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STANDARD ESTATE PLANNING DOCUMENTS

The end result of the estate planning process will normally be a set of basic estate planning documents that include:

- Living (Revocable) Trust
- Last Will and Testament
- Durable Power of Attorney (for financial matters)
- Health Care Power of Attorney
- Living Will
- Transfer Documents – Deeds, Bill of Sale, Account Titles and Beneficiary Designations
- Additional Documents for your unique needs

This list will vary in order to be appropriate for your specific estate plan based on your level of wealth, your family situation, whether your beneficiaries will require special treatment, and many other factors.

Standard Documents for a Typical Family with Assets Below the Amount Free from Federal Estate Tax

Under current federal estate tax law, each U.S. citizen has a unified estate and gift tax exclusion that excludes the first \$5,430,000.00 (for 2015) from payment of any federal estate tax. This amount is indexed for inflation each year. Also, a deceased spouse can transfer any unused exclusion amount to a married surviving spouse (this is called “portability”).

When the total value of a family’s assets is *less* than (and will always remain less than) the amount protected by a single estate tax exclusion, a typical family might have the following documents in their estate plan:

- Last Will and Testament with everything outright to the surviving spouse (often called a “spouse-all will”)
- Durable Power of Attorney
- Health Care Power of Attorney
- “Living Will” Declaration

The goal is normally to keep the estate plan simple and avoid probate administration issues.

TIP: For small estates, the husband and wife should keep all assets as joint tenants with right of survivorship and have “spouse-all wills.”

Standard Documents for a Typical Family with Assets Above the Amount Free from Federal Estate Tax

When the total value of a family's assets is **more** than the amount protected by a **single estate tax exclusion amount** but less than (and will always remain less than) the amount protected by **two estate tax exclusions** (one for each of the spouses), a typical family might have the following documents in the estate plan:

- Last Will and Testament with everything distributed to the revocable trust (often called a "pourover will")
- Revocable Trust (often self-trusted)
- Durable Power of Attorney
- Health Care Power of Attorney
- "Living Will" Declaration
- Transfer Documents to Fund the Trust

One principal goal includes making sure that any unnecessary estate tax is not paid. This is accomplished by either: (1) utilizing the estate tax exclusion amount at the first death, or (2) transferring that unused amount to the surviving spouse. Another goal is to minimize probate administration issues.

TIP: For families with combined assets exceeding the amount protected by one estate tax exclusion amount, the estate plan needs to focus on the needs of the family as well as the minimization and/or elimination of any estate tax liability.

When the total value of a family's assets is **more** than the amount protected by **two estate tax credits**, the future estate tax liability will become a significant issue. A typical family might have the following documents in the estate plan:

- Last Will and Testament with everything distributed to the revocable trust (often called a "pourover will")
- Revocable Trust (often self-trusted; documents must maximize the use of both estate tax exclusion amounts; consider the use of generation skipping trusts)
- Advanced Estate Planning Techniques (Gifting; Irrevocable Trusts; Charitable Transfers; Discounting Techniques)
- Durable Power of Attorney
- Health Care Power of Attorney
- "Living Will" Declaration
- Transfer Documents to Fund the Trust

One of the principal goals is to minimize the amount of the estate tax due. A second principal goal is making sure that the provisions of the estate plan meet the objectives and needs of the clients. A third goal is to minimize probate administration issues.

TYPICAL WILL AND TRUST PROVISIONS

Typical Last Will and Testament Provisions

For **small estates**, the typical last will and testament might include the following provisions:

- Revocation of prior wills
- Direction to pay (or refinance) debts
- Payment of estate taxes from the residuary
- Distributions of personal property and specific bequests, if any
- Language allowing for a memorandum dictating distribution of personal property
- Default distribution of personal property to the surviving spouse with alternate to children
- Residuary distribution of all remaining assets to the surviving spouse with alternate to children
- Appointment of personal representative
- Administrative language
- Appointment of guardian if there are minor children
- Signatures

If the estate is **larger**, potential estate tax issues often result in the inclusion of trust provisions that continue for the live of the surviving spouse.

- Revocation of prior wills
- Direction to pay (or refinance) debts
- Payment of estate taxes from the total assets included in the gross estate on a proportional basis
- Residuary pourover distribution to the revocable trust
- Appointment of personal representative
- Administrative language
- Appointment of guardian if there are minor children
- Signatures

Typical Revocable Trust Provisions

For many individuals, the typical trust used for estate planning begins as a self-trusteed revocable trust created by a settlor during that individual's lifetime. Typical trust provisions include:

- Right to amend, revoke, or withdraw assets
- During the settlor's lifetime
 - Income and principal to the settlor
 - Upon Settlor's incapacity, income and principal to settlor, spouse, and family
- After the settlor's death
 - Division into marital and family trusts
 - Income and discretionary principal to spouse
- After the surviving spouse's death
 - Division into shares for children
 - Either distribution or continued trusts for children

- Administrative language
- Trustee appointment and replacement language
- Signatures
- Initial corpus

Both a Last Will and Testament and a Revocable Trust may well have additional provisions to provide for your specific desires and directions. Every will and trust should be a personal document to meet your specific needs.

