

ESTATE PLANNING

1. Estate Planning – What is it? Process of considering alternatives to ensure that your wishes are followed in the event of disability or inevitable death.
2. Includes financial goals and personal goals.
3. Financial – provides a plan for the disposition and/or control of your assets.
4. Personal – provides direction on how to carry out your wishes regarding healthcare, end of life medical treatment, and guardianship of minor children.
5. Most common estate planning documents
 - Planning for Incapacity
 1. Durable General Power of Attorney, and
 2. Advance Directive with Appointment of Health Care Agent.
 - Planning for death
 1. Last Will and Testament
6. Revocable Living Trust
 - “will substitute”
 - avoid probate
 - DOES NOT provide protection from any TAXES, including inheritance tax.
7. Durable General Power of Attorney
 - you select a person to act as your agent in financial and/or legal matters in the event you are unable or unavailable to do so
 - your agent has a “fiduciary duty” to act in your best interest
 - should be “durable” which means the document survives your disability
 - in MD, must list specific powers
 - recommend selecting a contingent person in the event the primary person is unable or unwilling to act
 - document does become “stale” after 3-5 years
8. What happens if I do not have a Power of Attorney
 - requires guardianship proceedings in Circuit Court
 - can be contested by any “interested person”
 - expensive in that it requires an attorney for the petitioner and an attorney for the disabled person
 - takes time for the guardianship to go through the court process
9. Advance Directive – one document accomplishes 3 separate tasks

- Appoints an agent to make health care decisions for you in the event you cannot
 - a. Effect of HIPPA – authorizes the disclosure of personal medical information to your agent
 - Provides doctors and hospitals with your instructions regarding the nature and extent of care you desire in certain medical situations
 - Provides specific instructions regarding organ donation
10. What happens if I do not have an Advance Directive
- Nothing to ensure that your wishes are followed
 - Health care providers obligated to provide the highest level of care available, even if that is not your wish
 - possible family conflict with regard to healthcare – the law gives certain individuals surrogate decision making authority
 - i. if no agreement, can require court involvement
11. Last Will and Testament – What exactly is it?
- the legal document wherein you make your final wishes known with regard to your assets
 - specific bequests of property to certain individuals (can include items with little or no economic value)
 - name a person to be responsible for carrying out your wishes as set forth in your will – in MD a personal representative (same as executor)
 - make charitable gifts
 - name a guardian for any minor children
 - establish trusts
12. How does the will work?
- after your death your will is admitted to probate
 - i. Legal process under supervision of Register of Wills and Orphans' Court
 - ii. validity of will
 - iii. debts paid
 - iv. assets distributed according to your wishes – provides method to change title on assets
13. The will does NOT control:
- v. Jointly owned assets
 - vi. Beneficiary designated accounts (life insurance, IRA's)
 - vii. Payable on Death accounts
14. Is joint ownership a reasonable estate plan?
- does not avoid probate, but merely postpones it
- A and B married, A dies, B now owns all jointly owned property. Unless someone else added to title, the property will go through probate at B's death

- i. Common scenario if B remarries and adds new spouse to title. When B dies, new spouse owns the property with NO obligation to include B's children.
- 15. Common problems with joint ownership
 - ii. Can inadvertently affect distribution scheme
 - iii. Subject property to the creditors of the joint owner
 - iv. Unintended tax consequences (capital gains)
- 16. What happens if I do not have a will?
 - MYTH – the state will take most of my estate
 - You have died “intestate”
 - Maryland law determines the disposition of your assets
 - i. ½ to spouse, and ½ to children
 - ii. first \$15,000 to spouse if no minor children
 - iii. spouse can be appointed your personal representative, but if challenged by another “interested person” the court may end up deciding
 - iv. children receive any inheritance outright at age 18
- 17. I am married, own most of my assets jointly with my spouse, why do I need a will?
 - GUARDIAN for minor children
 - Testamentary trust for the management of any inheritance to minors
 - Plan to avoid or minimize ESTATE TAXES
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- 18. Federal Estate Taxes - Economic Growth and Tax Relief Reconciliation Act. (EGTRRA of 2001 or 2001 Act)

A. Applicable Exclusion Amount

2002	\$1,000,000.00
2003	\$1,000,000.00
2004	\$1,500,000.00
2005	\$1,500,000.00
2006	\$2,000,000.00
2007	\$2,000,000.00
2008	\$2,000,000.00
2009	\$3,500,000.00
2010	REPEALED
2011	\$1,000,000.00

- 19. State of Maryland - \$1,000,000.00 State estate tax
- 20. Taxable estate vs. probate estate
 - Probate estate includes all assets in title only in the decedent's name
 - Taxable estate includes all assets in which the decedent had ANY interest (including LIFE INSURANCE)
- 21. How do I start to plan?
 - Consider your objectives concerning:

Who do I want to receive my assets?

Who do I want to manage my financial affairs?

Who do I want to make my medical decisions?

Who do I want to take care of my family?

- Investigate your current assets:

Current value?

Current form of ownership?

Current beneficiaries?