

Estate Planning & Beyond

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**Please note that nothing in this power point should be relied upon as legal advice, each case is different, and we encourage you to seek your own legal counsel. No attorney client relationship is created by virtue of this presentation.

Agenda:

- Basic estate planning documents- Are they current?
- Trusts
- Estate Administration
- Probate
- Inheritance Taxes
- Tips



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Last Will & Testament

- Any person, who is at least 18 years old and of sound mind can make a Will.
- A person who does not have capacity **can not** make a Will.
- Who determines capacity?



Last Will & Testament

Should create a Will to designate:

- Who your beneficiaries are
- When your beneficiaries will receive your property
- Who is in charge of settling your affairs
- A Trustee for funds intended for a minor or an incapacitated beneficiary.



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Last Will & Testament

- Update your Will upon the 4 Ds.
 - Divorce
 - Death
 - Disease or diagnosis
 - Decade



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Durable Financial Power of Attorney

- Appoint an Agent to handle finances and legal affairs.
- Who should serve as Agent?
- If you have a Will and or a trust, do you need one?
- If you are married, do you need one?



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Durable Financial Power of Attorney

- What does it control?
- What if you do not have one and become incapacitated?
- When to update?



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Durable Financial Power of Attorney

- Changes in law in 2015 and 2016
- Specific provisions required to be stated if want the Agent to have those powers
- Examples:
 - *To make a gift*
 - *Create or change rights of survivorship*
 - *Create or change a beneficiary designation*



Durable Financial Power of Attorney

- Changes in law in 2020
- Specific provisions required to be stated if want the Agent to have powers regarding electronic communications and digital assets.



Health Care Power of Attorney

- POA that controls health care decisions
- Naming an Agent to make health care decisions when the principal is unable
- HIPAA Waiver

Health Care Power of Attorney

- Examples of powers:
 - To authorize, withhold, or withdraw medical and surgical procedures
 - To authorize, withhold, or withdraw nutrition or hydration through a tube
 - To authorize your admission or discharge from a medical, nursing, or similar facility

Health Care Power of Attorney

- Examples of powers:
 - To hire and fire medical, social services, or other support personnel
 - Take any legal action necessary to follow your wishes
 - Request a DNR
 - Authorize or refuse traditional organ donation and/or vascularized composite allografts

Health Care Power of Attorney

- Enables the Principal to provide guidance for the Agent in the event of an end-stage medical condition or other extreme irreversible medical condition
- Goals in making medical decisions
 - Examples:
 - *Comfort care*
 - *Hospice*



Health Care Power of Attorney

- Layout burial and or cremation wishes here.
- *Pre-planning a funeral makes things much easier.*
- Decide your treatment, if you have severe brain damage and a life-threatening condition.

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Living Will

- Different from the Health Care Power of Attorney.
- Specific directions for end stage medical condition or permanent unconsciousness.
- Directing treatment to relieve pain and provide comfort even if there are adverse side effects.
- Direct life prolonging procedures be withheld or withdrawn .
- Specifically states procedures that are unwanted to prolong life.



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Living Will

- Addresses Tube Feedings/hydration
- Agent's use of instructions
 - Must Agent follow or only use as guidance?
- Legal protection
 - As long as acting in good faith, Agent and provider will be protected from liability.



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Living Will

- Update in law 2018, effective in 2019:
 - Overcame conflicts in old documents
- Organ Donation
- Donation of Hands, Facial tissue, limbs, and other vascularized composite allografts



Types of Trusts

- Testamentary vs. Living
- Revocable vs. Irrevocable
- Special needs Trusts (d4a trust)
- Supplemental Needs Trusts (3rd party Trusts)



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Trust Terms to Know

- Grantor/Trustmaker/Settlor/Trustor
- Trustee
- Lifetime Distribution Trustee
- Beneficiary (after death and during life)
- Trust Protector





Last Will & Testament: Testamentary Trust

- Created through your Last Will and Testament
- For specific purpose
- Irrevocable after death
- Examples: underage trust, spousal trust, supplemental needs, spendthrift



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Living Trust

- A “Living Trust” is a written agreement, that is either revocable or irrevocable. (Those that are commonly touted as will substitutes are revocable.)
- Requires you to transfer assets to the Trustee.
- Can govern the disposition of property both during life and following death.
- Contains directions regarding the management of your assets



Living Trust: Who Can Serve as Trustee?

