I Have it Because Mom Liked Me Best:

How to Help Protect Seniors from Financial Exploitation

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Disclaimer:

The information contained herein is provided as general information but is not legal advice; every situation requires a review of the specific factual circumstances.

If you would like advice on situations specific to your circumstances, please do not hesitate to contact Stuart Bear at sbear@chestnutcambronne.com.

Stuart C. Bear is a partner, shareholder, and the President of Chestnut Cambronne PA and holds a national reputation for providing the highest level of succession planning services for individuals and businesses; including single individuals, married couples, domestic partnerships, blended families, and seniors. His practice specializes in wills, trusts, disability planning, powers of attorney, living wills, asset protection, and Medical Assistance planning. A native of Superior, Wisconsin, Stuart received his B.A. Degree from the University of Minnesota, Phi Beta Kappa, and his J.D. Degree from William Mitchell College of Law.

Stuart is distinguished as a fellow of the American College of Trust and Estate Counsel (ACTEC). Its members are elected to the College by demonstrating the highest level of integrity, commitment to the profession, competence and experience as trust and estate counselors. He has also been designated a Minnesota Super Lawyer, as well as one of the Top 40 Estate Planning Lawyers in Minnesota, by Super Lawyers magazine. Stuart is AV rated by Martindale-Hubbell, a testament to his peers ranking him at the highest level of professional excellence.

Stuart is a member of the Minnesota State Bar Association's Elder Law Section serving as past Chair of the Elder Law Governing Council, member of the Probate and Trust Law Section, and member of the Real Estate Section. He is also a current member of The National Academy of Elder Law Attorneys, Inc. (NAELA). Stuart has also been recently elected to membership in The International Academy of Estate and Trust Law (TIAETL). Stuart is a frequent speaker at legal education seminars for attorneys, financial planners, and community organizations, including being a featured speaker at ACTEC and the Heckerling Institute on Estate Planning sponsored by the Miami School of Law on the prevention of the financial exploitation of seniors and selection of the proper fiduciary. He was formally an Adjunct Professor at the University of St. Thomas School of Law, located in Minnesota, where he teaches courses on wills and estates.

Case Study:

Clara is a lovely woman in her late 80's living in her beautiful lake front property. Following her husband, Rodger's, passing last year, she found comfort in the support her daughter showed her in maintaining her independence in her lake home. Her daughter, Ann, helps her get her mail, pay her bills, arrange for cleaning services in her home and lawn and lake shore upkeep, and drives her to her doctor appointments.

This past holiday season, Clara's son, Jake, unexpectedly stopped by to surprise Clara and bring her a bouquet of flowers. When Clara opened the door, Jake noticed, along with the stunning lake front views, the kitchen in disarray, bills stacked on the kitchen table, and several voicemails from Clara's primary care provider regarding her recent test results. Ann had taken a new job that required frequent travel which impacted her availability to care for her mother.

Clara had not seen Jake in several years after they had a falling out ten years prior when Jake was managing his substance abuse disorder that resulted in several familial arguments. Clara's daughter, Ann, still traveling for work, isn't expected to return for another month. During this time Jake moved in with Clara and began assisting her with tasks around the house and driving her to various appointments. One day, after Jake took Clara to one of her doctor's appointments, he told her that they had one more stop to make.

One week prior, Jake contacted a local law firm who indicated they would be glad to speak with Clara regarding her estate and disability planning. Jake made the appointment and took Clara to see the lawyer. Upon arriving to the appointment with the lawyer, Jake started discussing changes to Clara's power of attorney document, heath care directive, and will. Clara indicated to the lawyer that she is already working with an attorney on her estate and disability planning, and she is unsure why she is here. The lawyer then asked Jake to leave the room and Clara further disclosed that not only does she not wish to change her documents, but she received a letter from her financial advisor that they noticed an increase in withdrawals from her bank account. Clara is not sure why Jake is pressuring her in this manner, and she is concerned about her financial future.

I. Introduction:

Our population is aging. According to the United States Census Bureau, "in 2020, about 1 in 6 people in the United States were age 65 and over."[1] Financial exploitation of vulnerable adults is not new, but is receiving increased attention among practitioners and lawmakers.

The Financial Crimes Enforcement Network (hereinafter "FinCEN") published their Financial Trend Analysis in April of 2024 exploring Elder Financial Exploitation (hereinafter "EFE") from June 2022 to June 2023.[2] FinCEN defines EFE as "the illegal or improper use of an older adult's funds, property, or assets."[3] Older adults are typically those age 60 or older. [4] EFE can be defined two ways:

1) Elder Theft: "theft of an older adult's assets, funds, or income by a trusted person;"
    a. In this instance the older adult knows and trusts the person.
2) Elder Scams: "the transfer of money to a stranger or imposter for a promised benefit or good that the older adult did not receive." [5]
    a. In this instance the older adult generally does not directly know the person and it can involve people outside the United States.[6]

Unfortunately, FinCEN's analysis found that adult children of seniors are the most frequent perpetrators (approximately 40% of cases)[7] As

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[1] Zoe Caplan, 2020 Census: 1 in 6 People in the United States Were 65 and Over, U.S. Census Bureau (May 25, 2023), https://www.census.gov/library/stories/2023/05/2020-census-united-states-older-population-grew.html.

[2] Fin. Crimes Enf't Network, Fin. Trend Analysis: Elder Fin. Exploitation: Threat Pattern & Trend Info., June 2022 to June 2023 (April 2024), https://www.fincen.gov/system/files/shared/FTA_Elder_Financial_Exploitation_508Final.pdf.

[3] Id. at 2.

[4] Id.

[5] Id. at 2-3.

[6] Id. at 3.

[7] Id. at 2.

practitioners, it is common for adult children to reach out to us on behalf of their parents. These materials seek to discuss strategies to keep our aging population's best interests in mind through appropriate planning strategies and action as practitioners.

Additional Statistics and Warning Signs:

The Federal Bureau of Investigation's (hereinafter "FBI") Internet Crime Complaint Center (hereinafter "IC3"), fields complaints regarding similar crimes discussed above.[8] In 2022, the FBI's Elder Fraud Report found that for those over the age of 60, there were:

- 88,262 victims;
- Approximately $3.1 Billion in total losses;
- An average of $35,101 lost per victim;
- 5,456 victims that lost in excess of $100,000.[9]

Financial exploitation of seniors is on the rise and being able to identify financial abuse and exploitation is increasingly important. As practitioners, it is increasingly important to catch warning signs and know how to determine whether your client is at risk.

The Elder Justice Initiative highlights the following as warning signs of financial exploitation:

- Sudden changes in bank accounts or banking practices, including an unexplained withdrawal of large sums of money by a person accompanying the older adult.
- The inclusion of additional names on an older adult's bank signature card.

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[8] Internet Crime Complaint Ctr., Elder Fraud Report 3 (2022), https://www.ic3.gov/AnnualReport/Reports/2022_IC3ElderFraudReport.pdf.
[9] Id. at 4.

- Unauthorized withdrawal of the older adult's funds using their ATM card.
- Abrupt changes in a will or other financial documents.
- Unexplained disappearance of funds or valuable possessions.
- Provision of substandard care or bills left unpaid despite the availability of adequate financial resources.
- Discovery of a forged signature for financial transactions or for the titles of the older adult's possessions.
- Sudden appearance of previously uninvolved relatives claiming their rights to an older adult's property or possessions.
- Unexplained sudden transfer of assets to a family member or someone outside the family.
- The provision of services that are not necessary.
- An older adult's report of financial exploitation.
- Unexplained credit card charges.[10]

While, as practitioners, we are not privy to all of the warning signs discussed above, abrupt changes to estate and disability planning documents, for example, may be a cause for concern or, at the very least, an additional conversation or two.

Financial exploitation of vulnerable adults is not going away any time soon. Our nation's population is aging and as trusted advisors, we need to be proactive in our approach to estate and disability planning and

[10] U.S. Dep't of Just., Red Flags of Elder Abuse, (Nov. 7, 2023), https://www.justice.gov/elderjustice/red-flags-elder-abuse#financial.

understand the tools available to us to protect our populations most vulnerable.

II. Who is the Client?

Sometimes a client's child will call asking to schedule a meeting to discuss a parent's current health situation and/or to discuss estate planning documents. While, generally, these children are calling to lend a helping hand to make sure their parent's affairs are in order, it is important to establish who the client is, and the duties owed immediately.

