Mabel T. Caverly Senior Center & Services

"A Friendly Place Providing Stepping Stones over Deep Water"

Volume 19, Issue 7 **OUR MONTHLY NEWSLETTER** **July 2015**

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Executive Director Denise's Diary

Annual Membership Meeting Held – On June 9, MTC members gathered at the First Congregational Church. Nelly Ayala, RN, MSN from the State, spoke about diet and exercise for diabetics. Bylaw revisions were approved. Individuals elected to serve on the Board for terms ending June, 2018 are Senior members Ann Farling, Pat Sledge, and Craig Spence, and Public members Donna Brooks, Audrey Ellsworth, Keith Fernandez and Tim Manwaring.
New Officers are: Keith Fernandez, President; Ann Farling, Vice-President; Tom Lucido, Secretary; Kevin Turkington, Treasurer. Susan Faith, a past Board member and long-time supporter of Mabel T. Caverly Senior Center was presented with a plaque designating her as MTCSC's first Member Emerita.

IN MEMORIUM: Join us in celebrating the lives of four long-time MTC members: **Bea Maule, Leo Hannan, Margaret Cameron**; and **Pat Jensen**.

Big **THANKS** to our volunteers.

You brighten our lives with your service and smiles. Mabel T is in need of volunteers to serve in various capacities. If you want to help, we need YOU!

PLEASE LET US KNOW OF CHANGES IN YOUR ADDRESS, TELEPHONE, OR EMAIL
IF YOU WISH TO UNSUBSCRIBE, PLEASE CONTACT OUR OFFICE OR EMAIL US AT newsletter@mabeltcaverly.org

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
Call Tom Graves and leave a message to reserve Space on the Van 276-1517			1 Errand Day Appointments	2 Target & IHOP (Tikahtnu)	3 Closed for July 4 Observance	4 CLOSED
			Music in the Park 12-1pm			
5 CLOSED	6 NO VAN	7 Fred Meyer (Muldoon)	8 Errand Day Appointment	9 Portage & Alyeska	10 NO VAN	11 CLOSED
			Music in the Park 12-1pm			
12 CLOSED	13 NO VAN	14 Walmart (Dimond)	15 Errand Day Appointment	16 Kriner's Diner	17 NO VAN	18 CLOSED
			Music in the Park 12-1pm			
19 CLOSED	20 NO VAN	21 Fred Meyer & Burlington	22 Errand Day Appointments	23 Red Apple & Costco	24 NO VAN	25 CLOSED
			Music in the Park 12-1pm			
26 CLOSED	27 NO VAN	28 Sears Mall & Outback Steakhouse	29 Errand Day	30 Palmer Valley Hotel Hatcher's Pass	31 NO VAN	
			Music in the Park 12-1pm			

Happy July Birthdays!

Jacqueline Herman-1st, Nez Vecera-18th, Bill Farling-23rd, Mike Rodriguez-26th, Bonnie Thayer-25th, Patricia Weatherby-27th, Sylvia Stewart-27th

NEW Newsletter Advertising Rates

Your purchase of advertising space in our monthly newsletter helps to offset our printing and mailing distribution costs. These days, with grants being withheld, and giving at an unprecedented low, your help is even more important and needed. And there's a win/win factor in advertising in our newsletter. Our current readership is over 1000, and grows monthly. A small expense on your part exposes you to seniors (55+), social charities, and local businesses that recognize the value of the ever-growing senior market. You may change your ad monthly at no additional cost.

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A Special Note About This Issue

This month's newsletter is about life insurance, estates, trusts, wills, and durable powers of attorney. It's a somber subject, one that most people try to avoid, yet it's immensely important. If you DO NOT plan things out, it may result in your family fighting, and your memory enmeshed with harsh feelings and remorse. This is a subject for ALL of our readers. We truly hope you will take some of this advice to heart and help yourself…and your heirs to enjoy a better life.

Dr. Tom Lucido

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Office Products Services

PARCEL POST PACKAGES!

For our **Fall Fundraiser**, remember: collect items in your travels this Summer (VALUED AT $25-$35), and drop them off at MTCSC for our big event. Our silent/live auction is September 24! (See page for details of an new "on-line" auction)

Why Plan Your Estate?

The knowledge that we will eventually die is one of the things that seems to distinguish humans from other living beings. At the same time, no one likes to dwell on the prospect of his or her own death. But if you postpone planning for your demise until it is too late, you run the risk that your intended beneficiaries -- those you love the most -- may not receive what you would want them to have, whether due to extra administration costs, unnecessary taxes or squabbling among your heirs.

