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Choosing Your Will and Estate Planning Attorney

Why Do I Need Legal Advice for Wills and Estates?

Do-it-yourself “legal” documents and estate planning software can be found in office supply superstores and scores of web sites. Some publications and advertisements lead a person to believe that they can handle all their estate planning needs either by themselves or with just one phone call, plus a hefty fee to a slick attorney operating from the internet. This causes us to question whether we really need an attorney to order our affairs.

Estate planning is the process of choosing among alternatives to ensure financial security during your life and to arrange for the well-being of heirs upon your death. To plan your estate yourself, you will need to study the law to such a degree that all documents articulate your end-of- life wishes in a way that is legally valid in your state(s), and also minimize heirs’ tax implications. If you have property in more than one state, and since different states may have different laws, your estate planning documents need to take the other states’ laws into account. Keep in mind, as laws change, you will have to keep your documents up to date with any changes in the laws. This is not an easy task. In the final analysis, doing it yourself will keep you busy and may leave you not knowing for certain whether you have solved the end-of-life issues that you wish to address.

There are good reasons to get personal advice from a trusted and qualified attorney to prepare for the inevitable. A common misconception is that only the wealthy have complicated enough situations to require an attorney to draw up wills, trusts, and guardianship and health care directives. The fact is that estate planning is necessary for all people and that even relatively simple estates can be handled better, more quickly and sometimes with less tax liability when an attorney is consulted.

Everyone needs to create a plan which will take care of essential obligations in cases of disability, give guidance on critical personal medical choices, transfer property, and arrange for care of dependents according to their wishes and their family’s needs. Everyone who wishes to be taken care of in old age and wants to ensure that loved ones are cared for needs a will and estate plan.

What Kind of Legal Advice Do I Need?

You will need to examine for yourself whether you need only the most basic advice, specific advice on certain investments or property holdings, advice relating to guardianship of minor children, or care for elderly or disabled dependents, or whether you need comprehensive planning services that will address a number of these specific concerns. Think about your situation. Many people use a combination of advisors for specific aspects of their estate planning process such as bankers, accountants, insurance agents, stockbrokers or financial planners.

Who you choose as an attorney will depend on what type of advice you want. Not all attorneys are created equal. You want someone who knows wills, trusts and estates, but an attorney who knows other fields as well can be an added benefit. For example, if the person who is planning his or her estate has extensive real estate holdings, the ideal lawyer should also know about real property law. Likewise, a person with plans for large or complex charitable gifts in their estate plan would want to seek an attorney who knows the tax implications and related laws. It can be helpful to have someone who knows enough about other relevant areas of law to ensure that all actions being taken and documents being put into place will ultimately work together without conflict.

What Kinds of Issues Do I Need to Consider?

Asset Distribution

A **Will** is a legal document that allows you to determine how you want your assets to be distributed. Should you die without a proper and legal will in place, it is the responsibility of the state to distribute your property to your heirs according to that state's **intestacy** (when there is no will) laws. The intestacy laws might call for the distribution of your assets and property in a manner that is similar to what you had wished. Then again, they might not. Even if the state's decision-making is in line with what you would have wanted, it may not sit well with your survivors. Legal challenges to an estate from disgruntled heirs after your death are far more likely if you have neglected to obtain legal counsel and to execute the essential formal documents. For those left behind, having no will or having an inadequate will can lead to enormous emotional distress and legal expense.

Asset Management for the Surviving Spouse and Others

There are strategies that can be used to manage assets that you leave to your spouse and/or others. Within a will, your attorney may suggest creating a **trust** as a way to manage your assets. A trust is an entity that is created to hold assets for the benefit of certain named persons. Establishing a trust may help reduce the tax burden of the heirs. You can set up a trust that provides for your surviving spouse and then upon their death is distributed to designated heirs. The use of trusts is especially useful for blended families and unmarried couples who may not have other legal means of distributing assets.

Guardianship of Dependents

A will can assist you if you have children under age 18 or children/relatives with special needs or limitations who depend on you to provide their care and manage their affairs. Within the will, you may nominate a capable and willing **guardian** (someone to care for dependents in your absence). Nominating a guardian can help prevent any disagreements between well-meaning relatives who might step forward to supervise and care for your dependents. If you do not appoint a guardian, a legal guardian is appointed by the court to manage the affairs and assert the rights of another person who is unable to do so given their age (as is the case for minor children under age 18), special needs (severe disability or illness), or cognitive status (the person is deemed incompetent, or unable to make important decisions regarding their health or care).

Charitable Giving

There are many ways to give a **charitable gift** through your estate. When considering a charitable gift as part of your estate planning, you will need legal and tax guidance to ensure that your gift is shared, accepted and allocated as you intended. There are many ways to give a charitable gift through your estate. Charitable gifts may include endowment, stock, property, life insurance, retirement accounts, IRA's and trusts, to name a few. Consulting with an attorney will ensure that your individual situation and plans for other portions of you estate are considered in a way that will maximize the potential of your intended gifts and allocations to beneficiaries.