1. **Engagement Letter**

   An engagement letter defines the legal relationship between you and your client and defines the scope of work and the responsibilities and obligations of each of the respective parties; many include fee estimates or quotes and other language regarding ability to use and/or disclose tax information.

2. **Initial Meeting Boundary Setting**

   During the initial client meeting determine: (1) who the client is, (2) who the client has authorized to act on his or her behalf, and (3) with whom the client wishes to share confidential information. Making sure all of this information is clearly laid out in the engagement letter will not only assure your client understands the terms of the professional relationship, but it may protect you from professional liability issues that could arise in the future.

3. **Capacity**

   Make sure you do not miss signs of diminished capacity. Try to get your clients in front of you for a meeting at least once a year. Meet more than once per year if capacity has begun to diminish. It is also

important to remember that you cannot always rely on friends and family members to report the problems as they arise, and these same friends and family members may be the perpetrators.

If you notice warning signs that may indicate diminishing capacity, have an honest and candid discussion with your clients about their wishes. If you do not have it already, obtain any information about a health care directive, power of attorney, or trusted person with whom they will authorize you to share confidential information. If they need legal documents prepared, refer them to legal resources or an attorney that can help.

4. **Remember You Are an Advisor and a Human**

Always remember, while it is our duty as lawyers to "exercise independent professional judgement and render candid advice", this may refer to the law and "other considerations such as moral, economic, social, and political factors, that may be relevant to the client's situation."[11] If something feels wrong about the situation, meet with your client and have an honest conversation about the help they may need in that moment.

III. Disability Planning Documents:

Power of Attorney Document

A Power of Attorney (hereinafter "POA") is a legal document where an individual (the "principal") authorizes a third party (or parties) (the "attorney-in-fact") to act on the principal's behalf.

North Dakota Chapter 30.1-30 Uniform Durable Power of Attorney Act contains the law regulating Durable Power of Attorney

[11] Minn. R. Prof. Conduct 2.1.

documents. The State of North Dakota Courts provides resources, and an example form for a General Durable Power of Attorney.[12]

In the absence of a Power of Attorney, an individual must be appointed as Conservator to manage the principal's assets which results in court and attorney fees.

1. **Execution**

   The power of attorney is validly executed when it is "dated and signed by the principal and, in the case of a signature on behalf of the principal, by another, or by a mark, acknowledged by a notary public."[13] It is best practice to execute the Power of Attorney in the presence of a notary.

2. **Types of financial powers of attorney**

   i. **Statutory short form power of attorney**

   Minnesota has a statutory form that can be found in Minnesota Statutes § 523.23. Because this form is easily accessible online there is a real risk of financial exploitation. Practitioners in all states should be aware of whether a form such as this is easily accessible online. See Exhibit A.

   ii. **General durable power of attorney**

   A general power of attorney authorizes the attorney-in-fact to perform any and all acts that the principal

[12] N.D. Legal Self Help Ctr., Instructions For Gen. Durable Power of Att'y (Nov. 2025), https://www.ndcourts.gov/Media/Default/Legal%20Resources/Legal%20Self%20Help/Power%20of%20Attorney/Power%20of%20Attorney%20for%20Adult.pdf.

[13] Minn. Stat. § 523.01.

themselves would perform on a daily basis. See Exhibit B.

Sample general power language: This power of attorney shall be construed as a general power of attorney.

iii. Specific and/or limited power of attorney

A specific power of attorney limits the attorney-in-fact's authority to specific acts or a specific duration. One way to limit an attorney-in-fact's authority is to restrict the activities he or she is authorized to conduct. Another way to limit an attorney-in-fact's authority is to expressly state an expiration date in the financial power of attorney.

For example, the attorney-in-fact could indicate that the power of attorney document does not authorize the attorney-in-fact to conduct real property transactions. Alternatively, the document could limit the attorney-in-fact's ability to conduct real property transactions in relation to a specific address.

Practice Tip: Ensure you are explaining in detail the powers being conveyed in the power of attorney document. A power of attorney document grants significant financial power to an attorney-in-fact.

iv. Durable power of attorney

A durable power of attorney continues to be effective regardless of the capacity of the principal.

Sample durability language found in Minn. Stat. §523.07:

This power of attorney shall not be affected by incapacity or incompetence of the principal.

This power of attorney shall become effective upon the incapacity or incompetence of the principal.

v. Non-durable power of attorney

A non-durable power of attorney ceases to be effective upon the incapacity of the principal.

vi. Springing power

A power of attorney with a "springing power" becomes effective upon the occurrence of a contingent event (typically incapacity of the principal). The attorney-in-fact's authority begins upon the principal's incapacity.

Sample definition of incapacity:

"I will be considered incapacitated if my attending physician has determined I am unable to effectively manage my property or financial affairs because of age, illness, mental disorder, dependence on prescription medication or other substances, or any other cause. I will be considered restored to capacity if my personal or attending physician signs a written opinion that I can effectively manage my property and financial affairs."

Sample "springing" provision: "The powers granted by this power of attorney shall become effective upon my incapacity as defined in this document."

3. Termination

Pursuant to Minn. Stat. §523.08, a durable power of attorney "terminates on the earliest to occur of the death of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage."[14]

Pursuant to Minn. Stat. §523.09, in the case of a nondurable power of attorney, this document "terminates on the death of the principal, the incapacity or incompetence of the principal, the expiration of a date of termination specified in the power of attorney, or, in the case of a power of attorney to the spouse of the principal, upon the commencement of proceedings for dissolution, separation, or annulment of the principal's marriage."[15]

Practice Tip: Execute 4 original copies of the power of attorney document where one stays as an original at the law firm, and three go home with the client. This is helpful in the event a financial institution requires an original on file.

[14] Minn. Stat. § 523.08.

[15] Minn. Stat. § 523.09.

Drafting a power of attorney document requires the practitioner to explain to the client that the document can grant expansive or more limited power to the attorney-in-fact. Ensuring that the document outlines the authority that the principal wants to convey and/or limit is key. Additionally, having an honest conversation with the principal about who they are choosing as their attorney-in-fact is important. A child may not be the best option to serve in this important role.

Health Care Directive

The health care directive has three main roles, it: (1) nominates your health care agent(s); (2) lets your health care agents know your wishes about your medical care and disposition of your body after your death; and (3) contains a Health Insurance Portability and Accountability Act (HIPAA) release, which allows medical professionals to disclose your medical information to your health care agents. See Exhibit C.

In the absence of a Health Care Directive, an individual must be appointed as Guardian to make health care decisions for the principal and receive the principal's health care information which results in court and attorney fees.

1. **Composition.**

There are several key provisions when outlining authority within the health care directive document. Clients should have a thoughtful discussion regarding the care they would like to receive in the event of a tragic accident.

Illustration: In the event someone was in a tragic accident and could not make medical decisions for themselves, their Health Care Directive should

outline their wishes for care. This language could include the following:

If I were dying and unable to speak for myself, I would want all medical procedures performed and all medications provided for my comfort and care and to alleviate my pain, but I do not want treatments that will only serve to prolong the dying process if there is no reasonable chance of recovery.

The client should also outline guidance for their health care agent that discusses when life would no longer be worth living. This could include the following:

I believe life will no longer be worth living if I am suffering from a terminal illness with no reasonable chance of recovery or if I have a brain injury or disease and have no reasonable chance of regaining consciousness.

The document should also address the client's wishes after they pass away. This includes whether they wish to be buried or cremated as well as their preference for disposition of their remains.

2. Execution

To be legally sufficient, a health care directive must:

(1) be in writing;
(2) be dated;
(3) state the principal's name;

(4) be executed by a principal with the capacity to do so or by a person authorized to sign on his or her behalf;
(5) be verified by a notary public or two witnesses; and
(6) include a health care instruction, health care power of attorney, or both.[16]

A health care agent or successor agent may not witness or notarize the document.[17] At least one witness must not be a health care provider, but a person notarizing a health care directive may be an employee of a health care provider.[18]

Practice Tip: Execute 4 original copies of the health care directive. Send one to the client's clinic, one to the hospital where a file already exists for the client, one stays as an original at the law firm, and one goes home with the client. Generally, the health care professional will scan the document into the patient's medical chart and return the original to the patient.

