Legal Decisions and Advanced Directives

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Estate Planning Overview

- Planning for the retention of property during life and for its distribution at death.

- Why Plan?
  - Control Distribution
  - Name Guardians for Children
  - Avoid Costly Probate Expense
  - Minimize Taxes

- Part of Financial Planning
Questions that Get Answered by Estate Planning

- What happens to my children if they are underage?
- Who gets my personal stuff?
- What do I own? How do I own it – alone or with someone else? (assets)
- Who gets my money or assets and when or how?
- Who will make my medical decisions if I can’t?
- Who will make financial decisions for me if I can’t?
- How can I reduce costs or taxes and preserve what I have for myself and my family?
Elements of Estate Planning

- Will
- Joint Property
- Designated Beneficiaries
- Trusts
- Durable Power of Attorney (Financial)
- Medical Directive and Durable Power of Attorney For Health Care
- Spousal Rights
- The Estate and Gift Tax
The Unplanned Estate

- When a person dies without a will or trust, he or she dies “intestate”.

- Property will be distributed according to the laws of the State in which you reside.

- If you don’t have a plan, the state has one for you!
In Missouri, if a person dies without a spouse or children:

- property will go in equal shares to father, mother and siblings.
If a person dies survived by spouse and:

- Parents (no children): Spouse gets entire estate.
- Children (of both decedent and surviving spouse): Spouse gets $20,000 and 1/2 of balance; Children get other 1/2.
- Children (of decedent, but not surviving spouse): Spouse gets 1/2 and Children get other 1/2.
Joint Property

- Joint property automatically passes by title, at death.
- Joint property is not part of your probate estate.
- Provisions in Will are ineffective as to joint property, if the other joint tenant survives.
Joint Tenancy with right of survivorship

- Spouses – Tenancy by the entirety
- The Good – surviving spouse owns property without probate
- The Bad – problem may arise at surviving spouse’s death leading to probate
- The Ugly – children from previous marriage may be shut out
Joint Ownership

Don’t do it with anyone but a spouse…

- Divorce
- Creditors/garnishment
- Unintentional disinheritance of grandchildren
- Unintended gifting and potential tax issues
POD/TOD

- Transfer on Death (TOD)
  - Motor vehicle
  - Stocks or bonds - certificates

- Pay on Death (POD)
  - Checking/Savings accounts
  - Certificates of deposit
  - Investment or brokerage account
POD/TOD

Pros for Estate Planning

- Easy and inexpensive to create
- Avoids probate if people named survive you
- Easy for beneficiaries to claim money
- Easy to cancel or make changes to account
- Beneficiaries only have rights to account after owner’s death
POD/TOD
Cons for Estate Planning

- Lack ability to name alternative beneficiaries
- No control over time of distribution
- No mechanism to control use of funds
- No current right to assist with bill payment
- People forget to change/update beneficiaries
- Account still subject to creditors of estate
Designated Beneficiaries

- Qualified Retirement Plan
- IRA
- Pension Plan
- Life Insurance
- Annuities
Beneficiary Deed

- **Real Estate**
  - Name beneficiaries
  - Designate percentages or shares for each
  - Record with Recorder of Deeds

- **Advantages**
  - Simple, inexpensive, revocable
  - Can designate lineal descendents Per Stirpes
  - Still own it - no loss of control
Probate

Probate is the court supervised procedure for:

- Validating a Will (if one exists)
- Paying debts and expenses of estate
- Resolving any challenges to Will
- Distributing property to beneficiaries

Personal Representative

- Collects Property
- Pays Debts
- Transfers Property to Heirs
Problems with Probate:

- **Expense**
  - Court Fees, Lawyer fees, Personal Rep fees.
  - Transactions must be approved by a Judge.
  - You may authorize “independent administration”

- **Publicity**
  - Terms of Will and probate proceedings are public.

- **Bond Required**
  - May cost $500 to $100,000 in probate expenses.
  - You may waive bond in your Will.
Will

- **Disposes of only property** in your name alone, at death.

