

Asking the Right Questions: An Inclusive Approach to Estate Planning

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SENIOR LAW DAY
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WHAT YOU NEED TO KNOW
TO AGE SMART

**ASKING THE RIGHT
QUESTIONS: AN
INCLUSIVE APPROACH
TO ESTATE PLANNING**

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Presented by:

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An Inclusive Approach to Estate Planning

INTRODUCTION

This is a brief summary of the structure your new Will, Trust Instrument, Power of Attorney, Healthcare Proxy, Living Will, Health Insurance Portability and Accountability Act and Burial Directives may take.



An Inclusive Approach to Estate Planning

CELEBRITIES

How can someone be worth millions of dollars and not have an estate plan in place?



ALL INDIVIDUALS

If you have concerns about who will care for loved ones after you are gone, or concerns about how your property will be divided and who it will be shared amongst, you have enough to make a Will.

A SIMPLE ESTATE PLAN

- ❖ Will
 - ❖ Trust
 - Supplemental Needs Trust for beneficiary under a disability
 - Descendant's Trust
 - Family Trust
 - ❖ Health Care Directives
 - HCP; LW; HIPAA
 - ❖ Financial Care Directives
 - POA
 - ❖ Beneficiary Designations of IRAs, 401Ks and Pension Plans
 - ❖ Burial Directives
- 

A COMPLEX ESTATE PLAN

Will

may direct assets be transferred to the Trust created during life

Trust

- SNT for beneficiary under a disability
- LLC interest and other business interest
- Charitable gifts and trusts
- Generational trusts
- Marital trust & descendant's trust

Life insurance Proceeds

1. removes any life insurance proceeds from your probate estate
2. reducing estate administration expenses
3. reducing your federal and state death taxes
4. Provides liquidity to your estate

Health Care Directives

- HCP; LW; HIPAA

Burial Directives

Financial Care Directives

- POA

Beneficiary Designation for retirement accounts

Deed Transfer for real property placed in Trust

Assignment of interests in other properties to the Trust.



What's Included In Your Will and Trust Instruments?



1. **Family or Relevant Beneficiary's Information**

1. Define parties so it is clear who you mean to benefit.

2. **Tangible Personal Property**

2. This includes your personal effects such as clothing, jewelry, furniture and automobiles.

3. **Intangible Personal Property**

3. Intangible Personal Property are stocks, bonds or other investment securities.

4. **Real Property**

4. First look to see how title in the property is held: joint owners with rights of survivorship; joint tenants; tenants in common. Who would you like to receive your interest in real property? Should the interest be shared between beneficiaries? Should you give a life estate in this property?

5. **Gifts of Pets**

5. Who should care for your beloved Pet? What provisions should be made for the pet's care? What will care look like for the animal?

6. **Gifts to Charities**

6. Would you like to benefit a cause? Or should a gift to charity become effective only to lower estate taxes if your gross estate is above the estate tax exemptions?

What's Included In Your Will and Trust Instruments?

1. Remainder (Residue)

1. After any other specified gifts and after the payment of certain taxes and expenses of administration, the remaining assets in your Trust or Will is referred to as the "residue" of your estate or trust fund.

2. Takers of Lost Resort

2. What happens to your property if all the persons you name predeceases you? Who would you like to receive your property?

3. Executor / Trustee Appointments

3. Consider this selection carefully in choosing your Executor or Trustee as this position will involve great responsibility and potentially a significant amount of effort.

4. General Provisions & Fiduciary Powers

4. Provide Executors and Trustees with broad authority to manage your estate and Trust.

5. Management of Digital Assets

5. Include a provision for the management of your online accounts and other digital assets

6. Disabled or Incapacitated Individuals

6. Should you create a supplemental needs trust for the benefit of individuals who are receiving or is eligible for Medicaid. Such a trust may help to supplement a beneficiary's needs without disrupting Medicaid benefits. Should the trust be created only if the beneficiary is eligible, or should trustee decide?

7. Burial Directives

7. Consider including these instructions in a separate document to avoid a situation where your Will is read after burial.

What's Included In Your Will and Trust Instruments?

8. Guardians

8. Name individuals who would have legal and physical authority for a minor child.

9. Surrogacy and Guardianship

9. The Intended Parent (IP) planning for a child to be born by surrogacy may designate a guardian for all resulting children from the arrangement. Also consider:

- ❖ authorizing an executor to perform the IP's obligation pursuant to the surrogacy agreement;
- ❖ authorizing executor to file parentage proceeding;
- ❖ defining heirs, issue, etc. to include children born via surrogacy;
- ❖ if you are the surrogate mother, consider disinheriting children born via surrogacy from inheriting under your estate as an extra precaution.



Additional Directions In Your Trust Plan?

In addition to the providing the relevant provisions we discussed earlier, your trust will include provisions for how assets should be used for your care during lifetime.

Generally, this article is most important if you become incapacitated and the trust is used in lieu of a guardianship or conservatorship.