Estate planning: No matter how small your estate may be. It allows you, while you are still living, to ensure that your property will go to the people you want, in the way you want, and when you want. It permits you to save as much as possible on taxes, court costs and attorneys' fees; and it affords the comfort that your loved ones can mourn your loss without being simultaneously burdened with unnecessary red tape and financial confusion.
All estate plans should include, at minimum, two important estate planning instruments: A durable power of attorney and a will. The first is for managing your property during your life, in case you are ever unable to do so yourself; the second is for the management and distribution of your property after death. In addition, more and more Americans are using revocable (or "living") trusts to avoid probate and to manage their estates, both during their lives and after they are gone.

Your Durable Power of Attorney

Finances: For most people, the durable power of attorney is the most important estate planning instrument available--even more useful than a will. A power of attorney allows a person you appoint -- your "attorney-in-fact" or "agent"-- to

act in your place for financial purposes when and if you ever become incapacitated.
In that case, the person you choose will be able to step in and take care of your financial affairs. Without a durable power of attorney, no one can represent you unless a court appoints a conservator or guardian. That court process takes time, costs money, and the judge may not choose the person you would prefer. In addition, under a guardianship or conservatorship, your representative may have to seek court permission to take planning steps that she could implement immediately under a simple durable power of attorney.

A power of attorney may be limited or general. A limited power of attorney may give someone the right to sign a deed to property on a day when you are out of town. Or it may allow someone to sign checks for you. A general power is comprehensive and gives your attorney-in-fact all the powers and rights that you have yourself.

A power of attorney may also be either current or "springing." Most powers of attorney take effect immediately upon their execution, even if the understanding is that they will not be used until and unless the grantor becomes incapacitated. However, the document can also be written so that it does not become effective until such incapacity occurs. In such cases, it is very important that the standard for determining incapacity and triggering the power of attorney be clearly laid out in the document itself.

However, some clients are experiencing increasing difficulty in getting banks or other financial institutions to recognize the authority of an agent under a durable power of attorney. A certain amount of caution on the part of financial institutions is understandable: When someone steps forward claiming to represent the account holder, the financial institution wants to verify that the attorney-in-fact indeed has the authority to act for the principal. Still, some institutions go overboard, for example requiring that the attorney-in-fact indemnify them against any loss. Many banks or other financial institutions have their own standard power of attorney forms. To avoid problems, you may want to execute such forms offered by the institutions with which you have accounts.

Medical: Any complete estate plan should include a medical directive. This term may encompass a number of different documents, including a health care proxy, a durable power of attorney for health care, a living will, and medical instructions. The exact document or documents will depend on your state's laws and the choices you make.

Both a health care proxy and a durable power of attorney for health care designate someone you choose to make health care decisions for you if you are unable to do so yourself. A living will instructs your health care provider to withdraw life support if you are terminally ill or in a vegetative state. A broader medical directive may include the terms of a living will, but will also provide instructions if you are in a less severe state of health, but are still unable to direct your health care yourself.

Your Will

Your will is a legally-binding statement directing who will receive your property at your death. It also appoints a legal representative to carry out your wishes. However, the will covers only probate property. Many types of property or forms of ownership pass outside of probate. Jointly-owned property, property in trust, life insurance proceeds and property with a named beneficiary, such as IRAs or 401(k) plans, all pass outside of probate.

Why should you have a will? Here are some reasons: First, with a will you can direct where and to whom your estate (what you own) will go after your death. If you died intestate (without a will), your estate would be distributed according to your state's law. Such distribution may or may not accord with your wishes.

Many people try to avoid probate and the need for a will by holding all of their property jointly with their children. This can work, but often people spend unnecessary effort trying to make sure all the joint accounts remain equally distributed among their children. These efforts can be defeated by a long-term illness of the parent or the death of a child. A will can be a much simpler means of effecting one's wishes about how assets should be distributed.

The second reason to have a will is to make the administration of your estate run smoothly. Often the probate process can be completed more quickly, and at less expense to your estate, if there is a will. With a clear expression of your wishes, there are unlikely to be any costly, time-consuming disputes over who gets what.

Third, only with a will can you choose the person to administer your estate and distribute it according to your instructions. This person is called your "executor" (or "executrix" if you appoint a woman) or "personal representative," depending on your state's statute. If you do not have a will naming him or her, the court will make the choice for you. Usually the court appoints the first person to ask for the post, whoever that may be.

