

Basics of Elder Law & Issues Specific to the LGBT Aging Community-Part 1

J. Scott Corporon, Attorney at Law

Seema Sehrawat: This is our third workshop of the spring semester and we are so glad to have the best people from the community to talk about planning benefits, discrimination all surrounding elder law and the LGBTQ community, so I'm really pleased to announce and introduce our speakers to you. J. Scott Corporon, is that...

J. Scott Corporon: Right, very good.

Seema Sehrawat: From the Corporon Law Office. Scott works and -- a lot in the area of benefit planning and especially with veterans, too. We have Vanessa Sundin who joined our community, is from Northern California and then decided to move from Bay Area and provide her services to Northern California and works closely with Stonewall Alliance and is a board member of Stonewall Alliance Center and also an attorney in town that works with older adults around elder law and she'll talk more about the specifics of what Vanessa does. We have Tom. Tom is the board chair for Stonewall Alliance Center and has been very instrumental in the community and a lot of you may know Tom for all the work he has done. And I am really pleased that he could be here and talk about the LGBTQ community in particular and the issue surrounding elder law and things that we need to keep in mind, while we are serving the community, or, you know, if we have a loved one that would need our assistance. So I'm really happy that we are hosting this session. Just few housekeeping issues and then we'll go ahead and get started. I do have certificate of participation and CEU certificate if you would like one, so see me after the workshop is done and I would be happy to give you one of those. We also do a small evaluation of every session that we do. So we do have evaluation sheets and will pass those to you around 10:30 so you'll have some time to give us your feedback and that helps us improve on what we are doing. The last thing that I would like to mention is we -- we also screen movies every month and this month's movie is "I Would Rather Be Home." It's about an older adult who faces extreme elder views but still wants to go back home. It's less than an hour long movie. We are doing -- we are screening it twice this month, 24th April and 25th April. And these fliers have the date and the place where it's going to be screened. It will be on campus. So please feel free as you walk out to take some of these fliers, and Scott brought some fliers, too. So we have a lot of materials for you to take with you so please feel free to do that. Thank you for coming and without further ado, let's go ahead and get started with our speakers. Thank you.

J. Scott Corporon: I'm on the end, I'll go first [laughter]. Good morning and thank you for having me as a speaker; and a nice introduction. I'm Scott Corporon, attorney here in Chico. I actually grew up in Chico. Just as kind of an introduction and point of interest, I was raised in the late '70s, early '80s by my mom and her partner which was kind of a -- probably a much different world for youngsters than it is now. But somehow I survived and I'm proud of my background, my upbringing. Sandy, my mom's partner, who has been more than a mom and parent to me than either one of my parents; I love her and I'm proud of her and we're still very close, maybe closer than we ever were. I gave her a bad time when I was a kid, especially as a teenager. But I, you know, since law school, I've had an interest in rights for same sex couples, but, you know, my heart's there because of my background but also, it just seems to me like

such a private matter, such a non-public issue who you choose to marry. It reminded me so much of a Supreme Court case called Virginia v. Loving which was the Supreme Court case that struck down state laws banning interracial marriage. You have a, you know, African-American woman, a white man that wanted to get married and they had to move out of state in order to do that and it seems absurd that the state would be involved with that decision.

So, anyway, I thought today I would share with you a little bit about a benefit known as Aid and Attendance, it's a pension benefit. Not a lot of people know about it. It's kind of as our population ages and there are more professionals out there that know about it, it's becoming more and more known, so -- but let me share with you the way Aid and Attendance works. I have some brochures that have all the details, the specifics. What it requires is that a veteran or a veteran spouse can be a claimant so long as the veteran served during a wartime era. They don't have to have served in combat. So we have some World War II, a lot of Vietnam and then, you know, Desert Storm onward, there's some people that qualify as having service in a combat era. So served and be -- anything other than dishonorably discharged. What it does is it will compensate the veteran, or the veteran spouse, or both, for unreimbursed Medi-Cal expenses. So in situations where you have extraordinary Medi-Cal expenses that exceed your income, the VA will kick in a certain amount of money to cover those expenses. And it's roughly \$1600 for the veteran, about \$1100 for the spouse, together if their joint claim it's around \$2,000, which can be significant.

And just to kind of give some context to it, I'll share with you a client and one of my first Aid and Attendance clients, a gentleman who was and is still living at home. He's in '90s. I think he's about 95 now. He did a good job saving and he had significant savings, over \$100,000, but he was paying between \$2 and \$3,000 a month to a caregiver to come in 24 -- well, not 24/7 but seven days a week. So he's -- between in social security and his pension, he was making about or bringing in about \$1500. He's paying an additional, you know, \$2,000 to \$3,000 for a caregiver to come in. So we, through a process of planning, we did have to shift some assets to an irrevocable trust but at the end of the day he qualified for the benefit and his income virtually doubled. He has a daughter and a son who are caregivers but they can't provide the care that he needs and the beauty of it. He's allowed to stay at home where he wants to be. I mean, there's a prospect of him going into skilled nursing being paid for by Medi-Cal, but he's at home in his familiar surroundings and the extra income helps to pay for the professional caregiver takes some stress off the family members. So that was a really good outcome, so that's an example. It's often where folks are getting older and they just need care that they can't afford and oftentimes they'll qualify for this benefit.