Representative Selection

Selecting an attorney-in-fact/health care agent should not be as straightforward as asking the client who he or she wants to nominate as his or her.
Generally, a client will select his or her spouse, followed by his or her children. That said, these may not always be the most appropriate options. The selection should be made only after a

[16] Minn. Stat. § 145C.03 subd. 1(1)-(6).
[17] Minn. Stat. § 145C.03 subd. 3(a).
[18] Minn. Stat. § 145C.03 subd. 3(b).

thoughtful discussion.

1. Individual vs. Corporate

Many clients prefer to appoint individuals, especially family members, to serve as their representative(s) roles. While this may be fine in certain circumstances the practitioner should have a discussion regarding the duties of an attorney-in-fact and health care agent and the reasons an individual or corporate fiduciary may be more appropriate.

There is no general rule for when an individual is better suited than a corporate representative and vice versa, but corporate representatives may be more appropriate when for example, if someone's spouse has diminished capacity and there are no other family members or friends to assist, it may not be appropriate to appoint them as the health care agent. Additionally, specific to choosing a health care agent, if a single individual has a child that has ideologically different views about health care, they might not be the most appropriate representative.

2. Single Fiduciary vs. Multiple Fiduciaries

Clients often want to appoint all children as their representative(s) so as not to hurt anyone's feelings. The appointment of co-attorneys-in-fact and health care agents may be appropriate and beneficial but should not be based upon preventing someone's feelings from being hurt.

Practice Tip: Power of Attorney: The principal could choose to appoint co-attorneys-in-fact and then decide if they wish to have the representatives serve together (i.e., they must make each financial decision together) or appoint co-attorneys-in-fact and permit them to each act independently of the other.

Whereas a health care directive only grants the authority to the health care agent to make health care decisions for the principal in the event of the principal's lack of decision-making capacity, the power of attorney document (absent a spring power provision), is effective upon signature.[19] It is critical to have thoughtful communication with the client to discuss the authority they wish to grant in the power of attorney and health care directive documents, as well as the most appropriate representative, to ensure their wishes are met and they are not taken advantage of.

IV. *Family Meeting Following Execution of Estate Planning Documents:*

An estate plan is most effective when everyone is on the same page. A family meeting can be a perfect way to highlight the estate plan, so all family members have knowledge and there is transparency. Knowledge and transparency decrease the likelihood of a conflict in the estate settlement process. The goal is that those at the meeting have a much greater understanding of this estate planning and the reasons for decisions. This is especially important when the persons making the estate plan, the clients, are present at the meeting.

[19] Minn. Stat. § 145C.07, subd. 1.

1. **Purpose and goals of meeting.**

   a. Create a clear understanding of the estate plan without necessarily discussing financial information.

   b. Create an understanding of the reasoning why decisions were made by those creating the estate plan.

   c. Create a sense of transparency and knowledge for beneficiaries and those identified as representatives.

2. **Who to invite to meeting and where the meeting takes place.**

   a. Children or children and spouse.

   b. Professional advisors (i.e., financial advisor(s) and accountant(s). I also strongly encourage a client's team of advisors attend. Communication and collaboration enable each advisor to provide a higher level of service.

   Clients appreciate the advisor's presence, which creates a strong first impression with their children. The family meeting provides the team of advisors an opportunity to develop a business relationship with future generations. When a client's children need professional advice of their own, they are more inclined to reach out to someone they have met before and know their parents' trust.

   c. I recommend the meeting take place in a formal setting given the important subject matter of the discussion. I generally offer to have the family meeting at my office, via video conference, or a blended meeting with some participants in my office and some participants via video conference.

3. When is a Family Meeting Necessary?

I strongly recommend a family meeting when: 1) assets are distributed unequally (whether actual or perceived) between children, 2) specific assets (i.e. family cabin or family business) are distributed to specific children, and 3) there is a second marriage or blended family.

Unequal distributions.

Whether willing to admit it or not, many adult children have rough estimates about their parents' net worth and how an inheritance might affect their lifestyles.

A client can dispose of his or her estate as he or she sees fit (subject to elective share statutes), but the attorney should consider advising the client to have a discussion with his or her beneficiaries (with or without disclosing specific financial information) regarding the overall distribution of his or her estate.

If a narrative is not provided for a beneficiary, he or she will create his or her own narrative. If a client wants to help a struggling child by providing a larger inheritance, the narrative will undoubtedly become "mom and dad loved you more." If a client wants to leave everything to charity, the narrative will undoubtedly become "mom and dad didn't love us." A client who has a meaningful discussion with his or her beneficiaries can control the narrative and eliminate dysfunction after death.

Unique assets.

Financial assets pose few issues; they are divided into equal shares and distributed. Non-financial assets, such as family

heirlooms, the family cabin, and the family business can get a bit messy.

The solution to reducing/eliminating conflict regarding family heirlooms may be as simple as having a discussion with the children to determine what items: 1) no one wants, 2) one child wants, and 3) multiple children want. Communication often leads to compromise.

For example, to effectively plan for a family cabin, the client should determine how many children, if any, want the family cabin. When more than one child wants the family cabin, an individual should consider a Limited Liability Company (LLC) or Cabin Trust. If only one child wants the cabin, an LLC is unnecessary and specific provisions within an individual's primary estate planning document can distribute the family cabin.

Family business succession issues typically occur when at least one child is involved in the family business. When no children are involved, the business is usually sold to the highest bidder. The main issues in family business succession are: 1) valuing the business, 2) valuing a child's contribution to the business, and 3) providing an inheritance for children not involved in the business with non-business assets.

Second marriages/blended families.

In first marriages with all common children, clients typically want the entire estate to go to the surviving spouse, and at the surviving spouse's death the assets are distributed among the beneficiaries. In second marriages and blended families, each client typically wants to make sure his or her children are taken care of, and any remaining assets go to the surviving spouse.

Regardless of how loving, caring, and thoughtful a step-parent was during life, if he or she receives the bulk of the inheritance, he or she will quickly turn from Mike/Carol Brady to the Wicked Warlock/Witch of the West.

Absent an agreement to the contrary, a surviving spouse is entitled to certain rights after decedent's death. For example, they are entitled to an elective-share "amount equal to the value of the elective-share percentage of the augmented estate, determined by the length of time the spouse and the decedent were married to each other, in accordance with the schedule found in Minnesota Statutes Section 524.2-202(a).

For example, if a couple was married for nine years but less than ten years, the elective-share percentage is 27% of the augmented estate.[20]

4. Substance of meeting.

The substance of the meeting can vary depending upon how detailed the creators of the estate plan want to be, or how general they want to be. The idea is to convey information in a straightforward manner, but in general, the focus of the family meeting is "big picture" details of the estate plan. Sending an outline prior to the meeting allows everyone to prepare questions, which results in better dialogue and ultimately a more effective meeting. See Exhibit D for a sample outline.

I open by explaining the difference between a Will and a Trust and discuss the factors considered when choosing the primary estate

[20] Minn. Stat. § 524.2-202(a).

planning document. Without disclosing specific financial information, I summarize the distribution of assets. The reason for distributing assets in trust is not to punish the beneficiary, but to ensure assets are available at a later stage in life when priorities have changed. Charitably inclined clients are able to share their charitable values with their children and beneficiaries.

After describing the Power of Attorney and Health Care Directive, the client shares his or her end of life wishes and preferences regarding organ donation and cremation or burial. This information provides solace to the health care agents when the doctor asks these difficult questions.

After each document is identified, I explain the roles of the Personal Representative, Trustee, Attorney-in-Fact, and Health Care Agent.

Throughout the discussion I turn to the team of advisors for their input and encourage they interrupt me to provide additional information or clarify information presented.

V. *Family Meeting Following Death of Client:*

There is no formal sit down and reading of the will. The purpose of meeting after the client has passed away is to assist the named representatives in navigating next steps. While this includes notifying the beneficiaries, it is not done so in a dramatic manner.

1. Who should attend?

I recommend the surviving spouse, children, nominated representatives, and team of advisors attend the initial estate settlement meeting.

2. What should be discussed?

It is best practice to get all issues on the table from the beginning. It is apparent within the first five minutes if there is dysfunction within the family and when discussions start getting heated and you hear the phrase, "it's not about the money," you know it is about the money.

It is important to inform everyone the attorney represents the Personal Representative/Trustee and the attorney's role is to act in the Personal Representative/Trustee's best interest. With dysfunctional families, it is important to remind everyone the attorney's role throughout the meeting.

