

IMPORTANCE OF ESTATE PLANNING

June 24, 2020

“Make plans by seeking advice...”
–Proverbs 20:18 (NIV)

Estate Planning

- A necessary tool that ensures financial security for your loved ones if you become ill or pass away.
- It allows you to protect, maintain and manage your assets (home, retirement accounts, life insurance, investments, etc.) in the event of illness or death.

Objective:

While living

- To designate who should make **financial decisions** for you if you become unable to make such decisions for yourself.
- To designate who should make **medical decisions** for you if you become unable to make such decisions for yourself.
- To express your wishes regarding your estate.

Objective:

At death

- To provide instructions concerning the physical and financial care of family members (especially minor children).

- To distribute your assets according to your desires
 - Who will get what
 - How they will get it
 - When they will get it

- To reduce the cost of settling your estate, minimizing estate tax, and income tax liability.

- To leave a legacy to a specific individual or organization.

DOCUMENTS NEEDFUL IN AN ESTATE PLAN

Advance Directive:

- Legal documents that allow you to give directions for your future medical care.
- They are valuable tools that will help your family, by freeing them of the responsibility—and stress—of having to make difficult medical decisions for you.
- These documents are called “Advance” because they are signed while you are living to let your family and health care providers know your wishes concerning medical treatment.

Durable Power of Attorney for Health Care (aka “Health Care Proxy”)

- A document used **to name a health care agent**.
- This directive allows the person (someone you trust) you name to authorize a variety of medical treatments if you cannot provide authorization yourself.
- HIPAA language has been incorporated into the forms in Chat.

Living Will

- Written instructions that explain your wishes for health care if you have a **terminal condition, persistent vegetative state, or in an end-stage condition.**
- It documents your wishes for whether or not you want life-sustaining treatments or procedures administered to you if it becomes improbable that you will regain any quality of life.
- You can address **cardiopulmonary resuscitation (CPR); intravenous (IV) therapy** – providing food, water, and/or medication through a tube in a vein; **feeding tubes, etc.; respirators; dialysis;** etc.

Additional Advance Directive (Optional)

After My Death Form:

- **Part I - Organ-donor form**

An organ-donor form allows you to legally indicate that you would like to donate your body for organ transplants or medical research.

- **Part II - Donation of Body**

After any organ donations indicated in Part I, indicate if body is to be donated to a medical study program.

- **Part III - Disposition of Body and Funeral Arrangements**

Names the person to make decisions about the disposition of your body and funeral arrangements.

SIGNATURE AND WITNESSES

- Advance Directives and the After My Death form do not have to be notarized.
- An attorney is not required to complete Advance Directives or the After My Death form.
- Advance Directives and the After My Death form require two witnesses. A health care agent may **not** be a witness. Also, one of the witnesses must be a person who would **not** financially benefit by your death or handle your estate.

<https://www.marylandattorneygeneral.gov/Health%20Policy%20Documents/adirective.pdf>

DURABLE POWER OF ATTORNEY FOR FINANCES

- This legal document gives one or more people the power to manage your finances in the event you become ill or incapacitated.
- It should name the person and indicate what that person is authorized to do on your behalf.
- It should specify the process for determining at what point you are considered unable to manage your own affairs.
- It provides for your agent to act legally in your place for business.
- Your named agent has a fiduciary duty to handle these matters as you yourself would do.
- **This document should be prepared by an attorney.**

“A good man leaves an inheritance for his children’s children...”
--Proverbs 13:22 (NIV)

WILL

What is a Will?

- A Last Will and Testament (commonly referred to as a Will) is the legal document which controls the disposition of your property at death and may provide guardianship for your minor children after your death.
- A Will is not effective until death.

Why Should I Make a Will?

