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MISSOURI ESTATE PLANNING GUIDE

The importance of having professionally drafted estate planning documents cannot be overstated. A Will, Trust, General Durable Power of Attorney, and Durable Power of Attorney for Health Care and Health Care Directive may be the most important legal documents that you and your family will ever encounter. It is not enough to simply tell your relatives how you'd like your assets distributed or who you want to raise your children. All of those instructions must be included in your formal estate planning documents that meet all the requirements of Missouri law. It's human nature to be uncomfortable talking about end-of-life decisions, but it is critical that you do so. Becoming seriously ill or passing away without the proper estate planning documents places unnecessary expense and stress on family members, and forces them to go through a lengthy and time-consuming Probate Court process. Creating your estate plan not only provides for your care, but is ultimately a selfless caring act that preserves your property, provides for your heirs, and makes the administration of your estate as simple as possible for the loved ones you leave behind.

If you already have an estate plan in place, we recommend reviewing those documents on a regular basis, at least every 3-5 years, and in particular, upon the occurrence of any life changes (e.g., divorce, separation, marriage, birth of additional children, an increase in your estate value, death or illness of anyone named, change in your relationship of anyone named, etc.) If any changes need to be made, the necessary amendments can easily be drafted by our office. Many people come to us with an estate plan that was drafted some time ago by another attorney, and they've forgotten what the documents even say. Our office can perform a review and analysis of those documents, explaining their meaning to you in simple language, and also suggesting any needed changes or updates.

Our law office handles all aspects of estate planning, and we look forward to answering any questions that you may have. Please don't hesitate to call or email us at your convenience. Our goal is to make this an easy and smooth process for everyone who walks through our doors.

As a quick overview, there are several common estate planning documents that our office recommends every person have in place. Each of them are separate pieces in the estate planning puzzle, and they all interlock to complete your estate plan:

1. **Will** - This is a legal document that states how you want your property distributed upon your death. It is also the only place where you can name a Guardian to care for any minor children that you leave behind. Note that having just a Will does not avoid Probate Court (you need a Trust to do that.) See the "Will" topic

heading below for additional information.

2. **Revocable Living Trust** - This is a more advanced, and very popular, estate planning document that sets forth how your property will be managed and distributed both during your lifetime and upon your death. A Trust deserves your consideration as it has numerous and substantial money-saving advantages over just having a simple Will, including the avoidance of Probate Court. See the “Revocable Living Trust” topic heading below for additional information.
3. **General Durable Power of Attorney** - This is a document wherein you appoint a person or persons as your agent to act for you in all legal matters. It is mainly used to help in the event of your illness or disability, or in a situation where you can't be present to sign necessary legal documents. The person you appoint as your agent has the legal authority to speak for you, make decisions for you, and sign your name to all legal documents (checks, contracts, etc.). See the “General Durable Power of Attorney” topic heading below for additional information.
4. **Durable Power of Attorney for Health Care and Health Care Directive** - This document appoints an agent (usually a close relative or friend) to make medical decisions for you if you're unable to make them on your own. It also sets forth your end-of-life medical directives, e.g., your wishes on the withholding or withdrawing of medical treatment when there is no expectation of your recovery from a terminal illness or injury and you are unable to communicate those wishes on your own. See the “Durable Power of Attorney for Health Care and Health Care Directive” topic heading below for additional information.

Other Estate Planning areas that our office handles are:

1. Review, analysis and amendment of all Estate Planning Documents;
2. Guardianships;
3. Estate tax planning and protection;
4. Beneficiary deeds;
5. Transfer on death (TOD) / payable on death (POD) provisions;
6. Planning to avoid Probate Court; and
7. Life insurance and general insurance planning.

Our office initially consults with a client to determine their particular needs and desires. Based on that meeting, we will provide recommendations and explain the advantages of those recommendations. We tie together all aspects of your estate plan, and provide you with detailed follow-up instructions on any action that needs to be taken in the future.

We recognize that planning for the inevitable can be extremely difficult. We handle all estate planning matters with compassion, professionalism and with a personal touch that we believe sets our office far above the rest. While no one likes to plan for unfortunate events, the amount of money, stress, uncertainty and confusion that it will save you and your family in the future makes a properly drafted estate plan well worth its weight in gold many times over.

The remainder of this Guide provides more in-depth information on each of the four estate planning documents mentioned above.

WILL

A Will is a legal document that spells out how your assets are to be distributed upon your death. If you're the parent of minor children, it is the only place where you can also legally name their Guardian (the person who will raise them upon your untimely passing). Without that Guardian appointment in your Will, a court will appoint someone without your wishes being considered.