Estate settlement meetings are most effective when each advisor discusses his or her area of expertise and feels free to comment at any time. Settling an estate has myriad issues and the more expertise in the room the more efficient the estate settlement process. For example, the attorney focuses on the estate settlement process and the duties of each representative, encouraging them to reach out to the advisors for help, and the accountant focuses on individual, fiduciary, and estate tax returns that need to be filed.

3. When should the meeting take place?

A client's loved ones occasionally call me the day after my client has passed away asking what needs to be done. I find comfort in being able to reassure my client's loved ones that nothing needs to be done immediately because the client set up an estate plan.

I. Periodic Updates to Estate and Disability Planning Documents:

Estate and disability planning is a fluid process. Assets, debts, family composition, and health care needs change as we age. As such, I recommend clients revisit their estate and disability planning documents every 3-5 years.

Timeline Illustration:

2005: I met with Clara twenty years ago with Rodger. They had two minor children at the time, Jake (8) and Ann (10), a townhome owned in Rodger's name, $50,000 in a savings account, and $75,000 in Clara's Traditional IRA.

I recommended Rodger and Clara establish the following: power of attorney and health care directive documents, wills, and a transfer on death deed to Clara if Rodger passed away before her.

2008: I sent Clara and Rodger a letter in the mail recommending they schedule a review meeting with me to go over their situation. I did not hear back from them.

2011: I sent Clara and Rodger a letter in the mail recommending they schedule a review meeting with me to go over their situation. They scheduled a meeting and indicated they wished to add charitable beneficiaries to their estate plan, and they also introduced me to their financial advisor.

2025: Fast forward to 2025, Clara's husband, Rodger, has since passed away and Clara came to me to revise her estate and disability planning documents.

VII: Extra Precautions When Executing Estate and Disability Planning Documents:

In some cases, it may be appropriate to approach a signing meeting from a preventative point of view to protect your client from undue influence but also work to ensure your client's wishes are followed after they pass away.

One way to protect your clients from undue influence is to insist that you meet with your client alone without any other family members present. This allows you to have an open conversation with your client about their wishes without others participating. This allows your client to speak freely without worrying about other participants in the room. During this one-on-one time, you can confirm that the documents reflect your client's wishes including who they are appointing to serve as their representative(s) and distribution of their estate after they pass away.

Additionally, especially if cognitive capacity is a concern, you could consider suggesting that a medical examination and/or cognitive exam be completed prior to executing documents.

Finally, following a signing meeting, it is best practice to complete a memorandum to the file outlining the events of and communications had during the signing meeting. Outline your conclusions about cognitive capacity as well as the important step of isolating your client to confirm they are not being subjected to undue influence.

VIII: Financial Industry Regulatory Authority "FINRA":

2165 Financial Exploitation of Specified Adults[21]

(a) Definitions

[21] FINRA Rule § 2165 (2022), https://www.finra.org/rules-guidance/rulebooks/finra-rules/2165.

(1) For purposes of this Rule, the term "Specified Adult" shall mean: (A) a natural person age 65 and older; or (B) a natural person age 18 and older who the member reasonably believes has a mental or physical impairment that renders the individual unable to protect his or her own interests.

(2) For purposes of this Rule, the term "Account" shall mean any account of a member for which a Specified Adult has the authority to transact business.

(3) For purposes of this Rule, the term "Trusted Contact Person" shall mean the person who may be contacted about the Specified Adult's Account in accordance with Rule 4512.

(4) For purposes of this Rule, the term "financial exploitation" means:

(A) the wrongful or unauthorized taking, withholding, appropriation, or use of a Specified Adult's funds or securities; or

(B) any act or omission by a person, including through the use of a power of attorney, guardianship, or any other authority regarding a Specified Adult, to:

(i) obtain control, through deception, intimidation or undue influence, over the Specified Adult's money, assets or property; or

(ii) convert the Specified Adult's money, assets or property.

(b) Temporary Hold on Disbursements or Transactions

(1) A member may place a temporary hold on a disbursement of funds or securities from the Account of a Specified Adult or a transaction in securities in the Account of a Specified Adult if:

(A) The member reasonably believes that financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted; and

(B) The member, not later than two business days after the date that the member first placed the temporary hold on the disbursement of funds or securities or the transaction in securities, provides notification orally or in writing, which may be electronic, of the temporary hold and the reason for the temporary hold to:

(i) all parties authorized to transact business on the Account, unless a party is unavailable or the member reasonably believes that the party has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(ii) the Trusted Contact Person(s), unless the Trusted Contact Person is unavailable or the member reasonably believes that the Trusted Contact Person(s) has engaged, is engaged, or will engage in the financial exploitation of the Specified Adult; and

(C) The member immediately initiates an internal review of the facts and circumstances that caused the member to reasonably believe that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted.

(2) The temporary hold authorized by this Rule will expire not later than 15 business days after the date that the member first placed the temporary hold on the disbursement of funds or securities or the transaction in securities, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(3) of this Rule.

(3) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted,

the temporary hold authorized by this Rule may be extended by the member for no longer than 10 business days following the date authorized by paragraph (b)(2) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, or extended pursuant to paragraph (b)(4) of this Rule.

(4) Provided that the member's internal review of the facts and circumstances under paragraph (b)(1)(C) of this Rule supports the member's reasonable belief that the financial exploitation of the Specified Adult has occurred, is occurring, has been attempted, or will be attempted and the member has reported or provided notification of the member's reasonable belief to a state regulator or agency of competent jurisdiction or a court of competent jurisdiction, the temporary hold authorized by this Rule may be extended by the member for no longer than 30 business days following the date authorized by paragraph (b)(3) of this Rule, unless otherwise terminated or extended by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

(c) Supervision

(1) In addition to the general supervisory and recordkeeping requirements of Rules 3110, 3120, 3130, 3150, and Rule 4510 Series, a member relying on this Rule shall establish and maintain written supervisory procedures reasonably designed to achieve compliance with this Rule, including, but not limited to, procedures related to the identification, escalation and reporting of matters related to the financial exploitation of Specified Adults.

(2) A member's written supervisory procedures also shall identify the title of each person authorized to place, terminate or extend a temporary hold on behalf of the member pursuant to this Rule. Any such person shall be an

associated person of the member who serves in a supervisory, compliance or legal capacity for the member.

(d) Record Retention

Members shall retain records related to compliance with this Rule, which shall be readily available to FINRA, upon request. The retained records shall include records of: (1) request(s) for disbursement or transaction that may constitute financial exploitation of a Specified Adult and the resulting temporary hold; (2) the finding of a reasonable belief that financial exploitation has occurred, is occurring, has been attempted, or will be attempted underlying the decision to place a temporary hold on a disbursement or transaction; (3) the name and title of the associated person that authorized the temporary hold on a disbursement or transaction; (4) notification(s) to the relevant parties pursuant to paragraph (b)(1)(B) of this Rule; (5) the internal review of the facts and circumstances pursuant to paragraph (b)(1)(C) of this Rule; and (6) the reason and support for any extension of a temporary hold, including information regarding any communications with or by a state regulator or agency of competent jurisdiction or a court of competent jurisdiction.

4512 Customer Account Information[22]

(a) Each member shall maintain the following information:

(1) for each account:

(A) customer's name and residence;

(B) whether customer is of legal age;

(C) name(s) of the associated person(s), if any, responsible for the account, and if multiple individuals are assigned responsibility for the account, a

[22] FINRA Rule § 4512 (2019), https://www.finra.org/rules-guidance/rulebooks/finra-rules/4512.

record indicating the scope of their responsibilities with respect to the account, provided, however, that this requirement shall not apply to an institutional account;

(D) signature of the partner, officer or manager denoting that the account has been accepted in accordance with the member's policies and procedures for acceptance of accounts;

(E) if the customer is a corporation, partnership or other legal entity, the names of any persons authorized to transact business on behalf of the entity; and

(F) subject to Supplementary Material .06, name of and contact information for a trusted contact person age 18 or older who may be contacted about the customer's account; provided, however, that this requirement shall not apply to an institutional account.

(2) for each account other than an institutional account, and accounts in which investments are limited to transactions in open-end investment company shares that are not recommended by the member or its associated persons, each member shall also make reasonable efforts to obtain, prior to the settlement of the initial transaction in the account, the following information to the extent it is applicable to the account:

(A) customer's tax identification or Social Security number;

(B) occupation of customer and name and address of employer; and

(C) whether customer is an associated person of another member; and

(3) for discretionary accounts maintained by a member, in addition to compliance with subparagraph (1) and, to the extent applicable, subparagraph (2) above, and Rule 3260, the member shall maintain a record of the dated, signature of each named, associated person of the

member authorized to exercise discretion in the account. This recordkeeping requirement shall not apply to investment discretion granted by a customer as to the price at which or the time to execute an order given by a customer for the purchase or sale of a definite dollar amount or quantity of a specified security. Nothing in this Rule shall be construed as allowing members to maintain discretionary accounts or exercise discretion in such accounts except to the extent permitted under the federal securities laws.

