

Developing and Updating Your Estate Planning Package



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Advance Directives

- Power of Attorney
- Health Care Proxy
- HIPAA
- Living Will
- Disposition of Remains
- Digital Assets Release

Power of Attorney

- Durable vs. Springing
- Allows an agent to assist you with financial matters
- Gift giving ability
 - Gifts to Agent
 - Medicaid Planning
- Financial Institutions typically have their own form

Power of Attorney Continued

- Not effective until the agent signs the document
- One agent vs. multiple agents
- Successor Agents
- Compensation
- Necessary to Revoke Prior Power of Attorney?

Health Care Proxy

- The agent's authority to act commences upon a determination that the principal lacks capacity
- Agent can make all decisions except involuntary psychiatric care and treatment
- Organ and Tissue donation
- Family Health Care Decisions Act

HIPAA Release

(Health Insurance Portability and Accountability Act)

- Gives access to protected health information
- Health Care agent will need a HIPAA in order to get access to protected health information
- Can include variety of individuals and corporation on the HIPAA release

Living Will

- Provides specific instructions about an individual's health care decisions and medical treatment when a person can no longer make decisions themselves
- May make specific wishes about life-sustaining treatment and other end-of-life care

Disposition of Remains

- Appoint the person you wish to control the disposition of your remains
- Decide how you want your body to be disposed
 - Cremated, buried, composted?
- Prepaid Funeral
- Prepaid Burial Account

Authorization and Consent For Release of Electronically Stored Information

- Gives appointed agent access to any electronically stored information from an entity that has electronic information of the individual
- Cryptocurrency, Facebook accounts, etc.
- Gmail and Apple allow you to appoint someone as the beneficiary of your accounts

Testamentary Planning

- Last Will and Testament
- Revocable Trust
- Beneficiary Designations
- Joint Tenancy

Last Will and Testament

- Only controls the disposition of property of assets in your individual name alone at the time of death
- What to consider?
 - Tangible Personal Property
 - Specific Bequests
 - Maintaining Real Property
 - Trust for Beneficiaries
 - What happens if a Beneficiary predeceases the Testator

Last Will and Testament

- No Contest Clause
- Appointing an Executor
- Valid execution

Revocable Trust

- A revocable trust takes ownership of your assets but allows you to continue to manage them during your life
- The client is in control until incapacity or death
- Useful in incapacity planning – works in addition to POA
 - Can define incapacity
- Successor trustee is important
- Avoid probate
 - Does not protect from estate taxes nor Medicaid
- Need to fund the Trust

Times to use Revocable Trusts

- Conflict within the family
- Real property in multiple States
- Only have distant family relatives.
 - No kids, no spouse, no siblings
- When your goal is to avoid probate

Caring and Preparing

- Many older adults care for spouse's, partner's, others, as well as for themselves
 - Approximately one in five Americans are unpaid caregivers
- Can lead to physical, emotional, and financial strain
 - Seek help and plan ahead!

Medicaid Asset Protection Trust

- The purpose of a Medicaid asset protection trust is to protect the assets that you transfer into the trust, so that if you or your spouse require long-term care, the assets will not be considered an available resource for purposes of determining your or your spouse's Medicaid eligibility and will not be subject to estate recovery upon your death
- 5 Year planning for lookback – not used in crisis planning
- Trust income payable to Settlor
- Cannot access principal

Medicaid Asset Protection Trust

- Benefits of funding your home with a Medicaid Asset Protection Trust
 - Reserve life use
 - Payment of household maintenance, expenses and improvements
 - Ability to sell property
 - Sales proceeds (including appreciation) considered principal
 - Tax exemptions
 - Income taxed at Settlor's rate
 - Principal residence exclusion
 - Step-up in basis
 - Real Property tax exemptions

Fiduciaries

- Who are they?
 - Executor
 - Trustee
 - Guardian
 - Power of Attorney
 - Health Care Proxy
- What are their responsibilities?
- Communication with them.

Estate and Gift Tax

Annual Gift Exclusion

- \$19,000 in 2025

New York State Estate Tax

- \$7.16 Million in 2025

Federal Estate Tax

- \$13.99 Million in 2025
- Portability

When should you review your plan

- Illness, disability or death of a beneficiary or fiduciary
- Marriage, divorce or remarriage
- Birth or adoption of a child
- Change in fiduciaries
- Retirement
- Change in distribution of assets
- Increase or decrease in net worth
- Move to a new state
- Minimum every three to five years!



Thank you!