Healthcare Decisions

Another important document that a lawyer can assist with is the **advance health care directives**. These are the instructions on whether or not you want certain specific medical procedures. It is impossible to predict what might happen in life, but it is possible to communicate your wishes ahead of time for certain circumstances. No matter what your age or health status, it is conceivable that the unexpected could happen—an accident or injury, sudden illness, or incompetence—leaving you unable

to communicate or make decisions about your own care. In light of this possibility, it is important to communicate your wishes ahead of time.

Advance directives are set forth in a legal document called a **Living Will**. It identifies your preferences and assigns specific people to make decisions for you in the case that you are unable so that your wishes can be honored and used as a guide for your care and treatment in the event you can not decide or communicate. In this document, you need to clearly state the kind of medical care you would like to receive or refuse. A Living Will allows you to communicate your wishes to family, friends and healthcare professionals so that medical decisions can be made based on your own preferences and can help to avoid confusion and reduce emotional distress that might otherwise be felt by those making choices on your behalf.

Important to know is that if you are able to make decisions and communicate them during medical emergencies, your advance directive is not activated and you will be able to make decisions that may differ from what you have documented in your Living Will. For example, you may choose to have a feeding tube inserted even if you previously said you would not want that treatment.

Powers of Attorney

A **Power of Attorney** is a legal document that designates someone to assist with aspects of your life while you are unable to do so. A specific type of Power of Attorney, a **Healthcare Power of Attorney**, goes into effect only if you are deemed incapable by two physicians. There are also powers of attorney relating to your financial matters. Powers of Attorney can be set forth as **durable** (permanent) or **swinging** (only when you are in a period of inability does the designee handle your affairs and, when you are capable, control reverts back to you).

It is important to identify someone you trust to be your power of attorney. Typically it can be a spouse, but it doesn't have to be. The person you may designate can be changed by updating this document over time as circumstances change. For example, you may assign power of attorney to your spouse when you are younger, but, as you age, you may identify a trusted child or even your attorney.

How Do I Shop for Legal Advice?

Choosing your will and estate planning attorney can take a little time and effort. People often procrastinate in shopping for legal advice because dying or becoming disabled is something we generally prefer to not think about. Lack of understanding about the estate planning process and fear about how complicated or expensive it may be are other reasons people put off planning. It is important to remind ourselves how devastating for our families *not* planning can be - financially, legally and emotionally - and that getting started is the better choice.

When trying to find the right legal help, it is important to compare services and costs. A good attorney will have the right credentials, be experienced and be trustworthy. They will educate you, help you navigate through the process and will work within your budget to provide as much assistance as possible at an affordable charge. Obviously, you want to choose an attorney who has a law degree, has passed the bar exam and is licensed in your state.

Some Delaware attorneys choose to be recognized as having special knowledge and experience by becoming "certified specialists" in certain fields of law. Delaware lawyers are permitted to communicate information regarding specialty certification when the program has been accredited by the American Bar Association. A Delaware specialist designation in the area of wills and estates will

indicate some legitimate specialty training but may not guarantee competence.

Unlike Delaware, The Maryland Rules of Professional Conduct prohibits lawyers from holding themselves out as “specialists,” so you should not expect to see this kind of advertising from a Maryland lawyer. If you do hear or see this language from a Maryland attorney, you should be wary.

The bottom line when shopping for legal advice is that the best person to help you prepare for your future is a professional who is knowledgeable about major estate considerations, tax impacts of decisions, state and federal laws, and the relationship between financial planning, healthcare planning and estate planning. A good lawyer will educate you and will walk you through the decisions you need to make and the consequences of each of the alternatives presented.

Where Do I Find Wills and Estates Attorneys?

Perhaps the easiest way to locate an attorney is to look in the phone book under “lawyers” or “attorneys.” This will give you an idea of the availability and location of advisors. You may find some of their areas of practice concentration listed and it may indicate that they perform estate planning and the writing of wills.

Since phone listings tell you little about the real people or their skills, ask trusted friends and neighbors if they have heard of the attorneys and what experiences they have. Especially if you have business, farm or property interests, make it a point to talk to other business or farm owners and ask them about their contacts and experiences.

State Bar Associations provide a **Lawyer Referral Service** or **Lawyer Referral and Information Service**. The Lawyer Referral Service refers you to a pre-screened private attorney with whom you can meet or speak to by telephone to discuss your particular situation. This attorney will consult with you for 30-40 minutes for a fee of \$35 - \$40. After the initial consultation, you may choose to hire that same attorney for further work on your behalf, or you may decide to seek a different attorney. The Delaware and Maryland Bar Associations’ lawyer referral contacts are listed in box below.