- When you die without a Will (or die “intestate,” as the law calls it) your estate is subject to and distributed according to state probate laws.
- You will not have any personal say as to how your property will be divided.
- Your assets could get tied up in court, possibly creating financial hardship for your heirs.
- Under state law, **generally**, your spouse and children will take your property upon death.
- If there is no spouse or children, **generally** your parents will take your property, then siblings, grandparents, and children of grandparents.
- **If no legal relation can be found, your property will eventually go to the state.**

- Many individuals may prefer that their entire estate go to the surviving spouse and that can be designated in your Will.
- Most important, for mothers and fathers, however, is not always the disposition of property after their death, but rather the proper care and custody of their minor children. **Grandparents, other family members, and godparents do not automatically receive custody of children who do not have a surviving parent.**
- Your will should **specify the individual, as well as an alternate**, who you would like to designate as the guardian of your minor children. This decision, on your part, will be of great assistance to the court in determining who will receive custody of your children.

Does My Will Control All of My Property When I Die?

- **NO**, some things are not controlled by your Will.
- Although the proceeds of insurance policies may be considered part of an estate, **a Will does not change the designated beneficiaries of an insurance policy**. The proceeds will normally pass to the beneficiaries designated in the policy.
- In fact, **a Will does not change the designated beneficiaries of any financial asset**; the money in the account goes directly to that individual when you die, **bypassing probate**.
- Property owned as joint tenancy **with right of survivorship** does not become part of the estate and is not subject to probate fees; the other joint tenant will automatically get the entire property at the decedent's death.
- Likewise, **certain bank accounts which are transfer on death (TOD) go directly to the beneficiary**. This property and money passes to the person outside the probate proceeding. These devices are often used as a means of passing property outside the estate.

Probate

- Probate is a court procedure which settles the estate of a deceased person, specifically resolving all claims and distributing the decedent's property.
- **It governs only assets not transferred through other means.**
- There is a limited period for filing claims against the estate.
- It follows an orderly, **court-supervised process.**
- **Probate files are public record.**
- Probate proceedings also address the administration of your estate, taxes, the guardianship of your children, and proves the will to be valid or invalid, etc.

TRUSTS

Revocable Living Trusts

- A written agreement designating someone to be responsible for managing your property.
- Its “revocable” because while you are mentally competent, you can change or dissolve the trust at any time, at your own discretion for any reason.
- A trust involves three parties:
 - you, as the creator (to maintain full control while you are alive)
 - the trustee or trustees, who agree to manage your assets, as determined by the terms of the trust (power to sell, exchange, invest your assets)
 - the beneficiaries

What is the Difference between a Living Trust and a Will?

- A will and a trust contain your inheritance instructions: who gets what, when they get it and how.
- A trust is preferred for people concerned with privacy and avoiding probate.
- The cost and delays of probate are much less.
- A living trust will not become part of the public record unless a trustee or a beneficiary demands court approval of accounts. Probate records are always open to the public.
- For most people with modest estates, wills are usually adequate. Wills are less complicated and less expensive than a trust.

Irrevocable Trusts

- Trusts that cannot be cancelled or changed.
- There are two popular types of irrevocable trusts.
- A charitable remainder trust (CRT) is a tax-exempt irrevocable trust designed to reduce the taxable income of individuals by first dispersing income to the beneficiaries of the trust for a specified period of time and then donating the remainder of the trust to a designated charity.
- An irrevocable life insurance trust (ILIT) is a trust that cannot be rescinded, amended, or modified, post creation. ILITs are constructed with a life insurance policy as the asset owned by the trust. Once the grantor contributes property or life insurance benefits to the trust, he or she cannot change the terms of the trust or reclaim any of the property held within the trust.

Costs of Dying Without Estate Planning

Without proper estate planning:

- The court determines who will administer your estate and care for your minor children.
- All children are treated equally, even if they have different needs.
- Distant relatives may receive assets that you would prefer to leave to friends or charity.
- Your estate may pay unnecessary taxes and expenses.
- If minor children receive assets, the court must appoint a conservator to manage the assets for them, and the children will receive the assets at age 18.

“May he give you the desire of your heart and make all your plans succeed.” –Psalms 20:4 (NIV)