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ESTATE PLANNING + ASSET PROTECTION

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ESTATE ADMINISTRATION

Documents to Execute + Retain

Documents to Execute

- [ ] Last Will and Testament
- [ ] Revocable Trust Agreement
- [ ] Durable Power of Attorney
- [ ] Living Will
- [ ] Durable Power of Attorney for Health Care
- [ ] Donor Registry Form (if applicable)
- [ ] Premarital Agreement (if applicable)
- [ ] Update designations on all beneficiary designed accounts, including life insurance policies, retirement accounts, bank accounts, etc.

Documents to Retain

- [ ] Property Deeds
- [ ] Vehicle Titles
- [ ] Notes Receivable
- [ ] Life Insurance Policies
- [ ] Stock Certificates
- [ ] Business Operating Agreements (if applicable)
- [ ] Funeral Arrangements or Instructions
- [ ] Marriage License
- [ ] Divorce Decree (if applicable)

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ESTATE ADMINISTRATION

Loss of a Loved One Checklist

The loss of a loved one is an emotionally difficult time. The following checklist is designed as a guide to help surviving friends and family through the administration process.

Action Items

- [ ] 1. Get a family member or close friend to help you notify loved ones, friends, business partners, physicians, etc. of the passing of your loved one.
- [ ] 2. Contact funeral home to make funeral arrangements. Check Last Will and Testament or Advance Directives for any instructions from decedent regarding funeral arrangements.
- [ ] 3. Ask funeral director to help you get copies of the death certificate.
- [ ] 4. Notify Social Security of the death, funeral director may also help with this process if needed.
- [ ] 5. Notify post office and forward mail to address of person handling estate administration.
- [ ] 6. Contact decedent's employer/human resources department to let them know of their passing. Discuss any money due (from accrued vacation/sick time etc.), insurance benefits options if decedent was primary insured for any other beneficiaries, and insurance policy on decedent.
- [ ] 7. Contact provider of any active life insurance policies. It can take several weeks to receive funds so try to get this started as soon as possible.
- [ ] 8. Update the name on any other insurance policies.
- [ ] 9. Contact attorney to review estate plan documents of the decedent and help you through the probate and/or estate administration process and any corporate business partnership transitions.
- [ ] 10. Put all bills in proper name (gas, electric, telephone, mobile phone, cable, internet, mortgage, water and sewer, garbage/waste etc.).
- [ ] 11. Contact any creditors to remove decedent's name from joint accounts and close accounts in decedent's name only (lawyer handling estate administration can assist with this process).
- [ ] 12. Contact all banks and financial institutions to update account information.
- [ ] 13. Maintain accurate record of expenditures.
- [ ] 14. Contact financial advisor to discuss process of assigning assets to beneficiaries.
- [ ] 15. Contact tax professional to assist with tax filings and estate taxes.

Documents to Gather

1. Social Security Card
2. Estate Documents (Will/ Trust/Advance Directives)
3. Life Insurance Policy
4. Death Certificate
5. Marriage Certificate
6. Funeral Arrangements or Instructions
7. Tax Returns
8. Divorce Agreement
9. Bank Statements
10. Investment Account Statements
11. Stock Certificates
12. Pension/Retirement Account Statements
13. Mortgages/Loan Statements
14. Leases
15. Deeds
16. Motor Vehicle Titles
17. Car Insurance
18. Homeowner's Insurance
19. Health Insurance
20. Bills

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ESTATE ADMINISTRATION

Loss of a Loved One Checklist

The loss of a loved one is an emotionally difficult time. The following checklist is designed as a guide to help surviving friends and family through the administration process.

Action Items, Continued

- [ ] 16. If decedent was in the military, contact the Veteran's administration to see what benefits are available for beneficiaries.
- [ ] 17. File any medical claims that occurred prior to death with decedent's health insurance provider.
- [ ] 18. Notify Medicare if decedent was receiving benefits.
- [ ] 19. If the decedent has a child in college, contact the school's financial aid office since they may qualify for more financial assistance.
- [ ] 20. If loved one belonged to a labor union, contact the union to see if they offer any assistance.
- [ ] 21. Update the name on any deeds or titles (home or vehicle).
- [ ] 22. Cancel memberships and subscriptions.
- [ ] 23. Take care of yourself! Complete a new spending and savings plan to reflect your new level of income and expenses. Talk to your attorney about revisions to your estate plan and talk to your financial advisor about your retirement goals.

