

ESTATE PLANNING INFORMATION

For Client's with less than \$2,000,000 in property, including life insurance

ESTATE PLANNING has a lasting effect on you and your family. To plan carefully requires you to think about your situation, family, and desires. Don't wait until an SRP to consider this important matter. Do so now while you have the time to reflect. Your plan will include one or more of these:

- a Last Will and Testament, which may include a trust for minor children and a letter of instruction for the disposition of several specific items of personal property;
- beneficiary designations in life insurance;
- a durable power of attorney designating someone to handle your financial affairs in case of incompetence;
- an advance medical directive ("living will");
- durable power of attorney for health care; and
- an anatomical gift designation (often also included on your driver's license).

INSTRUCTIONS FOR OBTAINING A WILL

Although it sounds over simplistic, know what you own and know how it is titled. For example, know how the deed to your house is titled, the titles to your motor vehicles, bank accounts, mutual fund accounts, stock certificates, insurance policies, IRAs, annuities, etc. Further, know where these documents are located. Either have a copy handy or look at them near the time of your appointment so that you will know how your assets are titled and whether they continue to reflect your intent. Further, you should keep abreast of any changes in the law where your property is titled that may affect how it is titled. For example, Kansas and Missouri allow residents to name beneficiaries on most indicia of ownership, such as deeds, car titles, bank accounts, brokerage accounts, etc.

1. Please complete the attached will worksheet to the best of your ability prior to your appointment with a legal assistance attorney from the Fort Detrick Legal Assistance Office, 1520 Freedman Drive, Suite 136. Please print all names clearly. Sloppy penmanship will cause delays.
2. You may schedule an appointment to see an attorney by calling 301-619-2221, or you can stop by Suite 136.
3. Please be prompt for your appointment. If you are delayed or cannot make your appointment, please call us as soon as possible to cancel, reschedule, or let us know how late you will be.
4. An attorney must interview each person before the will is prepared. If both you and your spouse need a will, you may be seen together so long as you have both seen and discussed each other's worksheets, and agree on the contents. Also, please let us know when you schedule your appointment if you would like to be seen together.
5. Please bring the following documents with you for your appointment:

a. A completed will worksheet. (A separate worksheet is needed for the preparation of each person's will.)

b. A copy of your current will, if possible (for reference purposes only). Please avoid bringing any existing, original will, and do not mark on it in any case, because doing so could invalidate it.

c. A list of any questions you may have for the attorney.

d. Your military identification card.

6. During your appointment, an attorney will review the will worksheet with you and answer any questions that you may have. After your appointment, we will prepare a draft copy of your will and either mail it to you or call you to pick it up from our office. Once you have reviewed the draft of your will, you can call us to make any minor corrections and to schedule an appointment to execute your will. If major corrections or changes are needed, please call for a follow-up appointment with the attorney that you have already seen.

7. The final step is the "execution" or signing of your will. The will execution session requires certain formalities to include a final review of the documents, the administration of oaths, the actual signing of the will, and the witnessing of such signatures, and a final briefing, all of which are time consuming. You should show up 15 minutes before your execution appointment to review the final version of your will. Plan on spending about one hour for the actual execution session. We schedule up to four clients for each will execution session. Each person signs their own documents and acts as a witness for two of the others. This avoids the need for you to bring your own witnesses or to rely on our staff to act as witnesses.

8. You must bring your military identification card with you to all appointments, even when in uniform. This is necessary to verify the client's identity for our notary publics and to determine eligibility for legal assistance.

Your cooperation is important and allows us to provide you the best in legal assistance. Please let us know how we may better serve your needs.

WILL TERMINOLOGY

WHAT IS A WILL? A will is a legally effective declaration of a person's wishes as to the disposition of his/her property upon his/her death. It must be executed with the formalities required by statute. The provisions of a will do not take effect until after the death of the maker. A will never disposes of the proceeds of insurance policies with named beneficiaries, nor does it dispose of some items of property which are held under various forms of special ownership, such as joint tenancy with a right of survivorship, or tenancy by entirety. In a will, you will designate an executor/trix, and if minor children are involved, a guardian (see definitions below). It is important that you contact the prospective executor/trix and guardian prior to the preparation and execution of the will to ensure that he/she/they is/are willing to accept the position.