So like I said, I have some brochures and if anybody has any questions about it, feel free to let me know and you can take some information. The other issue I thought I would talk about today or the other topic having to do with planning is about powers of attorney. And if anybody has any questions, we have a small group here. If you want to throw something out, I'm more than happy to answer that and I hope that's okay with the form here. But feel free. And let me take it a step further, if there's something else that you might have a question about that is somewhat related, I'm more than happy to answer any questions about that as well, so...

So we do a lot of the state planning and these days it means, in most cases, living trust but sometimes we do wills depending on the circumstances. Whether we do a living trust or a will, we always do -- always, always, always do powers of attorney. There's a power of attorney for healthcare, there's a power of attorney for asset management; and these two documents cover the entirety of your decision making realm. One is about making decisions about your person, your medical care, the other is about dealing with your stuff, your assets, property, et cetera. Hi!

So, the power of attorney for healthcare, you know, there's been some cases in the news about powers of attorney for healthcare, but essentially the way they work is you appoint an agent who has the legal right to make healthcare decisions for you if you're unable to make those decisions for yourself. So, I mean, typically it's a situation where there may be an accident, someone's in a coma. Sometimes it might be, you know, later stages of dementia. So while the person is able they appoint an agent, someone they can trust to act as their power of attorney. And that the person has not only the right to make those decisions, but they're also in the unique position where they can be an advocate for the patient, for the principle and sometimes that can be invaluable.

You know, I've noticed as I've gotten older and dealing with family members and my wife's family members in the hospital, it seems like you have to be very proactive with care providers, you know. Information isn't just freely flowing towards you. Decisions are made but oftentimes the family is not involved in the decision making process unless there's someone proactive saying, "Why are we doing this? Why are we not doing that?" asking specific hard questions. And usually you can get those answers but I think that, I don't know, maybe some of you have the experience where things just happen with no coordination, or very little coordination and little input from the family. So with the power of attorney for healthcare, the agent has the ability to really get involved in that process.

And then, with regard to powers of attorney for healthcare, in choosing an agent, that's something that I talk about with the clients, you know. It's a person who can be an advocate, so I recommend that you -- it doesn't necessarily have to be someone who has medical background, or, you know, any particular experience, but has the ability to be that advocate, to be persevering, to be adamant and make sure your wishes are carried out. Also along those lines of carrying out your wishes, I also recommend to clients that they have conversations with their partners or their children, whoever they appoint as the agent to sort of clarify what their end of life decisions might be like if they were able to make them themselves. You're appointing someone who's going to have to make some very difficult decisions, or may possibly have to make very difficult decisions. The more they know about your personal philosophy, the easier it'll be for them to say, "Yes, I know in my heart of hearts, Mom would not want to languish on this, you know, respirator," or "Mom told me no matter what, try to save her and so that's what I'm going to do." It sort of takes the pressure off and it's helpful for that agent.

The other power of attorney is the power of attorney for asset management. That has to do with all things financial, so it's a fairly broad range of powers that this agent has. So on the one hand it's convenient if there's some investments that need to be managed, or some banking that needs to be

done or a tax return is to be filed. The agent has the power to do that. At the same time, there is a lot of discretion on the part of the agent. So -- I mean, there's even room for misusing funds. So you are allowing this person access to your financial world by appointing them as an agent. So it's, again, as you go about naming the agent you want to be judicious with regarding to finances, someone who has the ability to get things done but, of course, someone who's trustworthy and, you know, sometimes, you know, we've seen it. Whether it's outright fraud or just sort of kind of playing fast and loose with someone else's money and using some for your own expenses and, you know, commingling that kind of thing, but it's also an important choice to make and helpful to have -- again, have conversations about how you like things run and so on, and with that nominee, the person you're nominating to be your agent.

There are two -- generally in our line of work two types of powers of attorney for asset management; one is the springing power of attorney, the other is the general non-springing. So the way that the springing power of attorney works is that some event must happen in order to spring that agent into the position to have the legal authority to act. Typically, what we use is a doctor's declaration. A doctor's declaration is the event, springs the agent into power. Now, the agent goes about to financial institutions with the power of attorney and the doctor's declaration attached showing that it's sprung into effect. Until that event happens, it's just a safety net; no powers are granted to the agent. The other power of attorney that we use, a general non-springing power of attorney, and that's a power of attorney where as soon as you sign the document, your agent has power. They have power to sign your name, they have power to manage your assets. We use those oftentimes with the partners or spouses where as a practical matter both partners or spouses are oftentimes on accounts. And it can be convenient if someone, one of the partners or spouses is out of town with the power of attorney, the agent can sign on behalf of their partner while her partner or spouse is absent. So it can be convenient. The other scenario where we use those rather commonly is where you have an aging parent and an adult child who is already managing assets, they're often helping with paying bills and so on; and it just kind of formalizes that relationship and if there's any question, they have that power of attorney to fall back on. So -- yes?

