

Advanced Care Planning

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Disclaimer

- This presentation is for general information only and is not intended to be legal advice.
- Consult a competent legal advisor for guidance concerning your situation.

Outline

- Wills and Estate Planning
- Financial Power of Attorney
- Health Care Advance Directive

Wills and Estate Planning

- Goal: Who will receive your possessions after you die
- Probate vs. non-probate assets
 - Wills dispose of assets subject to probate
 - Assets owned individually or as tenants in common
 - Assets where beneficiary is not named
 - Assets naming a beneficiary pass outside of probate
 - IRAs
 - Life Insurance
 - Trusts
 - TOD/POD
 - Joint tenants with right of survivorship

Estate Planning – Reasons to Have a Will

- Essential if want assets to go to individuals or in portions different than provided under Maryland law, or to place assets in trust (e.g. held until children are adults or for a disabled child)
- The Will also allows designation of a personal representative (executor) of the estate
- The Will also allows elimination of payment of a full bond
- The Will eases distributions to minors

Estate Planning – No Will in Maryland

- **Spouse and minor children of the decedent**— spouse receives one-half, children share remaining one-half
- **Spouse and children (all adult) of the decedent**—spouse receives \$15,000 plus one-half of remaining estate—children divide balance (predeceased child's share passes to predeceased child's issue)
- **Children only of the decedent**—children (does not include step-children) divide entire estate (predeceased child's share passes to predeceased child's issue)
- **Spouse and parents of the decedent**— spouse receives \$15,000 plus one-half of remaining estate—both parents divide balance or surviving parent takes balance
- **Spouse of the decedent *without other heirs listed above***—spouse receives entire estate
- **Parents of the decedent *without other heirs listed above***—both parents divide entire estate or surviving parent takes all
- Additional rules for more distant relatives

Wills

- Wills must meet certain technical requirements to be valid
 - Signed in front of two witnesses
 - Typewritten
 - Appoint personal representative
 - Generally must be U.S. Citizen
 - “Green card” holder okay if for close relative

Alternatives to Wills

- Lifetime Gift
- Joint Assets
 - Joint tenants with right of survivorship
 - Tenants by the entirety
 - Tenants in common
- “POD” or “TOD” account
 - POD = Payable of Death (banks use this)
 - TOD = Transfer on Death (brokers use this)
- Life estate deed (for real property)
- Trust

Trust

- Trustor (or Grantor) creates a trust (puts money into the trust)
- Trustee administers the trust
 - Trustee must be trustworthy
- Beneficiary “benefits” from the trust (receives income or principal)

Types of Trusts

- Revocable Trust
 - Grantor can change terms or remove assets
 - Established during lifetime
- Irrevocable Trust
 - Grantor cannot change terms
 - Established during lifetime
 - Established through a will

Uses of Trusts

- Probate avoidance
- Control wealth from the grave
- Give principal to one person and income to another
 - Ensure children of first spouse to die receive inheritance while letting spouse have access to income
- Protect funds for a spend-thrift or for a minor or for a disabled or incapacitated adult
 - Plan with care for a person who has a disability or they may lose their public benefits
- Estate tax planning (particularly if married)

Income Taxes

- Heirs receive a “step-up” in basis in property
 - Example 1:
 - Dad bought property in 1975 for \$100,000
 - Dad dies in 2019 when property worth \$500,000.
 - Daughter sells property in 2020 for \$550,000.
 - Basis is \$500,000, so reportable income is \$50,000.
 - Example 2:
 - Dad bought property in 1975 for \$100,000
 - Dad *gives* property to daughter in 2019 when property worth \$500,000.
 - Daughter sells property in 2020 for \$550,000.
 - Basis is \$100,000, so reportable income is \$450,000.

Income Taxes

- One-half step-up in basis when first spouse dies if property owned by both spouses
- Capital gains exclusion
 - \$250,000 (\$500,000 if married)
 - Must occupy and own property in 2 of last 5 years

Federal Death Taxes

- Probate and non-probate assets taxed
- In general, assets passing to U.S. Citizen spouse not taxed (“marital deduction”)
 - Deferral to when second spouse dies
- Federal Estate tax
 - \$11,580,000 threshold (adjusted annually for inflation)
 - Reduced to approximately \$5.8 million in 2025
 - Portability available
 - Minimum rate is 40%

State Death Taxes

- Maryland
 - \$5,000,000 threshold (no annual inflation adjustment)
 - Portability available
 - Maximum rate is 16%
- DC
 - \$4,000,000 threshold 2021 (adjusted annually for inflation)
 - Portability not available
 - Maximum rate is 16%
- VA
 - No Virginia estate tax
- Note: legislatures can change policies

