

Estate planning



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Disclaimer

This handout is meant to give an overview with general information; not intended to be construed as legal advice.



Documents

- Durable Power of Attorney- Appoint an AGENT to assist with Finances **during your lifetime** in periods of incapacity
- Advance Healthcare Directive- Appoint an AGENT to assist with Medical Care/**End of life decisions** during your lifetime and in periods of incapacity
- **Once the Principal passes away, the POA and AHCD are no longer valid.**
- Last Will and Testament- Appoint an Executor to manage the affairs and distribute assets/liabilities after Testator (person who made a will) passes away.
- Revocable Trust- Appoints Trustee to manage funds for beneficiaries

Power of attorney

Give the person you designate (your "Agent") broad powers to handle your property, which may include powers to sell, dispose of, or encumber any real or personal property without advance notice to you or approval by you.

The power can pass to the agent immediately upon document execution, or it can become effective only in the event the individual becomes incapacitated or disabled.

The agent has powers only during your life time.

Termination of power of attorney:

Absent a revocation by the principal, a POA terminates on:

The principal's death

The occurrence of a terminating event set out in the POA

The accomplishment of the POA's purpose

The agent's death, incapacity, or resignation when no other agent is named

Revocation by court order

Health Care Directive

It is possible that, due to illness or injury, you may become unable to talk to a doctor or make personal medical decisions.

By planning in advance, you can help make sure that any wishes about your treatment will be followed.

This is true for short-term and long-term illnesses.

If you do not plan ahead, your family may not know what your wishes are or be allowed to fulfill them.

The agent has powers only during your lifetime.

Last Will & Testament—upon your death

1. Executor- one or two back-ups
2. Guardian(s) of Minor Children
3. Trustee of Assets of Minor Children
4. Beneficiaries- beneficiary designations
5. Tangible Personal Property
 - Memorandum
6. Specific Gifts
7. Real Estate
8. Rest and Residue

Requirements

- Executor over 18 years old, of sound mind
- Two witnesses
- Notarized
- Self Proving Affidavit
- DE allows handwritten wills but changes cannot be handwritten on a typed will
- Codicil for amendments

Appoint the Guardian

If you have minor children, you want to be thoughtful

- Who should it be?
- Duties?
 - Raise the children
 - Make legal decisions
 - Education, Medical
 - Plan for the children

Not in your Will

Named Beneficiaries often override the will, check it often

- Bank accounts, Stocks/Bonds; Mutual Funds
- Retirement Account
- Life Insurance; Annuities; Pension, Employee benefits
- Transfer -on-death/Payable on death accounts

Dying without a will

Intestate Succession under Delaware Law

The statute dictates the priority for those who may serve as Administrator and dictates beneficiary designations

Petition for Guardianship through the Chancery Court

Probate

- Process that takes about a year on average
 - Filing the will, Opening the estate
- Gather all the assets- Inventory
- Prepare assets for Distribution
- Accounting of assets, claims, and fees
- Distributing/disposing the assets
 - Closing the estate- Final Accounting
- Final tax return

Keep in mind...

A creditor has 8 months from date of death to file claim.

Estate includes everything deceased owned at time of death including money, real estate, collection, tools, etc.

Estate does not include trusts/accounts with a beneficiary.

Agents act during your lifetime

Trustees—may act during or after your lifetime

Executor—after your life time

Guardian—often after your lifetime

Public Offices

1. Register of Wills
2. Recorder of Deeds
3. Office of Vital Statistics
4. Family Court
5. Chancery Court

Gift of love

The AARP is a tremendous source for the loved ones left behind

My daughter updates my obituary annually!

I have a book with all addresses, user names and passwords, account numbers and addresses.

My daughter knows exactly what we want to happen to us when we are incapacitated, terminally ill, or dead. At first, my granddaughters (9 and 11) were not happy about these discussions.

They now understand the importance of planning.

Preparing your family for your final days is the most precious gift you can give your loved ones.

Letter of Last Instruction

When you pass, and you will one day, you want to make it easy on the loved ones you leave behind. At the very least, you want them to know:

- Help them locate will/important documents
- Contact list to notify people upon your death
- Where important documents are located
- How to receive death benefits
- Safe deposit keys
- Funeral and burial instructions

A checklist

- Death certificates (maybe a dozen)
- Social Security card
- Marriage certificate
- Birth certificate
- Birth certificates for any children
- Insurance policies
- Deeds and titles to property
- Automobile title and registration papers
- Stock certificates
- Bank passbooks
- Honorable discharge papers for a veteran and/or VA claim number
- Recent income tax forms and W-2 forms
- Loan and installment payment books and contracts

Upon Passing

1. Arrange for organ donation.
2. Contact immediate family.
3. Follow body bequeathal instructions.
4. Consider funeral preparations.
5. Choose a funeral home.
6. Notify close friends and extended family.
7. Secure property.
8. Notify the post office.

Before the funeral

1. Meet with the director handling the funeral or memorial arrangements.
2. For a veteran, inquire about special arrangements
3. Consider whether you need or want other financial assistance for the funeral and burial.
4. Enlist help for the funeral.
5. Arrange for headstone.
6. Organize a post-funeral gathering.
7. Spread the word about the service.
8. Make a list of well-wishers.
9. Prepare an obituary.

Placing an obituary

Your local newspaper will need documentation of the loved one's passing AND the person who is requesting it not provide:

1. Your name
2. Your phone number
3. Your address
4. The exact text you want to be printed
5. Any photo or photos you would like printed
6. The name of the funeral home taking care of arrangements
7. The phone number of the funeral home taking care of arrangements
8. The date you would like to see your obituary printed

After the funeral

1. Get duplicate death certificates
2. Send thank-you notes.
3. Notify local Social Security office.
4. Handle Medicare.
5. Look into employment benefits..
6. Stop health insurance.
7. Notify life insurance companies.
8. Terminate other insurance policies.
9. Meet with a probate attorney.
10. Make a list of important bills (mortgage payments).
11. Contact financial advisers, stockbrokers, etc.
12. Notify mortgage companies and banks.
13. Close credit card accounts.
14. Notify credit reporting agencies.
15. Cancel driver's license.
16. Cancel email and website accounts.
17. Cancel memberships in organizations.
18. Contact a tax preparer.
19. Notify the election board.

Debt upon death

- 1. Some money is protected.** At death, unsecured creditors cannot collect from life insurance payments, pay-on-death bank or brokerage accounts, jointly held property that passes directly to the surviving owner, or retirement plans that have named beneficiaries. They're safe — but only if they were handled right.
- 2. Your signature matters.** If you signed a joint application for a credit card, you owe the balance. If you were merely an “authorized user,” however, most states don't require you to pay. Spouses are generally not liable for any separate debts their mate incurred before the wedding or, in most cases, after. You'll still owe any private debt you cosigned with the deceased such as student loans. Some private student lenders will forgive the loan.
- 3. You have to pay the doctor.** Final medical bills are usually considered a spouse's responsibility. If your mate entered a hospital, the admission papers you signed probably included a payment agreement. When there's no money, however, and the survivor has very little income, health providers might write off the account.
- 4. Get tough.** Don't be talked into making a few payments on bills you do not owe. Creditors might claim that you willingly assumed the debt. Tell them, “No, no, never.”