Audience member: If I have a bill and [inaudible] you know, designating my assets [inaudible] the person who I give the power of attorney can then come back and change my bill or do something with that?

J. Scott Corporon: Typically, no. General -- I mean, there's probably a couple of provisions that say that you cannot do that unless you specifically said in your power of attorney, "I'm granting my agent the ability to modify a trust or a will." But that's an extraordinary power that only you have and you have to state with specificity that you want your agent to have that power in order for that agent to have the power.

Vanessa Sundin: Typically, when that sort of power is granted within an instrument, usually it's [inaudible] with certain circumstances, like I say, like please don't adjust the [inaudible] what I've set forth as my intent and my [inaudible] that sort of thing, but usually it's like in order to accommodate

persons who have had the package or [inaudible] basic needs that need to happen, a lot of times the attendants indicated that [inaudible] statement that I already set out.

Audience member: So I have to be [inaudible] when I set out my estate plan that this is how I want it.

J. Scott Corporon: Yes, yes. I've dealt with a couple of situations, one in particular where there was a distribution to go to -- the children who are all adults. One of the children incurred a pretty significant liability and suddenly, you know, they didn't want a large inheritance to go to this child. By the terms of the trust, it wasn't allowed and, you know, because the father had died. So the mother is the only surviving settler of this trust, but in that case, we petitioned the court and said, "Look, we don't want to leave this heir a large sum of money because it's just going to go to the IRS or whoever the creditor was." And, you know, the court granted the petition. But it wasn't something that could be lightly done and it's kind of hard to plan for all these scenarios where, you know, nobody knew that he was going to get into this financial trouble. So -- yeah.

Audience member: Well, how [inaudible] the person's death.

J. Scott Corporon: Yes, that's a good question. The power of attorney ends a death and I've seen that so many times where somebody comes in and, you know, "Mom died last week but I went to the bank and got all the money this morning," you know. "How did you do that?" And "I just used the power of attorney," like, what -- you know. The bank didn't know that she had passed away so, but its known void upon death. The other thing, sometimes I'll have -- I told you about the general non-springing power of attorney where you have an elderly parent, you know, sign and say my son or daughter can, you know, access my accounts essentially. There is sometimes a bit of reluctance, you know, "What am I giving up? You know, am I giving up my power to manage my own affairs?" But actually all you're doing in that situation is allowing your adult child to help you as an agent. Both documents are absolutely and freely revocable if you don't like what your child is doing, you revoke it. It's, you know, it's entirely possible. And, you know, and I say that in a purely legal context and maybe when we're talking about elder abuse situations, it's a little more complicated than that. But there is the legal ability for mom or dad to just yank the power, so... Well, she had a question.

Audience member: [Inaudible] some issues of competency. [Inaudible] there's a power of attorney and with around dementia, you know, mom has dementia. She's getting more paranoid and now says, "No, I don't want my son to have that power."

J. Scott Corporon: Yeah.

Audience member: Is there have to be proven incompetent to do that?

J. Scott Corporon: It could get complicated. It seems -- I mean, that's not an unrealistic scenario at all, but, you know, that's far in my experience, most of the time when they get far along with dementia, they're not quite thinking linearly and sequence in saying, "Well, I'm just going to revoke the power of

attorney. They just a little more beyond that and, you know. But it could be an issue, I mean, if someone says, "I want to revoke my power of attorney and the agent says, "I -- you know, she clearly doesn't have competence and, you know, there's a good chance that it would end up as a conservatorship if there's this major conflict, so yeah. Tom, you had a question?

Tom: Yeah, I was going to ask, you know, and a lot of, at least historically for LGBTQ people who have had the power of attorney or wills, families that come and contested them and on cases...

J. Scott Corporon: Right.

Tom: ...so I'm wondering if there's extra things to be done or ways that things could be written so that's not as strong a possibility [inaudible].

J. Scott Corporon: Right. I mean, one of the, you know, the big changes in the last few years is that now under California state law, domestic partners have the same rights as married people. So if you're registered as a domestic partner, you do have these presumptive inheritance rights, presumptive rights about becoming conservators or interacting with medical care providers. But -- so that's good, but it's not to say that you shouldn't do any planning. People move out of state and not all states are as protective. But also, I found, you know, in addition to the planning practice, I do a little bit of a state contest. The clearer you are about what your wishes are, it heads off the disputes. If there is any ambiguity, that's where people, you know, get their foot in the door and start trying to pry it open and turn it into something that it's not. So, I would say if there is a potentially un-accepting family member out there in the wings, and I'm talking about, you know, particularly in the same sex couple, or even -- and it doesn't matter. I mean, if there's any potential for the contest. And most of us know if there's somebody out there that's a little bit radical and suspicious, perhaps greedy, make a plan, lay it out what your wishes are, and sometimes that in and of itself for them to see, "Oh, it says absolutely clearly here this is my relationship with my partner. This is exactly what my partner should have," you know, it eliminates that gray area where people can get creative and say, "Oh, you know, they were just roommates and he was a jerk," and, you know, they just starting spinning it out in a way that will benefit themselves. So...

Tom: What happens [inaudible] Californians, particularly [inaudible].

