



Financial & Philanthropic Planning – Part 2

May 19, 2024



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Part 2: Financial & Philanthropic Planning

- Objective
 - How to End Life Well . . . for you and your loved ones
- Financial Planning (legal perspective)
 - Financial Power of Attorney (POA)
 - Wills & Trusts
- Philanthropic Planning
 - Ryan Ebner – Regional Gift Planner for the ELCA Foundation
- Next Steps



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Financial & Philanthropic Planning

Bethlehem Lutheran Church
May 19, 2024

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What legal documents are we are covering?

May 5th
Medical Decisions



Healthcare Proxy

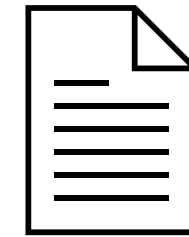


Living Will

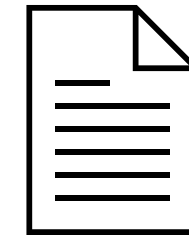


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May 19th
Financial & Estate Planning



Power of Attorney



Wills / Trusts



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Financial / Philanthropic Plan

Overview

- **Power of Attorney** – another person of your choosing may handle your financial decisions during your lifetime if you are unable to do so yourself
- **Will** – allows you to provide for disposition of your assets after death
- **Revocable Trust** – allows for management of your assets by a trustee during your lifetime and at death
- **Do nothing** – the State will determine how your assets are distributed at death, and guardianship procedure may be required during your lifetime
- **Charitable Gift Planning** – various gift vehicles are available during lifetime and at death

Power Of Attorney

Legal Requirements – Title 15, NY General Obligations Law

- Person signing the power of attorney (known as the “principal”) must have capacity to do so, and signature must be acknowledged by a notary public
- Two adult witnesses must sign (cannot be agent)
- Person designated as agent must sign, and signature must be acknowledged by a notary public
- Effective only after primary agent has signed the document
- Not necessary to have successor agent sign document – this may be done any time after document has been signed (i.e. – 2 months after, 2 years after, 10 years after, etc.)
- May be recorded in County Clerk’s Office and certified copies obtained, which should be accepted by third parties

Power Of Attorney

Additional Considerations

- Power of attorney terminates if principal signs new document to supersede old, or at death
- May name a monitor to check on activities of agent (useful if agency like Lifespan or Catholic Family Services is named as agent – if monitor for an individual agent is named, consider naming a different agent)
- If more than one agent is named, principal may allow them to act separately
- Signing power of attorney now does not revoke prior powers of attorney unless specified in modifications
- Any changes to statutory form may be contained in a “Modifications” section

Power Of Attorney

Modifications

- Revocation – may change presumption to state that new documents revokes all prior documents
- Additional powers – this is State law document, and may add additional powers under Federal law (i.e. – deal with tax authorities, government agencies like Medicare, Medicaid and Social Security, retirement accounts, medical privacy waiver, statutory elections and disclaimers, digital assets, etc.)
- Gift authority – unless modified, agent may only make gifts of \$5,000 total to others but not to agent; may need to allow agent to make gifts in excess of that amount to agent and to others (i.e. – as may be necessary for Medicaid planning or estate planning), or to allow agent to make charitable gifts
- Compensation of agent – may provide dollar amount or formula amount

Will

Legal requirements – NY Estates, Powers & Trusts Law §3-2.1

- Person making the Will (the “testator”) signs at the end before two attesting witnesses, who also sign
- Testator may or may not sign in front of witnesses, but must acknowledge his/her signature on the Will before the witnesses sign (and they may sign separately), and this must be done within thirty (30) days after Will is signed
- Testator must declare to witnesses that this is his/her Will and he wants them to sign as attesting witnesses
- Before Will is admitted to probate after death, witness affidavit must be filed (usually completed at time Will is signed, but may be done after death)

Will

Additional considerations

- Assets may be specifically bequeathed (personal property), devised (real property) or otherwise given (all other property) to named persons in Will, who may or may not be family members
- Will names Executor, who is person/entity in charge of collecting assets, paying bills, filing taxes (if necessary) and distributing assets
- Will may also name Trustee, who is person/entity in charge of managing, investing and distributing assets placed in trust for benefit of named beneficiary or beneficiaries
- Will names a Guardian(s) for your minor children if under 18 years
- “Probate” is Court procedure for administering an estate governed by a Will; “administration” is Court procedure for administering an estate when there is no Will

Revocable Trust

Generally

- To avoid “probate”, sometimes a revocable trust is created for the disposition of a person’s assets
- A revocable trust may also be created for the financial management of a person’s assets when that person becomes incapacitated
- A revocable trust works best when title to all of a person’s assets are in the name of the trust
- Person creating the trust (the “Grantor”) names a Trustee to manage the trust assets, and Trustee is usually the Grantor until the Grantor becomes incapacitated
- Use of revocable trust beneficial when assets located in multiple jurisdictions (i.e. – real property in NY and in FL) to avoid ancillary administration in the non-NY jurisdiction for the out-of-state property, or if there are a large number of distributees (persons entitled to share in the estate if there was no Will) since all distributees must be notified in a probate proceeding and must either consent or waive service or be served

Revocable Trust

Additional Considerations

- Need to transfer title of all property to trust, or some form of probate or administration will be required for transfer of property that is still in the individual name of the Grantor
- Not useful for Medicaid planning, since trust is revocable and all assets titled in name of trust are treated as “resources” of Grantor for Medicaid
- Main drawback to revocable trust is that at death, trust assets may be immediately transferred by Trustee to named beneficiary or beneficiaries (versus probate or administration where creditors have 7 months to make claims against the estate, so Executor will wait until after that time period before making transfers); however, if Executor distributes assets after that date to named ¹²beneficiary or beneficiaries, Executor is absolved of personal liability for the claim(s), whereas Trustee may have personal liability for claims made at any time within the statute of limitations period for the claim
- If Grantor changes mind after creating revocable trust, can always retransfer title to trust assets into his/her own individual name