Lawyer Referral Services in Delaware and Maryland

In Delaware, contact:

Delaware State Bar Association Lawyer Referral Service. Areas served: New Castle, Kent and Sussex Counties.

Phone: (302) 478-8850 8850 or (800) 773-0606 (in-state only)

Website: http://www.dvls.org/LRS_Public.htm

In Maryland, contact:

Maryland State Bar Association, Member Service Center. They will direct you to your local/county Lawyer Referral Service.

Phone: (410) 685-7878 or (800) 492-1964

Website: <http://www.msba.org/public/referral.htm>

How Much Will it Cost?

An individual attorney and the client make arrangements between themselves regarding payment of attorney's fees. Attorneys generally bill in one of two ways.

They may have a flat fee for each document prepared. In this case, you'll want to know how much it will cost for each document you think you will need.

Alternatively, some attorneys charge by the hour. There may be a charge for the attorney's time and there may be charges for their paralegal's time (usually much cheaper). You'll want to ask during your initial visit the breakdown in time charges between each of these professionals and an estimate, in writing, of the time it will take for the attorney to complete your estate plan, including the hourly breakdown of each aspect in the planning process.

A "free consultation" may not be absent of charge. Find out in advance how much time is included and, if you go over the time limit, what the fee will be.

Special programs for older and lower income clients do exist in both Delaware and in Maryland. The **Delaware Volunteer Legal Services** organization will provide free support for the development of wills, guardianship, power of attorney and advance directives for individuals who are 60 years and older or terminally ill. There is an income eligibility requirement. To find out more about this program, ask when you contact the referral service or go to website: <http://www.dvls.org/>.

For eligible older Maryland residents, there may be discounted service for a person who is 60 years or older through the **Maryland 60 Plus Program**. This program matches a moderate income person age 60 and older with an attorney in private practice who will handle certain types of cases for a low fee. With this program, the first meeting with the attorney is free and then, if you decide to have the attorney represent you, the services are provided at a reduced cost. You must meet certain income and asset guidelines for the Maryland 60 Plus Program. Information on the program eligibility guidelines is available at website: http://www.peoples-law.org/senior-citizens/sixty_plus.htm.

Regardless of how an attorney charges, you have a right to ask to be provided a copy of the fee policy and the **legal services agreement or retainer agreement** (a document that is usually signed by you when an arrangement is made for payment or when a deposit is paid in advance for services). Have all documents relating to fees explained to you and be sure that you fully understand it before you decide whether this is the lawyer for you.

How Do I Start My Estate Planning Process?

Though thinking about the inevitable can be difficult, beginning discussions with your loved ones and a legal advisor benefits you by identifying issues and bringing everyone into a conversation about financial stability now and in the event of loss.

Your next step is to choose and meet with your attorney and other advisors. Take notes in your meetings, gather the needed information and provide it to your attorney so that the documents can be created. Be sure to follow through in a timely manner to ensure that you and your family have end-of-life documents in order. Inform your legal advisor of any need for speed.

Where appropriate, share the documents with family members. Inform family members of your

choices for guardians, power of attorney, and health care power of attorney. To help keep the family harmonious, schedule time with family members to discuss your decisions and why. The research suggests that the more family members are on the same page, the better family members handle times of crisis and transition.

A valuable document to consider writing is a **letter of last instructions** -- separate from the will -- to your lawyer, your executor or your family. This letter, to be opened upon your death, can provide additional information -- such as where important papers are located; funeral and burial instructions; an inventory of your savings and investments; instructions and directions concerning your business; and a listing of various advisers, their addresses and phone numbers.

A letter of last instructions is not a substitute for a will, but it enables the survivors to handle financial affairs in an orderly manner, get a clearer picture of their situation and remind them where important papers are located.

It is never too late to make your end-of-life plans and it is important to not treat estate planning like a once-and-done task. Estate planning is ideally an ongoing process of evaluating the use and distribution of assets to accomplish personal and financial objectives while living *and* after one's passing. Estate plans should be reviewed annually and adjusted for births, deaths, marital changes, health issues, and other circumstances that indicate a potential shift. Though it takes time, organization and some money, it is well worth the effort for your own and your family members' peace of mind.

Additional Information Available Online

- eXtension Financial Security for All Community of Practice http://www.extension.org/personal_finance. Cooperative Extension provides the learning lesson entitled **Legally Secure Your Financial Future** located at website: http://www.extension.org/pages/Financial_Security_for_All_Learning_Lessons
- American Bar Association publishes helpful information on estate planning, probate and administration of estates, transfer taxes and tax planning for your assets, and healthcare and disability planning. See the 'Estate Planning Frequently Asked Questions' page available at website: <http://www.abanet.org/rppt/public/home.html>.

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