

Basic Estate Planning



From the desk of

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We prepare the following basic estate planning documents at a fixed fee for each of our clients:

1. Last Will and Testament, validly prepared and executed under Texas law
2. Statutory Durable Power of Attorney
3. Medical Power of Attorney
4. HIPAA Authorization
5. Directive to Physicians (often called a Living Will)
6. Appointment of Guardian for Minor Children
7. Designation of Guardian Before Need Arises
8. Burial Instructions

Even if an estate is not large enough to be subject to the Federal Estate Tax -- and most are not -- good estate planning enables a person to transfer his or her property at death in the fastest, easiest, least expensive manner possible. Good estate planning also enables a person to take advantage of the powers granted by the state of Texas to make healthcare choices and to plan appropriately for disability, whether temporary or permanent.

Your loved ones will be grateful to you for leaving your affairs in order. Completing these estate planning documents can provide peace of mind for you and your family.

The Will

The state of Texas allows an individual to designate how his or her assets and liabilities will be distributed at the time of death. To protect that right, the state requires that a Will be properly executed to be considered valid. A valid Texas will can name an Independent Executor to serve without bond and with minimal court supervision.

Probate is the legal process of proving the Will in court, settling the estate, and distributing the assets. In Texas the cost of probating a Will is very reasonable. Probate can be very expensive, however, if an individual has assets and dies without a valid Will. Executing a valid Texas Will can go a long way toward preserving your assets for the intended beneficiaries.

Statutory Durable Power of Attorney

The Texas Statutory Durable Power of Attorney is a document that allows you to designate someone to manage your financial affairs or transact business on your behalf in the event it should become necessary or convenient. The powers granted in the document can become effective immediately, or can be designated to become effective only if you become incapacitated. In either case, the powers will remain effective even after your incapacity – hence the use of the word “durable.”

This document can be very powerful. The state of Texas has provided a statutory format to be used to help improve acceptance of the document by third parties. Without a Statutory Durable Power of Attorney, a Guardianship would likely be required to take over an incapacitated person's financial affairs. Guardianships require continuing oversight by the Court, are very expensive, and open a person's private business to public scrutiny. Having a Texas Statutory Durable Power of Attorney is the estate planning equivalent of a “stitch in time.”

Medical Power of Attorney

The Medical Power of Attorney allows you to designate the person who will make your healthcare decisions in the event you are unable to do so – and only in that event. This document is always important to have. It is particularly valuable where someone other than a spouse will be making those decisions, or when members of a family have differing views of what should happen.

If you remember the case of Terry Schiavo in Florida, you should be aware that if she had only executed a Medical Power of Attorney – whether in favor of her husband or her parents – those parties would not have spent the 15 years and untold amounts of money they ultimately spent fighting in court over control of her healthcare decisions.

Directive to Physicians

The Directive to Physicians is sometimes called a Living Will. It allows an individual to decide in advance if he or she wishes to have artificial measures used to sustain life when the person is near death. Many people do not wish to be kept alive by means of artificial respirators or feeding tubes if they are not able to sustain life on their own. Without a Directive to Physicians the doctors involved may be required to use all measures available to sustain life. Proper execution of this document can help maintain a person's dignity and preserve assets for loved ones. Most importantly, the document allows you to exert maximum control over what happens to you in the event you are unable to speak for yourself.

Designation of Guardian Before Need Arises

The Designation of Guardian Before Need Arises is a relatively new statutory document in the state of Texas. It allows you to designate in advance who your guardian will be should you ever need one – for example, in the event of a debilitating stroke, or an injury that results in incapacity (in which state individuals sometimes linger for many years). The document also allows you to disqualify certain individuals from ever becoming your guardian.

This document can bring peace of mind to the maker, and can assist the court in making a proper guardianship designation if the need ever arises.

Appointment of Guardian for Minor Children

If you have minor children, and both you and their other parent die or become incapacitated, the children will need to be cared for by someone until they reach the age of majority. The Appointment of Guardian for Minor Children allows you to choose who that person should be – whether it is a

family member or a friend. In the event you do not designate someone yourself before the need arises, your family members may dispute the matter; and in that case, a court of law would decide who will raise your children. You can avoid that possibility and maintain control over your children's future by executing a Guardian appointment.

Burial Instructions

It is possible to designate a particular person to be in charge of decisions affecting burial and funeral arrangements; and once designated, that person can enforce the right to do so. Within the same document, you may specify your burial instructions.

Conclusion

The documents discussed above form the basic estate planning package. If the estate is large enough to be taxable, certain complex estate planning documents and techniques can minimize and in some cases eliminate the tax liability. For most of us, however, the bottom line is this: Good advance planning significantly eases the emotional and financial burden of disability and death on our loved ones.

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