

ATTORNEY'S BULLETIN

PREPARING FOR YOUR FAMILY'S FINANCIAL FUTURE

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Whether your own one home or several. Have an elaborate financial portfolio or a simple savings plan, One thing is certain: You've worked hard for what you have. Along with asset ownership comes responsibility. Assets must be managed properly and maintained in such a way that in the event you die or become disabled your family will derive benefits with few administrative burdens and minimal court involvement.

Nonetheless, many people neglect to plan for this eventuality. Those who work diligently to create financial security for themselves and their families should recognize that an unplanned death may threaten a family's financial security and interfere with desired property distribution. A well reasoned estate plan developed with the advise of an attorney can help prepare for your family's financial security in the event of your death and ensure that your property is distributed according to your wishes. Two common estate planning tools are the revocable living trust and the will. The following narrative is a brief discussion about these two methods of property management and distribution.

THE REVOCABLE LIVING TRUST

A trust is created when the owner of property (the settlor/grantor) conveys that property to an entity or individual as trustee to hold pursuant to trust agreement for the benefit of a beneficiary (often the grantor or grantor's family member) Trusts may be used to accomplish a variety of objectives, such as: facilitating business transactions: supplementing an estate plan: and conveying property with flexibility. Although there are several types of trust, only the revocable living trust will be discussed here. Please consult our office to learn more about trusts and how they can benefit you.

As part of your estate plan, you may wish to consider establishing a revocable living trust. A revocable living trust typically has the following six characteristics.

- 1) Creation during the grantor's lifetime.
- 2) Appointment of a trustee to receive and hold legal title to property and thereafter, administer the assets of the trust;
- 3) Designation of beneficiaries;
- 4) Designation of the grantor as either trustee, beneficiary, or both;
- 5) Retention by the grantor of the power to amend to terminate the trust; and
- 6) Revocability during one's lifetime but irrevocable upon death.

The purpose of a living trust is to administer your assets during your lifetime and distribute those assets at death. The living trust constitutes the estate plan and can be used as substitute for a will. However, a simple “pour over” will may still be needed to direct that those assets of the grantor that were acquired after the creation of the trust and not transferred into the trust should be conveyed into the trust. In addition, individuals with minor children may wish to execute a will to designate a guardian for their children.

It is important to remember that revocable living trusts are not tax avoidance vehicles. Transferring assets into this type of trust will not reduce your federal income, estate, or gift taxes. A revocable living trust is not needed to dispose of assets held in joint tenancy or to distribute third-party beneficiary contracts such as life insurance policies, IRA accounts, or pension and profit plans. Moreover, if the grantor’s estate does not exceed the \$100,000 statutory minimum for a small estate and does not include solely-owned real estate, the benefits of a revocable living trust may be minimal.

Some primary reasons for creating a revocable living trust are as follows:

Probate Avoidance - Assets held in a living trust on the grantor’s death are not subject to probate administration. Probate avoidance may be convenient and can save the cost of administrator executor’s fees and attorney’s fees. A living trust however, is not without its own costs, particularly those associated with transferring property to the trustee.

Privacy - The use of a living trust creates privacy. A will is a public document that must be filed with the circuit court clerk upon death and can be read by anyone. A living trust, is not required to be filed in the public record.

Asset Management without Court Adjudication of Incompetency - If you become disabled due to mental or physical deterioration, a living trust may eliminate the need to seek a court adjudication of incompetency and the appointment of a guardian for your estate. The trust agreement may contain a provision that deals with the contingency.

To give property to a spouse, child, charity, or some other person or entity. This disposition may be appropriate where the property is being given to a competent adult or non-profit corporation.

Establish a Testamentary Trust (a trust that does not come into existence until after death). As part of the probate of the will, property will be conveyed into this trust and managed by a trustee for the benefit of the persons or entities designated in the will. This type of arrangement may be beneficial where the property is being used to care for minor children or a disabled spouse.

Designate a person or persons known as guardians, to care for any minor children and manage their financial affairs. If not such direction is made in a will or other document approved under state law and both parents of the minor child are deceased, the court will appoint a person or persons to act as guardian(s) for a minor child to minimize the effect of estate and gift taxes.

A well reasoned estate plan developed with the advise of an attorney can help prepare for your family’s financial security in the event of your death and ensure that your property is distributed according to your wishes.

Dying without a Will

In the absence of a will directing the manner in which property is to be distributed and naming a representative to manage the property and affairs of the deceased, a court will appoint a representative and apply state distribution

laws. For instance, if you die without having created a valid will, then you have died intestate. In Illinois your property will pass to your heirs according to the rules set forth in Illinois Compiled Statutes that deal with descent and distribution of an intestate's property. This means that your property may not be distributed in the manner you would have chosen.

Example: Jane is married to Bill and has two minor children. Jane owns real estate titled in her name alone. However, Jane's intention is that upon her death the real estate would belong to Bill. If Jane dies without having created a will, under Illinois law the real estate will pass according to the statutory rules of intestate descent and distribution as follows: 1/2 to Bill and 1/4 to each of the minor children. In Illinois, minor children can hold title to property but they cannot convey or mortgage their property unless a court appoints a guardian to act on their behalf. This means that if Bill ever needs to sell or mortgage the real estate, he will have to go to court and ask that a guardian be appointed for the minor children. Bill would be entitled to only 1/2 of the sale proceeds. The other 1/2 of the sale proceeds would go to the children.

If Jane had died after having created a will, she would have died testate. She could have directed in her will that 100% of the real estate be distributed to Bill. Bill would be the 100% owner and entitled to all the sale proceeds. Bill would then be able to sell or mortgage the property without the hassle of another court proceeding.

Other Consideration

It is not always necessary to dispose of property by will. Some types of property, including real estate, bank accounts, and mutual funds, may be owned jointly by two or more people each of whom have a right of survivorship. A right of survivorship allows a surviving joint owner to automatically succeed to the interest of deceased joint owner. There is no need for a direction in a will to transfer survivorship property to the survivor.

It is important to remember that the manner in which a valid will is created and interpreted is determined by the law of each state. We can help you prepare a valid will and ensure that the language used in the will is appropriate to accomplish your estate planning goals.

Effective estate planning requires careful examination of your values, goals, assets, and family needs. Please contact our office for assistance in developing an appropriate estate plan for you.