Estate Planning Information

We have prepared the following information to help you with your estate planning document decisions. To prepare a will and other documents efficiently and accurately, your attorney will need certain basic information about your wishes, your beneficiaries, and your assets.

All information you give your attorney is confidential. Your attorney will need an indication of the size, nature and ownership of your assets. Approximate values are generally sufficient. It is particularly important that your attorney know how assets are titled - which are in your individual name, which are titled in joint names - and the beneficiaries (both primary and contingent) you have named on bank accounts, life insurance, IRA accounts, 401(k) accounts, annuities, etc.

Joint property at your death usually belongs to your surviving joint owner and not to the beneficiaries in your will, but this rule can sometimes be changed with a specific provision in your will.

Make a list of the names, ages, and addresses of your beneficiaries. Let your attorney know to whom a beneficiary's share is to go if that beneficiary does not survive you. You may want the gift to lapse (i.e., be distributed as a part of your residuary estate), be distributed to another named beneficiary, or be distributed to the deceased beneficiary's children and grandchildren (that's called "per stirpes"). If you will let your attorney know your preferences, your documents can clearly state your intentions. Your attorney can best advise you how to re-title accounts and revise beneficiary designations, if necessary, so your documents and the titles to your assets are coordinated.

Your personal representative (the executor of your probate estate) is the one who, after your death, pays the balances of your bills, files your final income tax return, pays your final taxes or collects a refund due you, and then distributes the remaining assets to your beneficiaries. Your personal representative may be one or more individuals or a trust department or a combination of both. We suggest that you decide upon a second choice if your first choice is not able to serve as your personal representative. If you want to name family members, such as your spouse first, and then one or more children, choose the ones most able to handle your estate competently and fairly, not necessarily the eldest or the one who lives locally. The personal representative needs to be able to handle a great deal of detail. The more efficient your personal representative is, the less the administration costs will be. And be careful about naming too many personal representatives. Two children may be able to work together efficiently, but three or more may be "too many cooks in the kitchen", causing delays and additional expense to your estate.

At a minimum, your will should decide who receives your tangible personal property (jewelry, furniture, china, silver, coin collections, automobiles, etc.) and who gets the remaining items. To avoid cluttering your will with many bequests of personal items and to let you change these beneficiaries quickly and easily and inexpensively, you can give special family heirlooms and jewelry or other items (but not money, real estate, or securities) to a named beneficiary by a separate list which you can later change without changing your will. To be able to do this, however, your will must mention that you may have a separate list. Otherwise the informal list is invalid.

If you wish to include any charities in your will, please obtain the exact name and address of the charity. All non-profit organizations will be happy to provide you with this information and if you ask, will give you their federal tax number. You can give the charity a specific dollar amount or a percentage of your residuary estate. You can also make the bequest a combination of the two (either the greater of those amounts or the lesser of those amounts).

Do you wish to exclude any natural heirs or prevent a child's spouse from inheriting? If so, your attorney will need to know so your documents can contain appropriate provisions to clearly state your intentions. You may need to name a contingent beneficiary so that share does not go by default to those you wish to exclude.

If you have minor children (a child under the age of 18), you should name a guardian of the person for them, and perhaps a guardian of the property as well. For minor beneficiaries, a trust in your will is recommended to avoid the expense of a court-supervised guardianship of the property and to prevent distribution of the entire amount at the age of 18, which is not generally a good age for a young person to inherit a substantial sum of money. It is usually better that the age be older, such as 25 or whenever they complete their education to prepare for a career.

Trusts are also helpful for beneficiaries who are inexperienced at handling their finances or who are imprudent in handling money, or to delay distribution of large sums until the beneficiary is more mature and financially astute. Your wishes expressed in the trust control and guide the trustee. If your beneficiary is financially responsible, a trust may also be appropriate to help protect the inheritance from the beneficiary's creditors, a divorcing spouse, or estate taxes. The trustee's job is to invest the money, make regular reports, distribute income and principal as the document directs, file tax returns, treat all beneficiaries fairly, etc. Some local financial institutions have trust departments to do all this. Trustworthy and experienced individuals with the time and expertise can also be trustees, but they will probably need more help from an attorney and an accountant. Choose your trustee carefully because the trustee is not court-supervised in Florida unless a beneficiary complains.

In 2023 a decedent's estate under the value of $12.92 million ($25.84 million for a married couple) will not be subject to federal estate tax, and this amount will annually increase with inflation, but under current law in 2026 the estate tax exemption will be reduced to ½ of the 2025 amount. There is no Florida estate tax.

In addition to a will, also consider having:

a) A **Living Will and Health Care Surrogate Designation**, if you are later unable to communicate your wishes to your physicians. The living will expresses your wishes concerning extraordinary life support measures if you are terminally ill. A health care power of attorney also names a health care surrogate who will decide on your medical treatment when you are too ill to communicate with your physicians. These directions are easily revised if you later change your mind and want to name someone else.

b) A **HIPAA Medical Information Authorization** permits the release of your medical information under the federal HIPAA guidelines (the Health Insurance Portability and Accountability Act of 1996) to named family members or friends and to your personal representative and successor Trustee, if any.

c) A **Durable Power of Attorney** naming someone to sign your name to legal documents and handle your finances (endorse checks, pay medical bills, handle investments, etc.) if you become incapable of doing so. You can give full or limited powers, and it is very important to choose your agent carefully. A Durable Power of Attorney is very important if you do not have a living trust, because it may be the only way (other than joint accounts or a court guardianship) for you to authorize someone else to have access to your accounts to pay your bills.

d) A **Revocable Living Trust** avoids probate and lets someone you name handle your assets and pay your bills if you become incapacitated. You can be both trustee and beneficiary now and name a trust department, family member, or friend to take over as successor trustee if you become sick or incapacitated. You can name another as trustee now or you and another can serve as co-trustees. Unlike a power of attorney which gives that person access to your accounts with no instructions as to how to use that authority, the trustee's powers are limited by the guidelines you specify in your trust agreement. Like wills, revocable trusts can be changed in writing as your wishes change. Living trusts are often referred to as "will substitutes" because they specify who gets your assets when you are gone, but the trust administration is done without probate.

And what is probate? It is a court supervised administration at your death which is required if you leave assets in your sole name with no beneficiary designation. If you were the only one who could access an account in your sole name and you are no longer alive, the account is frozen until the court appoints someone as your personal representative who then can obtain the funds in the account to pay your bills and distribute your assets to your beneficiaries. Your will does not cause or prevent probate. It merely gives the court the names of your preferred personal representative and your beneficiaries.

You may wish to ask your financial planner or your insurance advisor to attend the conference with your attorney. They can often provide valuable information and input and as a member of your estate planning team, will benefit from being present, can ask questions, and are therefore better able to help you in the future. You may only see your estate planning attorney once every 5 or 6 years, but you most likely will be visiting with your accountant and insurance advisor at least annually, and your financial planner more frequently still. It is helpful if they understand your goals and objectives and plans for your beneficiaries. They can help make sure that your accounts and beneficiary designations coordinate with your legal documents and remind you to update your documents as your health, assets, and family members change.

We hope this information will help you prepare for your estate planning conference.

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