Contact Us

Our estate planning team is ready and willing to help your family through this difficult time. Contact us at our downtown Columbus office for more information.

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Frequently Asked Questions

Disclaimer: The information contained in these materials are intended to provide general information and should not be taken as legal advice. Before acting on any information you should consider seeking independent professional advice for financial, insurance, legal, tax, medical or other matters before making your decisions.

WILLS

1. What happens if I do not have a Will?

If you die without a will, your assets will be distributed in accordance with the state law of your residency. For example, Ohio law provides that if you die without a will, leaving a spouse and one or more children, all of whom are your children, the entire estate will go to your surviving spouse. If you do not have a surviving spouse, the assets will go outright to your lineal descendants.

2. Who should my beneficiary be in my Will? Does it have to be my spouse?

Although there is no requirement that you name your spouse as the beneficiary of your will, clients typically would name their spouse as the primary beneficiary and name children successor beneficiaries. Our typical recommendation to a client to accomplish the client's goals is to establish both a will and a living trust. The will would direct that assets at death go to the client's trust. The trust would provide that the spouse would be the primary beneficiary during the spouse's lifetime, and after the death of the spouse, the assets would be held for the benefit of the children. The trust would also typically have provisions that until children reach at a minimum 18 years of age, the trustee would distribute income and principal for their needs, rather than distributing the assets outright to children. For example, under Ohio law, if a child inherits assets before age 18, those assets would need to be held in a state law guardianship. A trust is more simple, and less expensive and less complicated to deal with than a state law guardianship.

3. How do I make sure my children are taken care of in my estate?

As described in Question 2, above, the best way to assure that your children are taken care of is with an estate plan that includes a will and trust provisions for your children.

4. Can I have different beneficiaries on my Life Insurance and Will?

There is no requirement that the beneficiaries be the same as your will, your trust or your life insurance. However, a good plan will coordinate beneficiaries in a way that is consistent with your goals of providing for your family.

5. Who should be the executor of my estate?

Most clients identify their spouse, children or other family member as Executor. However, it can be anyone you trust to fulfill his or her duty as Executor, without regard to the nature of your relationship. Ideally, this person is trustworthy, honest and financially responsible. In the event one does not have individuals they can designate, one may appoint a bank or financial institution to serve in this role. Regardless of who is appointed, it is wise to disclose to your potential Executor of your intended designation. If they are not willing to serve, it is best to know sooner, rather than later. The same thought process applies to the appointment of a Trustee if you establish a trust.

6. Where should I keep my Will?

Since only an original Will can be submitted to probate, it is important to keep your Will, and all of your estate planning documents, in a safe but accessible place. This may include your attorney's office, your advisor's office, a safety deposit box or a fireproof safe in your home or office. Wherever the estate planning documents may be kept, it is important that they remain accessible when they are needed.

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Frequently Asked Questions

TRUSTS

7. What is the difference between a Will and a Trust?

A Will can be used in simple estates to direct the distribution of assets to beneficiaries. However, having a Will does not eliminate the need for a probate administration. It merely directs the court to apply your distribution instructions instead of the statutory guidelines. If a minor is to inherit under a Will, a guardian of the estate must be appointed to manage the funds for the child. Once the child turns 18, the guardianship funds will be released to the child.

A Trust can also be used to distribute assets but allows for greater control over the timing and amount of distribution. With a Trust, distributions can be withheld until any age the Grantor deems appropriate. While most clients will allow a beneficiary to withdraw principal in 1/3 increments at ages 25, 30 and 35, the Grantor can delay distributions to any age or event, and can dictate for what purpose the trust funds can be used.

8. What is the difference between a revocable trust and an irrevocable trust?

A Revocable Trust is one that can be modified. This trust is the more commonly used when one prefers greater flexibility over the assets than a Will can provide. The Grantor can continue to update and change the trust assets, terms, beneficiaries and trustees until the date of death. Upon the death of the Grantor, the trust becomes Irrevocable and no further changes can be made.

An Irrevocable Trust is a trust whose terms cannot be modified. This type of trust can be used for more complex estate planning goals, including estate freezes, gifting, generation-skipping transfers. A revocable trust also becomes an irrevocable trust upon the death of the Grantor so that the terms set forth by the Grantor shall be followed.