State Death Taxes

- Inheritance tax (Maryland only)
 - 10% if bequest to beneficiaries other than direct descendants (and in-laws), spouses or siblings or charities
 - Can be 11.1111% if estate pays tax
 - All assets taxed (no minimum)
 - Except for life insurance and small probate estates
 - Claw-back if “substantial gift” within 2 years of death
 - Inheritance tax is a dollar-for-dollar credit on the MD estate tax

Gift Taxes

- Federal
 - Of concern when estate at death + lifetime gifts exceed about \$5.45 million
 - Unified federal estate and gift tax
 - Lifetime gifts added to estate at death to calculate tax
 - \$15,000 (\$30,000 for married couple) per person per year exclusion
 - No gift tax between spouses, except a non-citizen spouse can receive up to \$157,000 without being subject to the gift tax
- States
 - No gift tax at state level for DC, MD, VA

Managing Financial Decisions

- Financial Power of Attorney
 - Problem:
 - Someone cannot act on behalf of another without proper legal authority
 - No exception for a spouse, relative or friend
 - Preferred Solution : Financial Power of Attorney

Managing Financial Decisions

- Financial Power of Attorney
 - “Principal” appoints an “agent” to have authority to make financial decisions
 - Principal does not relinquish authority
 - Authority can be broad or narrow
 - Agent must be trustworthy
 - Can have more than one agent concurrently or consecutively

Managing Financial Decisions

- Financial Power of Attorney (continued)
 - Principal must have “legal capacity” to sign the document
 - Document must be specific enough to allow third parties to accept document
 - Document can go into effect immediately or “spring” into effect at a later time
 - Principal has right to revoke
 - Power of attorney terminates when principal dies
 - Maryland POA law

Managing Financial Decisions

- Alternatives to Power of Attorney
 - Trust
 - Grantor appoints a trustee to manage assets
 - Assets must be titled in name of the trust
 - Trustee must be trustworthy
 - Trust may survive death of grantor
 - Joint Ownership
 - Gifting
 - Guardian of the Property

Managing Health Care Decisions

- Advance Directive
 - Living Will
 - Health Care Power of Attorney

Managing Health Care Decisions

- Problem: No one knows or is certain of your end-of-life wishes
- Preferred Solution: Living Will

Managing Health Care Decisions

- Health Care Advance Directive
 - Living Will
 - Allows you to express wishes regarding end-of-life decisions
 - Terminal Condition
 - Persistent Vegetative State
 - End State Condition (in Maryland)

Managing Health Care Decisions

- Health Care Power of Attorney
 - Problem: A spouse, relative or friend does not have legal authority to manage your health care if you are unable to do so yourself
 - Preferred Solution: Health Care Power of Attorney

Managing Health Care Decisions

- Health Care Advance Directive
 - Health Care Power of Attorney
 - “Principal” appoints an “agent” to have authority to make health care decisions
 - Principal does not relinquish authority
 - Authority can be broad or narrow
 - Agent must be trustworthy
 - Can have more than one agent concurrently or consecutively
 - HIPAA Authorization

Managing Health Care Decisions

- Alternatives to Health Care Advance Directive
 - Statutory “Pecking Order”
 - Guardian (if appointed)
 - Spouse or Domestic Partner
 - Adult Children
 - Parent
 - Adult Siblings
 - Others (must prove regular contact with patient)
 - Guardian of the Person

MOLST / POLST

- Medical Order for Life Sustaining Treatment
- Maryland Order for Life Sustaining Treatment
- Patient Order for Life Sustaining Treatment

MOLST / POLST

- MOLST is a medical record that is part of the patient's hospital chart
- Only a doctor can sign the form
- Intended to ensure health care instructions are followed
- Health care agent should discuss with doctor
- MOLST is also used as a DNR ("Do Not Resuscitate") order

Guardianship

- Person is incapable of making decisions
- Removal of person's civil rights to make decisions
- No less restrictive alternative

Guardianship

- Guardian of the Person
 - Decides health and welfare
- Guardian of the Property
 - Preserves assets and spends funds
 - May need to be bonded
- Guardian of the Person and of the Property can be the same individual
- Must file reports to the court

Guardianship

- Process
 - Two health care professions must certify person is incapable of making decisions
 - Court appoints an attorney to represent individual
 - Closest relatives must be notified
 - Most issues resolved at a “show cause” hearing
 - If not resolved, a trial is held
 - Emergency procedures possible if need is urgent

Questions

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