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# ***ESTATE PLANNING BASICS***

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**Q: WHAT IS MY ESTATE?** Your estate consists of all property and personal belongings you own or are entitled to possess at the time of your death. This includes real estate, personal property, cash, savings and checking accounts, stocks, bonds, automobiles, jewelry, etc. Although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy, including Servicemembers' Group Life Insurance (SGLI); the proceeds will normally pass to the beneficiaries designated in the policy. A Will also does not change the designated beneficiaries of any financial asset; however, the money in the account goes directly to that individual when you die, bypassing probate and thereby the money is not considered part of the estate. Likewise, certain bank accounts which are payable on death, bypass probate and go directly to the beneficiary. Property owned as joint tenancy with right of survivorship does not become part of the estate and is not subject to probate; the other joint tenant will automatically get the entire property at the decedent's death. Probate is the legal process of settling the estate of a deceased person; specifically determining the validity of the Will, resolving any claims, paying debts and expenses, and distributing the decedent's property to heirs and beneficiaries.

**Q: WHAT IS ESTATE PLANNING?** Estate planning is a process of making decisions during your lifetime about the use, maintenance, and disposal of your property and personal belongings upon your death or disability. It provides peace of mind by knowing that your desires are recorded and your property will be disposed of as you desire. Good estate planning can entail more than a simple Will. You may decide to avoid using a Will in favor of a living trust or property held in joint tenancy with right of survivorship, such as joint bank accounts, to avoid the time and costs associated with the probate court process. From a financial standpoint, a thorough and effective estate plan minimizes any potential taxes and determines what will happen to your home, your savings and investments, your retirement plan, a business, and other property if you become disabled or die. It can also entail establishing a trust to preserve your assets for your children until they reach the age set for distribution of the trust. If you do not prepare a Will or trust that provides decisions about your estate, it could be years before your property is awarded to your heirs, or it could be transferred to them and distributed in ways you did not intend. A coordinated estate plan considers your SGLI beneficiary designation, together with any other life insurance policy you may have. Life insurance policies can provide income for your surviving spouse, especially if he or she does not work outside the home, for disabled or elderly relatives, your children's education and upbringing, or for paying any estate taxes. From a personal standpoint, good estate planning nominates a guardianship for minor children, expresses your funeral arrangements, and it anticipates a possible incapacity and memorializes your desires regarding medical care in the event of a terminal condition or mental incompetence through the use of Advanced medical Directives.

**Q: DO I NEED AN ESTATE PLAN?** Almost everyone does, whether or not they are rich. Estate planning can be critical to the health, security, and welfare of your loved ones. It is one way to ensure that your wished will be carried out after you are gone or you become mentally incompetent. To decide what your personal estate plan should include, consider the following questions:

- How will the needs of my surviving spouse and children be met?
- Do I want to provide for family members or loved ones besides my spouse or children?
- How will my children's college education be paid?
- How will my burial expenses, estate settlement, taxes and other debts be paid?
- What funeral arrangements would I like?
- Will my property be divided amongst family and friends according to my wishes?
- Do I want to make gifts to my heirs before I die?
- How high will the taxes be on my estate?
- Are there strategies I can use to reduce my estate taxes?
- How will my health needs be met if I become terminally ill or mentally incapacitated?

**Q: WHAT ARE ESTATE TAXES?** Federal law may impose an estate tax upon the privilege of transferring property at death. This estate tax is applied to your total taxable estate. In addition to all the property disposed of by your Will, your taxable estate consists of such items as joint tenancy property and certain life insurance proceeds distributed upon death. However, property owned as “joint tenancy with right of survivorship” does not become part of the estate; the other joint tenant will automatically get the entire property when you die. As previously stated, although the proceeds of insurance policies may be considered part of your estate, a Will does not change the designated beneficiaries of an insurance policy; the proceeds will normally pass to the beneficiaries designated in the policy if property or assets are left to a spouse who is U.S. citizen, the federal estate tax does not apply. This is referred to as the “marital deduction” exemption. Federal estate tax also usually does not apply if property or assets are left to a charitable organization. However, the transfer of property to other individuals or organizations may be subject to federal estate taxes, depending on the value of the estate. Your estate may also be subject to state estate tax.

**Q: WHAT SHOULD I DO NEXT?** The first step in preparing your estate plan is to discuss it with your family to determine both your and their needs and objectives.