J. Scott Corporon: Yeah.

Tom: But is the family is in another state, if somebody dies in another state and what [inaudible].

J. Scott Corporon: Well, it depends. In most cases, an estate would be administered at the -- in the place of residence of the dissident. So if you're just on vacation and, you know, your property is here, this is your residence and few counties, say, it would probably be administered here. There would be no reason to administer it out of state. But I mean, sometimes people, you know, move for a job relocation or, you know. The issue comes up -- I do some adoptions. The stepparent adoption process is available

for same sex couples and one of the things they ask is, you know, "Well, why are we doing this? Because we have all these rights?" But a big issue is, if you're traveling out of state and, you know, you say, "Well, we're domestic partners so I'm presumptively the parent of this child. Under other states' laws they might say, "Well -- you know, well, we don't care about that. We're not in California." But, if you have a court order that says, "Yes, I am the legal parent of this child," you know, there's not any question. I mean, it's the full faith and credit clause of the Constitution requires other states to honor that court order, so...

...yeah. Any other questions about anything [laughter]?

Audience member: We have lawyers in the office and I know they're not charging [inaudible].

J. Scott Corporon: Oh, I might charge you if it's a hard question [laughter]. Yeah. Well, I don't want to take too much time. I think I've -- have I spoken enough?

Audience member: ...one more question.

J. Scott Corporon: Okay.

Audience member: I worked in Arizona for several years, so I've only been in California three years, is there a surrogate decision maker statute, or law in California if there is no power of attorney? See, in Arizona there's a real clear surrogate decision maker law that states the order of if somebody becomes incapacitated who can make just limited decisions.

J. Scott Corporon: Yeah. Well, the way -- I mean, maybe our equivalent is, [inaudible] conservatorship. A conservatorship is where somebody's incompetent, decisions need to be made -- there's no powers of attorney in place, so you petition the court to get appointed this conservator, they haven't nominated anybody. In that scenario, there is a list of who has priority. I mean, first it would be spouse and then family and, you know, on down. So there is a law, like, on the books for conservatorship, but I don't -- I mean, [inaudible] a conservatorship or a power of attorney, someone couldn't...

Audience member: In a medical situation setting...

J. Scott Corporon: Yeah. You know, I don't know. I mean...

Audience member: ...I haven't been able to find one [laughter].

J. Scott Corporon: Yeah [laughter], and I mean, it sounds like in Arizona if you're high on that list, it doesn't matter whether there's a power of attorney or anything.

Audience member: Yeah, there's no question in the hospitals and healthcare facilities usually.

J. Scott Corporon: I don't know of anything like that.

Audience member: I haven't been able to really...

Vanessa Sundin: Like in emergency situations, usually, but, you know, there's a spouse or a [inaudible] a parent or something that, you know, the medical decision could fall to whoever [inaudible] in that emergency scenario, like it's a lingering situation...

J. Scott Corporon: That's tough. It's...

Vanessa Sundin: ...and certainly you need to go forward and getting a conservatorship that these are the person, that way, you know, the medical issues can be dealt with if it hasn't been like [inaudible] documents have been put in place prior to the person, you know, [inaudible].

J. Scott Corporon: Yeah.

Audience member: ...or physicians who actually assists in...

J. Scott Corporon: The decision making process? Yeah. Yeah. Yeah. I mean, I think it's a practical matter in emergency situations, the family is going to be consulted, but, you know, one scenario that comes up in our line of work is about placement in a locked facility, say, for an Alzheimer's patient. And that's a pretty extraordinary power to have over someone to say, "You're going in here and you're locked down." So there is a special conservatorship proceeding for that type of placement.

Audience member: And aren't those also, you know, in Arizona, again, those were options you could choose on a healthcare power of attorney, special powers in the healthcare...

J. Scott Corporon: Yeah.

Audience member: And I don't think that I've seen those in California either, for -- just for healthcare power of attorney being given that...

J. Scott Corporon: Yeah.

Audience member: ...power.

J. Scott Corporon: Right. As far as a place in a locked facility?

Audience member: Yep.

J. Scott Corporon: Yeah, yeah. I mean, it's pretty extraordinary, so yeah. Yes, ma'am.

Audience member: What would be the best place to put your will so your family members can find it, because I had a friend pass away in a long-term facility and [inaudible] family members are having a hard time finding her will, her wishes.

J. Scott Corporon: Right.

Audience member: And so...

J. Scott Corporon: What -- here's -- our practice is, we give the original documents to the client and recommend that they advise somebody. Usually, it's the first successor trustee or if they're nominated executor where the documents are, wherever you keep important papers; sometimes it's at a bank at a safe deposit box, sometimes it's a filing cabinet at home, as long as they know. And then, also, I let clients know that we have copies of everything. We have electronic copies. If you need an email somewhere, have your family call us and we can get copies. And if the original can't be found, there's an affidavit you can complete and say, "This is, you know -- the original was lost or destroyed. This is a true and correct copy." So with that, I mean, there's -- we have copies, they have the original. So long as somebody knows, I mean, that can be -- the problem is, she didn't tell anybody.

