

# HOME FOR THE HOLIDAYS: GIVE THE GIFT OF LEGAL PLANNING FOR YOUR COLLEGE STUDENT

In the summer flurry of packing and planning to transition their high school student to college life, many parents overlook the legal documents that can help families in the event of a student's financial or health emergency. As many parents learn the hard way when their child suffers a physical or mental health crisis, the law generally prohibits a hospital or medical provider from sharing information about their adult child without their child's consent regardless of whether the child is covered under their health insurance or a dependent for tax purposes. Similarly, while parents can deposit money into their child's checking account, they do not have the ability to act on their adult child's behalf to manage other aspects of his or her financial life. A few simple documents can help families as their teens transition to adulthood.

## **HIPAA Release and Authorization**

HIPAA normally prohibits a medical provider from giving information about a patient to anyone without the patient's consent. A HIPAA release and authorization allows medical professionals to divulge medical records to an individual's personal representative under HIPAA. Students can name one or both of their parents as individuals authorized to obtain such information.

## **Power of Attorney for Health Care**

A power of attorney for health care allows a person to appoint someone to make health care decisions for them if they are unable to do so. The power of attorney does not override or supplant the individual's wishes; it becomes effective only when (i) two physicians or (ii) a physician and a psychologist, nurse practitioner, or physician assistant determine that the individual is incapacitated. Only one person can be given power of attorney for health care at a time and that person should be aware of the individual's desires and beliefs concerning treatment.

## **Durable Power of Attorney**

A durable power of attorney allows a person to appoint someone to oversee their financial affairs. These powers can be either immediate or effective only in the event of incompetence. For a college student, an immediate durable power of attorney would permit his or her parent to act on the student's financial behalf to the extent the power permits. This power can be broad and cover all accounts, including brokerage institutions, credit cards or banks, or limited to a specific financial institution.

O'Neil Cannon's **Estate and Succession Planning Group** can advise and assist your college student with these important documents.

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## **ATTORNEY SETH DIZARD RECENTLY FEATURED IN SUPER LAWYERS**

Attorney Seth Dizard, chair of O'Neil Cannon's banking, receivership, and creditors' rights practice group, was recently featured in the Super Lawyers article "Debt Collection Options for Businesses". In the article, Dizard shares advice and insights for business owners in the area of creditors' rights. Read the full article [here](#).

As the head of the firm's Banking, Receivership, and Creditors' Rights Practice Group, Dizard regularly serves as a court-appointed receiver throughout the State of Wisconsin for businesses, construction projects, real estate developments, marital and family estates, rental income properties, and high net worth individuals. He also represents financial institutions, secured and unsecured corporate or individual creditors, companies seeking to acquire distressed businesses, and financially troubled corporations in both state and federal courts. In addition, he assists business owners by guiding them through the process of informal financial work-outs and refinancing. Dizard has extensive experience serving as court-appointed receiver, and representing court-appointed receivers, throughout the state in assignments for the benefit of creditors (Chapter 128 Receiverships), as well as real estate foreclosures, the winding-up of closely held corporations, and complex post-judgment collection matters.

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## **SUPER LAWYERS RECOGNIZES 25 O'NEIL CANNON ATTORNEYS**

Each year, *Super Lawyers* surveys the State of Wisconsin's 15,000 attorneys and judges, seeking the State's top attorneys. Recently, *Super Lawyers* published its lists for 2022, which include the Top 10 Attorneys in Wisconsin, Top 50 Attorneys in Wisconsin, Top 25 Attorneys in Milwaukee, Super Lawyers (consisting of the top 5% of attorneys in Wisconsin), and Rising Stars (consisting of attorneys who are 40 years old or younger or who have been in practice for 10 years or less).

