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GET A PLAN FOR YOUR LIFE ESTATE PLANNING: THE BASICS

Estate Planning is planning to retain control of your assets and your life for as long as possible, planning for care of your minor children and for your potential disability, and then, upon your death, planning to pass your assets to those you care about in the way YOU want to do it while saving taxes and costs to the greatest extent possible.

Estate Planning is Life Planning; not Death Planning

Good Estate Planning really takes a team of professionals, including your lawyer, your accountant, your financial advisor, your broker and your life insurance agent working together to establish directions for the distribution and management of your estate, provide for your loved ones' welfare and, with clarity, state your end of life directives.

In general, there are six tools that can be utilized in developing your estate plan:

- 1) **Testamentary Will** -a common and basic tool used by most individuals to transfer their estate upon their death. A Will is not enforceable until after the death of its Maker. A Will typically accomplishes three (3) things: 1) Selects an Executor; 2) Transfers Property and 3) Appoints a Guardian and/or Trustee for Minor or Special Needs Children. Wills typically are probated. PROBATE is the 1st step in the legal process of administering the estate of a deceased person, resolving all claims and distributing the deceased person's property under a will **or under the laws of intestacy** if one died without a will. A Probate Court decides validity of the will and approves an Executor to serve as the will specifies or in intestacy, appoints an Administrator. Some Debatable Disadvantages: A Will can be contested in court. If you have a taxable estate, a Will may not give you the opportunity to minimize the tax liability for your heirs. A Will becomes a public record as it is filed in the Circuit Court where the estate will be probated. Probate may be time consuming.
- 2) **Living Trust**- used by people to handle their financial affairs while alive and to dispose of their property after death typically without going through probate. A Living Trust allows for customized asset management. A Revocable Living Trust can be amended and revoked by its maker (called a Grantor). You can be the Trustee of your own Revocable Living Trust; thereby, keeping full control over all the property held in trust. The terms of a trust typically are not made a matter of public record-unlike the Testamentary Will. Individuals selecting a trust will additionally need a Pour-Over Will as it transfers any remaining assets to your Living Trust after your death through the process of probate that

you may have forgotten to transfer into the trust while alive. The Pour-Over Will is the accompanying document which also allows you to appoint Guardians for your minor children when choosing a trust as your estate tool of choice. Living Trusts can also be Irrevocable wherein you transfer ownership away from yourself with the goal of protecting assets and to lower your tax liability if you have a taxable estate.

- 3) **Power of Attorney (POA) for Health Care**- allows you to designate someone to make medical decisions for you if you cannot make them yourself. It is commonly referred to as a Living Will, but the POA is more comprehensive. This power includes the power to consent to your doctor giving, withholding or stopping any medical treatment, service or diagnostic procedure, and allows you to define life sustaining treatment and to determine ahead whether or not you want any such treatment as you define it (i.e., vent care, tube feeding or IV fluids)
- 4) **Power of Attorney for Property**-allows you to designate someone to act on your behalf over your property. Property consists of items including but not limited to real estate, finances, automobiles, jewelry, furs, artwork, business interests, etc. You may limit or expand the scope of authority of your Agent for property.
- 5) **Land Trust**- the recorded title to real estate located in Illinois is held by a trustee and all rights of real estate ownership are retained by you as beneficiary. Property passes to beneficiaries without going through probate and can simplify property transactions in multiple ownership situations, centralize ownership and seamlessly transfer ownership to the surviving owner or owners. Annual fees are involved, and again, probate is avoided.
- 6) **Transfer on Death Instrument (TODI)** (TODI and subsequent Notice of Death Affidavit and Acceptance of Transfer on Death Instrument)-authorizes owners of residential property to transfer their real estate outside of probate using a prerecorded instrument. A TODI is what we practitioners call a Beneficiary's Deed because it is prepared in deed form, names a beneficiary or several and is recorded at the Recorder of Deeds office. Its Maker retains all ownership interest, avoids probate, and allows Maker to change the named beneficiary. It is similar to a Land Trust, but there are no annual fees involved and it's not a private document. A TODI does not avoid estate taxes (if you have a taxable estate), nor protect your real estate from your creditors, nor does it terminate your named beneficiary's share if that beneficiary dies or predeceases you and it will not automatically pass to that beneficiaries heirs, however you can design it to do so by naming contingent beneficiaries. The Notice of Death Affidavit and Acceptance of Transfer on Death Instrument is the document filed at the Recorder of Deeds by the beneficiaries named in the TODI. It, in essences, announces to the world that you have died and that they accept the property that you designated for them to have in the previously filed TODI