Audience member: And she was like in her 70s and she was a professor. She worked part time, worked at this college for 30 years, didn't have any insurance or anything. So as a friend, I'm helping her with Medicare and Medi-Cal, doing our own paperwork. It's -- you know, with paper [inaudible]...

J. Scott Corporon: Yeah, that's aggressive.

Audience member: So here I am having to call the -- her family going, "You need to get here, she's dying." And so they couldn't get to her because of HIPAA laws. They couldn't tell me really what was going on.

J. Scott Corporon: Yeah.

Audience member: And I don't if they could tell her family members, I don't know. So, everything was just very chaotic. It's -- like she said, she didn't tell anybody, you know, and they were trying to get it at the bank and they couldn't get to the bank. [Inaudible] like a couple banks.

J. Scott Corporon: Right. Of course, yeah, nothing's simple.

Audience member: Yeah, and they were having trouble getting to it.

J. Scott Corporon: What you brought up about HIPAA, that's an excellent point and I, you know, it's onerous. In our documents, we put a HIPAA waiver saying, "My agent has the right to access my medical information. I'm waiving my rights under HIPAA of privacy with regard to my agent."

Audience member: [Inaudible] could my friend have wrote it down a piece of paper for me to do that?

J. Scott Corporon: Possibly, but most offices have their language that they want to see. But, I mean, any estate planning attorney should have that HIPAA waiver in their...

Audience member: But this is like all the setting...

J. Scott Corporon: Yeah, yeah.

Audience member: ...crisis or emergency, could she have given me the -- she trusted me. Could she give me the power of attorney or whatever rights, something on the paper to advocate for her or...?

J. Scott Corporon: Probably, but I mean it certainly would be subject to question. I mean, you know, whether it was notarized or witnessed or, you know, what powers is she granting you. Yeah, yeah.

Audience member: So that's caused me to think about appointing somebody who can act once you have that's the way, an executor of the estate. So you should and can appoint somebody to manage things when you die, is there -- I mean, the average cost of -- I guess, that's probably really broad what that might cost?

J. Scott Corporon: It really depends.

Audience member: It depends.

J. Scott Corporon: It's a way over priced, yeah.

Audience member: Okay.

J. Scott Corporon: No, I'm joking [laughter].

Audience member: [Laughter] I don't know!

J. Scott Corporon: I've had situations where I've recommend to people just do a holographic will in a pinch. And a holographic will is legal under California state law where it's all the pertinent provisions of the will are in the testator's handwriting, signed and dated. It doesn't have to be witnessed as long as it's in their handwriting.

Audience member: You could appoint somebody? Can you put...

J. Scott Corporon: Sure. You could say "I want so and so to be my executor. I want, you know, my things to go to these individuals. So, I mean, that can be done. You know, in many instances it might trigger a probate. It might be a situation where a living trust or a beneficiary designations could be useful to avoid

probate and the cost of probate, but, you know, it just depends, every situation is a little bit different. So...

Audience member: How can you protect a will because [inaudible] has happened where there's the original codicil or whatever you call it, or...

J. Scott Corporon: The codicils are the amendments to the will.

Audience member: So I don't know law stuff but, you know. But that you have the original will, the person dies, but somehow they have like a second codicil that everything changes.

J. Scott Corporon: Yeah.

Audience member: How does that -- and that, how can that be right or just -- possible. Is that legal or...

J. Scott Corporon: Well...

Audience member: If someone who has died [inaudible] sign like a paper changing everything...

J. Scott Corporon: Right. Right.

Audience member: ...a will when they're not really in their mind.

J. Scott Corporon: Right. Right. Well, yeah, I mean, they must have testamentary capacity which is sort of loosely defined. I mean, it's something to the effect of you have to understand the objects of your bounty like, what you have and who you're going giving it to. But there's also a tax on those codicils for undue influence is a big one, and lack of capacity that's kind of go hand in hand. But it happens often where you have someone who's frail and with enough pressure, they'll relent and say, "Whatever, just stop getting in my face and I'll sign it." Or, it could be by fraud. Here, sign this. This is a Christmas card and it's actually a will or something," you know, but it does happen. I mean, sometimes -- I think most often, it is one of these situations. I'll talk to these adult children of, you know, "Mom died, Dad remarried. A new wife had him change the estate plan," and, you know, they're kind of going, "That doesn't sound like Dad," you know. But here's Dad lonely, widower, new wife and she's saying I really want this and she won't leave him alone and finally he says, you know, "Whatever you want. Just, you know, leave me alone." And -- it's hard to say. Is that undue influence? Or at that stage in his life maybe that's what he wanted, you know, and it's really difficult for the adult children, you know, like my dad's hard work is going to these stepsiblings that I don't even know. So...

Audience member: [Inaudible] that something like that is happening, I can take it to the court and...

