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Basic Estate Planning – Overview

By Leslie Daff, JD

An estate plan benefits both you and your loved ones in the event of your incapacity and upon your death. Planning now, while you are healthy, enables you to choose appropriate fiduciaries to handle your affairs. Without such a plan in place, the court will appoint a conservator if you are incapacitated and will appoint an administrator upon your death. The court will also appoint guardians for your minor children.

By taking the time to plan now, you make these decisions yourself instead of leaving it up to the court. Moreover, you choose your beneficiaries instead of having the state determine them for you; you are able to plan the manner and timing of distributions to those beneficiaries; and you can avoid probate and minimize taxes. Thus estate planning has lasting benefits for both you and your loved ones. The documents most commonly used for basic estate planning are a revocable living trust, a pour-over will, a power of attorney for health care and a living will or an advance health care directive, a durable power of attorney for financial matters, and a Health Insurance Portability and Accountability Act authorization.

Revocable Living Trust

People often use a revocable living trust to avoid probate, for tax planning, and to control the manner and timing of distribution to beneficiaries. Unlike a will, which is a public document filed with the court, the trust is private. Property held in the name of the trust is not subject to probate proceedings.

You need to transfer your assets (e.g., real estate) into the trust, generally with the assistance of an attorney. You continue to control and manage the assets as you do now, but upon your incapacity, your named successor trustee manages the trust assets on your behalf without a court having to appoint a conservator. Upon your death, your successor trustee distributes the assets to your beneficiaries according to the terms of the trust.

Will

A “pour over” will is typically used in conjunction with a living trust, to catch any assets that may not have been transferred to the trust, so they can be distributed according to the trust’s terms. You also nominate guardians for your minor children in the will.

Durable Power of Attorney for Financial Matters

A Durable Power of Attorney for financial matters enables a designated individual to handle your non-trust assets (e.g., pay your bills from your checking account, transfer assets to your living trust) in the event you are incapacitated.

Advance Health Care Directive or Power of Attorney for Health Care

A Power of Attorney for Health Care and Living Will, combined in an Advance Health Care Directive in some states, allows you to designate an agent to make health care decisions for you in the event you are incapacitated. In addition to the release and execution of health care records and forms and consent to surgery and the like, it can be used to express your preferences regarding life-sustaining care.

Health Insurance Portability and Accountability Act Authorization

A Health Insurance Portability and Accountability Act ("HIPAA") authorization permits your designated agent to obtain protected medical information about you in order to handle your medical affairs.