WHO IS THE BENEFICIARY? Anyone to whom the maker of a will (testator/trix) leaves a portion of his/her property.

WHAT DOES BEQUEATH MEAN IN A WILL? To give personal property by will.

WHAT IS A BOND? Money put up by a guardian or executor to insure against loss occasioned by their negligence or theft.

WHAT IS DOMICILE? A person's permanent home. The place to which, whenever he/she is absent, he/she has the intention of returning. You can have more than one residence, but you can only have one domicile. Your intent, voting, paying taxes, registering automobiles, obtaining a driver's license, and location of assets are factors considered in determining domicile. For military members, your domicile is often your legal residence (e.g., your home of record), not the place you are currently living.

WHAT IS AN ESTATE? All property, real and personal, in which a person has an interest, such as money, savings accounts, stocks, house, furniture, insurance policies, etc.

WHAT DOES RESIDUARY ESTATE MEAN? Residuary is a derivative of the word "residue." It means what is left over. Your residuary estate is the portion of your estate that is left over when everything else is disposed of.

WHAT DOES EXECUTION MEAN? To validate a will by correctly signing it and having it witnessed.

WHO IS THE EXECUTOR/TRIX? The person named in a will to carry out the wishes expressed in the will. An Executor is male; an Executrix is female. Upon the death of a maker of a will, the Executor/trix must take the will to the proper court for probate. Once the court accepts the will as valid, the court officially appoints the person as Executor/trix. An Executor/trix may be entitled to compensation for his/her services. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. A bond may be required of an Executor/trix. In some states the term "Personal Representative" means the same thing as Executor/trix.

WHO IS A GUARDIAN? One who is responsible for caring for the person and/or property of a minor child. Individuals serving in this capacity serve subject to court approval. While most courts follow the desires of the Testator/trix in his/her will, they are not bound to do so. Courts can require guardians to post a bond.

WHO IS THE TESTATOR/TRIX? You, the person making the will. A Testator is male; a Testatrix is female.

WHAT IS PERSONAL AND TANGIBLE PROPERTY? Property which is moveable.

WHAT IS A PROBATE? A court proceeding where the Executor/trix seeks to establish a will as genuine, settle all the debts of an estate, and distribute the property in the estate to the heirs according to the wishes of the will maker as expressed in the will.

WHAT IS A PROBATE ESTATE? The portion of an estate that requires court supervised administration to effect transfer of title. It does not include property transferred at the time of a person's death by other means, such as property held as joint tenants with right of survivorship, or life insurance paid to a designated beneficiary. For tax purposes, all property which the decedent owned or in which he/she had an interest, may be included in the taxable estate, although some of it is not within the probate estate.

WHAT IS A NON-PROBATE ESTATE? It is property that does not pass through a decedent's will and, thus, does not pass through probate. Be aware that an increasing number of jurisdictions are passing non-probate laws that allow property owners to transfer ownership of certain assets by beneficiary designation. Kansas and Missouri are two such states that permit property owners to designate beneficiaries on Transfer On Death (TOD) Deeds to real property situated in Kansas or Missouri and permit the designation of beneficiaries (TOD) on Titles to Motor Vehicles. Many states, including Kansas and Missouri, have adopted the Uniform Transfer On Death Security Registration Act. Pursuant to this Act, you may also designate Transfer/Pay On Death (TOD/POD) beneficiaries on all bank accounts and all credit union accounts (such as savings account, checking account, certificates of deposit, money market accounts); further, you may designate beneficiaries on securities accounts, such as mutual funds and brokerage accounts.

