

The following is a brief overview of some of the primary decisions you will be asked to make in establishing your estate plans. Please review the content contained below and give some thought to these decisions prior to our initial meeting. We have provided space below each topic to jot down any questions or thoughts you may have.

I. Will-Based Plan Considerations:

❖ **Guardian:** If you have minor children, you need to name a guardian for the children in the event you pass away before the children become adults. The guardian(s) may be a single person or a married couple, serving either individually or together. Factors you should consider include the health and age of the potential guardian(s), as well as the compatibility of the guardian(s) values with yours. In addition, you should consider the geographic location of the guardian(s), as it is likely that is where the children would live. You are encouraged to identify at least two back-up guardians just in case your initial guardian(s) is unable or unwilling to serve at the time of your death. Prior to finalizing your documents, you should consult with all of your potential candidates to ensure they are willing to accept the responsibility.

Notes: _____

❖ **Personal Representative (Executor) of your Estate:** At your death, the person you designate as personal representative (also commonly referred to as the “executor”) is responsible for accounting for your property, safeguarding and temporarily managing your property during the period of estate settlement, paying any necessary expenses, preparing an accounting of the administration, and distributing assets in accordance with your last will & testament. Your personal representative must be represented by legal counsel, and in most cases, he or she must be approved and appointed by the probate court in the county in which you reside at the time of your death. All legal fees, expenses and court costs are paid from your estate. It is important to choose an individual who is competent in administrative matters, possesses a sound financial mind, and has not been convicted of a felony. The personal representative’s role is required for a limited amount of time, typically ranging from 6-24 months depending on the complexity of your estate. For married couples, most often, the surviving spouse is named as personal representative, followed by one or two alternates.

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❖ **General Asset Distribution Pattern:** You will need to determine who you want to receive the balance of your assets. This may be an individual such as your spouse, or if unmarried it may be multiple individuals in various percentages. You will want to consider who is the “primary beneficiary” of your estate and the “contingent beneficiaries” should the “primary beneficiary” not survive you. The “testamentary trust” referenced below may be utilized here depending on who you select to receive your assets.

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❖ **Testamentary Trust:** In the distribution of your estate assets, you may choose to utilize a testamentary trust in your estate plan. Testamentary trusts provide a proper structure for administering financial assets for a beneficiary. For instance, if you have minor children, you would want to establish a testamentary trust in your will. The trustee you appoint to administer this trust would oversee the assets and utilize trust funds to provide for the children’s health, education, maintenance and overall support. When your children reach specified ages as determined by you, the trustee would then distribute each child’s share of the trust. Frequently, the distributions occur in stages. For example, one-third (1/3) of each child’s inheritance is distributed to such child upon attaining certain ages such as 25, 30 and 35. This staged distribution protects your children from receiving “too much too soon” while allowing the trustee to continue using money for the children’s benefit as the trustee deems appropriate. Testamentary trusts may also be beneficial to include in your will for other beneficiaries such as your spouse, older children, nieces and nephews, grandchildren, etc.

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○ **Trustee of the Testamentary Trust:** Unlike the personal representative, the trustee may serve for an extended period of time. Typical candidates include trusted family members or friends of the family who would look after the beneficiary’s financial needs in a way that is consistent with your values and expressed direction. The trustee manages the assets in the trust so it is important the person is well organized, attentive to financial matters, and understands when to seek professional advice. The trustee is also responsible for carrying out your wishes as specified in the trust and will properly use the discretion provided to them under the trust terms. It is advisable to identify at least two successor trustees in case your initial trustee is unable or unwilling to continue serving as trustee. A professional or corporate trustee (such as a bank) is also an option.

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❖ **Personal Property and/or Specific Bequests:** You should identify any specific or unique desires regarding your personal property. Are there possessions or assets that you want to transfer to certain individuals? For example, personal items or family heirlooms. Are there any other individuals or charities you would want to benefit through your estate? If so, this is the time to consider expressing these desires in your estate plan.

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❖ **Worst-case scenario:** How would you want your estate divided in the event that you passed away and none of your primary or secondary beneficiaries survived you? Would you want the estate to pass to extended family members, charitable organizations, or a combination of both?

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II. Trust-Based Plan (also referred to as Living Trusts) Considerations:

You may also consider including a living trust in your estate plan. A properly funded living trust places your assets in trust for your benefit during your lifetime and directs the distribution of your assets upon your death. Typically you name yourself as the primary trustee and identify at least two successor trustees in case of your incapacity or death. The decision whether to include a living trust in your estate plan should be made after an estate planning attorney has reviewed your personal and financial situation and explained to you the advantages and disadvantages of a living trust based plan. For the purpose of efficiency on this brief overview and the complexity of this type of plan, we will not go into the individual considerations of this plan type.

III. Powers of Attorney Considerations: In addition to a will and/or a trust, you will also receive the following advanced directives that would be utilized during any period of time where you become unable to make financial and/or health care decisions for yourself due to incapacity or incompetency:

❖ **General Durable Power of Attorney:** This advanced directive is used when you are unable to make financial decisions for yourself due to incapacity. The individual named in your General Durable Power of Attorney (sometimes referred to as “Attorney in Fact” or “Agent”) is authorized to pay your bills, transfer or sell assets if necessary, and make most financial decisions on your behalf. For married couples, most often the spouse is named as the initial Agent, followed by one or two alternates.

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❖ **Health Care Power of Attorney:** This advanced directive is utilized when you are unable to make health care decisions for yourself due to incapacity. The individual in your Health Care Durable Power of Attorney (sometimes referred to as “Health Care Representative”) is authorized to make medical decisions on your behalf, including your wishes regarding end of life matters. In the event of your death, your Health Care Representative is also responsible for carrying out your funeral and burial wishes. For married couples, most often the spouse is named as the initial Health Care Representative, followed by one or two alternates.

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❖ **Living Will:** This advanced directive specifies your wishes with regard to artificially supplied nutrition and hydration in the event of a life-prolonging or life-sustaining procedure in both a terminal condition and persistent vegetative state. You will be asked to choose to either: receive, not to receive, or to make no decision to receive artificially supplied nutrition and hydration in each scenario. This document covers both federal and state laws concerning its validity.

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Disclaimer: This material is for informational purposes only and is not intended to be advertising, solicitation or legal advice. Due to the complexity of estate planning, not all generalities contained herein may apply to your current situation.