

Estate Planning Basics

What would happen to your family should you unexpectedly pass away or face a period of significant disability? It is in our nature to want to protect our loved ones from harm and distress and to protect what we have worked a lifetime to acquire. Estate planning gives you the freedom to say that you have all of your personal affairs in order.

Oast & Taylor can guide you through the creation of a comprehensive estate plan that includes making key decisions and preparing legal documents that will protect you, your assets, and your family should you pass away or experience a period of disability. The basic estate planning documents that each person should consider having in place include:

General Durable Power of Attorney

An important issue to consider is who will handle your property and personal affairs during a period of your disability. By executing a general durable power of attorney (a "POA"), you can make your own decision as to who will be your primary and successor agent, who will be responsible for making decisions on your behalf. Your agent will be tasked with handling your financial and real property issues such as bill paying, investments, buying or selling your home, and purchasing or cashing in life insurance policies, in the event that you cannot do so for yourself.

If you fail to execute a POA and later become incapacitated or otherwise unable to make your own decisions, then someone will have to petition a court to be appointed as your guardian and/or conservator to handle your affairs. The appointment process is lengthy and expensive, and it invites the prospect for disputes over who will be appointed as your guardian and conservator.

Advance Medical Directive

An Advance Medical Directive (an "AMD") is the best tool for appointing a surrogate decision maker for medical decisions and for letting your loved ones know how you prefer end of life decisions be handled. An AMD typically consists of two parts: 1) Living Will, and 2) Medical Power of Attorney.

A Living Will applies when you are in the process of dying (i.e., death is imminent and physicians have determined that there is no hope of a meaningful recovery). A Living Will states whether you want artificial or extraordinary means to be used to prolong the dying process and designates whether you would like artificial nutrition or hydration be administered.

A Medical Power of Attorney appoints an agent and a successor agent, to carry out the health care decisions stated in the Directive, and make medical decisions on your behalf, in the event that you cannot do so yourself.

An AMD should include a HIPAA waiver so your physician can disclose otherwise confidential information to your agent. An AMD also allows you to lay out your organ donation preferences.

Last Will and Testament

A Last Will and Testament (a "Will") appoints an executor, whose has the responsibility of disposing of your property at your death according to your wishes. You can also designate a guardian for your minor children in your Will. If you die without executing a Will, the default rule is that your property passes by intestate succession, resulting in a plan of distribution that may be contrary to your wishes.

Revocable Living Trust

In certain situations, a Revocable Living Trust may be the better option for disposing of your assets at your death. If you have a blended family due to a second marriage, have young children, are concerned about your children encountering marital or creditor issues, or you are concerned about your estate incurring federal estate taxes, then you may want to consider an estate plan that also uses a Revocable Living Trust.

A Revocable Living Trust usually involves the transfer of property ownership to a Trustee and may also include naming the Trust as the beneficiary of certain policies and accounts. As Grantor, you can serve as Trustee of your trust during your lifetime. Upon the death of the Grantor, the Trust Agreement includes provisions for the disposition of the assets held in trust. By further distributing assets in trust, you may be able to achieve asset protection for your beneficiaries.

Additional Estate Planning Tools

- Special Needs Trusts
- Marital Agreements
- Designation of Individual to Make Arrangements for Funeral and Disposition of Remains
- Self-Settled Spendthrift Trust
 - New in Virginia in 2012
- Irrevocable Life Insurance Trusts
- Trusts established for Estate Tax Planning or Charitable Giving Strategies:
 - QTIP / Marital Trust
 - Family / Credit-Shelter Trust
 - Charitable Remainder Trust
- Beneficiary Designations; Payable/Transfer-on-Death Designations
- Joint ownership of assets

Periodic Review

It is extremely important to review your estate plan every few years or upon the occurrence of a “life event” such as:

- A change in family circumstances
- A change in financial situation
- Obtaining new assets
- Change in ownership of existing assets
- Fiduciary changes
- Changes in the law

Conclusion

This estate planning guide only discusses the basics of estate planning documents and is not intended to cover every particular scenario. Your financial or family situation may dictate the use of different or additional estate planning tools. It is important to consult with an Elder Law attorney who can help you to understand your estate planning needs and assist you to develop a comprehensive plan.

Learn More

Call Oast & Taylor at 757-452-6200 or visit www.OastTaylor.com to schedule a consultation with an attorney at one of Oast & Taylor’s convenient office locations in Virginia Beach, Portsmouth, or Elizabeth City, North Carolina.

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