J. Scott Corporon: Sure. Sure. There's always -- I mean, there's always an ability to, you know, petition the court and say, "Hey, I think this was procured by fraud or there was undue influence or that he

clearly lacked capacity." But, you know, really, if you can set things up initially, it's like the ounce of prevention is worth a pound of cure situation. To bring a will contest, it's really expensive, hard to prove; and even if you get a judgment, you know, maybe half the money is gone already -- or more; or maybe it's all gone, it's not even worth it. It's difficult. I had a client who was -- I thought was clever. He was a retired executive from Silicon Valley and he moved up here to be closer to his kids and wanted to stay busy, so he started this little handyman service marketing to seniors just helping them change light bulbs or paint fences or that kind of thing. He did that for a few years and he saw some pretty shady things happening by caregivers, adult children, second spouses. So when he came to me to do his estate plan, his wife had passed away, he had two adult children and he said, "Put a provision in there that I cannot change my estate plan without the consent of my two sons." So if he remarries and his wife says, "Let's go to the lawyer and change this," under the provision of his trust document that we've prepared, his two sons have to go, yeah, that's -- that seems appropriate the dad change everything and give it to the new wife or whatever, you know, the change might be. So it was a nice safeguard and that he came up with on his own. I mean, he didn't trust himself to -- you know, at some point in the future when he is -- his health is failing, maybe he wouldn't be able to resist that kind of undue influence. So, there's really a lot of safeguards you could put into place, but a lot of times you just don't anticipate some of these situations happening.

Audience member: ...so going back to the previous question about HIPAA, so for a friend [inaudible] something that wasn't [inaudible] grant her access to the records [inaudible] handwriting and signed as you were describing the hospitals or others that and that.

J. Scott Corporon: I don't know. I mean, it's one of those things. I mean, even when we do a power of attorney, sometimes there's a little bit of resistance on, you know, going to a financial institution. Oftentimes, there's resistance by employees if it doesn't look familiar to them. It might have the right verbiage in it but they're going to, you know, resist because it's like, "No, that's not the form we use." I mean, it happens at banks all the time when I'm dealing with the states and we have to kind of walk them through it and -- but I don't know if there is a HIPAA waiver that you can -- you know, I don't know if there's a downloadable one or, I don't know.

Audience member: [Inaudible] yeah.

J. Scott Corporon: Yeah. There might be -- I know most offices, doctors' offices, when you go in you have to sign a HIPAA disclosure.

Audience member: [Inaudible] in the first place.

J. Scott Corporon: Yeah.

Vanessa Sundin: You can just go in ahead of time [inaudible].

J. Scott Corporon: Yeah. Yeah.

Vanessa Sundin: You might be able to do it on your own but in [inaudible] you know, [inaudible] or you might do it improperly and then it's going to ultimately end up costing them more hassle and time and money than if they'd just gone in in the first place and done it.

J. Scott Corporon: Right. Right. It's been many times that I've seen the "I'll get the trust document off the internet and I'll do it, you know. Dad's on his death bed," and so often that leads to a mess, an expensive contest or just a, you know, a can of worms that would've been far less expensive to just go and get some documents prepared. So...

Audience member: And, you know, I think this is a great information for us as practitioners working with people because we often as, you know, individuals in [inaudible] to have a decent [inaudible] provisions laid out but I don't know if you have ever talked about, you know, having them design of HIPAA labor and retirement given that, you know, like to the person [inaudible] of the advocates. So this is like being, you know, a great information that we should start adding [inaudible] to give them directives or the [inaudible] practitioners, you know, [inaudible] clients.

Vanessa Sundin: [Inaudible] that the waiver is another important document oftentimes, especially in same sex couples it is -- a hospital visitation authorization form. I had my clients that are [inaudible] signing with [inaudible] married or partner because, A, you don't know if you're going to end up in a hospital outside of state.

J. Scott Corporon: Right.

Vanessa Sundin: And I've even seen scenarios in California where hospitals or facilities are not properly trained or there is just bias there. And they refuse to let people that should be in the room in the room. So it's a hugely important document to be able to come in and, you know, show the facility, expressly have authority regardless even from what my statutory rights are to enter this room.

Audience member: And what is that called?

Vanessa Sundin: It's a hospital visitation authorization form, at least that's what I title it as, but I'm sure it could be called whatever you want but it's more just a contract thing, not a set of boilerplate legal document -- or statutory document.

Audience member: Yeah. There are HIPAA waiver forms. The tricky part is that they give you the healthcare provider permission to discuss your care and condition but not to make decisions. And so that's where the, you know, where they hesitate to -- what to do because we usually use them and people could call and ask how someone was doing and you could discuss their condition but it didn't give them any ability to make any decisions.

J. Scott Corporon: Right. Right. Yeah, I would venture to say that any estate planning attorney should have a HIPAA waiver. I mean, that's -- I mean, it's pretty basic, but, you know, if you do find yourself getting one prepared for you, I mean, certainly ask the question, "Is there a HIPAA waiver in here?" because that can be crucial. We had a situation a few years ago where it was a married couple of -- you know, married for 35 years and the husband was in the hospital. I don't remember if he had a stroke or something but he was pretty incapacitated. The wife was needing to make some claims with the health insurance companies so she's going to the hospital saying, "Okay. I need this information." They're saying, "Where is the HIPAA waiver?" And she's, you know, "My God, this is my husband. We've been married for 35 years." And after some wrangling, they finally let loose but it was kind of amazing. This is a, you know, a spouse and clearly a legitimate purpose for use of the records, so...