**Q: IS THERE A PROCEDURE FOR ME TO PROVIDE HELPFUL GUIDELINES CONCERNING THE ADMINISTRATION OF MY ESTATE?** Yes, you can prepare a letter of instruction. A letter of instruction is a nonbinding legal document containing commands, instructions, useful information, and advice concerning the administration of your estate in the event of your sickness or death. The content of the letter will differ from individual to individual, however, the following is a list of typical subjects to be addressed:

- Organ donation and location of any document that expresses this intent;
- Individuals to be notified about your death and funeral;
- Specific funeral instructions or requests. If they are detailed in another letter or your Will, state the location of the document;
- Whether you prepared a Will or trust and their location;
- Social Security and Medicare card/statements and location of the card/statements;
- Information on life insurance policies or medical, accident, and disability insurance;
- Information on pensions, retirement accounts or annuities;
- Information on property and liability insurance and any real estate holdings;
- Information on bank accounts, stocks, bonds, mutual funds, and credit cards;
- Location of important papers such as birth certificate, marriage certificate, and income tax returns;
- Information regarding debts;
- Information regarding any other items that will help those discharged with the responsibility of administering your estate.

The letter of instruction should be kept with the Will and both should be stored in a safe place that is accessible to your personal representative or executor/executrix. Whether you should keep executor/ r personalim

**Q: CAN I GIVE SPECIFIC THINGS TO SPECIFIC PEOPLE?** Yes, you can make specific bequests in your Will by fully describing both what you want to give and the person who is to receive it. However, you should be careful about making specific bequests. If you dispose of the property that you describe in your Will before you die, or if there is any doubt about the exact property that you have described, you may be creating difficulties for your personal representative. Therefore, you should discuss with your attorney whether you should make specific bequests in your Will.

**Q: SHOULD I NAME A GUARDIAN FOR MY MINOR CHILDREN IN MY WILL?** Yes, it is advisable. A guardian is a person, institution, or agency appointed by a court to manage the personal affairs of minor children (or a special needs adult), when no parents survive or the one surviving parent is adjudged unable to care for his or her child(ren). Thus, a legal guardian is the person who will act as a parent(s) for any of your children who are minors at the time of your death. A guardian should be named in a Will to ensure that minor children and their estates are properly cared for. Although a court of law is not obligated to appoint the guardian you named in your Will, the court will certainly consider your choice and it places great weight on the parent’s selection. You can also name a substitute guardian. This would provide a guardian for your children in the event that your spouse or other named guardian dies before you, or you and your spouse die at the same time.

**Q: WHO SHOULD I NAME A GUARDIAN FOR MY MINOR CHILDREN IN MY WILL?** You should choose your children's guardian (and alternate guardian) with extreme care. You should discuss the decision with both your spouse and the person you are thinking of naming as guardian; do not automatically assume that your parents or any relative will be suitable guardians. In making your decision, you should consider such factors as the guardian's age, religion, financial situation, and current relationship with your children. Additionally, you and your spouse should agree on who should be guardian of your children. If you both die in a car accident and your Wills designated different guardians, then a court would have to decide who will be the children's guardian. This could cause undue hardship, both financial and emotional, on all the parties concerned.

**Q: WHAT IS AN EXECUTOR?** An executor (executrix, if female), also referred to as a personal representative, is the person who will manage and settle your estate, after your death, according to your Will. The executor, executrix, or personal representative collects your property, receives and pays claims against your estate, such as court costs, taxes, and debts, disputes any claims, and distributes your property according to your Will. You should also consider naming an alternate executor in the event that the named executor is unable or unwilling to act as executor of your estate. In your Will, you can require that your executor or substitute executor be required to post bond or other security, or you can waive the requirement, thereby saving expense to your estate. A bond is the executor's /executrix's promise to reimburse any loss to the estate as a result of his or her negligence or wrongdoing in carrying out his or her required duties.

**Q: WHO SHOULD I CHOOSE AS MY EXECUTOR?** Choose your personal representative or executor/executrix with care. Your personal representative will have an important role; therefore, you should name someone you trust and in whom you have confidence. Many married people name their spouse as their personal representative. However, regardless of who you name, you should discuss the matter with him or her before you make your Will.

**Q: HOW LONG IS A WILL VALID?** A properly drawn and executed Will remains valid until it is changed or revoked. However, changes in circumstances after you execute your Will, such as tax laws, marriage, divorce, birth of children or even a substantial change in the nature or amount/value of your estate, can affect whether your Will is still adequate or whether your property will still pass in the manner you choose. All changes in circumstances require a careful analysis and reconsideration of the provisions of a Will and may make it wise to change the Will, with the help of your legal assistance officer.

**Q: HOW LARGE AN ESTAE IS NECESSARY TO JUSTIFY A WILL?** Everyone who owns any real or personal property should consider having a Will regardless of the present amount/value of his or her estate. Your estate grows daily in value through the repayment of mortgages, appreciation of real estate, stocks and other securities, inheritances from relatives, and other factors.