Twenty-five of our attorneys were recognized by *Super Lawyers*, which has referred to the firm as “the Milwaukee mid-sized powerhouse.” Those attorneys are the following:

- Nicholas G. Chmurski:
  - Rising Stars
- Douglas P. Dehler:
  - Super Lawyer
- James G. DeJong:
  - Super Lawyer
- Seth E. Dizard:
  - Top 50 Attorneys in Wisconsin
  - Top 25 Attorneys in Milwaukee
  - Super Lawyer
- Peter J. Faust:
  - Super Lawyer
- John G. Gehringer:
  - Super Lawyer
- Joseph E. Gumina:
  - Super Lawyer
- Jessica K. Haskell:
  - Rising Stars
- Grant C. Killoran:
  - Super Lawyer
- Dean P. Laing:
  - Top 10 Attorneys in Wisconsin
  - Top 50 Attorneys in Wisconsin
  - Top 25 Attorneys in Milwaukee
  - Super Lawyer
- Trevor C. Lippman:
  - Rising Stars
- Gregory W. Lyons:
  - Super Lawyer
- Patrick G. McBride:
  - Super Lawyer
- Britany E. Morrison:
  - Rising Stars
- Joseph D. Newbold:
  - Super Lawyer

- Erica N. Reib:
  - Rising Stars
- Chad J. Richter:
  - Super Lawyer
- John R. Schreiber:
  - Super Lawyer
- Jason R. Scoby:
  - Super Lawyer
- Steven J. Slawinski:
  - Super Lawyer
- Kelly M. Spott:
  - Rising Stars
- Christa D. Wittenberg:
  - Rising Stars

*Super Lawyers* is a national rating service that rates attorneys in all 50 states. The selection process utilized by *Super Lawyers* is multi-phased and includes independent research, peer nominations, and peer evaluations. One court recently had this to say about *Super Lawyers*:

“[T]he selection procedures employed by [*Super Lawyers*] are very sophisticated, comprehensive and complex. It is abundantly clear . . . that [*Super Lawyers* does] not permit a lawyer to buy one’s way onto the list, nor is there any requirement for the purchase of any product for inclusion in the lists or any quid pro quo of any kind or nature associated with the evaluation and listing of an attorney or in the subsequent advertising of one’s inclusion in the lists.”

We are proud to be one of the few firms in Wisconsin that had more than 50% of its attorneys receive recognition by *Super Lawyers*.

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## **EMPLOYMENT LAWSCENE ALERT: VOTE! AND REMEMBER THAT YOUR EMPLOYEES ARE ENTITLED TO TIME OFF TO VOTE!**

Tuesday, November 8, 2022, is Election Day. Although early voting is underway, many people will want to vote in-person on Election Day. All Wisconsin employers, regardless of size, are required to provide employees who are eligible to vote up to three consecutive hours of unpaid leave to vote while the polls are open (from 7 a.m. until 8 p.m.). Employees must

request the time off prior to Election Day. Employers cannot deny voting leave on the basis that employees would have time outside of their scheduled work hours to vote while the polls are open, but employers can specify which three hours an employee may utilize (e.g., the beginning or end of the workday). Employers may not penalize employees for using voting leave. Although voting leave is unpaid, employers should remember that, under the FLSA, they may not deduct from an exempt employee's salary for partial day absences.

Additionally, all Wisconsin employers are required to grant 24 hours of unpaid leave to an employee who is appointed to serve as an election official. This election official leave is for the Election Day on which the employee serves in his or her official capacity. Employers may not penalize employees for using election official leave. Employees must provide their employers with notice of their need for this leave at least seven days prior to Election Day.

Finally, Wisconsin employers are not permitted to make threats that are intended to influence the political opinions or actions of their employees. Specifically, employers cannot distribute printed materials to employees that threaten to shut down the business, in whole or in part, or to reduce the salaries or wages of employees if a certain party or candidate is elected or if any referendum is adopted or rejected.

As always, O'Neil, Cannon, Hollman, DeJong and Laing is here for you. We encourage you to reach out with any questions, concerns, or legal issues you may have.

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## O'NEIL CANNON RANKED IN 2023 "BEST LAW FIRMS"

O'Neil Cannon has been ranked in the *2023 U.S. News - Best Lawyers*® "Best Law Firms" list in 16 practice areas:

- Bankruptcy and Creditor Debtor Rights / Insolvency and Reorganization Law
- Business Organizations (including LLCs and Partnerships)
- Commercial Litigation
- Construction Law
- Corporate Law
- Employment Law - Management
- Litigation - Bankruptcy
- Litigation - Insurance
- Litigation - Labor and Employment
- Mergers and Acquisitions Law
- Personal Injury Litigation - Plaintiffs
- Product Liability Litigation - Defendants

- Real Estate Law
- Securities / Capital Markets Law
- Tax Law
- Trusts and Estates Law

Firms included in the 2023 “Best Law Firms” list are recognized for professional excellence with persistently impressive ratings from clients and peers. Achieving a tiered ranking signals a unique combination of quality law practice and breadth of legal expertise.