Vanessa Sundin: [Inaudible] is that, I mean, HIPAA came into effect within the '90s.

J. Scott Corporon: Late '90s.

Vanessa Sundin: ...late '90s?

J. Scott Corporon: Yeah.

Vanessa Sundin: And so if you had [inaudible] maybe earlier than the mid '90s, there may not be that HIPAA waiver document in there...

J. Scott Corporon: Right.

Vanessa Sundin: ...so that's a good reason to go back. I mean, every person should, you know, reevaluate their estate plan every few years depending on, you know, health or, you know, financial circumstances changing, or even family situations changing. But just to make sure that it's also up to date with, you know, current laws and the HIPAA is a great example of you may not be as protected as you think you are because your documents might be too old.

J. Scott Corporon: Yesterday I met with somebody and under the old law and powers of attorney only had a specific life, five or seven years, and you had to renew them. And they had these old powers of attorney that they had gone through the process of renewing them every five or seven years since the early '90s or late '80s whenever they first prepared them. But, I mean, nowadays we can prepare a document that is valid until your death or until you revoke it, so...

Vanessa Sundin: [Inaudible] experience where financial institutions or other, you know, people that you're bringing and an older power of attorney to it, maybe you're like 10 years older or something that assert the question, the document, as it gets stale because [inaudible], "Well, maybe -- you know, is this the most current document?" That's our thing. It's probably a leftover...

J. Scott Corporon: Right.

Vanessa Sundin: ...from that time period but I have seen that as an issue, too.

Audience member: And my partner and I have -- you know, I don't like to [inaudible] but we're [inaudible] and so some assets [inaudible] more assets. And so the house will be in both our names. I don't know.

J. Scott Corporon: How do you hold title?

Audience member: Huh?

J. Scott Corporon: Are you going to ask how do you hold title?

Audience member: Yeah, and it's like it should happen to me, then, you know, I have three children, adult children...

J. Scott Corporon: Yeah.

Audience member: ...how would I know that the -- what I put into the house, they would get out of it, you know, and...

J. Scott Corporon: Well, probably in your situation there's probably two choices, basically, and I don't know -- you guys can jump in if you want. You can have it as tenants in common which creates 250% interest. Upon your death, your will directs where does this go. Does it go to your partner? Does it go to your children? The other option might be to do a joint tenancy with right of survivorship, so it's - you're 50/50 owners of this estate, this house. One of you dies, the other becomes owner of the entire property by operation of law, no proceedings, you know...

Audience member: [Inaudible] or...

J. Scott Corporon: No, whoever your fellow joint tenant is. So your will say -- may say, "Leave this to my children." But I just had an estate, I'm dealing with this contest now where -- it was a questionable situation where adult kids, second marriage, dragged dad down to the lawyer, he doesn't sign it, so they get something off the internet and he said, "I want half of my 40 acres and house to go to my wife and half to my kids." And it was in joint tenancies, so she gets the whole \$500,000 property and, of course, the step kids are pretty upset about it. But the will doesn't speak to something in joint tenancy because by operation of law when one joint tenant dies, the survivor is the sole owner or survivors if there's one more than one joint tenant. So if you want to ensure that your kids get something, you might be a do a tenants in common, tenancy in common, so yeah. And I mean, this is a quick from the hip kind of advice. I mean, you might be in a situation where it might make sense to set up a trust or do some other things, some other planning to avoid probate and depending on assets and so on. But, outside of a trust, the tenants in common are joint tenants here.

Audience member: How do you make a will come out?

J. Scott Corporon: How do you make it come out?

Audience member: Yeah.

J. Scott Corporon: What do you mean?

Audience member: If the power of attorney or benefactor isn't bringing up the will, is there a time limit when someone passes -- to bring it out? How do you make someone bring it out. Let's say, for example, my father died and his stepmother waited months and months; had to hire an attorney to get her to...

J. Scott Corporon: Start the process?

Audience member: Yeah.

J. Scott Corporon: Well, you could start the probate process without the will. I mean, I guess there was a will and you knew there was a will. Yeah. That's -- yeah, I mean, that's a big question.

Audience member: Okay.

Vanessa Sundin: And you're entitled to -- as an heir, you're entitled to a copy of the will anyway, so if she's not providing it to you to petition the court.

J. Scott Corporon: She's obligated to lodge the will in the court.

Audience member: [Inaudible].

J. Scott Corporon: Yeah. So you could petition the court, but, I mean, also what I'm thinking is you as a child might have some intestate rights, you might fair better without a will so you could petition the court.

Audience member: What's the statute of limitation? [Inaudible].

J. Scott Corporon: There's no statute of limitations. Once a proceeding begins, there is -- it's not a statute of limitations but there's a time limit to bring a contest or to bring a competing will. I actually did an appellate case on that issue that got published -- I'm bragging now [laughter], but it was a great case.

Audience member: Cool [laughter]!