9. Are there different types of trusts? How are they put together and what are the applications and benefits?

Trusts can be used for a variety of reasons. While there may be tax reasons to establish a trust, the more likely reason for a trust are to address "people" issues. If one has minor children or immature children, a trust can be helpful to ensure a trusted individual will be there to manage the investment and distribution of the trust assets. If a beneficiary is a spendthrift or has a substance abuse problems, a trust can be useful to ensure distributions are made in the right amounts. If a beneficiary has special needs and is receiving income qualified government benefits, a trust can help pay for supplemental expenses without causing disqualification of those benefits. Creditor protection can also be provided by trusts to shield beneficiaries from divorce. Trusts can also be useful in a blended family setting in which one may want to treat beneficiaries differently.

Living trusts are created during one's lifetime by executing a trust document. These can be revocable or irrevocable, depending upon the Grantor's goals. Family trusts are typically revocable to allow the plan to be modified as circumstances change. Irrevocable trusts can be created for tax planning or gift planning reasons. The terms of an irrevocable trust generally cannot be modified but can be useful to leverage estate, generation-transfer or gift tax exemptions by freezing current values and passing growth and appreciation on to beneficiaries. Testamentary trusts are created under a Will. The Will can be amended during the testator's lifetime but upon death, the testamentary trust created within the Will is irrevocable. Testamentary trusts are not usually recommended as it will still require the estate the engage in the probate administration process. The trust will also continue to be subject to court supervision until the trust is terminated, leading to additional time and expense. However, in tenuous family circumstances, court involvement may be a benefit to oversee the proper administration of the trust.

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Frequently Asked Questions

10. Why or when would you set up a family trust?

Family trusts are typically used when one wants to retain control over the property, amounts and timing of asset distributions after one's death to ensure loved ones are provided for in the right ways. Most often, at the death of the first spouse, the assets remain available to the surviving spouse. At the subsequent death of the surviving spouse, the assets are distributed to the children, either in an outright fashion or held for a period of time until the children attain a certain age. While the assets are held in trust for a beneficiary, the trustee typically has discretion to make distributions to the beneficiary for his or her health, support, maintenance and education. This allows the trustee to make distributions as needed while protecting the balance for future use.

11. Do the laws around Wills and Trusts vary from state to state? For example, are there major differences between the laws that govern trusts and wills in California vs. Ohio?

Probate Codes and statutes vary slightly from state to state. However, these variations can have a significant impact on how your estate plan will function. Thus, it is important to review one's estate planning documents when one relocates to or from another state. Small differences in the statutes can have a substantial impact on a variety of areas such as the rights of beneficiaries and heirs, the rights available to spouses, creditor claims and the fees that may be imposed by Executors or Administrators.

12. If I have a Will or Trust, how often should it be revisited? Is 25 years too long?

Yes, 25 years is a little too long. One should review his or her estate plan every two to three years, or more frequently if a major life event has occurred. For example, if there has been any marriages, deaths, births, divorces, retirement, change in financial circumstances, these are all reasons to review your estate plan. If no major life events have occurred, it is still a good idea to review your documents every few years to ensure it still accurately reflects your wishes.

ACTIONS AFTER DEATH

13. What is the legal process after someone dies?

Information about the decedent will need to be gathered. The "Loss of a Loved One" Checklist provides details on the type of information that will be helpful when starting to administer a loved one's estate. The legal process will depend on whether the decedent died intestate, with a Will or with a Trust.

Intestate/Will

Upon the decedent's death, the Administrator (if decedent died intestate) or Executor (if decedent designated in a Will) will petition the probate court of the county in which the decedent was domiciled. The Administrator/Executor will seek appointment to have the legal authority to transact on behalf of the decedent's estate. In doing so, the Administrator/Executor must disclose the names and addresses of the decedent's heirs and the approximate value of the decedent's estate. Notice of the probate case will be published in the newspaper.

Once appointed, the Administrator/Executor will marshal the assets. For real estate and the personal property contained therein, this may take the form of caring for the house, retaining the keys, securing the personal belongings until they are ready for distribution. If assets titled in the decedent's sole name, such as, bank accounts or investment accounts, this is done by notifying the banks to change title to the Estate.