## THE WILAW QUARTERLY NEWSLETTER

### Newsletter Article Highlights:

- Anne Heche’s Will Contest: A Cautionary Tale
- How Joint Accounts Can Ruin Your Estate Plan
- Understanding Common Notices Individuals Receive from the IRS
- How Does Life Insurance Work with an Estate Plan?
- Seventh Circuit Holds That Light Duty Policy Did Not Violate the PDA

### Firm News:

- The Firm Welcomes Four New Attorneys
- Attorney Jessica Haskell Elected to the Board of Directors of the State Bar’s Bankruptcy, Insolvency and Creditors’ Rights Section
- Attorney Erica Reib Reelected to the Board of the State Bar’s Labor and Employment Section
- 19 OCHDL Lawyers Selected as 2023 Best Lawyers®; Another 4 Named Best Lawyers: Ones to Watch

Click the image below to read more.



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## ATTORNEY JESSICA HASKELL NEW CHAIR OF THE MBA BANKRUPTCY SECTION

Attorney **Jessica K. Haskell** was recently selected as the new chair of the Bankruptcy Section of the Milwaukee Bar Association. The Bankruptcy Section of the Milwaukee Bar Association is focused on providing continuing legal education seminars and engaging section members. Jessica is a member of O'Neil Cannon's Banking, Receivership, and Creditors' Rights Practice Group. She represents court-appointed receivers, secured and unsecured creditors, financial institutions, and corporations in state and federal court. Jessica is pleased to be selected as the new chair and looks forward to being involved with the Bankruptcy Section in her new role.

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## ANNE HECHE'S WILL CONTEST: A CAUTIONARY TALE

The circumstances involving [Anne Heche's estate](#) are a stark reminder of the uncertainties that may exist following the death of a loved one and the issues that can arise even when someone *thinks* they have their estate plan in place.

### **Heche's (Possible) Will**

When the Emmy Award-winning actress died after a fiery car crash in August 2022, she left behind two sons. After her death, her former partner, James Tupper, the father of the younger of Heche's sons, came forward with a document—reportedly an email from 2011—that he said names him as the administrator of Heche's estate.

In response, Heche's older son, Homer Laffoon, filed a petition to assume control over Heche's estate. In doing so, Laffoon also said that the 2011 document is not a valid will because it does not meet requirements under California law.

More specifically, Laffoon argued, in part, that the document does not qualify as a valid will because it does not contain Heche's signature and was not observed by two witnesses as required by California law. Because there is a question as to whether Heche had a valid will, a probate court must decide the issue before her assets can be distributed.

State law varies on the requirements of a valid will, so let's look at what is required in Wisconsin.

## **What is a Valid Will in Wisconsin?**

First, for a [valid will in Wisconsin](#), the testator (the person making the will) must have the capacity to create a will, which means the person must be at least 18 years old, of sound mind, and acting on their own volition.

For a will executed in Wisconsin to be valid, it must be written down and signed by the testator, or with the assistance of another person with the testator's consent and in the testator's conscious presence, and signed by two witnesses. If a witness to the will is a beneficiary of the will, his or her interests will most likely be limited to what he or she would have received had the testator died without a will, through intestacy law.

## **Proving a Will in Wisconsin**

In Heche's situation, a judge must decide whether Tupper's proposed 2011 document is a legally valid will. Without a valid will, Heche will have died "intestate," and the probate court will distribute Heche's assets according to California law.

Similarly, when a Wisconsin resident dies, his or her estate will be distributed under Wisconsin intestacy law unless a will is admitted to probate. Depending on the circumstances, it might be appropriate to investigate the circumstances surrounding the purported execution of a will by the testator and/or the witnesses prior to waiving any rights to challenge the proposed will.

Our inheritance litigation team has a wide array of experience in handling will disputes—whether investigating the authenticity of the document itself, analyzing the legal sufficiency of a proposed will, or investigating concerns over lack of legal capacity and undue influence. If a court finds that a document does not meet the legal requirements of a valid will, the decedent's estate may be distributed under a testator's previous estate plan or under Wisconsin intestacy law.

Anne Heche's situation is another reminder of the unfortunate complications and issues that may arise following the death of a loved one.