Do Nothing

No Power of Attorney

- If person who has not executed Power of Attorney becomes incapacitated during lifetime, assets in individual name are “frozen” until Guardian of the Property is appointed to manage those assets
- Other family members may be relying on those assets for payment of everyday bills (i.e. – mortgage, taxes, insurance, utilities, etc.)
- Appointment of Guardian of the Property is an expensive procedure – family member who is to serve as Guardian pays legal expenses and expenses for obtaining opinions¹³ from two doctors that person is unable to handle financial affairs for themselves, Court appoints a Court Evaluator to review the situation and file a written report, a Court hearing is held, and then a decision is made (can take up to 6-12 months for this)

Do Nothing

No Will

- If person who has not executed a Will, New York law (Estates, Powers and Trusts Law §4-1.1) determines who will receive that person's estate
- Actual distribution depends on who survived that person:
 - 1) Survived by spouse and issue (lineal descendants), \$50,000 plus half the residue to the spouse, the balance to issue by representation;
 - 2) Survived by spouse and no issue, all to the spouse;
 - 3) Survived by issue and no spouse, all to issue by representation;
 - 4) Survived by one or both parents but no spouse or issue, all to surviving parent or parents;
 - 5) Survived by issue of parents (i.e. – siblings and lineal descendants of predeceased siblings) and no spouse, issue or parent, all to issue of parents by representation;
 - 6) Survived by grandparents and no spouse, issue, parent or issue of parents, one-half (1/2) to grandparent(s) on paternal side and one-half (1/2) to grandparent(s) on maternal side, or their issue as far as their own grandchildren;

Do Nothing

- Actual distribution depends on who survived that person (continued):
 - 7) Survived by great grandchildren of grandparents and no spouse, issue, parent, issue of parents, grandparents or issue of grandparents as far as their grandchildren, one-half ($\frac{1}{2}$) to great grandchildren of grandparent(s) on paternal side and one-half ($\frac{1}{2}$) to great grandchildren of grandparent(s) on maternal side; or
 - 8) Survived by none of the above, property escheats to New York State.
- Children receive property outright at 18 years of age, and if minors, property goes to a custodian who is then required to give such property as soon as the minor reaches 18 years of age
- **No** distributions to persons who are not family members
- **No** distributions to charity
- **Unable** to name person/entity who will serve as Executor, and no Trustee

Charitable Giving

Generally

- Affirmative action required if a person intends to benefit charity either during lifetime or at death
- If no plans are made, a person can make charitable gifts whenever they want to as long as they have the capacity to do so, but if they become incapacitated, their agent under power of attorney cannot continue to make those gifts during their lifetime unless document specifically provides for it
- If no Will has been made, there will be no gifts to charity, since this would require that the Testator has provided for such a gift in his/her Will
- Charitable gifts are sometimes used to reduce a person's taxable estate if their assets exceed the exemption amount (\$6,940,000 for NYS purposes and \$13,100,000 for Federal purposes)

Charitable Giving

Forms of Charitable Gifts

- Outright – Simplest form of gift; immediate charitable deduction
- Donor Advised Fund – Established with community organization (i.e. – Community Foundation in Rochester); immediate charitable deduction and decision as to what charity/charities to benefit may be made over time
- Charitable Lead Trust – Established by donor, with charity to receive income for a specified time, with remainder to be distributed to named individual(s)
- Charitable Remainder Trust – Established by donor, with individual(s) to receive income for a specified time, with remainder to charity/charities

NOTE: A lead trust and a remainder trust may be in one of two forms – an annuity trust (fixed percent of income based on initial contribution – amount stays the same each year) or a unitrust (fixed percent of prior year's ending balance – amount may vary from year-to-year); tax deduction for present value of interest that charity will receive)

- Beneficiary of all or some of Requirement Minimum Distribution (RMD) – By having a charity named as a recipient of some or all of an RMD, the account owner may reduce the RMD that he/she must take, and thereby pays less taxes on his/her RMD – basically, he/she gets full deduction for this portion

Charitable Giving

Forms of Charitable Gifts (continued)

- Named Beneficiary of Retirement Account – If person has charitable intent, name the charity/charities as the beneficiary/beneficiaries of retirement account to maximize net amounts going to individual beneficiaries; retirement accounts are tax-deferred, but if charity receives the net amount in the account, the charity does not pay taxes on the amount received, whereas an individual would need to pay taxes on amounts from a retirement account
- Named Beneficiary of Life Insurance Policy – Easiest way to make a non-cash contribution to charity – simply fill out Change of Beneficiary form from life insurance company and proceeds will be paid directly to charity at death
- Gift of appreciated property (i.e. – stock)¹⁸ – If a person has low basis stock and wants to sell it and give the proceeds to charity, that person will pay capital gains tax on the difference between fair market value and basis; if instead, that person gives the stock to charity, the charity sells the stock and receives the full amount of the net proceeds, but the charity pays no tax on the capital gains

Summary

- If you care about the management of your assets during your lifetime, *you should always consider preparation of a power of attorney*
- If you care about the management and distribution of your assets at death, *you should always consider preparation of a Will*
- If you intend to benefit a charity or charities during lifetime or at death, *you should have both documents*
- If you are concerned about income taxes and/or estate taxes, *you should discuss the use of various charitable gifts with your financial and legal advisors* to incorporate charitable giving as part of your estate plan

Questions?



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