The Executor will then file an Inventory with the probate court, listing all the assets and the value of those assets titled

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to the decedent.
The Administrator/Executor will open a checking account in the name of the Estate in order to deposit any funds payable to the decedent and pay any bills incurred by the estate, such as final medical bills, funeral bills, outstanding debts. The Administrator/Executor will also file any tax returns that may be due, such as income or estate taxes.

Once the debts are paid, the Administrator/Executor will calculate the remaining balance available for distribution to the beneficiaries on an Accounting. An Accounting must then be filed with the probate court detailing all receipts, expenditures and distributions that have occurred since the date of death. Upon approval of the Account by the Probate Court, the estate will be closed. The Probate process often takes six months to a year, depending upon the complexity of the estate.

Trust
Upon the death of the decedent, if all assets were titled in the name of the trust or beneficiary designated to the trust prior to the decedent's death, the Trustee will marshal the real and personal property held by the trust and update the trustee name on all assets. The beneficiaries will be notified of their interest as a beneficiary of the Trust. The Trustee will the follow the directions set forth in the trust document and make distributions in accordance to those provisions. No court proceeding is required.

If any assets are either not titled to the trust or beneficiary designated to the trust prior to the decedent's death, a probate proceeding (as set forth above) will be required. If the decedent executed a "pour-over" Will, a probate proceeding will need to be commenced to distribute the asset into the Trust. This can be avoided by pre-funding the trust during the decedent's lifetime.

14. How does a surviving spouse avoid financial responsibility of debt from their deceased mate?

The debts of a decedent generally are the obligations of the decedent. For example, one spouse's credit card debt is to be paid from the deceased spouse's assets. If the assets are insufficient, the credit card company cannot pursue the surviving spouse. As a practical matter, each spouse should have their own credit cards issued under their own social security number. If the deceased spouse was a cardholder for an account opened under the surviving spouse's social security number and incurs debt, the debt belongs to the surviving spouse, not the deceased spouse.

However, there are cases when the surviving spouse is a joint debtor. In such cases, the creditor can seek recovery from the surviving spouse. For example, if a decedent owes back taxes on a jointly filed return, the liability does not end with the decedent spouse's debt. The surviving spouse remains liable.

In the case of secured debts, such as real estate with a mortgage, the debt follows the recipient of the house. Thus, if the house is distributed to the surviving spouse, either as a result of joint ownership or by inheritance, the spouse is required to take over the mortgage if he or she wishes to retain the house.

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POWER OF ATTORNEYS, ADVANCED DIRECTIVES AND LIVING WILLS

15. What's the difference between a Will and a Living Will?

A will is a document that sets forth how a person would like to have his or her probate property distributed upon death. Everyone who owns any real or personal property (home, car, household furnishings, clothing, jewelry, books, tools, collections, pets, etc.) should have a will, regardless of the property's value, because the purpose of the will is to ensure that the property is distributed the way you want it to be distributed, regardless of its value.

For example: In a will you can list your property and the recipient: *"I give all clothing and jewelry to my dear friend Jane Doe."*

A living will is a legal document you can use to set forth your directions about the use or non-use of artificial life-sustaining support if you become terminally ill or permanently unconscious. A living will:

a. Becomes effective only when you cannot communicate your wishes and are permanently unconscious or terminally ill;
b. Can be changed or revoked by you at any time, but cannot be changed or revoked by anyone else; and
c. Trumps the health care power of attorney.

For example: In a living will you set forth your end of life instructions for your medical providers and loved ones: "I do not want life sustaining support (food, nutrition, etc.) if two doctors deem that I am incapacitated."

16. If I have a Will do I need to have a Power of Attorney?

A will and a financial power of attorney are two separate documents that address different items. As stated above, a will is a document that sets forth how a person would like to have his or her probate property distributed upon death.

A financial power of attorney (POA) is a legal document an individual (the "principal") can use to appoint someone (the "agent") to act on his or her behalf regarding personal, financial and business matters. Typically, a POA is used when an individual becomes unable to handle his or her own affairs. A principal can name one agent, or two or more co-agents, each of whom can act alone, unless the POA specifically states that they must act together, by majority, or in any other manner. If the principal names a single agent, it is wise to name at least one successor agent.

For example: A financial power of attorney can be created to permit an agent to handle the financial affairs (pay bills, manage bank accounts, etc.) of a principal who has lost mental capacity (dementia, coma, etc.).

A financial power of attorney ends when the documents states that it will end, when it is revoked, or when the principal dies.

