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About the Cover: While not the "official" state flower, orchids thrive and grow aplenty throughout the state. RPPTL Section officer, John Neukamm, captured the beauty of a winter white bloom.

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Get Included in ActionLine!

Readers are invited to submit material for publication concerning real estate, probate, estate planning, estate and gift tax, guardianship, and Section members' accomplishments. **We also accept paid advertising from outside vendors.**

Forward any proposed **ARTICLE OR NEWS OF NOTE** to Dresden Brunner at Dresden@comcast.net.

For information on **ADVERTISING**, please contact Scott Pence at spence@carltonfields.com.

The deadlines for all submissions are as follows:

Issue	Deadline
Spring 2008	Jan. 31, 2008
Summer 2008	April 30, 2008
Fall 2008	July 31, 2008

For GENERAL INQUIRIES about the RPPTL Section, contact Carmalita Hawkins at The Florida Bar at 800-342-8060 extension 5619, or at chawkins@flabar.org. Carmalita is the Section's program administrator and can help with most everything, such as membership, the Section's website, committee meeting schedules, and CLE seminars.

When Is The Right Time to Ask Your Clients About Long-Term Care Planning?

By Mitchell Dannenberg, CLTC, LTCi Marketplace, Bonita Springs, FL

Most of us have had a family member, friend, or business colleague who needed care as the result of an illness or accident. For many, that memory is of our parents caring for our grandparents. Many of the baby boomer generation are now lending a hand to help their moms or dads, and some may find themselves in a caregiver role for their spouses or partners.

The greatest misconception about planning for long term care is that those issues are better dealt with as we approach retirement. Having a plan for care is really about protection of lifestyle, wealth preservation, and the security and peace of mind knowing you've taken steps to shield your family and those you care about from the emotional, physical, and financial challenges needing care can present. None of us knows when we might experience a change of health. Of those individuals presently receiving care, 37% are between the ages of 18 and 64.¹ Actually, the best time to obtain insurance is when you are still working and vibrant, as obtaining coverage can become very difficult or impossible once an accident or illness has changed our good fortune.

In my family, of the three grandparents I knew – all required care. In addition, my dad, who passed away at age 57, needed care. Two years ago, I suggested to my brother and his wife that they purchase a policy, and they determined that waiting to obtain coverage was a prudent decision based upon being in their early 50's. Unfortunately, my sister-in-law was diagnosed with MS earlier this year and now at age 53 finds she is uninsurable. Sadly, not only is she excluded from applying for long term care ("LTC") coverage, she cannot obtain any disability or life insurance either. Having this occur has forced my brother to re-think the importance of planning and he has obtained coverage for himself and both of his children. Within our practice, we have had clients as young as 22 turned down for coverage based upon specific health concerns and, conversely, helped clients as old as age 85 secure protection - which is the maximum age that any company offers coverage.

Sharon Treiser, M.B.A., Director of Development of BNY Mellon Wealth Management's Naples office shared, "Getting coverage is really about making sure clients have liquidity to cover those costs when or if a need for care arises. I've been witness to significant spend downs of portfolio assets - because families simply thought they should wait to obtain protection, or that they were in a position to self fund their needs for care." She adds, "Having a policy

can help one to avoid entirely or postpone the need to make decisions about what assets must be sold, or what the tax ramifications might be from the sale of highly appreciated securities, or taking distributions from an IRA, and in the event of a market downturn, coverage can allow time for an investment portfolio to recover."

Many attorneys with whom I've met and who have historically not brought up the importance of considering at least some level of long term care coverage are now beginning to do so. The primary reason being that there is growing concern among financial advisors and accountants and even in some areas of the legal community that a family could commence a suit based upon a failure to have a client explore what the ramifications of failing to plan could be

upon a portfolio or estate plan. Almost all clients, when asked about why they create a team of advisors, will share that they rely on their experts to help preserve, grow, and, ultimately, pass on their assets, whether that be to family members or for philanthropic purposes. While there has not been a lawsuit filed against an attorney of which I'm aware, at some point many believe there will be litigation over this matter.

Andy Krause, a Trusts and Estates attorney who is a member of the Naples office of Hahn Loeser & Parks LLP, believes that the topic should be addressed and adds, "There are reasons to consider long term care coverage and ways to potentially tax advantage the purchase in concert with a strategy that can reduce the size of a taxable estate, as well as preserve a client's wealth."

For those who believe they can self insure, the question becomes one of spending pennies to protect dollars. Many are surprised to learn there are options offered today that provide for full return of all premiums upon death of the insured - regardless of whether a claim was ever filed. The net effect in this scenario reduces the cost of care to the opportunity cost of the money to purchase a policy.

For business owners of a C corporation, long term care premiums are 100% tax deductible. Given this advantage, it is not uncommon to see purchase of insurance as an incentive to attract and retain talented members of a management team or to become part of a buy-sell agreement. Because companies are allowed to be selective with regard to who is eligible for coverage, we are seeing a growth in popularity of company-paid, executive carve-outs combined with a voluntary offering for the rank and file.


Coverage can be very affordable or more expensive

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depending upon how a policy is designed and what a family wants to protect. As Florida has no state income tax, there are no deductions but federal tax laws do allow for deductions based upon meeting certain criteria. If your client happens to be a resident of another state that does have an income tax, there may be tax credits or deductions based upon annual premiums or there may be additional tax advantages depending upon each personal situation. As an example, New York residents receive a 20% income tax credit regardless of income, based upon ongoing annual premiums for long term care coverage.

You may find yourself meeting with a client who, when asked about long term care, shares they have coverage in place. In this situation, I would encourage asking them for a copy of the policy and then finding a professional to review the plan and make sure it provides appropriate benefits. We have found instances where people think they've purchased long term care coverage and actually have a disability or hospitalization plan, or a policy with a very small benefit, or perhaps the plan lacks inflation protection. Just as a good estate plan needs to be reviewed and updated from time to time, insurance policies should also be looked at to determine if coverage needs to be augmented or is meeting the needs of the family as it currently exists.

Someone who specializes in long term care insurance and understands the difference between company offerings, contract language, the underwriting process and representing a variety of insurers will be most adept at answering your questions and concerns. For example, one company may have a provision allowing for informal care to be delivered by a family member or friend and pay your entire benefit without restriction directly to your checking account, whereas another may require all care to be provided by a licensed healthcare agency and require receipts be turned in to obtain reimbursement. For all these reasons and more it makes sense to have this dialog with your clients and to note in their files that you have discussed the importance of long term care insurance.

LTCi Marketplace is a long term care insurance specialty house and can be contacted at mitchell@ltcimarketplace.com.

Endnote:

¹ Who Needs Long Term Care? Georgetown University Long Term Care Financing Project Fact Sheet, May 2003

Section Welcomes New Administrator

The Florida Bar's new program administrator for the RPPTL Section is Ms. Carmalita Hawkins. Her e-mail address is chawkins@flabar.org and her phone number is 850-561-5619.

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