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GET A PLAN FOR YOUR LIFE!

FAQs IN ESTATE PLANNING

1. What is a Will?

A will is a formal legal document in which you specify the persons or entities to whom you want to give your property after you die. The persons or entities who will receive your property are called beneficiaries. A will also makes arrangements for how any debts you owe at your death are to be paid. If you have a child or children under the age of 18, you can name the person you want to be your children's guardian if you die before they become adults. In your will you also choose the person called your executor who you want to take the necessary legal steps to carry out the instructions you have written in your will.

In your will, you can leave your property to anyone you choose, including charities or even perfect strangers. In your will you can create a trust to manage your property for your beneficiaries. There is no law that says you must leave your property to your family, with ONE IMPORTANT EXCEPTION. If you are married, you cannot simply write a will which leaves nothing to your husband or wife. In Illinois, your husband or wife can renounce your will for any reason, whether you leave them everything or nothing.

If your spouse renounces your will your spouse will get 1/2 of your estate if you have no children or other descendants, and 1/3 if you do. Further, regardless of your will, your spouse has a statutory right to an award of $20,000.00 from the estate plus an additional $10,000.00 for each dependent child living with the spouse. Whatever property remains in your estate after your spouse takes his or her share will be distributed to your other beneficiaries as you originally instructed in your will. However, because your spouse took a different percentage of your estate than you intended, the other beneficiaries' share will be proportionately affected.

The Probate Act also sets the requirements for writing a will. You must be at least 18 years of age, of sound mind and memory and your will must be in writing, signed by you and by two disinterested witnesses in your presence.

2. What is the difference between a Will and a Living Will?

A Living Will is a document in which you state whether you would want life sustaining medical treatment if you become severely disabled or cognitively impaired or were placed on life support.

3. What happens if I die without a Will?

In Illinois, if you die without a will, a statutory law codified as the Probate Act of Illinois determines who gets your property once you die. This situation is known *as intestate distribution.* The following describes the legal rules of intestate distribution for some common situations:

- If you are survived by your spouse, but have no children, grandchildren or great-grandchildren, your widow or widower will get your entire estate.

- If you are survived by a spouse and have children, grandchildren or great grandchildren, your spouse will get half of your estate. The other half will be divided among your children equally. If any of your children die before you do, that child's children, if any, will equally divide the share your child would have received.

- If you do not leave a surviving spouse, your entire estate will go to your children in equal shares. If any of your children die before you do, that child's children, if any, will equally divide the share your child would have received if he or she had not died before you.

- If you die without leaving a spouse or children, your estate will be divided among your parents, brothers, sisters and their descendants according to the detailed rules in the Illinois Probate Act.

- If you die without a will and you have no known relatives, your estate will either pay for tracking down any distant relatives or it will go to the county or to the state, depending on a variety of factors listed in the Illinois statutes.

4. Do I need an attorney to prepare my Will or can I use one from the Internet?

It is not a good idea to write your own will, but it can be done. If you draft your will yourself and make a mistake, your will could become meaningless and not accomplish what you intended. I highly recommend that you get professional legal assistance and I look forward to meeting you at your soon to be scheduled initial consultation.

5. How do I change my Will?

If you want to change your will, you must create a separate document called a codicil. Your lawyer (or you) must write the codicil with the same formality as your will and you must sign it in the presence of two disinterested witnesses. If the changes you want are lengthy or significant, it may be wiser to write an entirely new will.

6. How do I revoke my Will?

Once written, you can choose to revoke your will. This means to invalidate it and to cancel it. You can do this in several ways:

- You may burn, cancel, tear, or physically destroy it yourself or direct someone else to do it in your presence;

- You may write a new will stating that your earlier will is revoked. If your new will does not state this, any part of your new will which is different from the earlier one will control;
- You may write a statement saying that your will is revoked. You must sign it in the presence of two witnesses, just as you did the original will.