(b) A member need not meet the requirements of this Rule with respect to any account that was opened pursuant to a prior FINRA rule until such time as the member updates the information for the account either in the course of the member's routine and customary business or as otherwise required by applicable laws or rules.

(c) For purposes of this Rule, the term "institutional account" shall mean the account of:

(1) a bank, savings and loan association, insurance company or registered investment company;

(2) an investment adviser registered either with the SEC under Section 203 of the Investment Advisers Act or with a state securities commission (or any agency or office performing like functions); or

(3) any other person (whether a natural person, corporation, partnership, trust or otherwise) with total assets of at least $50 million.

IX. Conclusion:

Financial elder abuse is a growing concern with a significant impact. It is critical to be aware of your client's diminishing capacity and possible undue influence and have procedures in place for when something seems off. Certain precautions can be taken to reduce the likelihood of financial abuse.

A well drafted power of attorney and health care directive naming trustworthy individuals can go a long way in preventing abuse. Having a team of professionals (attorneys, CPAs, and financial advisors) and authorizing that team to communicate with each other increases the likelihood of spotting and addressing financial abuse.

EXHIBIT A

STATUTORY SHORT FORM POWER OF ATTORNEY

(Top 3 inches reserved for recording data)

STATUTORY SHORT FORM POWER OF ATTORNEY
MINNESOTA STATUTES, SECTION 523.23

Before completing and signing this form, the principal must read and initial the IMPORTANT NOTICE TO PRINCIPAL that appears after the signature lines in this form. Before acting on behalf of the principal, the attorney(s)-in-fact must sign this form acknowledging having read and understood the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT that appears after the notice to the principal.

PRINCIPAL (Name and Address of Person Granting the Power)

_____

_____

_____

ATTORNEY(S)-IN-FACT
(Name and Address)

_____

_____

_____

_____

_____

_____

_____

_____

SUCCESSOR ATTORNEY(S)-IN-FACT (Optional)
To act if any named attorney-in-fact dies, resigns, or is otherwise unable to serve
(Name and Address)

First Successor _____

_____

_____

_____

Second Successor _____

_____

_____

_____

NOTICE: If more than one attorney-in-fact is designated to act at the same time, make a check or "x" on the line in front of one of the following statements:

_____ Each attorney-in-fact may independently exercise the powers granted.

_____ All attorneys-in-fact must jointly exercise the powers granted.

EXPIRATION DATE (Optional)

_____ _____, _____
Use Specific Month *Day* *Year Only*

I (the above named Principal) appoint the above named Attorney(s)-in-Fact to act as my attorney(s)-in-fact:

FIRST: To act for me in any way that I could act with respect to the following matters, as each of them is defined in Minnesota Statutes, section 523.24:

(To grant to the attorney-in-fact any of the following powers, make a check or "x" on the line in front of each power being granted. You may, but need not, cross out each power not granted. Failure to make a check or "x" on the line in front of the power will have the effect of deleting the power unless the line in front of the power of (N) is checked or "x"-ed.)

Check or "x"

_____ (A) real property transactions;
I choose to limit this power to real property in _____ County, Minnesota, described as follows: (Use legal description. Do not use street address.)

(If more space is needed, continue on the back or on an attachment.)

_____ (B) tangible personal property transactions;

_____ (C) bond, share, and commodity transactions;

_____ (D) banking transactions;

_____ (E) business operating transactions;

_____ (F) insurance transactions;

_____ (G) beneficiary transactions;

_____ (H) gift transactions;

_____ (I) fiduciary transactions;

_____ (J) claims and litigation;

_____ (K) family maintenance;

_____ (L) benefits from military service;

_____ (M) records, reports, and statements;

_____ (N) all of the powers listed in (A) through (M) above and all other matters, other than health care decisions under a health care directive that complies with Minnesota Statutes, chapter 145C.

SECOND: (You must indicate below whether or not this Power of Attorney will be effective if you become incapacitated or incompetent. Make a check or "x" on the line in front of the statement that expresses your intent.)

_____ This power of attorney shall continue to be effective if I become incapacitated or incompetent.

_____ This power of attorney shall not be effective if I become incapacitated or incompetent.

THIRD: My attorney(s)-in-fact MAY NOT make gifts to the attorney(s)-in-fact, or anyone the attorney(s)-in-fact are legally obligated to support, UNLESS I have made a check or an "x" on the line in front of the second statement below and I have written in the name(s) of the attorney(s)-in-fact. The second option allows you to limit the gifting power to only the attorney(s)-in-fact you name in the statement. Minnesota Statutes, section 523.24, subdivision 8, clause (2), limits the annual gift(s) made to my attorney(s)-in-fact, or to anyone the attorney(s)-in-fact are legally obligated to support, to an amount, in the aggregate, that does not exceed the federal annual gift tax exclusion amount in the year of the gift.

_____ I do not authorize any of my attorney(s)-in-fact to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

_____ I authorize _____,
(write in name(s))
as my attorney(s)-in-fact, to make gifts to themselves or to anyone the attorney(s)-in-fact have a legal obligation to support.

FOURTH: (You may indicate below whether or not the attorney-in-fact is required to make an accounting. Make a check or "x" on the line in front of the statement that expresses your intent.)

_____ My attorney-in-fact need not render an accounting unless I request it, or the accounting is otherwise required by Minnesota Statutes, section 523.21.

_____ My attorney-in-fact must render _____ accountings to
(Monthly, Quarterly, Annual)
me or _____
(Name and Address)
_____
during my lifetime, and a final accounting to the personal representative of my estate, if any is appointed, after my death.

In Witness Whereof I have hereunto signed my name this _____ day of _____, _____.

_____
(Signature of Principal)

ACKNOWLEDGEMENT OF PRINCIPAL

State of Minnesota, County of _____

This instrument was acknowledged before me on _____, by _____
(month/day/year) *(insert name of Principal)*
_____
_____.

(Stamp)

_____
(signature of notarial officer)

Title (and Rank): _____

My commission expires: _____
(month/day/year)

ACKNOWLEDGEMENT OF NOTICE TO ATTORNEY(S)-IN-FACT AND SPECIMEN SIGNATURE OF ATTORNEY(S)-IN-FACT.

By signing below, I acknowledge I have read and understand the IMPORTANT NOTICE TO ATTORNEY(S)-IN-FACT required by Minnesota Statutes, section 523.23, and understand and accept the scope of any limitations to the powers and duties delegated to me by this instrument.

(Notarization not required)

_____

_____

THIS INSTRUMENT WAS DRAFTED BY:
(insert name and address)

Specimen signature of Attorney(s)-in-Fact
(Notarization not required)

_____

_____

_____

_____

IMPORTANT NOTICE TO THE PRINCIPAL

READ THIS NOTICE CAREFULLY. The power of attorney form that you will be signing is a legal document. It is governed by Minnesota Statutes, chapter 523. If there is anything about this form that you do not understand, you should seek legal advice.

PURPOSE: The purpose of the power of attorney is for you, the principal, to give broad and sweeping powers to your attorney(s)-in-fact, who is the person you designate to handle your affairs. Any action taken by your attorney(s)-in-fact pursuant to the powers you designate in this power of attorney form binds you, your heirs and assigns, and the representative of your estate in the same manner as though you took the action yourself.

POWERS GIVEN: You will be granting the attorney(s)-in-fact power to enter into transactions relating to any of your real or personal property, even without your consent or any advance notice to you. The powers granted to the attorney(s)-in-fact are broad and not supervised. THIS POWER OF ATTORNEY DOES NOT GRANT ANY POWERS TO MAKE HEALTH CARE DECISIONS FOR YOU. TO GIVE SOMEONE THOSE POWERS, YOU MUST USE A HEALTH CARE DIRECTIVE THAT COMPLIES WITH MINNESOTA STATUTES, CHAPTER 145C.