Funeral Directions

Often Individuals want to put funeral and burial/cremation instructions in their Will. While there is nothing wrong with including this information in the Will, decisions on cremation and funeral arrangements are made by the family members within hours after death. A Will is often in a safe deposit box or filed away at home and its directions are not available to the family members at the hospital, so those instruction may not be seen in time.

TIP: If you have specific funeral or burial instructions, they should be in writing and given to your family members before the need arises.

Organ Donation

Many People believe that the best gift that one can give after a death is the gift of life to another person through organ donation. If you want to make your organs available for transplant after your death, consider the following steps:

- (1) Have your driver's license annotated to show that you want to be an organ donor;
- (2) Carry a uniform donor card in your wallet; and
- (3) Make sure that your immediate family knows of your desire.

Name a Guardian for Minor Children

All parents with minor children worry about what would happen to their children if both parents should die. If one parent dies or becomes incapacitated, then normally the surviving parent will retain sole custody of any children. If both parents die, then usually there must be a court action to appoint a legal guardian for the children.

In such a proceeding, the court will look first to the desires of the parents, preferably expressed in a Last Will and Testament. The court normally appoints a nominated person as a guardian unless this would not be in the best interests of the child.

Be sure to ask your "nominees" if they would agree to care for your children if something happened to both parents. Don't risk putting someone in the awkward position of first learning of your

nomination after you die. Even the most supportive and caring friend or relative may have good reasons for declining to take on the burden of caring for more children.

TIP: You should also nominate alternate choices for guardian, in case your first nominee is later unable to take your children.

In most circumstances, the guardian for your children should not be the person that is also the trustee for your assets. Name a guardian who is the best person to care for your children. Name another individual or institution that is the best person (or corporate entity) to handle the money. Unfortunately, some guardians, when they are also in charge of the money, tend to use the children's money for the guardian's needs.

TIP: Having one person (the guardian) in charge of spending the money to support the children and a different person (the trustee) in charge of investing and preserving the money is a good check and balance.

KEEP IT CURRENT!

Once you've created your initial estate plan and all the necessary documents, the question always asked is, "**How often must I review my estate planning documents?**" There is no simple answer.

You must, of course, always **review your documents if Congress makes substantive changes in the estate planning laws.** Other factors that suggest reviewing your planning include:

- **Change in Family.** The death of a spouse or child should always prompt a review of your documents. The birth of a child or a grandchild may necessitate a change.
- **Change in Marital Status.** A marriage, divorce, or separation should always prompt a review of your documents.
- **Relocation to another State.** If you move permanently to another state, your existing documents should always be reviewed to make sure that they work in your new state of residence. Some documents may be state language specific.
- **Change in Assets.** If the value or composition of your assets changes significantly, then your estate plan needs to be reviewed. This is also true if you receive a significant inheritance.
- **Change in Health.** All people plan their estates with the assumption that they will live for a long period of time. If your doctor tells you that your time is short, have your estate plan reviewed immediately.
- **Change in Beneficiaries.** If either a beneficiary falls out of your favor or you want to name a new beneficiary, your documents will need to be changed.

Even if none of the above reasons are present, it is always a good idea to have your documents and your assets reviewed **approximately every five years.** Failure to make sure that your documents work with your current assets and in accordance with current law can cost your family far more in taxes than the cost of updating your documents.

TIP: Always make sure that your estate planning documents are current to reflect your intentions and desires.

WRAP UP

- The estate planning process includes all steps required to protect your assets and lifestyle during your lifetime and then ultimately transfer your remaining wealth to beneficiaries...all based on your specific goals and terms.
- The end result of the estate planning process will normally be a set of estate planning documents that may include: a revocable trust, a will, powers of attorney for finances and health care matters, a living will, transfer documents, and additional documents to meet your unique needs.
- Individuals with higher asset amounts will require additional planning techniques to eliminate or minimize their estate tax burden.
- Will and trust documents include some standard topics such as directions to pay debts and taxes, distributions of personal effects, and naming a personal representative, trustee, and/or guardian; each document should also have particular language to meet your particular needs.
- Life circumstances change, so review and update your estate plan to make sure it will continue to meet your goals!

For more information on this topic, contact us any time!

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