**Q: WHAT HAPPENS IF I DO NOT MAKE A WILL?** When you die without a Will (or die "intestate," as the law calls it) your property is distributed according to state law; you will not have any personal say as to how your property will be divided. Under state law, generally your spouse and children will take your property upon your death. If there is no spouse or children, generally your parents will take your property, then siblings, grandparents, and children of the grandparents. If no legal relation can be found, your property will eventually go to the state. Many individuals may prefer that their entire estate go to the surviving spouse and that can be designated in your will. Most important, for mothers and fathers, however, is not always the disposition of their property after their death, but rather the proper care and custody of their minor children. Grandparents, other family members, and godparents do not automatically receive custody of children who do not have a surviving parent. Your Will should specify the individual, as well as an alternate, who you would like to designate as the guardian of your minor children. This decision, on your part, will be of great assistance to the court in determining who will receive the custody of your children. Note, however, that the decision to make a Will is strictly a personal one, dictated by your own unique financial and personal circumstances; no one can be ordered or required to have a Will.

**Q: WHAT HAPPENS TO PROPERTY HELD IN THE NAMES OF BOTH HUSBAND AND WIFE?** Joint bank accounts, real property, and other property held in the names of both husband and wife usually pass to the surviving spouse by law and not by the terms of your Will. However, if both spouses do not want to be listed as joint owners of property, then the Will can determine the disposition of the property.

**Q: IS A LIFE INSURANCE PROGRAM A SUBSTITUTE FOR A WILL?** No, life insurance is only one kind of property which a person may own. An individual usually has other assets that need to be disposed upon his or her death. Although a Will cannot change the designated beneficiaries of an insurance policy, the

payment of the proceeds may be directed by a Will. For example, a Will can direct the insurance proceeds to be paid to any surviving children only when they attain a certain age. The careful person will have a lawyer and a financial planner working together on a life insurance program as one important aspect of estate planning.

**Q: ARE THERE ANY SPECIAL REQUIREMENTS FOR EXECUTING A WILL?** The specific requirements depend on state law. In most states, any person 18 years of age or older can execute (sign) a Will if he or she is mentally competent and is doing so as his or her voluntary act. Some states permit individuals younger than 18 years of age to execute a Will if they are married, economically independent, or a member of the armed forces. Thus, check with your state's laws to determine the age at which one is eligible to execute a Will. Generally, the Will must be in writing, typed and not handwritten, signed by the testator (person making the Will), and signed in front of witnesses who are mentally competent. Most states restrict beneficiaries from also serving as witnesses, witnesses must generally be 18 years of age, and in all states, except Vermont, two witnesses are required; Vermont requires three witnesses. Louisiana is the only state that requires Wills to be notarized; however, notarization is recommended since it makes the document self-proving. This means that the Will is admitted into probate court without the need for gathering witnesses to appear in court or sign affidavits stating the testator/testatrix was of sound mind when he or she signed the Will.

**Q: CAN I STATE FUNERAL ARRANGEMENTS IN MY WILL?** You may have a strong desire regarding funeral arrangements (i.e. burial at a certain location or gravesite, cremation, or military honors). However, if you elect to state your desires in your Will, do not rely on your Will alone to communicate those desires, as Wills may not be read prior to the funeral! As a practical matter, your funeral arrangements are likely to have been carried out already by the time your Will is read. Finding out, after the fact, that the arrangements were contrary to your Will may cause some dismay for your survivors. Therefore, it is recommended that you also communicate your desires to your next of kin NOW. You may also make the receipt of an inheritance contingent on the beneficiary's compliance with your burial instructions.

**Q: WHO SHOULD HAVE THE ORIGINAL WILL?** Store your will in a safe place that is accessible to the executor or executrix after your death. The executor or executrix will need the original Will, copies are not valid. Whether you should keep the Will in your safe deposit box depends on your state law regarding access to safe deposit boxes after death. Some states make it relatively easy for family members or the executor to remove certain documents, such as Wills, life insurance policies and burial instructions, from a deceased person's safety deposit box. However, other states may require a court order to remove the Will, which can take time and money. The best policy is to check with your bank's official to ensure that your executor or executrix has access to your Will upon your death.

**Q: WHAT IF I STILL HAVE QUESTIONS REGARDING MY WILL?** Ask them while your legal assistance officer is preparing your will. Be sure that you convey accurately your wishes for the distribution of your property to him or her.

*This handout is part of a series containing general information on topics that legal assistance attorneys frequently advise on. Information provided is general in nature and does not constitute legal advice. Consult an attorney for specific legal advice for your particular situation @ (717) 245-4940.*