of-life" questions my clients struggle with often go unasked and, thus, unanswered.



What happens when I call 911 in terms of resuscitation?

If an individual calls 911, the first responders will perform CPR whether the patient wants that type of intervention or not. By calling 911, an individual has asked for emergency care. This

is most often the case, but there is an exception to this general rule.

Michigan has a **Do-Not-Resuscitate Procedure Act** (DNR). This Act sets forth the specific situation in which healthcare professionals can follow an individual's **prior written direction** to not provide

resuscitation. Please note that this Act applies to medical situations that take place outside of a hospital, nursing home or mental health facility – *in general, this means first responders to a 911 call.*

A health professional will not provide resuscitation if an individual has a prior, written, valid DNR that is provided to the health professional upon arriving or is wearing a DNR identification bracelet; **and** upon responding to an emergency call, the health professional determines that the patient has no vital signs – meaning no pulse or respiration.

Often, in the event of an emergency, the written DNR is not readily available. A bracelet is suggested to ensure the emergency provider can readily honor your loved ones' wishes. These can be easily purchased online or at your local pharmacy.

A DNR is valid in Michigan under the following circumstances:

- The DNR is put into place by an individual over the age of 18;
- The DNR is validly executed in the form prescribed by the State of Michigan.

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The Estate Planning attorneys at Willingham & Cote' P.C., are pleased to announce a new service offering: **"Simply Wills."** Over 80 percent of families* do not have adequate estate planning documentation. This product allows you to inexpensively generate a durable power of attorney, a medical power of attorney and a simple will. In addition, clients will have up to one hour of time with a licensed Michigan attorney to ask questions, review and sign these documents. The fee for this service is \$297.

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Serving the Mid-Michigan area for over 40 years.

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Announcements

Lansing Symphony Orchestra



Willingham & Cote', P.C., is a proud sponsor of the Lansing Symphony Orchestra. On Saturday, April 14, 2012, we enjoyed a small reception at the firm and then went to the performance, "Piano Man: The Music of Billy Joel" at the Wharton Center.

Lansing Food Bank: Empty Plate Fundraiser



Willingham & Cote', P.C., is also proud a supporter of the Lansing Food Bank. On Thursday, May 10, 2012, several employees attended the Empty Plate Fundraiser, held at the MSU Football Stadium. All proceeds from the event benefit the Greater Lansing Food Bank, whose mission is to stop hunger in the Greater Lansing area.

East Lansing Art Fair Client Open House



Each year, during the East Lansing Art Fair, Willingham and Cote' P.C. opens our doors to all clients for a casual open house. On Saturday, May 19, 2012, over 50 clients took a break from the heat and enjoyed our balcony views of the event. We also viewed beautiful artwork, on loan from Saper Galleries, which were prominently displayed throughout the office.

Estate Planning Tea at Walnut Hills

On Wednesday, May 23, 2012, approximately 40 clients joined us for an Estate Planning Tea at the Walnut Hills Country Club. During the tea, Attorney Lee Reimann answered a variety of questions from the clients in attendance. Some of the areas discussed were: the future of the estate tax, annual gifting and options for real estate that qualifies your secondary residence or vacation home.

Tara Bachner, our newest Estate Planning attorney, was introduced as well.