Why do people do this? Primarily, folks do this to avoid the probate of their assets. It is a simple way to convey ownership of a particular asset upon death. Until death, no control of the asset is relinquished. The owner or owners of the asset retain full control over the property until death, then it passes to the designated beneficiary(ies). The TOD/POD designation is revocable. The owner can change it anytime. It does not restrict the owner's use of the property during his/hers/their lifetime. This is a good way to effectuate the KISS Principle that we are all familiar with. TOD/POD designation is usually a win-win situation for most people who are not too concerned with the federal estate tax issue.

WHAT IS REAL PROPERTY? Property that has a fixed location, such as land or a house.

WHAT IS A FINANCIAL CUSTODIAN? As part of your will, you may name someone to be a Financial Custodian to manage money or property that you leave to any child under 18 or 21 years old (depending on the state you live in). California, Alaska and Nevada are notable exceptions. These states permit a resident to choose an age of majority between 18 and 25.

Most states have a simple method of appointing some adult to be the custodian for a child's property. If you are interested in this sort of arrangement, you should discuss it with the person who you want to name as custodian and then discuss it when you arrive for your appointment.

WHAT IS A TRUST AND HOW MIGHT IT BE USED FOR THE BENEFIT OF MY CHILD(REN)? A trust is similar to a bank account that you create for the use of your child; the property you leave to your children automatically goes into the account. You appoint a "trustee"

who is legally responsible for the account to watch over the account and distribute money to your children. You decide in your Will what sort of needs of the children the trustee may pay from the account.

When your child reaches a certain age that you have decided upon in your Will (it could be 18, 21, or 25 or any other age), all the money that remains in the account is distributed to the child. If you have more than one child, each child receives his share of the account when he or she reaches the required age. A “separate” trust sets up an account for each of your children. A “unitary” trust creates one account that all of your children share. A unitary trust is terminated and the monies distributed equally when the youngest child attains the age you have set.

A trustee must be selected with care. The trustee should be a person you have confidence in, some one who knows your children and understands their needs. One of the advantages of a trust is that if the trustee mismanages the trust he or she is responsible for the property that is lost. A trustee is required to be supervised by the court and required to submit a yearly report. Additionally, creditors of your children may not collect debts from the trust; this is called a spend thrift provision. Be aware that the 1993 Budget Bill drastically increased the income tax on income earned within the trust. In 2001, income from the trust in excess of merely \$8,880.00 was taxed at 39.6%, currently the highest federal income tax rate.

Do I Have to use a Trust to Leave Property to my Children? No. You may elect to leave property to your children outright. If you do, the court will appoint some one to watch over your child’s inheritance until the child reaches the age of 18 or 21. At the age of 18 or 21, your child will receive all the property he or she has inherited. If you do decide to leave property to your child outright, you must also decide how to treat the shares of children who may die before you do. Specifically, you must decide if their share will revert to surviving children, or be shared by their children, your grandchildren. Your attorney will discuss this with you to ensure your desires are accurately recorded in your will.

Are There Alternatives to a Trust Available? Yes. Specifically, the Uniform Gifts to Minors Act (UGMA) or the Uniform Transfer to Minors Act (UTMA) creates custodianships which are generally recognized in state law and may be preferable to creation of a trust in your will. UGMA/UTMA account can be established during your life or through your Will at death for the benefit of your child(ren), and then funded with proceeds of your insurance policies, like SGLI, or with property from your estate on death. Like a trustee, the UGMA/UTMA custodian will be charged with administering the funds for the benefit of your children. Unlike a trustee, the custodian’s duties and responsibilities are defined in uniform acts rather than a trust instrument. Also, when the custodian is a life insurance beneficiary, payment to the custodian should be made immediately after death without any court intervention. However, the same life insurance company may not pay immediately on a trust designation.

NOTE: That a custodian is not required to go to court like a trustee is required. Further income earned within custodial account is taxed at a much lower rate than similar income earned within a trust. The following is a comparison of the primary differences between a custodial account and a testamentary trust.