[Trevor C. Lippman](#) is a shareholder at the law firm of O'Neil Cannon Trevor assists clients with all matters related to inheritance disputes, including questions surrounding the creation and administration of trusts and wills. Since graduating from University of Wisconsin Law School in 2013, Trevor has assisted hundreds of clients navigate the difficult waters involved in elderly financial abuse allegations and inheritance litigation. Trevor prides himself on protecting the rightful legacies of those who have passed on and seeks to understand each client's unique concerns. To schedule an initial consultation with Trevor, call 414.276.5000 or email Trevor directly at [trevor.lippman@wilaw.com](mailto:trevor.lippman@wilaw.com).

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## OCHDL IS PLEASED TO ANNOUNCE THAT NANCY WILSON HAS JOINED THE FIRM

Attorney Nancy L. Wilson, a graduate of the University of Wisconsin Law School, has joined O'Neil, Cannon, Hollman, DeJong and Laing. She will join the firm's Estate and Succession Planning Practice Group, where she will assist clients in all matters relating to estate planning, succession planning, and trust administration. In addition to her legal experience, Nancy has also served as Chief Operating Officer for a large consumer electronics distributor and Vice President of Operations for a manufacturing company. She has also owned and operated an accounting and consulting business, credit reporting agency, and various retail stores. Nancy's experience and familiarity with running a business provides her with in-depth knowledge of her business client's needs. We are very pleased to have Nancy join OCHDL.

OCHDL, founded in Milwaukee in 1973, is a full-service law firm that focuses on meeting the many needs of businesses and their owners. Our experienced attorneys work with businesses and their owners at all stages of the business life cycle, helping them start, grow, and transition their businesses. We also assist business owners with their personal legal needs, including tax and estate planning, and family law. For more information about the types of services we provide, please visit our [website](#) or contact your OCHDL attorney.

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## TAX AND WEALTH ADVISOR ALERT: HOW JOINT ACCOUNTS CAN RUIN YOUR ESTATE PLAN

As individuals grow older, they are often inclined to add a child to their financial accounts to assist them with paying bills and managing assets. While this strategy is convenient, it can lead to financial abuse and can also derail estate plans.

A joint account is a financial account with one or more owners, who both have rights of survivorship. Upon the death of one owner, the balance of the account passes to the surviving owner without probate, regardless of whether the surviving owner contributed to the account or not. The balance of the account will not pass according to the deceased owner's estate plan and the surviving owner has no legal duty to abide by the deceased owner's estate plan. The surviving owner can legally liquidate the account and cannot be held liable for doing so.

If you mistakenly add a joint owner to your financial account, it can be extremely difficult to prove that the joint account was instead set up as a “convenience account” for the sole purpose of making it more “convenient” for the joint owner to pay your bills and manage your assets. To prove a joint account was a convenience account, the legal presumption that the surviving owner of the joint account should receive the balance of the account must be overturned. This proof relies heavily on factual circumstances and requires a showing of clear and convincing evidence that the original owner did not have a donative intent when initially creating the joint account.

Instead of adding an individual as a joint owner of your financial account, we recommend adding your agent under your financial power of attorney. A financial power of attorney allows a person to perform financial transactions on your behalf, without having any legal ownership over your financial accounts. More importantly, a financial power of attorney also terminates upon your death. In other words, when you pass away, the account will either pass to the beneficiary listed on your account or to your estate—as originally intended. If you already have a revocable trust in place, your revocable trust can be named as the beneficiary of the account and the account will then pass to your trust upon death, thus avoiding a probate proceeding.

It is important to note that while it is better to add an agent under a financial power of attorney to a financial account, a financial power of attorney can also be dangerous in the hands of a bad actor, and it can be difficult to hold an agent accountable. It is vital to choose a trustworthy agent, such as a spouse or close family member. Avoid selecting an agent who has a history of financial trouble, drug, or gambling problems. Always consult with an estate planning attorney when establishing a financial power of attorney and adding an agent to financial accounts.

Here at O’Neil Cannon, our [Estate and Succession Planning Group](#) can create a comprehensive estate plan for you and assist you with properly retitling your bank accounts, setting up beneficiary designations, and adding your agent under your financial power of attorney as an authorized user of your accounts. Our [Inheritance Litigation Group](#) can also assist you in holding a bad actor liable if you believe that your loved one’s joint account should be considered a convenience account or if your loved one was taken advantage of by his or her agent under a financial power of attorney.