7. Can I avoid court if I have a Will?

Not typically. All wills are usually probated, unless the estate has no real estate involved and the assets are $100,000.00 or less. Many mortgage companies require you to have an official document from the probate court to allow you to address the outstanding mortgage on the property of the person who died.

8. What is Probate?

When a person dies, his or her property is often distributed through a legal proceeding in the probate division of their local Circuit Court. Usually this happens in the county where the person dies.

If you have a Will, your Executor (or whomever is in possession of the original Will at the time of your death) will file your Will with the local circuit court clerk, then a petition will be filed for a hearing before a judge and at the subsequent hearing your executor will be given a legal document called Letters of Office. If the judge is satisfied that all the presented documentation is in order, the judge will sign a court order declaring your executor is formally appointed and awarded the Letters of Office. With Letters of Office in hand, your executor has the legal authority to carry out the instructions in your Will.

If you die without a will, or if your executor is unable or unwilling to take on the responsibility, anyone may file a request with the probate court to determine the administration of your estate. Anyone can be an administrator as long as the probate judge approves. Your family, the people they nominate, or the people who will receive your property have priority in being appointed...but even one of your creditor can petition to serve as the administrator of your estate. The administrator is issued Letters of Administration, which provide the legal authority to settle your debts and distribute your property as specified in the Probate Act or as instructed by your Will.

The probate court process can be long, complicated and costly, or relatively short, simple and inexpensive. The nature of the probate process depends on the size of your estate and whether anyone tries to contest your will.

9. What is a Small Estate?

You are considered to have a Small Estate if you do not own any real estate AND if the value of your other property is $100,000.00 or less. Small estates do not have to go through the probate court process. The Probate Act spells out a different kind of procedure to distribute a small estate. The Small Estate Affidavit is a sworn affidavit which outlines information about the person who died, his or her property, debts, will (if there is one) & if probate is contemplated,

surviving family members and people to whom property is left in the will (again, if there is one) or by intestate law if there is no will. A certified copy of the death certificate and a certified copy of the will (in unison: if there is one) MUST be attached to the affidavit.

Theoretically, anyone (whomever is going to be the Executor or Administrator ideally) can complete and sign the Small Estate Affidavit. However, the Affidavit must be made under oath, before a notary public, swearing, under penalty of perjury, that all of the information contained in the Affidavit is true. Once your heir or family member (the affiant) completes and signs the affidavit, they can use it to obtain and distribute your property as directed by the Probate Act or as instructed in your will.

10. What if I own property in Joint Tenancy?

Joint Tenancy refers to joint ownership. If two people own a house as joint tenants, when one person dies, their ownership of the house passes automatically to the other person. This is known as the right of survivorship. This requires neither a will nor the probate court. In addition to real estate, you can own bank accounts and other property in joint tenancy.

11. What are the benefits of a Land Trust?

Some of the benefits of a land trust are personal anonymity which **may** protect against creditor attachment and lawsuits, avoidance of probate upon naming remainder beneficiaries, the ability of a landowner to easily designate the property to the heirs of his or her choice upon death, and provides convenience and security. However, a land trust does not have the flexibility of a living trust. Living trusts are often much more complex, containing additional terms and provisions and holding title to property other than only land. Living trusts are usually much more costly because of their increased scope. In addition, living trusts may contain various provisions dealing with estate tax minimization and other estate, gift and property tax issues. However, the land trust is the perfect estate planning vehicle for the transfer of land outside of probate and is an excellent tool for most persons whose only asset is real estate.

12. Why do I need Powers of Attorney?

Powers of attorney for health care and property enable your designated agent to act regarding all or some of your very necessary health care and property decisions when you are unable to act due to disability or incapacity. Without powers of attorney, a court proceeding with court approval may be necessary to execute these decisions and transactions, and court can be costly, time-consuming and often inflexible....and at a time when time is of the essence for you.

13. What happens if I fail to appoint a guardian for my child or children?

If you fail to appoint a guardian, then the matter may be decided by a Probate Court on petition by a family member or friend subject to court approval and thus the Court will decide who will be guardians over your children. It may be someone you very well intended to keep your children far far away from.

