

Winter 2015

## **ESTATE PLANNING TERMS: THE BASICS**

The following are descriptions of documents that should be considered for every estate plan. Most of these will ultimately be included in some fashion in your personal estate plan. Some of these terms may be specific to Washington State, so you will need to ensure to follow up with the laws in the state you live.

If your net estate market value (the combined value of both spouses if married) is more than \$2,000,000, your estate plan becomes more complex because you have to consider estate tax implications. The \$2,000,000 figure may include life insurance depending on who owns the policy when the insured person dies. The discussion below does not consider estate tax planning, which is addressed on a client-by-client basis. The same basic documents will likely be included, but there may be additional documents and they may be more complex.

### **Will.**

A will is a legal document which details where you want your estate's assets to go, and who is going to oversee the administration of your estate. You may also designate a guardian for your children and include testamentary trust(s) such as a Child Trust or Special Needs Trust. Without a will, your estate will be administered outside your control or the control of your family and according to state laws.

We try to make the will as simple as possible. However, there are many legal principles to be covered in the will so it can become cumbersome. For example, most young couples with small children will want to leave everything to the surviving spouse if one spouse dies. If they both die, they will want to leave everything in a trust for their minor children. We will provide language and ideas for a children's trust. We will also help you arrange life insurance policies so that if both parents die, the life insurance money will go to the trustee for the children as specified in the will. Parents can also say in their will when a child will receive the money (e.g. at 25 years of age). If there is no trust, the child will receive the money when he or she turns 18.

### **Community Property Agreement.**

You can use this simple, two-page document to transfer all of the property of one spouse to the other when one spouse dies. By using this method of transferring your property, you can avoid probate. However, the community property agreement can cause serious problems if a husband's and wife's combined

estate is over \$2,000,000. (This figure includes life insurance.) In this case, you should be concerned about estate tax ramifications. Community property agreements can also cause difficulties if spouses are contemplating a separation or dissolution of their marriage, if either spouse has children from a prior marriage, or if one spouse may need to qualify for Medicaid. Some of these agreements are fairly simple and only a few paragraphs long, but others require more thought to accomplish what you want.

### **General Durable Power of Attorney.**

This is the document in which you appoint another person to be your attorney-in-fact. This power of attorney can become effective immediately or you can make it effective only if you become incompetent. The document is usually comprehensive, covering many contingencies. A major purpose of the Durable Power of Attorney is to avoid expenses of a court-appointed guardian if a person becomes incapable of making his or her own decisions.

### **Health Care Directive ("Living Will").**

In this document you specify what you want to happen to you in the event you are in such a condition that you are being artificially kept alive.

### **Health Care Durable Power of Attorney.**

With this document you can appoint a trusted person (usually your spouse if you are married) to make health care decisions for you in the event you cannot make them yourself.

### **Trusts.**

Trusts have many uses in the area of estate planning. Usually, a trust is a separate entity created by one person (the "trustor") to hold property controlled by a second person (the "trustee") for the benefit of a third person (the "beneficiary"). Go to our "Trust" newsletter to learn more.

### **Disposition of Certain Tangible Personal Property.**

A Washington statute allows a person to refer in a will to a list of tangible personal property which will say who will receive the property at the death of the person who wrote the will. The statute authorizes gifts of only tangible personal property. The gifted property cannot be money, securities, or other intangibles. The gift cannot be real property. This method of identifying gifts can be convenient if a person wants to specify gifts after the will is written.

## **Disposition of Remains.**

In this document, you can specify your wishes regarding the disposition of your remains and appoint a representative and alternate representative to ensure that your wishes are carried out. Matters discussed in this document include funeral directors (do you have a preference or prepaid contract with a funeral home?), details and authorization for ceremonies and/or services, and methods of ultimate disposition (burial, cremation, etc.)

## **Change of Beneficiary.**

A Change of Beneficiary form allows you to name the primary beneficiary (usually the spouse for couples) and first and second contingent beneficiaries of your life insurance policy or other investment assets.

## **POLST Form**

The Physician Orders for Life-Sustaining Treatment (POLST) form allows you to clearly express what type of care you desire at end of life. The form must be obtained and completed with a physician, ARNP, or PA-C, and their signature on the form ensures that your wishes will be treated as physician orders. Topics covered on this form include resuscitation, medical intervention for comfort level, use of antibiotics, and artificially administered nutrition. The POLST is intended primarily for adults with life-limiting illnesses.

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