DUTIES OF YOUR ATTORNEY(S)-IN-FACT: Your attorney(s)-in-fact must keep complete records of all transactions entered into on your behalf. You may request that your attorney(s)-in-fact provide you or someone else that you designate a periodic accounting, which is a written statement that gives reasonable notice of all transactions entered into on your behalf. Your attorney(s)-in-fact must also render an accounting if the attorney-in-fact reimburses himself or herself for any expenditure they made on behalf of you. An attorney-in-fact is personally liable to any person, including you, who is injured by an action taken by an attorney-in-fact in bad faith under the power of attorney or by an attorney-in-fact's failure to account when the attorney-in-fact has a duty to account under this section. The attorney(s)-in-fact must act with your interests utmost in mind.

TERMINATION: If you choose, your attorney(s)-in-fact may exercise these powers throughout your lifetime, both before and after you become incapacitated. However, a court can take away the powers of your attorney(s)-in-fact because of improper acts. You may also revoke this power of attorney if you wish. This power of attorney is automatically terminated if the power is granted to your spouse and proceedings are commenced for dissolution, legal separation, or annulment of your marriage. This power of attorney authorizes, but does not require, the attorney(s)-in-fact to act for you. You are not required to sign this power of attorney, but it will not take effect without your signature. You should not sign this power of attorney if you do not understand everything in it, and what your attorney(s)-in-fact will be able to do if you do sign it.

Please place your initials on the following line indicating you have read this IMPORTANT NOTICE TO THE PRINCIPAL: _____

IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT

You have been nominated by the principal to act as an attorney-in-fact. You are under no duty to exercise the authority granted by the power of attorney. However, when you do exercise any power conferred by the power of attorney, you must:

(1) act with the interests of the principal utmost in mind;

(2) exercise the power in the same manner as an ordinarily prudent person of discretion and intelligence would exercise in the management of the person's own affairs;

(3) render accountings as directed by the principal or whenever you reimburse yourself for expenditures made on behalf of the principal;

(4) act in good faith for the best interest of the principal, using due care, competence, and diligence;

(5) cease acting on behalf of the principal if you learn of any event that terminates this power of attorney or terminates your authority under this power of attorney, such as revocation by the principal of the power of attorney, the death of the principal, or the commencement of proceedings for dissolution, separation, or annulment of your marriage to the principal;

(6) disclose your identity as an attorney-in-fact whenever you act for the principal by signing in substantially the following manner:

Signature by a person as "attorney-in-fact for (name of the principal)" or "(name of the principal) by (name of the attorney-in-fact) the principal's attorney-in-fact";

(7) acknowledge you have read and understood this IMPORTANT NOTICE TO THE ATTORNEY(S)-IN-FACT by signing the power of attorney form.

You are personally liable to any person, including the principal, who is injured by an action taken by you in bad faith under the power of attorney or by your failure to account when the duty to account has arisen.

The meaning of the powers granted to you is contained in Minnesota Statutes, chapter 523. If there is anything about this document or your duties that you do not understand, you should seek legal advice.

EXHIBIT B

GENERAL DURABLE POWER OF ATTORNEY

I, SPOUSE 1, of _____ County, Minnesota, appoint my _____, SPOUSE 2, of _____ County, Minnesota, as my lawful Attorney-in-Fact (my "attorney").

If SPOUSE 2 dies, resigns or is determined to be legally incompetent while this power is still in effect, I nominate my _____, _____, of _____ County, _____, as successor attorney-in-fact.

If _____ dies, resigns or is determined to be legally incompetent while this power is still in effect, I nominate my _____, _____, of _____ County, _____, as successor attorney-in-fact.

1. *Scope and Duration.* This power of attorney shall be construed:

1.1 As a general power of attorney, effective from the date it is executed until my death unless I revoke it in writing while competent.

1.2 As a durable power of attorney under Minnesota law, I intend the authorizations and powers granted in the power of attorney to continue during any period when I am disabled, incompetent or absent.

2. *Powers.* My attorney shall have all the powers incident to a general power of attorney under the common law and statutes of Minnesota and shall also have full authority to take any actions necessary or incident to the execution of these powers, as fully as I could do if personally present. For purposes of clarification, and not as a limitation of this grant of powers, these powers shall include:

2.1 *Disposition of Property.* The power to lease, exchange, sell, convey, mortgage, pledge or otherwise dispose all real estate, all stocks, bonds and other securities, and any other property of any nature, upon such terms as my attorney shall deem advisable, and to execute and deliver assignments, stock powers, contracts, mortgages, deeds, bills of sale and any other instruments;

2.2 *Investment.* The power to invest my funds in such properties as my attorney deems advisable, investments in preferred and common stocks of any kind or class of any corporation, investment trusts and shares of a common trust fund, bonds, promissory notes, debentures or other obligations (secured or unsecured), leases, mortgages or other interests in real estate, and in any limited or general partnership, sole proprietorship, or other business enterprise, however organized and for whatever purpose;

2.3 *Borrowing and Pledging of Credit.* The power to borrow money for any purpose my attorney deems advisable, to pledge my credit, to incur debts on my account in favor of any creditor and to pay reasonable interest on such borrowings or indebtedness;

2.4 *Negotiable Instruments, Deposits and Withdrawal of Funds.* The power to endorse all notes, checks or other commercial paper in my name and to collect or deposit them for collection with any financial institution;

to deposit in my name in any financial institution any of my money; to make withdrawals from any account maintained by me (or by my attorney on my behalf) in any financial institution; and to open and remove the contents of any safety deposit box of which I am a lessee without other authorization;

2.5 *My Obligations.* The power to pay, compromise, settle and satisfy any bills or other obligations of mine or any demands made on me as my attorney deems advisable;

2.6 *Obligations of Others.* The power to collect, demand, sue for and receive all debts, moneys, security for money, goods, chattels or other personal property to which I am entitled, and to settle or compromise the same as my attorney deems advisable;

2.7 *Employment of Agents.* The power to employ any agents, servants or other persons in the administration of my affairs, conferring on such persons both ministerial and discretionary powers and duties, and to pay them reasonable compensation for their services;

2.8 *Tax Obligations.* The power to prepare, verify and file federal and state income tax, gift tax, property tax, generation-skipping tax and any other tax returns, claims for refunds, requests for extension of time, petitions to any court regarding tax matters, and any other tax related documents including receipts, offers, waivers, consents, powers of attorney, closing agreements and declarations of all kinds; to receive confidential information; and generally to act on my behalf in all tax matters of all kinds, for all periods before any officer of the Internal Revenue Service or any other tax authority;

2.9 *Insurance.* The power to make application for insurance policies, to pay any fee or premium for any insurance policy out of my funds and, in regard to any life insurance policies, to exercise any and all rights or incidents of ownership in such policies;

2.10 *Employment Benefits.* The power to do any act relating to my employment, including termination from employment and election of options under any benefit or retirement plans, group insurance plans, group health plans and the like;

2.11 *Miscellaneous Powers.* The power to make application for licenses or any other matter or thing on my account and to pay any fee for the same out of my funds; to vote any shares of stock and to issue proxies and consents with respect to stock; to continue or to permit the continuation of any business in which I have any interest, for whatever period of time my attorney deems advisable, to reorganize, merge, recapitalize, sell, dissolve or liquidate the business in whole or part, upon such terms as my attorney deems advisable; this power shall include the power to invest additional sums in any such business, to act as or to select other persons to act as directors, officers or other employees of any such business and to make other arrangements with respect to the business as my attorney deems advisable;

2.12 *Payments.* The power to disburse funds to pay for my support, maintenance and health care and to pay for the support, maintenance, education and health care of my spouse and any minor or disabled child of mine;

2.13 *Trusts.* The power to create and fund revocable trusts in my name conforming to or incorporating by reference the provisions of my latest

validly executed will, or to transfer assets to any revocable trust established by me, even though the holder of this power may be a trustee or beneficiary of the trust, including the power to designate the trust as a beneficiary of any life insurance policy or to transfer to the trust the incidents of ownership of any insurance policy;

2.14 *Personal Care.* The power to arrange and pay for medical, dental or hospital care, the services of a companion, convalescent care, extended care or nursing home care for me as my attorney deems is advisable for me and to consent to any medical or surgical treatment;

2.15 *Guardian/Conservator.* The power to nominate in a probate court petition a guardian or conservator of my person, including my attorney, it being my intent that the holder of this power shall retain full power over all of my financial affairs;

2.16 *Disclaimer.* The power to disclaim or renounce, in whole or in part, any asset, benefit or interest which would, but for the disclaimer, vest in me, even if the disclaimer constitutes a gift by me;

2.17 *Gifts.* The power to begin or continue a gift program in my name, to any persons or organizations as my attorney-in-fact deems advisable, including but not limited to making gifts to my attorney-in-fact, for purposes of estate planning, tax planning or Medical Assistance planning, even if the aggregate value of my gift or gifts exceeds the sum of annual exclusion gifts under applicable federal and state tax laws.

