



**THE E.P. EXPRESS**

FOS's Estate Planning Newsletter  
*An ounce of prevention. . . .*

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**PROTECTING FAMILY MEMBERS WITH SPECIAL NEEDS**

**WHAT'S SO SPECIAL ABOUT A SPECIAL NEEDS TRUST?**



By Shannon A. Allen,  
FOS Shareholder

In 1991, our mother prematurely passed away and I was appointed legal guardian for my younger brother, Clancey, a minor, and my older brother Timothy, who is intellectually disabled.

I have had the honor of being Timothy's legal guardian for the past twenty-three years. Timothy has taught me the name and number of every starting player on the 1955 Brooklyn Dodgers World Series Championship Team. I truly believe that key piece of baseball trivia will come in handy someday.

I am extremely proud of Timothy for recently living independently with minimal assistance. Timothy's Special Needs Trust allows me the peace of mind to know he will be able to maintain his current quality of life if I am unable to continue the personal care and financial support I currently provide due to illness or death.

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FOS shareholder Shannon Allen's personal decision to create a Special Needs Trust for her disabled brother, as described in the adjacent article, should give all pause.

Most of us know someone who is physically, intellectually or emotionally disabled and receives government benefits like Medicaid or Supplemental Social Security.

The government places major financial restrictions on benefit recipients. For example, an individual currently may have no more than \$2,000 in cash assets.

A proper Special Needs Trust does two things—it provides a vehicle to fund and oversee a disabled individual's care, and it insulates the individual from certain (but not all) benefit reductions or losses from that funding.

As Shannon's article describes, such a trust can make a huge difference in a disabled person's quality of life. Funds may be used, for example, for rehabilitation, transportation, dietary needs, insurance, and even entertainment and recreation.

A Special Needs Trust is a complex legal document which must be carefully crafted by a specialized estate planning

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**THE PACKERS, BEER, CHEESE AND..... HEALTH CARE POWERS OF ATTORNEY?**

When non-Wisconsinites think of our great state, they think of beer. Cheese (and cheeseheads). The Packers. Even the polka.

Well, there is a new addition to the list of Wisconsin's great accomplishments.

Health Care Powers of Attorney (HCPOAs). Yes, you read that right.

An HCPOA is a written directive stating the signer's wishes regarding medical care, and appointing someone to act as his agent if he can't make his own medical decisions.

According to National Public Radio ("NPR"), Wisconsin—specifically La Crosse, Wisconsin—holds the record for the highest percentage of people who die having signed HCPOAs or similar directives—96%. That's more than three times the national average.

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## EVEN MOVIE STARS FORGET TO UPDATE THEIR ESTATE PLANS

The only constant in life is change.

We grow up. We start our career. We get married, buy a house, and sign those first mortgage papers. We have a child, and obtain an estate plan, in case the worst happens (which, we think, never will).

We move up in our job, and acquire more assets. We have another child, or two, or three.

The days tick by, and we don't revisit that estate plan. When the thought crosses our mind, we vow to get on the stick and update it. But first we need to get the kids to school and finish that project at work....

Then the unthinkable happens. Leaving our family in the lurch.

That's exactly what happened when the actor Philip Seymour Hoffman died recently.

When Hoffman's now 10-year-old son was born, Hoffman executed a will which left most of his estate to his son's mother (in true Hollywood fashion, they never married), and which created a specific trust for his son.

In the subsequent decade, Hoffman had two daughters. But he never updated his estate plan. He never changed his will to benefit (at all, much less equally) however many children he had when he died.

So, Hoffman's three children are left with a will that provides for only one of them. Hoffman could not have wanted that.

Hopefully, Hoffman's family will agree to equalize distributions amongst his three children when they become adults. Some families, however, can't agree on what time it is, much less how much money each should receive when a loved one dies.

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### *HCPOAs, from page 1*

As NPR reports, HCPOAs have been shown to reduce overall medical costs. More importantly, they reduce the already overburdening stress on families faced with a loved one's serious illness or medical emergency.

When a hospitalized or incapacitated person's wishes are not reduced to a written HCPOA, doctors, medical staffs, and families have no directions upon which to make health care decisions.

Confusion, conflict, and feelings of helplessness often result. These problems can be easily avoided by preparing and signing a written HCPOA. Families can then focus on their loved ones, and each other.

Be like the residents of La Crosse. Call your FOS estate planning attorney today to create your and your families' HCPOAs. It will make you feel better about your tomorrows.

## INHERITED IRAS AND BANKRUPTCY CREDITORS

IRAs represent the biggest part of U.S. retirement assets, according to the Investment Co. Institute.

Many of us will inherit one or more IRAs when a family member dies.

IRAs have been protected from IRAs' owners' creditors in bankruptcy.

But what about an IRA that you inherit from your father or mother? Is that IRA protected?

No, according to the June, 2014 U.S. Supreme Court decision in *Clark v. Rameker*. The Supreme Court held that the Bankruptcy Code protects only the IRA funds of the initial IRA owner (and creator) and only in that initial owner's bankruptcy.

The Supreme Court's reasoning was that inherited IRAs are not the same as non-inherited IRAs, in that additional contributions cannot be made by the recipient, and the recipient can, under certain circumstances, draw funds from the inherited IRA without penalty.