Fourth, for larger estates, a well-planned will can help reduce estate taxes.
Fifth, and most important, through a will you can appoint who will take your place as guardian of your minor children should both you and their other parent both pass away.

Trusts

A trust is a legal arrangement through which one person (or an institution, such as a bank or law firm), called a “trustee,” holds legal title to property for another person, called a “beneficiary.” The rules or instructions under which the trustee operates are set out in the trust instrument. Trusts have one set of beneficiaries during their lives and another set -- often their children -- who begin to benefit only after the first group has died. The first are often called "life beneficiaries" and the second "remaindermen."

Uses of Trusts: There can be several advantages to establishing a trust, depending on your situation. Best-known is the advantage of avoiding probate. In a trust that terminates with the death of the donor, any property in the trust prior to the donor's death passes immediately to the beneficiaries by the terms of the trust without requiring probate. This can save time and money for the beneficiaries. Certain trusts can also result in tax advantages both for the donor and the beneficiary. These are often referred to as "credit shelter" or "life insurance" trusts. Other trusts may be used to protect property from creditors or to help the donor qualify for Medicaid. Unlike wills, trusts are private documents and only those individuals with a direct interest in the trust need know of trust assets and distribution. Provided they are well-drafted, another advantage of trusts is their continuing effectiveness even if the donor dies or becomes incapacitated.

Kinds of Trusts: Trusts fall into two basic categories: testamentary and inter vivos.

A testamentary trust is one created by your will, and it does not come into existence until you die. In contrast, an inter vivos trust starts during your lifetime. You create it now and it exists during your life.

There are two kinds of inter vivos trusts: revocable and irrevocable.

Revocable Trusts: Revocable trusts are often referred to as "living" trusts. With a revocable trust, the donor maintains complete control over the trust and may amend, revoke or terminate the trust at any time. This means that you, the donor, can take back the funds you put in the trust or change the trust's terms. Thus, the donor is able to reap the benefits of the trust arrangement while maintaining the ability to change the trust at any time prior to death.

Revocable trusts are generally used for the following purposes:

Asset management: They permit the named trustee to administer and invest the trust property for the benefit of one or more beneficiaries.

Probate avoidance: At the death of the person who created the trust, the "grantor" or "donor," the trust property passes to whoever is named in the trust. It does not come under the jurisdiction of the probate court and its distribution need not be held up by the probate process. However, the property of a revocable trust will be included in the grantor's estate for tax purposes.

Tax planning: While the assets of a revocable trust will be included in the grantor's taxable estate, the trust can be drafted so that the assets will not be included in the estates of the beneficiaries, thus avoiding taxes when the beneficiaries die.

Irrevocable Trusts: An irrevocable trust cannot be changed or amended by the donor. Any property placed into the trust may only be distributed by the trustee as provided for in the trust document itself. For instance, the donor may set up a trust under which he or she will receive income earned on the trust property, but that bars access to the trust principal. This type of irrevocable trust is a popular tool for Medicaid planning.

Testamentary Trust: As noted above, a testamentary trust is a trust created by a will. Such a trust has no power or effect until the will of the donor is probated. Although a testamentary trust will not avoid the need for probate and will become a public document as it is a part of the will, it can be useful in accomplishing other estate planning goals. For instance, the testamentary trust can be used to reduce estate taxes on the death of a spouse or provide for the care of a disabled child.

Supplemental Needs Trusts: The purpose of a supplemental needs trust is to enable the donor to provide for the continuing care of a disabled spouse, child, relative or friend. The beneficiary of a well-drafted supplemental needs trust will have access to the trust assets for purposes other than those provided by public benefits programs. In this way, the beneficiary will not lose eligibility for benefits such as Supplemental Security Income, Medicaid and low-income housing. A supplemental needs trust can be created by the donor during life or be part of a will.

Credit Shelter Trusts: Credit shelter trusts are a way to take full advantage of the estate tax exemption. The first $2 million (in 2008) of an estate are exempt from taxes, so theoretically a husband and wife would have no estate tax if their estate is less than $4 million. However, if one spouse dies and leaves everything to the surviving spouse, the surviving spouse may have an estate that is greater than $2 million. When the surviving spouse dies, any part of the estate over $2 million will be subject to estate tax. To avoid this problem, the spouses can create a credit shelter trust as part of their estate plan. When one spouse passes away, the first $2 million of that spouse's estate is put in to a trust.

The surviving spouse can receive income from the trust, but as long as he or she does not control the principal, the money will not be included in the surviving spouse's estate when he or she passes away.