It should be noted that a Will alone does not avoid Probate Court - - it would ordinarily take a Revocable Living Trust to accomplish that.

The advantages of having a Will include the following:

1. You decide to who, how and when your property is to be distributed;
2. You can nominate a Guardian of your minor children; and
3. You can name a Personal Representative (a/k/a Executor), the person responsible for carrying out the directives set forth in your Will.

If you are married, both you and your spouse will need separate Wills. Missouri does not allow joint Wills.

REVOCABLE LIVING TRUST

A Revocable Living Trust is a very popular advanced estate planning document that acts as a vehicle to manage and protect your assets as you age and then distributes those assets after your passing. The vast majority of people who come to our office end up going this direction and drafting a Trust as their primary estate planning document. The Trustee (manager of the Trust) holds, manages, and distributes your Trust assets as directed by the terms of your Trust. You are usually the sole beneficiary and Trustee of your Trust during your lifetime and are free to use the Trust assets as you deem fit. You do not lose any control over your property by creating a Trust.

After your passing, the Trust assets are then distributed per your directions as set forth in that document. The Trust is considered “revocable” as its terms can be amended, changed or revoked by you at any time prior to your incompetency or death. The Trust is also “living” because you make it during your lifetime. Most people create Trusts to avoid their assets being forced to go through Probate Court, thus reaping the resultant savings in Probate fees and costs.

By drafting a Trust, you create a separate legal entity to hold your assets. During your lifetime, you are usually the trustee of your Trust and retain complete control over those assets. The Trust then provides your specific direction as to what happens to your assets after your passing. E.g., they are either distributed outright to beneficiaries or continue to be held in the Trust for a beneficiary (e.g., until they reach a certain age or upon the happening of a certain event). You decide how and when your assets will be distributed, and also decide who to appoint to manage your Trust assets should you be unable to handle that role on your own due to incapacity or death. We will extensively discuss your wishes during our initial meeting, our office will offer suggestions, and we will incorporate all of your decisions and wishes into your Trust.

There are two steps to the creation of a Trust. The first is the actual drafting, creation and signing of that Trust. Thereafter, the second step is transferring your assets into that Trust (the “funding” of your trust). Titled property such as bank accounts, stock accounts, real estate and the like must be retitled in the name of your Trust (again, you lose no control over the property by doing so). This is usually not complicated or difficult and it takes little time to accomplish. Our office assists with the entire funding of your Trust, provides detailed instructions, and is there to painlessly guide you through this process.

If you are married, and hold most of your assets jointly, a single joint Trust may be appropriate for the both of you rather than two separate Trusts. This will be discussed in detail during our initial meeting.

Trusts are no longer just for the “rich and famous,” but are now very common estate planning documents utilized by the average person. As set forth below, a Trust has many advantages over a simple Will that may tip the scales in favor of a Trust. It is up to you to ultimately decide whether a Trust is appropriate for you and your family, and our office is glad to assist you in that decision.

ADVANTAGES OF A REVOCABLE LIVING TRUST OVER A SIMPLE WILL

1. Probate Avoidance. Probably the biggest potential advantage of a Trust, if properly drafted and funded, is that it will keep your estate out of Probate Court. Property owned by your Trust at the time of your death is not required to go through Probate Court, and thus won't be subject to that 6-18 month cumbersome

and expensive process. Knowing that your heirs will avoid the stress, aggravation and frustration of a complicated Probate Court process gives most people peace of mind and is the biggest factor that makes many people choose a Trust.

2. Substantial Money Savings. Avoiding Probate Court usually results in substantial money savings for your estate (and thus your beneficiaries). The cost of administering a Trust after your death is usually much less than taking a Will through Probate Court. If you don't have a Trust, and your estate is required to pass through Probate Court, the following Probate fees would usually be charged and deducted from your assets. The charges are based on the total value of assets needing to go through Probate Court (real estate, bank accounts, investments, retirement plans, cars, business ownership interest, etc.):

<u>Total Value of Your Assets</u>	<u>Probate Fees</u>
\$50,000	\$3,600
\$100,000	\$6,600
\$200,000	\$12,100
\$300,000	\$17,600
\$400,000	\$23,100
\$500,000	\$28,100
\$600,000	\$33,100
\$700,000	\$38,100
\$800,000	\$43,100
\$900,000	\$48,100
\$1,000,000	\$53,100
\$2,000,000	\$93,100
\$3,000,000	\$133,000
\$4,000,000	\$173,000
\$5,000,000	\$213,100

A Trust will completely eliminate these fees thus placing that much more money in the hands of your beneficiaries. As a result, this is one of the main reasons that most people elect to draft a Trust as their primary estate planning document.

