

Estate Legal Planning



SAVING HEADACHES AND
MONEY IN THE FUTURE



Two Truths

- **Everybody Dies.**
- **Nobody Likes Paying Money To Lawyers.**



Proper Estate Planning Now Saves Money Later

What If You Do Not Have a Will When You Die?



- ▶ **Your Estate Will Go Into Intestacy**
- ▶ **You lose control of how your estate is to be distributed.**
- ▶ **Assets will be distributed according to the intestacy laws of your state**

Types of Estate Planning Documents



- **WILL**
- **COMMUNITY PROPERTY AGREEMENT**
- **DURABLE POWER OF ATTORNEY**
- **HEALTHCARE POWER OF ATTORNEY**
- **HEALTHCARE DIRECTIVE**
- **TRUSTS?**

ESTATE PLANNING 101

Wills

- Not expensive
- Ensures specific bequests
- Minimizes future disputes

Community Property Agreements



- **BETWEEN SPOUSES.**
- **HELPS TO AVOID PROBATE
AFTER DEATH OF FIRST
SPOUSE.**

Power of Attorney



- **Two Types**

- Durable Power of Attorney

- General – can be used at any time for any purpose.

- Healthcare Power of Attorney

- Limited to Health Care Decisions if you are incompetent.

Durable Power of Attorney



- When is it effective?
Either Immediately or Upon Incompetency – your choice.
- Which To Choose?
If effective immediately, you still have your own authority to act, but so does your attorney in fact.
- **Benefit to making it immediate:** No dispute later about whether you are incompetent.
- **Risk:** The attorney in fact may act in some ways that you do not approve of. Keep an eye on accounts and agreements.

You can always change or revoke until you are incompetent.

Healthcare Power of Attorney



- Can be limited only to healthcare decisions if you are incompetent (e.g. a coma or suffer a brain injury), but more convenient if made effective immediately.
- If you do not have a Healthcare Power of Attorney:
 - Medical Providers will not/should not discuss condition with family or provide medical records.
 - Who should make medical decisions on your behalf?
 - Family or friends will need to obtain a Guardianship.
 - Expensive
 - Time Consuming
 - Can cause fighting among family members
- You can always change or revoke until you are incompetent.

Healthcare Directive



- **What it is:**

- Directs physicians and family as to your desires for artificial nutrition and other artificial life-sustaining treatment if you are suffering from a terminal condition.
- Terminal condition: An incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within twelve (12) months, and where the application of life-sustaining treatment would serve only to prolong the process of dying.
- Addresses whether to administer hydration, nutrition, CPR, and pain relieving measures, and when to withdraw these measures.
- Can address conditions – amputation, dialysis, etc.

- ▶ **Benefits:**

- Ensures your wishes are honored.
 - Helps your family members from having to make horrible decision about whether and when to withdraw life support.
 - Minimizes internal family fighting in this difficult issue.
- You can always change or revoke until you are incompetent.

TRUSTS



A fiduciary arrangement in which a person allows a third party, the trustee, to exercise control over assets on behalf of a beneficiary or beneficiaries

Usually created to fund a specific need or to avoid tax or probate, but be careful about the type of trust.

Examples of Types of Trusts



- **Revocable Living Trust** – avoids probate on assets; names trustee to manage finances during incapacity; provides instructions for use of funds
- **Credit Shelter Trust** – 1 part placed in credit shelter trust; 2nd part passes to surviving spouse with no tax. Assets pass to beneficiaries after spouse dies, and may be subject to tax unless the Trustee is someone other than spouse
- **QTIP Marital Trust** – “Qualified Terminable Interest Property” – used for gifting scenarios: surviving spouse receives income during life; assets pass to designated beneficiaries after spouse dies

Bank Accounts



**IF YOU ARE INCOMPETENT, WHO HAS ACCESS TO
PAY BILLS?**

TWO WAYS TO ADDRESS:

- Power of Attorney
- Joint Account with Right of Survivorship

Be Careful!

- If you add someone to your account for convenience, make sure that your Will states it is merely for convenience.
- Otherwise, when you die, that person is likely to be entitled to everything in that account, even if you intend otherwise.
Results in an expensive and nasty fight among the family.

Not Included in Probate

**Accounts which designate a beneficiary
are not controlled by a will or a trust**

- **Life Insurance Policies**
- **Designated Retirement Accounts**
- **Other Investment Accounts**
- **Joint Bank Accounts not specified in
the Will as being for “Mere
Convenience”**

**Make sure you have updated your Beneficiary Designations
on these documents!**

CONCLUSION



**HAVING THE PROPER DOCUMENTS IN
PLACE NOW SAVES MONEY IN THE
LONG RUN AND PROVIDES FOR
CERTAINTY THAT YOUR WISHES ARE
KNOWN AND EXECUTED AT DEATH
OR INCOMPETENCY**