

BASIC ESTATE PLANNING TOOLS

The purpose of this brochure is to provide you with information about various estate planning documents: wills, trusts, and powers of attorney. It is an attempt to explain in “laypersons’ language” some of the options available to you in planning your estate, so that you may be more informed when you meet with your attorney.

THE PURPOSE OF PLANNING

Estate planning involves arranging our affairs to provide for the orderly management and disposition of our property at the time of disability or death. The primary concerns of an estate plan should include:

- Being sure the right people receive our property at the right time with the proper management
- Minimizing publicity, expense and inconvenience
- Minimizing taxes payable on account of death
- Making a charitable gift as an act of faith

It is our hope that the following information will help you know how to address each of these concerns as you proceed with your personal estate planning.

LAST WILL & TESTAMENT

A will is the most basic and common personal estate planning document. A will is a legal document stating how your property is to be disposed of at your death and should be dated, witnessed, and signed by you (and is subject to probate).

A will may be amended as long as the “testator” remains competent. A “codicil” is an amendment to a will.

EVERYONE SHOULD HAVE A WILL

A will is the proper place to:

- Name the executor or personal representative who will oversee the disposition of your probate estate
- Make special gifts to charities or individuals
- Specify final takers of property if heirs you otherwise named predecease you
- Name the guardians for your children, to serve if the other parent cannot care for them
- Specify the order of death between you and your spouse if a common accident occurs

A WILL IS SUBJECT TO PROBATE

The Probate Court will (1) determine the validity and meaning of the will, (2) determine who the named heirs are, and (3) approve the payment of the creditors and distribution of assets. If you die without a valid will, your probate property will be distributed through the probate process according to the “intestacy” laws of your state. These laws cover all property passing at death, except property passing:

- By a valid contract without probate (e.g. life insurance, pensions, or living trust property)
- Automatically by law without probate (e.g. joint property)
- Under a valid will with probate.

The law varies from state to state but seldom coincides precisely with the decedent’s wishes. Tax-saving opportunities may also be lost. Intestacy laws do not give any gifts to charities. These problems can be avoided with a valid will of Living Trust.

TRUSTS

A trust is an arrangement of property where assets are transferred to a trustee, to be managed for the benefit of specified beneficiaries. The most common estate planning trust is a living or revocable trust. The same person may set up the Trust (the “Settlor”), manage the property as trustee, and be the initial beneficiary. Trusts continued on next page.

TRUSTS (CONTINUED)

A living trust can be amended at any time by the Settlor, while competent. Any assets held in the name of a living trust are generally not subject to probate when the Settlor dies or becomes disabled.

A testamentary trust is included as part of the creator's will, becomes effective only at death, and is subject to probate. Such trusts are no longer preferred.

A living trust can provide all the advantages of a will, plus:

- Property management now or, if preferred, only during disability or at death
- Probate avoidance
- Retention of property in trust for a surviving spouse in a manner that avoids federal estate taxes on the property at the death of the survivor (a "residuary" or "unified credit" trust)
- Retention of property in trust after the Settlor's death, to be distributed to the named beneficiaries only when and as the Settlor has specified

There are several specialized types of trusts in addition to those noted:

An irrevocable life insurance trust holds life insurance for the creator's beneficiaries, intended for the creator's beneficiaries, intended to be excluded from the taxable estate of the creator. Such trusts may not be amended after they are created. They may not be cancelled without permission of all parties to the trust. Charitable remainder trusts are irrevocable trusts established for the benefit of named individuals and one or more charities. Individuals receive income for a period of years or for life; the charity receives the remaining property at the end of that period.

A charitable lead trust provides income to a charity for a period of years; the remainder passes to named beneficiaries at the end of the period involved.

DURABLE POWER OF ATTORNEY

A Power of Attorney is an instrument authorizing another person to act as your agent, signing your name for a specific purpose. The Power of Attorney may be broad or narrow. It is not valid during periods of incapacity, unless it is "durable" under local statutes. Without a Durable Power of Attorney, a Probate Court order appointing a guardian would be necessary before a document, such as a deed selling real estate, could be signed on behalf of an incapacitated individual.

Many other documents may be used in the estate planning process. Everyone's estate plan will involve at least one of the documents or arrangements mentioned. Many estate plans will involve them all.

WHAT'S NEXT

Contact the Walkway Over the Hudson to get additional information about planning your estate, including any charitable gifts you may wish to make.

This publication does not attempt to make specific legal or tax advice. For advice on how to handle your individual situation, the services of a competent legal, tax, or financial planning professional should be obtained. Lorem ipsum