Capacity Requirements

Proper execution of a legal instrument requires that the person signing have sufficient mental "capacity" to understand the implications of the document. While most people speak of legal "capacity" or "competence" in a rigid way (either the person has it or doesn't), in fact it can be quite variable depending on the person's abilities and the function for which capacity is required.

One side of the capacity equation involves the client's abilities, which may change from day to day (or even during the day), depending on the course of the illness, fatigue and the effects of medication. On the other side, greater understanding is required for some legal activities than for others. For instance, the capacity required for entering into a contract is higher than that required to execute a will. The standard definition of capacity for wills has been aptly summed up as follows:

Testamentary capacity requires ability to understand, in a general way, the nature and situation of his property and his relation to those persons who would have some claim to his remembrance. It requires freedom from delusion which might influence the disposition of his property. It requires ability at time of execution of the will to comprehend the nature of the act of making a will. This is a relatively "low threshold," meaning that signing a will does not require a great deal of capacity. The fact that the next day the testator does not remember the will signing and is not sufficiently "with it" to execute a will does not invalidate the will if he understood it when he signed it.

The standard of capacity with respect to durable powers of attorney can vary. Some courts and practitioners argue that this threshold is quite low. Ultimately the client must trust the attorney-in-fact to manage his financial affairs. Others argue that since the attorney-in-fact has the right to enter into contracts on behalf of the client, the client should have capacity to enter into contracts as well. The threshold for entering into contracts is fairly high.

Competency to enter into a contract requires the ability to comprehend the nature and quality of the transaction, together with an understanding of what is "going on". It is imperative to understand the significance and consequences. Because you need a third party to assess capacity and because you need to be certain that the formal legal requirements are followed, it can be risky to prepare and execute legal documents on your own without representation by an attorney.

Guardianship and Conservatorship

Every adult is assumed to be capable of making his or her own decisions unless a court determines otherwise. If an adult becomes incapable of making responsible decisions due to a mental disability, the court will appoint a substitute decision maker, often called a "guardian," but in some states called a "conservator" or other term. Guardianship is a legal relationship between a competent adult (the "guardian") and a person who because of incapacity is no longer able to take care of his or her own affairs (the "ward").

The guardian can be authorized to make legal, financial, and health care decisions for the ward. Depending on the terms of the guardianship and state practices, the guardian may or may not have to seek court approval for various

decisions. In many states, a person appointed only to handle finances is called a "conservator." Some incapacitated individuals can make responsible decisions in some areas of their lives but not others. In such cases, the court may give the guardian decision making power over only those areas in which the incapacitated person is unable to make responsible decisions (a so-called "limited guardianship"). In other words, the guardian may exercise only those rights that have been removed from the ward and delegated to the guardian.

Incapacity: The standard under which a person is deemed to require a guardian differs from state to state. Generally a person is judged to be in need of guardianship when he or she shows a lack of capacity to make responsible decisions. A person cannot be declared incompetent simply because he or she makes irresponsible or foolish decisions, but only if the person is shown to lack the capacity to make sound decisions. For example, a person may not be declared incompetent simply because he spends money in ways that seem odd to someone else. Also, a developmental disability or mental illness is not, by itself, enough to declare a person incompetent.

Process: In most states, anyone interested in the proposed ward's well-being can request a guardianship. An attorney is usually retained to file a petition for a hearing in the probate court in the proposed ward's county of residence. Protections for the proposed ward vary greatly from state to state, with some simply requiring that notice of the proceeding be provided and others requiring the proposed ward's presence at the hearing. The proposed ward is usually entitled to legal representation at the hearing, and the court will appoint an attorney if the allegedly incapacitated person cannot afford a lawyer.

At the hearing, the court attempts to determine if the proposed ward is incapacitated and, if so, to what extent the individual requires assistance. If the court determines that the proposed ward is indeed incapacitated, the court then decides if the person seeking the role of guardian will be a responsible guardian.

A guardian can be any competent adult -- the ward's spouse, another family member, a friend, a neighbor, or a professional guardian (an unrelated person who has received special training). A competent individual may nominate a proposed guardian through a durable power of attorney in case she ever needs a guardian. The guardian need not be a person at all -- it can be a non-profit agency or a public or private corporation. If a person is found to be incapacitated and a suitable guardian cannot be found, courts in many states can appoint a public guardian, a publicly-financed agency that serves this purpose. In naming someone to serve as a guardian, courts give first consideration to those who play a significant role in the ward's life -- people who are both aware of and sensitive to the ward's needs and preferences. If two individuals wish to share guardianship duties, courts can name co-guardians.