2.18 *Joint Account/Payable on Death Account/Transfer on Death Account.* The power to establish ownership of any existing account or any new account as a joint account, payable on death account or transfer on death account, for the purpose of probate avoidance, with or to any persons or organizations as my attorney-in-fact deems advisable, including but not limited to, establishing a joint account, payable on death account and/or transfer on death account naming my attorney-in-fact as a joint owner, payable on death, or transferrable on death beneficiary.

2.19 *Appointment of Additional, Substitute or Successor Attorney-in-Fact.* The power to appoint any additional, substitute or successor attorney-in-fact to act under this general power of attorney, even if the additional, substitute or successor attorney-in-fact is related by blood or marriage to my attorney-in-fact.

2.20 *Digital Property.* The attorney-in-fact may exercise all powers that an absolute owner would have and any other powers appropriate to achieve the proper investment, management, and distribution of: (1) any kind of computing device of mine, (2) any kind of data storage device or medium of mine, (3) any electronically stored information of mine, (4) any user account of mine, and (5) any domain name of mine. The attorney-in-fact may obtain copies of any electronically stored information of mine from any individual or entity that possesses, custodies, or controls that information. I hereby authorize any individual or entity that possesses, custodies, or controls any electronically stored information of mine or that provides to me an electronic communication service or remote computing service, whether public or private, to divulge to the attorney-in-fact: (1) any electronically stored information of mine, (2) the contents of any communication that is in electronic storage by that service or that is

carried or maintained on that service, and (3) any record or other information pertaining to me with respect to that service. This authorization is to be construed to be my lawful consent under the Electronic Communications Privacy Act of 1986, as amended; the Computer Fraud and Abuse Act of 1986, as amended; Minnesota's Revised Uniform Fiduciary Access to Digital Assets Act; and any other applicable federal or state data privacy law or criminal law. The terms used in this paragraph are to be construed as broadly as possible, and the term "user account" includes without limitation an established relationship between a user and a computing device or between a user and a provider of Internet or other network access, electronic communication services, or remote computing services, whether public or private.

2.21 *Add, Change, and Remove Beneficiary Designations.* This Power of Attorney document explicitly grants authorization to the attorney-in-fact to add, change, and remove beneficiary designations on qualified and non-qualified accounts.

3. *Limitations on Powers.* The powers given to my attorney in Article Two shall be construed so that no assets of my estate will be included in the estate of my attorney in the event my attorney predeceases me.

4. *Exoneration of Attorney-in-Fact.* My attorney shall be deemed to have acted within my attorney's authority, to have exercised reasonable care, diligence and prudence, and to have acted impartially as to all persons interested in the assets of my estate unless the contrary is proved by affirmative evidence.

5. *Revocability.* I reserve the right to amend or revoke this power of attorney, while competent, by an instrument signed, witnessed and acknowledged by me and delivered to my attorney at any time.

6. *Competency and Medical Privilege.* If my competency to revoke this power of attorney is in doubt for any reason, my attorney shall consult with any licensed physician and may rely conclusively upon the physician's written medical opinion regarding my competency to manage my affairs. If I fail or refuse to submit to an examination, the physician may rely solely upon observations and any written evidence in preparing the opinion. I waive any medical privilege in favor of my attorney.

7. *Inducement Reliance.* All persons dealing with my attorney may rely conclusively upon the original or a photocopy of this document, which is intended to give my attorney complete authority over all of my assets and financial matters. For purposes of inducing any bank, broker, custodian, insurer, lender, transfer agent and any other party to act in accordance with the powers granted in this power of attorney, I represent, warrant and agree that, if this power is terminated for any reason, I and my heirs, legal representatives, successors and assigns will hold such party harmless from any loss suffered or liability incurred by me or my estate and will indemnify such party for any loss or liability incurred by such party in acting in accordance with this power of attorney prior to such party's receipt of written notice of any such termination.

8. *Governing Law.* This power of attorney shall be governed by the laws of the State of Minnesota in all respects including its validity, construction, interpretation and termination. If any provision is determined to be invalid, such invalidity shall not affect the validity of any other provisions.

IN WITNESS WHEREOF, I have signed this instrument on _____.

In Presence of:

_____ _____

SPOUSE 1

_____

STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

On _____, before me, a Notary Public within and for said County, personally appeared SPOUSE 1 to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the instrument as his free act and deed.

_____

Notary Public

ACCEPTANCE OF APPOINTMENT AS ATTORNEY-IN-FACT AND SPECIMEN SIGNATURE

I, SPOUSE 2, agree to act as attorney-in-fact for SPOUSE 1, pursuant to the provisions of this power of attorney.

_____

SPOUSE 2

STATE OF MINNESOTA)

)

COUNTY OF HENNEPIN)

On _____, before me, a notary public, personally appeared SPOUSE 2, to me known to be the person described as the attorney-in-fact in the above instrument, and signed such instrument and acknowledged that she/HE executed the instrument as her/HIS free act and deed.

_____

Notary Public

EXHIBIT C
HEALTH CARE DIRECTIVE

I, _____, understand this document allows me to do ONE OR BOTH of the following:

PART I: Name another person (called the health care agent) to make health care decisions for me if I am unable to decide or speak for myself. My health care agent must make health care decisions for me based on the instructions I provide in this document (Part II), if any, the wishes I have made known to him or her, or must act in my best interest if I have not made my health care wishes known.

AND/OR

PART II: Give health care instructions to guide others making health care decisions for me. If I have named a health care agent, these instructions are to be used by the agent. These instructions may also be used by my health care providers, others assisting with my health care and my family, in the event I cannot make decisions for myself.

PART I: APPOINTMENT OF HEALTH CARE AGENT

THIS IS WHO I WANT TO MAKE HEALTH CARE DECISIONS FOR ME IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

NOTE: If you appoint an agent, you should discuss this health care directive with your agent and give your agent a copy. If you do not wish to appoint an agent, you may leave Part I blank and go to Part II.

When I am unable to decide or speak for myself, I trust and appoint _____ to make health care decisions for me. This person is called my health care agent.

Relationship of my health care agent to me: _____

Telephone number of my health care agent: _____

Address of my health care agent: _____

APPOINTMENT OF ALTERNATE HEALTH CARE AGENT: If my health care agent is not reasonably available, I trust and appoint - _____ to be my health care agent instead.

Relationship of my alternate health care agent to me: _____

Telephone number of my alternate health care agent: _____

Address of my alternate health care agent: _____

THIS IS WHAT I WANT MY HEALTH CARE AGENT TO BE ABLE TO DO IF I AM UNABLE TO DECIDE OR SPEAK FOR MYSELF

(I know I can change these choices)

My health care agent is automatically given the powers listed below in (A) through (D). My health care agent must follow my health care instructions in this document or any other instructions I have given to my agent. If I have not given health care instructions, then my agent must act in my best interest.

Whenever I am unable to decide or speak for myself, my health care agent has the power to:

(A) Make any health care decisions for me. This includes the power to give, refuse, or withdraw consent to any care, treatment, service, or procedures. This includes deciding whether to stop or not start health care that is keeping me or might keep me alive, and deciding about intrusive mental health treatment.

(B) Choose my health care providers.

(C) Choose where I live and receive care and support when those choices relate to my health care needs.

(D) Review my medical records and have the same rights that I would have to give my medical records to other people.

If I DO NOT want my health care agent to have a power listed above in (A) through (D) OR if I want to LIMIT any power in (A) through (D), I MUST say that here: _____

My health care agent is NOT automatically given the powers listed below in (1) and (2). If I WANT my agent to have any of the powers in (1) and (2), I must INITIAL the line in front of the power; then my agent WILL HAVE that power.

_____ (1) To decide whether to donate my organs when I die.

_____ (2) To decide what will happen with my body when I die (burial, cremation).

If I want to say anything more about my health care agent's powers or limits on the powers, I can say it here: _____

PART II: HEALTH CARE INSTRUCTIONS

NOTE: Complete this Part II if you wish to give health care instructions. If you appointed an agent in Part I, completing this Part II is optional but would be very helpful to your agent. However, if you chose not to appoint an agent in Part I, you MUST complete some or all of this Part II if you wish to make a valid health care directive.