J. Scott Corporon: And I was actually representing human rights campaign. It was like the pinnacle of my legal career. I should've quit right after I did that [laughter]. But -- yeah, once you bring a petition, everybody else, you're letting the world know we're going to administer this estate and if you've given proper notice, they only have a certain amount of time to bring a competing will or to contest the will, or to contest the intestacy of the estate which was what our situation was. If you guys don't watch out, I'm going to talk all day [laughter].

Audience member: It's okay [inaudible] I can make adjustments...

J. Scott Corporon: So anyway, in this case, there was a situation where a young man lived up in Paradise. Reading between the lines, his dad wasn't really happy about him being gay. It seemed -- I never talked to the guy, but a conservative guy from Orange County, just -- that's the feeling I got. So they were estranged. A couple of years before he passed away, he did a couple of holographic wills leaving everything to HRC -- Human Rights Campaign -- because he was very happy that they're advocating for, you know, for the gay-lesbian community. So I think he might have been HIV positive or he had some serious health issues that eventually caused him to die. He died in his house alone, his partner had predeceased him. He wasn't discovered until months later, somebody did -- what do they call it, a welfare check; sent the police over, I mean, and just decomposed remains because he had been there for months. So they contacted the father, the father comes in and goes, "Oh wow," you know, "no will. I get to inherit his house, his money" a piece of property in Southern California that dad had to give to the gentleman's mom in a divorce proceeding and it was like his first investment, this commercial property. So mom had died, so now son had owned the commercial property and I think he was thinking "Now I'll get my property back," you know. "I outlived these two." And I'm maybe portraying him as evil, but he might not be as bad as I'd like to think. Yeah? Yeah [laughter]? Yeah. Do you know the guy?

Audience member: [Inaudible].

J. Scott Corporon: Yeah. So anyhow, he had sent these wills off to HRC a couple of years before. They notified father, he starts a probate proceeding saying there's no will, and as they're going through records, there's a couple of accounts here in Chico at Washington Mutual that designate HRC as the beneficiary. So they contact HRC and say, "Hey, there's -- I think there's a couple of \$100,000. There's a couple of \$100,000 here for you. You just have to contact the bank." It was great. So the folks at HRC went back into their files and like, "We know this guy. Oh, hey. There's a couple of wills that he sent us!" So they contacted the attorney who was handling the probate and said, "Hey, there's some holographic wills," and then immediately they got - they're like, "Oh no," like, you know, "those are probably forged," or, you know, just kind of, "Hush, hush. We're not going to deal with you." They called me and I looked at the will, I asked them to send me a copy of the will and I thought, "Gosh, I'm just going to make a phone call and we'll resolve this. This is not -- kind of a no-brainer, but I got the same like, "Oh no. Well, how do you know it's his signature? Like, my goodness, he lived by himself, like did you -- HRC sent a spy to Paradise, California from [laughter] Washington, D.C.," or, you know. So we went through this -- I mean, being naive I thought, "Gosh, this is easy. Let's just probate this will, I'm like, "What are you guys doing?" But I got a lot of flack from them. And one of the things they tried to pull was, "Well,

you didn't bring your will in insufficient time, so we're going to do this as an intestate [inaudible] administration." And my response was, "You guys had a couple of the will from the very beginning and you're being scoundrels and," -- yeah. So we won at the hearing here and then they appealed it and then we won again on the appeal. But it was a case that in the end, it all worked out in our favor.

The last icing on the cake on the case -- then I really will stop talking -- then after the whole thing was settled, we won on appeal, the attorney had the gall to come and say, "Well, my client would like to be paid his statutory probate fee for starting the probate," which was like \$25,000. I was -- oh my God! The guys that I was working with at HRC, it was the general counsel and the head of fundraising -- or something or other. They were great to work with. They were very objective and they were very angry. So I talked to them for a while and I could sort of play the good cop and I talked to them about it and they said, "No way." So I said, "Well, here's an idea. Why don't we do this -- I'll prepare a petition for malpractice," and the other claim was based on the fact that this property was valued at over a \$1 million in 2006 or 2007 whenever he died and in all this legal wrangling, you know, the real estate market dropped, it was now worth like \$600,000. So I said, "We're going to sue you for malpractice. We're going to sue you for \$400,000 we lost in equity and we're going to pay you nothing. Or you guys quiet down and we'll just walk away." And so like I think the same day he called back and said, "Yeah, that's all right. Don't worry about the [laughter] probate fee." So it was great. That was definitely my favorite case. I felt like I was fighting the good fight, and we won on every single level. Oftentimes in litigation or settling cases, it's a give and take, but they were -- yeah. It came out as it should, so...

Audience member:...and what is HRC again?

J. Scott Corporon: Human Rights Campaign, yeah. Yeah, so... And then after that -- I'm bragging again -- I got these calls from these like lawyers in Southern California like, "Congratulations! Good work!" Like, "Wow! Who are you [laughter]?" But when your case gets published, it was -- it's pretty cool. So, yeah, since then it's been ho-hum [laughter], okay, so I should've quit. If anybody has any other questions and you want to talk at the break, feel free to let me know but I should probably let these guys have a word.

Audience member: Thank you, Scott.

J. Scott Corporon: Thank you [applause]!