Legal Documents: A Guide for the Perplexed

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Learning Objectives

• Understand who needs to plan and why

• Determine what essential legal documents you need in your toolkit

• Recognize life changes that may impact your plan and when your plan requires updates
Who Needs to Plan?

1. Are you over the age of 18?
2. Do you have a taxable estate?
   - Minnesota Estate Tax exemption is currently $2.4M
   - Federal Estate Tax exemption is currently $11.2M
3. Do you have a loved one with special needs?
   - Disability, hard times, addiction?
4. Do you have real property in more than one state?
5. Did you recently get married or divorced?

Who Needs to Plan?

6. Are there charitable objectives that are important to you?
7. Do you have children from a prior marriage?
8. Will your family members agree on your end of life care?
9. Does your retirement plan and estate plan lack coordination?
   - Do your beneficiary designations match your estate planning goals?
10. Do you have a diagnosis that may require long-term care?
“Two sure things in life…”

Everyone over 18 needs to have a plan.
Planning includes establishing the right legal documents and discussing them with your loved ones.

Pre-planning for death includes:
- Disability Planning
  - What happens when you are alive, but experience short-term or long-term disability?

Pre-planning for death also includes:
- Estate planning
  - What happens with your assets when you die?
- Tax planning
  - What are the tax implications upon death?
- Considering disposition of remains after death
  - What happens to your body when you die?
Priorities When Planning

- Make Decisions Early
- Create Your Team
- *Plan for the worst, so you can live your best!*

Disability Planning Tools

**Health Care**

- Advance Directives
  - Durable Power of Attorney for Health Care
  - Health Care Directive
- Contents could include
  - Nomination of Agent
  - DNR / DNI Designation
  - End of Life Wishes
Importance of a Health Care Directive

- Protects your autonomy by protecting your right to make medical choices - even if you are unable to speak for yourself!
- Appoints an individual to make medical decisions on your behalf if you are incapacitated
- If Agent is unavailable, physicians can use the HCD to guide them until an Agent can be reached or until you can communicate for yourself

Without a Health Care Directive

- There is no way to insure your treatment preferences are followed
- You will still receive medical treatment if you don’t have a HCD and cannot speak for yourself
- A court proceeding (“guardianship”) may be required
  - This can take time and money away from your family during an already stressful situation
Health Care Directive Example

POLST Example
Disability Planning Tools

Finance

• Powers of Attorney (POA)
  • Statutory Short Form Power of Attorney (SSFPOA)
  • Common Law or General Durable POA
• Powers of Attorney end at death of principal

Statutory Short Form Power of Attorney

• Names Attorney(s)-in-Fact
• Effective when signed
• Can have limitations on power and on time
• Power to revoke or change
• If spouse is appointed, terminates in event of divorce
• Gifts to the attorney-in-fact and family limited
• Easy for financial institutions to recognize
**Statutory Short Form Power of Attorney**

- POA can be customized by attorney for client’s specific situation
- May allow powers beyond those granted by the statutory form (SSFPOA)
- Can have unlimited gifting amounts
- May be more difficult to use with financial institutions
Without a Power of Attorney

- There is no way to insure someone could manage finances on your behalf should you become incapacitated
- A court proceeding ("conservatorship") may be required
  - Time and money involved and ongoing court reporting can be burdensome for your loved ones

Estate Planning – Wills, Trusts, etc.

- The purpose of estate planning is to designate where your assets pass upon your death and who has the power to administer your estate
How Assets Transfer at Death

- Distribution determined by:
  - Joint Ownership
  - Beneficiary Designations
  - Statutes of Intestacy (without a Will or Living Trust)
  - Will in existence
  - Trusts in existence

Probate vs. Non-Probate

- What does probate mean?!
- Probate Assets (Decedent’s Name Alone)
  - Triggers may include real estate or $75,000+
- Non-Probate Assets (Joint Owner, Designated Recipient, Beneficiary or Trust)
Wills (Pros and Cons)

**PROS**
- Ease of Establishment
- Simplicity During Life
- Certainty for Beneficiaries and Others
- No Need to Re-title Assets

**CONS**
- Requires a Probate Administration
- Some Loss of Privacy (Probate is Public)
- May be More Expensive for Heirs than a Trust or Beneficiary Designations

Trust Planning

- Inter Vivos Trust (Set up During Lifetime)
  - Revocable Trusts are the most commonly used Trusts in estate planning
  - Irrevocable Trusts are sometimes used for gift or estate tax planning

- Testamentary Trust (Set up Upon Death in a Will)
  - Commonly used when individuals have minor children
Revocable Trusts (Pros and Cons)

**PROS**
- Maintains privacy of assets and family matters
- Avoids probate of the Estate
- Provides management of assets if you become incapacitated
- Disposition of assets at death

**CONS**
- Cost to Establish
- Cost to Administer
- May Not Save Taxes
- Requires Constant Vigilance

How to Prepare?

- Identify your Team or Key Players
- Consider your Values and Legacy
- Meet with an Attorney
- Execute Documents
- Have “the Talk”
- Review Annually
When to Update?

- Life Change
  - Retirement
  - Moves
  - Receipt of Inheritance
  - Desire to Gift
  - Children/Grandchildren/Great Grandchildren
- Values Change

Thank You!

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