

## **ESTATE PLANNING BASICS**

Before meeting with your estate-planning attorney, it is important to review the following important information, and prepare for the meeting:

1. **Executor of the Will.** The will is the basic estate-planning document that sets forth your wishes for distribution of property and other matters upon your death. You should name an executor (usually your spouse) for your will, and two or more successors. The role of the executor is to identify and gather all assets, identify all debts and potential claims against the estate, safeguard and protect assets including any real estate and investments, carry out the provisions in the will for distribution of assets, payment of expenses, debts, claims, taxes, account for all transactions, and, finally, distribute the balance of the estate to your heirs. An executor is entitled to fees for managing the estate, so whenever possible I recommend that clients choose a trusted and capable family member or close friend, who they would want compensated or who would be willing to do the work for no charge.
2. **Revocable (Living) Trusts.** In order to avoid probate, revocable trusts are used to hold assets such as real estate, other investments and bank accounts. In Illinois, which is not a community property state, and especially when one spouse owns a business or is in a profession that exposes him or her to lawsuits, each spouse should have their own revocable trust. Joint trusts should be used with great caution. A carefully prepared trust can ensure that funds inherited by minor children or young adults, will be managed by a trustee until the children reach an appropriate age and can handle their own financial affairs. Revocable trusts can also be used to protect your assets from your adult children's creditors. This is especially important when an adult child is not good with handling money or could be facing a divorce or lawsuit. In order to be effective, revocable trusts must be properly "funded," which means that title to property and accounts must be title in the name of the trust.
3. **Special (Supplemental) Needs Trusts.** A special needs trust is advisable for any child or other beneficiary who is disabled, has special needs or circumstances (physical, mental, etc.), in order to maximize their eligibility for Medicaid benefits. As part of estate planning, I help clients develop a life care plan to ensure that loved ones are properly cared for in the future. Issues such as guardianship, housing, health care and general lifestyle support should be considered as part of a life care plan.
4. **Trust Distributions.** If trusts are used for minor children or young adults, the trust instrument should specify the age or ages at which distributions will be made to the beneficiaries, and any appropriate limitations or conditions for use of funds. Discretionary trusts may be desired to maximize asset protection or for beneficiaries who are not good with handling money.

5. Trustee. You will need to select a person, bank, or trust company to act as trustee for your trusts, and at least two successor trustees. If the value of your assets, investments and other property is very large or complex (such as commercial real estate or corporate interests) it may be advisable to select a bank or trust company to be the trustee, but keep in mind that those institutions charge management fees. When appropriate, I recommend that a trustworthy and capable family member or close friend serve as trustee to avoid management fees. However, in situations where family conflict may be likely, it is a good idea to name a professional trust company or bank as trustee, in order to preserve family harmony, even if assets are not substantial or complex.

6. Guardian. You will need to select a guardian (and at least one alternate guardian) for your minor children, in case one of the parents does not survive. The child normally lives with the guardian and the guardian has authority to make educational and religious choices for the child. Your wishes for various matters such as education and religious upbringing may be specified in your will, but the guardian may not be bound to obey your wishes. So, a guardian must be chosen with great care. If any children are from a prior marriage, we will need to discuss possible custody issues. It may be advisable to prepare an affidavit regarding your feelings about an ex-spouse gaining eventual custody, so that the court can make a more informed decision in the event that your guardian selection is contested.

7. Personal Property. If you intend to make specific gifts of items of personal property, detailed descriptions, especially of jewelry items, should be obtained. For valuable personal property, it is recommended to obtain an appraisal. It is best to handle such distributions in a separate letter requiring the executor or trustee to direct those gifts to the proper persons. Gifts of personal property to minor children may be held by their guardians or parents until they reach the age of 18, or later, if specified.

8. Power of Attorney for Health Care. Estate plans should include a Power of Attorney for Health Care, which names an agent to make health care decisions for you in the event of a temporary or permanent disability. Your health care agent also has the right to donate your organs and deal with your bodily remains upon death including choice of funeral arrangements. Please give thought to the persons you would select as the agent and successor agents. If possible, pick someone who would be comfortable speaking with your health care providers and who can handle the stress of dealing with a health care emergency. If you want to ensure that your funeral arrangements are handled in accordance with your wishes, a separate funeral or cremation direction is recommended.

9. Living Will. Powers of Attorney for Health Care provide general health care instructions and are used to allow your agent to act on your behalf in case of a health care emergencies. If you desire more specific and detailed instructions for end of life and/or emergency care, you may want to include a Living Will in your estate plan.

10. HIPAA Release. Estate plans should include a HIPAA release, which allows your designated health care agent (and anyone else you designate, such as additional family members) access to your medical records, so that they may be informed of your medical condition.

11. Power of Attorney for Property. Estate plans should include a Power of Attorney for Property, which names an agent to handle your assets and investments, receive income, pay bills, file tax returns, and otherwise handle your financial affairs, in the event of a temporary or permanent disability. Please consider the persons who would act as agent and successor agents prior to the meeting. It is best to pick an agent who is financially stable and trustworthy.

12. Religious Issues. A person's religion may have special requirements regarding how assets are divided upon death and how health care decisions are made, especially at the end of life. Please feel free to consider and discuss these important issues with me.

13. Confidentiality. All communications with your attorney are confidential. Family members may participate in phone calls and meetings, only with the client's express consent.

14. Representation of Spouses. When I represent a married couple, they must waive their rights of confidentiality. This means that I cannot protect secrets between spouses. When there is a second marriage or spouses cannot agree to communicate openly, I will recommend that each spouse retains their own separate attorney.

15. Elder Law Matters. Adult children often call to schedule estate planning meetings for their elderly parents and assist their elderly parents with financial affairs. It is important for adult children to understand that I always represent the elderly parents and their best interests. The elderly parent must meet with me privately to establish the attorney client relationship. Adult children are invited to attend meetings, only upon the elderly parent's request. I may refuse to prepare an estate plan when I have reason to believe that an elderly person is being pressured or unduly influenced. Please be aware that I believe I have a duty to protect my elderly clients, and this means I will not hesitate to report the situation to the Illinois Department of Aging or the police, if I feel my client is the subject of elder abuse (either financial abuse or physical abuse) at the hands of their own children, other family members, or caregivers.