These are instructions for my health care when I am unable to decide or speak for myself. These instructions must be followed (so long as they address my needs).

THESE ARE MY BELIEFS AND VALUES ABOUT MY HEALTH CARE

I want you to know these things about me to help you make decisions about my health care:

My goals for my health care: I want to live as long as I possibly can in a natural, meaningful state.

My fears about my health care: I do not want to be kept alive by artificial means if I have a terminal condition and there is no reasonable chance of recovery, or if I have a brain injury or disease and there is no reasonable chance of regaining consciousness. I do, however, want to be made reasonably comfortable and suffer no more pain than necessary.

My spiritual or religious beliefs and traditions: I would like clergy from my religious faith to visit me if I am ill or in the dying process.

My beliefs about when life would be no longer worth living: I believe life will no longer be worth living if I am suffering from a terminal illness

with no reasonable chance of recovery or if I have a brain injury or disease and have no reasonable chance of regaining consciousness.

My thoughts about how my medical condition might affect my family: I do not want to prolong the suffering of my family and myself if there is no hope for recovery.

THIS IS WHAT I WANT AND DO NOT WANT FOR MY HEALTH CARE

Many medical treatments may be used to try to improve my medical condition or to prolong my life. Examples include artificial breathing by a machine connected to a tube in the lungs, artificial feeding or fluids through tubes, attempts to start a stopped heart, surgeries, dialysis, antibiotics, and blood transfusions. Most medical treatments can be tried for a while and then stopped if they do not help.

I have these views about my health care in these situations:

(Note: You can discuss general feelings, specific treatments, or leave any of them blank)

If I had a reasonable chance of recovery, and were temporarily unable to decide or speak for myself, I would want: Every method available used to bring about my recovery.

If I were dying and unable to decide or speak for myself, I would want: All medical procedures performed and all medications provided for my comfort and care and to alleviate my pain, but I do not want treatments that will only serve to prolong the dying process if there is no reasonable chance of recovery. Specifically, if there is no reasonable chance of recovery, I would not want artificial breathing by machine, artificial feeding or fluids (depending upon the then existing circumstances), cardiopulmonary resuscitation, major surgery, dialysis or blood transfusions.

If I were permanently unconscious and unable to decide or speak for myself, I would want: See response above.

If I were completely dependent on others for my care and unable to decide or speak for myself, I would want: All measures taken to relieve my suffering and to provide for my comfort.

In all circumstances, my doctors will try to keep me comfortable and reduce my pain. This is how I feel about pain relief if it would affect my alertness or if it could shorten my life: I believe my health care agent(s), after

consultation with my treating physician, can best make this decision based upon my situation at the time.

There are other things that I want or do not want for my health care, if possible:

Who I would like to be my doctor: _____

Where I would like to live to receive health care: _____

Where I would like to die and other wishes I have about dying: _____

My wishes about donating parts of my body when I die: _____

My wishes about what happens to my body when I die (cremation, burial): _____

Any other things: _____

PART III: MAKING THE DOCUMENT LEGAL

This document must be signed by me. It also must be verified by a notary public. It must be dated when it is verified.

I am thinking clearly, I agree with everything that is written in this document, and I have made this document willingly.

PART IV: DISCLOSURE FOR HEALTH CARE GOVERNED BY HIPAA

Minnesota Statutes, Section 145C.08 states that a health care agent acting pursuant to a health care directive has the same authority as the principal to receive, review and obtain copies of the medical records of the principal, and to consent to the disclosure of the medical records of the principal, unless the principal has specified otherwise in the health care directive. Minnesota Statutes, Section 145C.05, Subdivision 2, Clause (c) allows a principal to authorize a health care agent to make health care decisions for the principal even though the principal retains decision-making capacity. Notwithstanding any provision in this health care directive to the contrary, and whether or not I have or retain decision making capacity for any other purpose, I hereby grant my health care agent, and any person named as successor or alternative health care agent in my health care directive, whether or not then acting as my principal health care agent, the authority to:

1. receive, review, obtain copies, and otherwise have access to and obtain disclosure of my health records and any protected health information held in any form, written or oral, regarding any past, present, or future medical or mental health condition, without limitation, by any of my health care providers as if my health care agent were me; and

2. to be recognized as my personal representative under the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d ("HIPAA"), by any health care provider, insurance company or health care clearinghouse that has provided treatment or services to me, or that has paid for or is seeking payment from me for such services, or is maintaining any protected information about me; and

3. to execute or otherwise provide specific authorizations or consents for the use and disclosure of my health records and my protected

health information by my health care providers and to third parties for any purpose my health care agent deems advisable.

This authorization shall not expire and shall remain in effect as long as my health care directive remains in effect.

_____ Date signed: _____

My Signature, _____ Date of birth: _____

Address: _____

_____

If I cannot sign my name, I can ask someone to sign this document for me.

_____

Signature of the person who I asked to sign this document for me.

_____

Printed name of the person who I asked to sign this document for me.

STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

In my presence on _____, _____ acknowledged her signature on this document or acknowledged that she authorized the person signing this document to sign on her behalf. I am not named as a health care agent or alternate health care agent in this document.

_____

(Signature of Notary)

(Notary Stamp)

REMINDER: Keep this document with your personal papers in a safe place (not in a safe deposit box). Give signed copies to your doctors, family, close friends, health care agent, and alternate health care agent. Make sure your doctor is willing to follow your wishes. This document should be part of your medical record at your physician's office and at the hospital, home care agency, hospice, or nursing facility where you receive your care.

EXHIBIT D
BRADY FAMILY MEETING

ESTATE AND DISABILITY PLANNING
MIKE BRADY AND CAROL BRADY

By:
Stuart C. Bear, Esq.
Chestnut Cambronne PA
100 Washington Avenue South Suite 1700
Minneapolis, MN 55401
(612) 339-7300
sbear@chestnutcambronne.com

I. Estate Planning Documents:

A. Reciprocal Revocable Living Trusts:

1. Tangible personal property distributed to spouse; if no surviving spouse, then specific beneficiaries in accordance with written list; then with residue of estate.

2. Distribution of remaining property:
   a. Distributed to surviving spouse; unless surviving spouse disclaims to "Disclaimer Trust".

   b. "Disclaimer Trust" established for purpose of estate tax minimization. Primary beneficiary is surviving spouse.

      i. Income distributed to spouse.

ii. Principal distributed to spouse in discretion of independent Trustee, for health, education, support, and maintenance.

c. Upon the death of both spouses, assets held by the last spouse to die, as well as assets remaining in the Disclaimer Trust, shall be distributed to our children, Greg, Peter, Bobby, Marcia, Jan and Cindy, in equal shares, per stirpes. In the event a child does not survive, the distribution shall be to the deceased child's biological children, to be held in Trust with discretionary distributions for health, education, support, and maintenance, as well as larger distributions, such as the need for transportation, entering into a marriage, starting or expanding a family, buying a home, or entering into a business or professional practice. Ultimately, assets are distributed in increments at ages 25, 30, and 35. In the event a deceased child has no surviving children, the distribution shall be to Mike and Carol's surviving children, in equal shares.

B. Representatives:

1. Trustee:
   a. surviving spouse
   b. Greg and Marcia.

2. Independent Trustee:
   a. Alice
   b. Sam

3. Trustee in the event Trust created for a person who has not attained age thirty-five (35):
   a. Alice
   b. Sam

C. Necessity to allocate ownership of assets to separate ownership and update beneficiary designation forms.

II. Disability Documents:

A. General Durable Power of Attorney: Empowers the other spouse, followed by Greg, followed by Marcia, followed by Jan, to handle a broad range of financial affairs in the event of disability or incapacity.

B. Health Care Directive: Empowers other spouse, followed by Peter, followed by Bobby, followed by Cindy, to make medical decisions in the event the person entering in the Health Care Directive is unable to make or communicate decisions. Also provides instruction as to the kind of care the person wants at the end of the person's life. Allows caregivers to provide comfort and relief.

III. Location of Documents:

A. Complete set of documents (see attached Receipt) located in safe deposit box of:

Stuart C. Bear, Esq.
Chestnut Cambronne PA
100 Washington Avenue South
Suite 1700
Minneapolis, MN 55401

(612) 339-7300
sbear@chestnutcambronne.com

B. Mike and Carol keep their documents _____