- **It does not** dispose of
  - Jointly held property (if the other joint tenant survives)
  - Property with beneficiary designation (insurance proceeds or retirement plan benefits, unless payable to the estate)
  - Trust assets
Will

- Allows you to name:
  - **Beneficiaries**: Persons entitled to receive distributions of property from Estate.
  - **Personal Representative / Executor**: Person or bank who collects your assets upon your death, pays expenses and claims, and distributes remaining assets to your beneficiaries.
  - **Guardian**: Person who will care for any of your minor children (under age 18).
  - **Custodian**: Person who will act as successor custodian for any transfers to minors accounts.

http://www.youtube.com/watch?v=pEC9uKhc69U
Advantages of a Will

- Appoint Personal Rep and Trustees; set powers
- Probate Judge can oversee and decide disputes
- Waive bond and request independent admin.
- Control distribution to heirs
- Creditors have only 6 months to file claim
- Name guardian/conservator for minor children
- Include list of tangible personal property
DIY Wills

Online wills or stationery store wills

**Pros —**
- Lower up front expense.
- Only for simple family plan with no family conflict.

**Cons —**
- One size fits all approach.
- Less flexibility for complicated family plans.
- More potential for court challenge if family conflict.
- Lack legal advice or understanding of legal consequences.
Will vs. Trust

- When to use a Will rather than a Trust
  - Very small estate or minimal probate assets
  - All or most assets beneficiary designated
  - Simple family plan
  - No concern of privacy
  - All real estate in one state
  - Upfront cost
Trusts

- Property is transferred to Trustee of the Trust and governed by the terms of Trust Agreement.
- Trust is a legal entity
- Types of Trusts
  - Testamentary
  - Revocable
  - Irrevocable
Testamentary Trust

- A trust created at your death to hold assets for your beneficiaries.
- Unfunded until after death.
- May be used to control when and how property is distributed, to protect beneficiaries from creditors or in the event of divorce, to direct future dispositions of property and to minimize estate taxes.
- May be created under a Will, Revocable Trust or Irrevocable Trust.
Revocable Trust

Advantages of Revocable Trust or Living Trust

- May be revoked or amended at any time.
- Retain control over all property
- Avoids Probate
- Provides management of assets in event of incapacity
- Passes property at death according to wishes.
- Third parties are more willing to deal with a Trustee than a Power of Attorney.
- Facilitates beneficiary designations
Revocable Trust

Property in Your Name
- Money
- Real Estate
- Stocks/Bonds
- Vehicles
- Furniture, etc.
- Jewelry

Property in Trustee’s Name
- Income to You
- Principal to You

Property in Beneficiaries’ Names
- Money
- Real Estate
- Stocks/Bonds
- Vehicles
- Furniture, etc.
- Jewelry
Disadvantages of Revocable Trust

- No tax benefits.
- Administrative burden - must actually transfer property to Trust.
- Still need Pourover Will
Pour-over Will

- Provides for assets not in revocable trust
- Names personal representative
- Names guardian for minor children
- Directs payments of debts, expenses, etc.
- Pours balance of assets over into revocable trust
Financial Power of Attorney

- General Durable POA: Authorizes your “attorney-in-fact” to act for you in managing your property and affairs if you are unable to do so due to incapacity.

- The powers granted to your attorney-in-fact may be broad and include the power to deal with bank accounts, investments, retirement accounts and real estate.

- Springing Durable POA

http://www.youtube.com/watch?v=EPZTpjPLLg8
Advanced Directives

- Clarify Your wishes and values
- Guide family members and doctors
- Minimize misunderstandings
- Maximize resources
- Increase choices and options
- Demonstrate caring and respect for family

http://www.youtube.com/watch?v=xPdzWo_RTls
Medical Directive

- Also known as “Advance Directive”.
- Allows you to state that if you become terminally ill or comatose, that you do not want any extraordinary death-delaying medical procedures administered to you.
- You may also provide specific treatments that you do or do not want administered.
Durable Power of Attorney for Health Care

- Authorizes your “attorney-in-fact” to make health care decisions for you in the event you are unable to do so yourself due to incapacity.
- Allows your attorney-in-fact to enforce your Medical Directive.
- HIPAA release / amendment needed to allow your “attorney-in-fact” to see your medical records.
Frequently asked questions about Healthcare Directives/POA

- What if I want to change my durable POA instructions?
- How often should I update my estate planning documents?
- Who should I appoint as my healthcare POA?
- What is a living will?
- Where should I keep the healthcare documents? Who should I give them to?