

Estate Planning 101

The Basics of Estate Planning

By

Lewis J. Saret

Law Office of Lewis J. Saret

Lewis.saret@lewissaret.com

202.965.7748

www.lewissaret.com

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Overview of Estate Planning

- Presentation Objectives
 - What typical estate plan documents are
 - What typical estate plan documents are intended to accomplish
- Approach of Presentation: Lifecycle Approach
- Overall Objective of Estate Planning
 - To ensure you are provided for during your lifetime
 - To ensure your loved ones are provided for when you are unable to provide for them, due to either death or incapacity

Overview of Estate Planning:

- What will be discussed in this presentation.
 - Advance Medical Directives
 - Durable Financial Powers of Attorney
 - Wills
 - Revocable Trusts
 - HIPAA Authorization for Release of Medical Information
 - Deed of Gift

Overview of Estate Planning

- What will not be discussed.
 - Advanced estate tax planning
 - This includes planning such as GRATS, ILITS, Dynasty Trusts, FLPs, etc.
 - Estate planning issues specific to married couples.
 - Probate administration.
 - Reason: These topics will be discussed in other presentations.

Advance Medical Directives (AMD)

- Other names
 - Health care proxy
 - Power of Attorney for Health Care
 - Living Will
 - Note: Not same as DNR
- What does AMD do?
 - Names someone (i.e., your agent) to make decisions for you if you are unable to make those decisions for yourself.
 - Set forth any wishes you have about your medical care, to guide your agent.

Advance Medical Directives (AMD)

- What happens if you don't have an AMD?
 - Someone else, possibly a stranger, will make medical decisions for you.
 - Most likely a guardian will be appointed for you to make decisions for you, in a judicial proceeding.
 - Most states have a fiduciary panel made up of lawyers and one of those lawyers, who most likely is a stranger to you, will be appointed to make your medical decisions.

Advance Medical Directives (AMD)

- Who should have an AMD?
 - Everyone over the age of majority (usually 18 years old).
- **Caution/Planning Pointer.**
 - As soon as children reach the age of majority, their parents lose the right to make medical decisions for them or access their medical information, even in the case of emergency (e.g., car accident).
 - Therefore, it's important to have in place medical directives for children as soon as they reach the age of majority.
- How often should AMDs be reviewed/updated?
 - Roughly every three (3) years AMDs should be updated/reviewed.
 - More frequently when facts change (e.g., named agents become unavailable, etc.)

Durable Financial Power of Attorney (DFPOA)

- What does DFPOA do?
 - A DPOA names an agent/attorney in fact.
 - Gives legal authority to your agent to act on your behalf for financial matters.
 - Typically includes authority to file tax returns and deal with tax issues.
- Why would you do this? What happens if you don't have a DFPOA?
 - Generally, court steps in and appoints a conservator.
 - Disadvantage of conservator:
 - Very expensive.
 - Time consuming.
 - Complete stranger may be appointed conservator, taking control over your financial affairs.

Durable Financial Power of Attorney (DFPOA)

- Design features of DFPOA
 - Springing vs. Nonspringing.
 - Ability to make gifts.
 - Ability to change beneficiary designations on retirement accounts.
 - Ability to create/fund revocable trusts.
 - Ability to amend existing revocable trusts.
- What about children?
 - When children have financial assets in their own name and have reached age of majority, a DFPOA should be considered.

Durable Financial Power of Attorney (DFPOA)

- How often should DFPOAs be reviewed/updated?
 - Roughly every three (3) years DFPOAs should be updated.
 - Frequently, financial institutions will refuse to accept POA that is more than a few years old. To avoid this issue, we recommend that DFPOAs be re-executed every three years, even where no changes are made to the DFPOA.
 - More frequently when facts change (e.g., named agents become unavailable, etc.)

Wills

- What does Will do?
 - Disposes of assets at death (i.e., your Will names those individuals who receive your property at death (i.e., estate beneficiaries)).
 - Names guardians for your minor children.
 - Names personal representative (i.e., executor).
 - Establishes testamentary trusts (i.e., trusts set up at death in will).
 - Names trustees if trusts are created in Will.

Wills

- What happens if you die without a Will?
 - Assets
 - Pass by intestacy.
 - Can have unintended consequences. EG: Maryland – ½ goes to spouse and ½ to children even if only a baby, which is problematic.
 - Children
 - Have no input into who will be named guardian of you children and you have not arranged for assets to give your children a start in life.
 - Personal Representative
 - State law sets forth who has priority to serve as your estate personal representative.
 - Trust
 - Will not exist unless pursuant to a court order, which would be expensive.

Revocable Trusts

- What is a trust?
- What is a revocable trust?
- Parties in revocable trust?
- What are benefits of revocable trust?
 - Avoid Probate.
 - Real property in multiple states.
 - Better for potential disability.
 - Privacy.
 - Life insurance for non-taxable estates.
 - Retirement accounts for children lacking maturity.
- Disadvantage: Must title assets in revocable trust.

Other Documents

- HIPAA Medical Release Form
- Deed of Gift
- Retirement Account/Life Insurance Beneficiary Designations

Conclusion

- Documents Discussed
 - Advance medical directives
 - Durable financial powers of attorney
 - Wills
 - Revocable trusts
 - HIPAA Authorization for Release of Medical Information forms.
 - Deed of Gifts
 - Beneficiary Designations.
- If you have questions, please feel free to email us at lewis.saret@lewissaret.com or call us at (202) 965-7748.