TYPES OF TRUSTS

- ❖ **Living Trust** – This Trust is created during your lifetime and can be:
 - *Revocable* – you can revoke or amend the trust. You retain complete lifetime control over this trust.
 - *Irrevocable* – you are unable to revoke or amend without the consent of all beneficiaries pursuant to statute.

- ❖ **Testamentary Trust** – This Trust is created under your Will upon death. The Surrogate’s Court will review Executors and Trustees transactions.

- ❖ **Why?** By holding title to more of your assets in your trust, you reduce the need to go to court to administer your estate, and thereby reduce the cost of administration; it lowers estate taxes and further protects assets.



What's the Purpose of Your Trust?

- ❖ After deciding when to create your Trust (during life or at death), and whether to make the Trust revocable or irrevocable, you will then need to decide what assets your Trust will hold and for what purpose?
- ❖ Consider your assets and which ones you would want to transfer to your Trust:
 - Is the Trust to hold life insurance proceeds;
 - IRAs; 401(k)s; pensions and other benefit plans;
 - Real property;
 - LLC or other business interests;
 - Stocks and other investment properties?
 - Cryptocurrency such as Bitcoin and other assets that uses blockchain technologies such as Non-Fungible Tokens (NFTs)



What's the Purpose of Your Trust?

Is the Trust for the benefit of a spouse? If so:

- ❖ should you create a marital trust to take advantage of the federal and state marital deduction? In a marital trust, the only beneficiary is the spouse who receives all the income at least annually.
- ❖ Should you give the spouse an interest in all the principal assets used to fund the Trust or only a portion of the principal?
- ❖ Should the spouse be entitled to receive principal distribution, or should the spouse's interest be limited to an ascertainable standard such as for health, education, maintenance and support?
- ❖ What should you do with the remainder of the Trust property after a spouse dies and the marital trust is terminated?
- ❖ Should the Trust be a Qualified Domestic Trust (QDOT) – for spouses that are not U.S. Citizens?
- ❖ Should the trust be a SLAT – A Spousal Lifetime Access Trust for the benefit of spouse and which allows you access, through your spouse, to assets of the trust during its administration?

What's the Purpose of Your Trust?

Is the Trust for the benefit of a spouse and your children and/or other descendants?

- ❖ Should you create a Family Trust for the benefit of your spouse and children and great grandchildren?
- ❖ Should the trust be a credit shelter trust for estate tax purposes in sheltering assets by applying estate tax exemptions?
- ❖ How often should income be distributed to beneficiaries?
- ❖ How should the principal of the Trust be distributed?
- ❖ How often? Should distribution be limited?
- ❖ Should Trustees have absolute discretion over when on how to distribute property or should the Trustees authority be limited to an ascertainable standard for health, education, maintenance and support?
- ❖ What is the termination date or triggering event that will terminate the Trust and what happens to the remainder of the property upon that date or triggering event?



What's the Purpose of Your Trust?

Is the Trust only for a specific person or for your children and more remote descendants such as great grandchildren?

- ❖ If so, should this be a life-time trust for the benefit of the beneficiary?
- ❖ Or should the trust terminate at a certain age?
- ❖ Should income and principal be distributed and how often?
- ❖ Should distribution be limited to an ascertainable standard, or should Trustees have absolute discretion to distribute income and principal assets from the Trust for any purpose?
- ❖ Should Trustees favor beneficiaries?
- ❖ What happens when the trust terminates either at the death of the beneficiary or at a certain age, where does the remaining trust property go?
- ❖ Are you giving a power of appointment to beneficiaries to appoint property to someone else? If so, is the power to be used during the beneficiary's lifetime or at death? Should the power be limited to appointment amongst your children and descendants, or can the beneficiary appoint property for a general purpose, and should it be to anyone?

Then consider the tax consequences if a beneficiary has full control (general power of appointment) or limited control (limited power of appointment) over property during life for income tax purposes and for estate tax purposes.

Financial and Health Care Directives

Power of Attorney

Can be for personal or business use. It names an agent to manage financial affairs during incapacity.

Consider naming co-agents and successor agent. The power of attorney may be revoked, unless you are incapacitated. The agents' power ceases if you die.

It may authorize the agent to sell or purchase real property, file tax returns, banking authority, make gifts, etc.

Health Care Proxy

This document appoints the person you choose to help you make medical decisions if you become incapacitated.

Consider naming a successor agent if you can. Only one person may serve at a time to avoid conflicting directions.

There is no power over financial affairs.

Living Will

In your Living Will, you provide instructions to your health care agent regarding how you prefer to be treated during a time where you are incapacitated and are on life support. It discusses pain medication, food and other necessary instructions.

Health Insurance Portability and Accountability Act

This document authorize the individuals you name to obtain copies of your medical information, speak with your doctors and deal with insurance companies on your behalf.

Best Practice for Health Care Directives During Surrogacy

A surrogate mother should consider authorizing/directing agent to discuss medical decisions with an Intended Parent and to follow the provisions of the surrogacy agreement. This may include directions to take all measures to keep surrogate child alive if the pregnancy is viable.

Burial Directive

A standalone document detailing your burial instructions could be important in avoiding a situation where your Will or Trust instruments are read after your burial arrangements have been completed.

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