14. What are the benefits of a Trust?

A Trust is a legal arrangement you create in which you split the legal rights to property. You give to someone called a Trustee the legal right to own and manage (i.e., distribute, invest or sell) the property in the Trust. The Trustee has the responsibility to see that the property in the Trust is used to benefit the person named as the Beneficiary. The Beneficiary of the Trust has the legal right to demand that the Trustee live up to that responsibility.
With a Living Trust, you may name yourself as both trustee and beneficiary of the trust while you are alive so that you do not lose control of your property. The trust document will specify who becomes the new trustee and beneficiaries upon your death, and what the new trustee is to do with the property in the trust. Some of the reasons to get a Trust are as follows:

a) Trusts are private and offer greater privacy than wills as they do not generally go through probate, so there's no public record of them.

b) A trust CAN be used to disinherit a spouse.

c) May help reduce taxes.

d) Trusts allow you to transfer assets such as money, real estate or art to a charitable trust and designate that they eventually be given to a specific organization.

e) A college trust allows you to pay for higher education. Whether the grantor is paying for one child or several, a college trust fund offers flexibility in how and when money is disbursed for educational expenses.

f) Trusts allow for Flexible Distribution of the grantor's estate. The grantor of a trust can set out in detail how his or her estate is to be distributed to beneficiaries. For beneficiaries who are unable to effectively manage money or who cannot be relied on to make sound financial decisions, a trust gives the grantor the option of disbursing funds to the beneficiary in smaller, regular amounts instead of one large lump sum, so the beneficiary cannot spend all the money at once. The grantor can also specify how the funds can be spent, for example on rent, car insurance, food, healthcare, vacation and other necessary or unexpected expenses.

g) Trusts are more difficult to contest. A trust gives you greater protection than a will against legal action from anyone who is unhappy with the distribution of assets and decides to challenge it. The main ways to challenge the legitimacy of a trust is: that the grantor was under some mental incapacitation or that the grantor was under duress or undue influence.

h) Avoids probate....generally.

15. What is better--a Will or a Trust?

It depends. There is no simple answer. Many factors must be considered in estate planning. Your decision is individual and personal and must be rightly suited for your particular situation. There is not a one size fits all.

16. When I meet with you at Law at Last, Inc. to select the best estate planning tool (s) TO GET A PLAN FOR MY LIFE, how much detail do you need about my assets?

I need to know the general nature and extent of your assets. While I do not need to know, for example, which stocks you own, I do need to know that you have a brokerage account and its approximate value. Any details you provide regarding account numbers and the like are to assist your executor. Of particular importance is the type of ownership of each account (i.e., sole, joint, pay on death, transfer on death, etc.) and the identity of the designated beneficiaries for retirement accounts. If real estate is subject to a mortgage, that should be noted. For most property, a ball park value will be sufficient. Personal property does not need to be specifically detailed, unless you have special gifts that you want to make to designated individuals. It may be helpful to summarize an estimate of your net worth including life insurance and retirement plans for tax purposes.

17. Do I need to bring deeds or beneficiary forms with me?

Yes, if you have them available. During our meeting, we will discuss what documents you will need to locate and obtain going forward.

18. Should I tell you if my children or beneficiaries have particular problems, such as addictions like gambling or alcoholism, disabilities or spousal or creditor problems?

Yes, it is very important that you discuss any special or unique needs that your beneficiaries may have.

19. Do I need to know exactly who I want my executor, trustee, guardian and agents to be?

While you will be required to determine who you want to serve in these fiduciary roles, you don't need to be certain about who you will name before we meet. Do be sure to select individuals whom you believe to be highly trustworthy and who will carry out your wishes.

20. What other issues should I consider before my consultation?

-Age(s) you feel your children may be able to handle an inheritance.
-Any restrictions or conditions you might want on gifts
-Contingent beneficiaries should any or all of your primary beneficiaries predecease you.

All information above derived from public sources.