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Frequently Asked Questions

17. What is a Health Care Power of Attorney?

A health care power of attorney (or durable power of attorney for health care, sometimes known as Advanced Directives, or health care proxy, or Medical Power of Attorney) is a legal document that authorizes another person (your agent) to obtain your health information and to make health care decisions for you. You can allow your agent to get your health information and communicate with your health care provider at any time, but health care decisions can be made for you only if and when you cannot make health care decisions for yourself due to incapacity.

A health care power of attorney:

a. Names an individual you trust to make a wide variety of health care decisions for you at any time you cannot do so for yourself, whether or not your condition is terminal;
b. Requires the person you appoint to make decisions that are consistent with your wishes; and
c. Will not overrule a living will if you have both documents.

18. What is a DNR and a DNI, and how and when are they used?

DNR refers to a do not resuscitate order which is a medical order written by a doctor that instructs health care providers not to do cardiopulmonary resuscitation (CPR, chest compressions, cardiac drugs or placement of a breathing tube) if breathing stops or if the heart stops beating. A DNR order allows you to choose before an emergency occurs whether you want CPR.

Although CPR (cardiopulmonary resuscitation) does save lives it is not always successful or does not benefit those who receive it, especially the elderly or people with serious medical conditions. CPR can leave patients with painful injuries, or depending on the circumstances brain damage resulting from oxygen deprivation.

DNI refers to a do not intubate order which is a medical order written by a doctor that instructs health care providers that no breathing tube will be placed but does permit chest compressions (CPR) and cardiac drugs in an emergency.

If you do not want to receive CPR or if you do not want to be intubated then it is important that you speak with your doctor about your wishes because you may not be able to do so in an emergency situation. Your doctor will explain the different ways the order can be written (DNR or DNI options). In Ohio doctors use a standard form that is easily recognizable by paramedics and other health care providers. The DNR/DNI order must be written by a physician, certified nurse practitioner, certified nurse specialist or physician assistant in consultation with the patient. Your doctor will keep a copy of the order and you will need to notify any family members, health care agents or nursing home staff that you have the order.

You have the right to change or revoke a DNR/DNI order. Tell your doctor and any family members, health care agents or nursing home staff of the change.

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Frequently Asked Questions

CONSIDERATIONS WHEN SEEKING PROFESSIONAL ADVICE

19. Do you need a lawyer to set up my estate plan?

Although there is no legal requirement that you engage a lawyer to draft documents, and although there are "on-line forms," that you could use to prepare your own plan, we recommend you engage an experienced estate planning lawyer to assist you in developing your estate plan and preparing the appropriate documents to implement the plan.

20. Should I use a lawyer or is it okay to use a financial planner/consultant to set up or revisit a trust or will?

Although you can use a financial planner or consultant to assist you in deciding what your estate plan would look like, in Ohio and most other states, only the client or lawyers engaged by the client are permitted to prepare a will and a trust.

21. What is the best way to find and hire an accountant/financial planner for taxes and retirement planning?

Start by asking friends and family for referrals and, in particular, get recommendations from people whose financial needs, outlook or stage of life is similar to yours.

Also, search for planners directly in the website of the Financial Planning Association and the National Association of Personal Financial Advisors. The advisors on the latter organization's site are fee only, meaning they will not earn commissions for selling a specific investments but instead pay a fixed rate, usually based on the assets you put under management. Many experts say that the fee-only advisor is preferable, to eliminate conflicts of interest and ensure he or she always acts with your best interest at heart.

22. Who should I buy Life Insurance from?

Speak with a trusted insurance agent-ask friends and family for recommendations.

23. What credentials should I look for in a financial planner? Questions to ask:

- What do you charge and what method do you use to get paid?
- What are your credentials?
- How much experience do you have?
- What planning services do you provide and how often do you meet with your clients?
- Does your planning include specific recommendations for investments or other products?
- What are you selling and who is paying your commissions?
- What is your investment approach?
- Could I see a sample financial plan?
- Will I be working only with you or with the team?
- What makes your client experience unique?
- Can I get references from other clients?
- Do you have any questions for me?

24. How much should I expect to pay a financial planner?

Planners use different methods to bill clients. You generally choose between fee-only, fee-based, and commission planners. Sometimes they bill by the hour or charge a percentage of assets usually 1 to 2% - of a client's assets.

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