- Any person, who is at least 18 years old and of sound mind.
- You, if a revocable trust, but generally, you should not serve as the Trustee of an irrevocable Trust you create. (there is a difference of opinion on this)
- Any competent adult.
- A Bank, with trust powers, or a Trust Company.
- Generally corporate fiduciaries charge an annual fee of 1% to 1.25%, of the trust's fair market value to serve as trustee.



Living Trust: What does a Trustee do?

- Manage your assets, just like you do. That is, receive assets, invest, sell assets, pay bills, etc.
- In essence, once you transfer your assets to a Trust, the Trustee is the only one who has the authority to act with respect to those assets.



Living Trust: Revocable vs. Irrevocable

- Revocable Trusts can be changed.
 - To add or remove assets
 - To change the beneficiaries
 - To terminate (revoke) the Trust
- Irrevocable Trusts can not be changed once you establish one.



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Living Trust: Why create one?

- To designate:
 - Who your beneficiaries are and provide specific terms for beneficiaries who have special circumstances. (Divorce, dependency, creditors, disability)
 - When your beneficiaries will receive your property
 - Who is in charge of settling your affairs





Living Trust: Why create one?

- To avoid probate in multiple states because you own real estate in more than one state.
- Privacy
- To Avoid federal estate taxes





Estate Administration: Last Will & Testament & Probate

- Executor/Executrix/Personal Representative nominated in a Will
- Administrator if no will, follows PA law
- The actual “grant of authority” to be an Executor is made by the Register of Wills when he or she admits the Will to probate.
- What is probate property?



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Estate Administration: Last Will & Testament & Probate

- Admitting a Will to probate requires:
 - Executor or attorney to complete a Petition for Probate;
 - Executor to be sworn in;
 - Post bond in some instances;
 - Send notices to the heirs; and
 - Pay taxes.



Pennsylvania Inheritance Taxes

- Not the same as Federal Estate Tax
- Pa Inheritance Tax Rate is based on the relationship to the decedent:
 - 0% for transfers between spouses, child and parent where child is 21 or younger, active-duty Military Member, charitable org.
 - 4.5% transfers to direct descendants and lineal heirs
 - 12% transfers to siblings
 - 15% transfers to all other heirs, except charitable organizations, exempt institutions and government entities exempt from tax.

Does Avoiding Probate = Avoiding PA Inheritance Taxes?

- There are many ways to avoid probate:
 - Jointly owning property
 - Adding beneficiaries to all assets – beneficiary designation, POD or TOD

Avoiding probate **does not mean** you avoid inheritance taxes unless the surviving owner or beneficiary is an exempt party.



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Pitfalls of Trying to Avoid Probate

- Holding all assets in joint ownership with a child.
- If your child died before you, you would pay PA inheritance tax on your own money.
- Your child’s “share” of that account is subject to claims of his or her creditors.
- After you die, that child is under no legal obligation to share the balance in that account with your other children regardless of what your Will says.





Tips for Preparing the Executor/ix

- Inform and get permission from your Executor
- Provide your Executor with an inventory of all of your assets, income, debts and regular expenses (including online accounts and passwords)
- Provide the location of your important documents (Last Will and Testament, military discharge papers, vehicle titles, etc.)
- Provide contact information for your Advisors (Attorney, Financial Advisor, Accountant, etc.)





Tips for Preparing the Executor/ix

- Inform and get permission from your Executor
- Provide birth and occupation information needed for death certificate
- Provide burial/cremation instructions and cemetery plots
- Do not keep your original Last Will and Testament in a safe deposit box
- Make sure your Executor is willing to serve



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Tips for the Executor/ix

- Confirm information on death certificate is correct
- Obtain Last Will and Testament
 - Obtain contact information for all beneficiaries
- Collect recent income tax returns and bank statements
- Request a credit report
- Check unclaimed property website
- Be aware of important deadlines and discounts



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Questions

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