While *Rameker* did not address other retirement vehicles such as 401(k)s, future courts may apply its rationale to such accounts.

Despite this decision, under the right circumstances and with careful planning, it may be possible to avoid this problem, by placing an IRA in a special trust which allows access to funds for its holder's needs, but still protects assets from creditors.

Such a trust may be most beneficial for those with large IRAs, or with heirs that have a greater than usual risk of ending up in bankruptcy. At one end of the spectrum, a child could have a high-liability job; at the other end, a child could have a history of fiscal irresponsibility.

If this issue may affect you, consult your FOS attorney to discuss available alternatives to protect inherited assets from bankruptcy creditors.



## PASSWORD, PASSWORD, WHO'S GOT THE PASSWORD?

The date you married. The date your first child was born. The date your second child was born. The date you got your dog. Your address, backwards.

We've all got passwords. To access our computers, cell phones and tablets. For online bill payments. Bank/credit cards. ATMs. Netflix. Facebook and Twitter. Even Paypal and Ebay (if you dare).

We're supposed to use a different password for every account, to reduce the financial risk if one account gets hacked. So many of us have lists. Of old passwords. New passwords. Passwords to get to files listing passwords.

Forget a password? Get a new one. Forget to write the new one down? Get a new-new one.

Common lore is that we should never disclose our passwords to anyone. While this may protect us while we are in good health, it could wreak havoc on our families and finances if we become incapacitated or die.

Without knowing our passwords, our loved ones may not be able to access bank or credit card accounts. Bills that we think are being paid may not be. Other payments may continue which should be stopped. All while the password search continues.

Some internet sites will keep password lists, but even they need a password to open.

Your FOS attorney can confidentially keep a written list of your passwords with your estate planning documents. You can and should update the list annually. And, when you periodically review your estate plan, you can review your passwords as well.

But first, open that drawer, look through those scraps of paper, and figure out how many current passwords you really do have. And what accounts go with them.

*Hoffman, from page 2*

Hoffman could have prevented this fiasco by updating his estate plan. For example, Hoffman could have created a trust for each new child that came along or one trust for all of his children. Instead, he did nothing. That should be a lesson to us all.

There is another lesson to be learned from Hoffman's death.

We only know the details of Hoffman's estate plan because he used a will to dispose of his assets.

When a will is filed with the court in a probate, its contents become public, for all to know. Had Hoffman disposed of his assets through a separate trust (outside of his will), he could have kept his dispositional scheme private.

Learn from Hoffman's mistakes. Contact your FOS estate planning attorney to review your estate plan or, if you don't have an estate plan, to develop one.

*Shannon Allen, from page 1*

Over the years, I have met countless families who do their absolute best to provide for their loved ones with special needs.

The majority of these families do not have a Special Needs Trust established.

Their family members with intellectual disabilities often times remain their own guardians.

Contact an FOS estate planning attorney to determine if a Special Needs Trust, guardianship or other option is appropriate for your family member with special needs.

*Special Needs Trusts, from page 1*

attorney, with full knowledge of the beneficiary's circumstances.

It must be irrevocable (not changeable). It should state that it is intended to provide "supplemental and extra care" over any benefits available to the beneficiary.

The trust must be for the beneficiary's sole benefit, but cannot be established by the beneficiary himself. It must be established, before the beneficiary turns 65, by a parent, grandparent or legal guardian.

Funds in a Special Needs Trust are distributed not to the beneficiary but to third parties on the beneficiary's behalf.

FOS's estate planning attorneys have the expertise to help you establish a Special Needs Trust.



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***YOUR WILL GIVES YOU THE LAST WORD—USE IT!***

Human nature has many idiosyncrasies, but two stand out in the context of estate planning.

We like to believe we control our destiny. And we want to have the last word.

An estate plan lets you achieve both goals.

You can specify who will and will not inherit your assets. And you can condition your bequests, including ways others may view as eccentric (they must, of course, be legal).

For example, junk business owner Ron Sturgeon plans to leave his \$75 million estate to his dogs, according to [www.aol.com](http://www.aol.com).

Not to be outdone, Charles Miller, a childless Toronto lawyer, left his entire estate to the woman who gave birth to the most children in Toronto.

Miller's death spurred a race to procreate, and an unsuccessful attempt to void the will as promoting immorality. His estate was divided among four

"winners," each bearing nine children, according to [www.duhaime.org](http://www.duhaime.org).

Actor Conrad Cantzen left over \$200,000 (in 1945 dollars) to the Actors Fund to help actors buy shoes. Unheeled actors can still apply at [actorsfund.org/services-and-programs/conrad-cantzen-shoe-fund](http://actorsfund.org/services-and-programs/conrad-cantzen-shoe-fund).

You may have your own "last word" direction. It may not be as unique as Miller's or Sturgeon's or Cantzen's, but it surely is important to you.

You may, for example, want to fund an annual trip for top local high school graduates.

Or you may want to give your grandchild money, if and when he graduates college.

The place to do that is in your will or trust.

Otherwise, you cannot control how, when or to whom your assets will be distributed when you die.

It's your last word. Use it.