3. Immediate Distribution of Assets Upon Death. A Trust allows property to pass to your heirs immediately upon your death rather than requiring them to wait the 6-18 months that it takes for non-trust assets to pass through Probate Court.
4. Privacy. A Trust is a private document not open to the public. If you only have a Will, after your death, your Will is required to be filed with Probate Court along with a list of your assets. Many of those documents are open to the public for

inspection, including by nosy neighbors and scavenging sales people. A Trust is not filed with the court and is not a public document. In addition, a Trust, because of its privacy, may make it more difficult for disgruntled heirs and creditors to challenge the distribution of your assets.

5. Tax Savings. Depending on the size of your estate, a Trust can be used to reduce or eliminate estate taxes.
6. Asset Management Upon Incapacity. A Trust provides for continuity and back-up financial management during your lifetime, particularly in the event of your disability or incapacity. A Trust designates a person as the successor trustee to take over the management and administration of your Trust assets upon your incapacity. The successor trustee then assumes all of the administration powers that you held, including the ability to manage money, write checks, pay your bills, all on your behalf. While you are incapacitated, the successor trustee's sole responsibility is to use your trust assets to provide for your needs. No distributions are usually made until after your passing.
7. Avoid the Appointment of a Guardian or Conservator. A Trust may avoid the necessity of guardianship or conservatorship proceedings over you if you become incapacitated or disabled and are unable to manage your own financial affairs. As discussed in the previous paragraph, the successor trustee will assume control of your assets at that point in time and will manage them for your benefit as long as your incapacity lasts.
8. Avoid Multiple State Court Proceedings. A Trust may avoid the necessity of ancillary probate proceedings in another state. If you own property in another state, that property may be subject to an additional, costly and inconvenient probate process in that other state. If the property is owned by your Trust at the time of your death, there is usually no need for such a process.

Nevertheless, after having touted the benefits of a Trust, a Trust may not be needed by everyone. The best way to determine whether a trust would be beneficial for you and your family is to discuss the particulars of your situation with our office. We will explain to you all of the nuances and pros and cons of such a trust in the context of your particular situation.

GENERAL DURABLE POWER OF ATTORNEY

A "Power of Attorney" is a document wherein you appoint a person to act as your agent on all legal matters. An agent is a person who has authority to legally act for another person. Making a Power of Attorney "durable" means that it is still effective even after your incapacity. These

documents are primarily used to help in the event of your illness or disability, or in a situation where you can't be present to sign necessary legal documents.

A General Durable Power of Attorney (DPOA) is a highly recommended document that assists your family and friends should you become ill or incapacitated. It allows the person you appoint to handle all of your affairs, including signing checks, paying bills, making deposits, signing contracts, managing your assets, dealing with benefit providers, dealing with your health insurance and social security, and many other functions. All acts of the agent you appoint are legally binding on you, just as though you performed the acts yourself. If you do not have a DPOA, another person (even your spouse) does not automatically have the right to sign legal documents for you. Once you become incapacitated, it is too late to draft a DPOA - - it must be drafted and signed in advance of any incapacity.

DPOAs are very powerful documents that are a recommended part of every estate plan. An effective DPOA must be carefully worded. Furthermore, you should use great care in the selection of the agent you appoint. Remember, you are entrusting the care and management of your well-being and property to this agent. Usually only spouses, children and close relatives/friends are appointed in this capacity. Our office is glad to advise you on these issues and answer any questions that you may have.

If you are married, each of you will have your own separate DPOA.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE AND HEALTH CARE DIRECTIVE

A Durable Power of Attorney for Health Care and Health Care Directive appoints an agent (usually a close relative or friend) to make medical decisions for you if you're unable to make them on your own. It also sets forth your end-of-life medical directives, e.g., your wishes on the withholding or withdrawing of medical treatment when there is no expectation of your recovery from a terminal illness or injury and you are unable to communicate those wishes on your own (that portion is sometimes called your "Living Will" or "Advance Directive").

How you draft your Health Care Directive drafted is a very personal decision. These documents are custom tailored to meet the needs and desires of each individual client. Many individuals come to the conclusion that they do not want any extraordinary life-prolonging procedures performed on them if they are persistently unconscious or if there is no reasonable expectation of their recovery. Others may want to specify certain procedures or treatment they desire. The decision as to the particular wording and drafting of this document is something that our office will discuss in detail with you taking into consideration your beliefs and wishes, including your faith or religious views on this issue, if applicable.

Health Care Directives have received much attention in the news in the past years due to the Terri Schiavo court case. Terri did not have a Health Care Directive. If she had executed one of these documents, the endless court battles would probably not have occurred as her wishes would have been clearly expressed along with naming someone who had the legal authority to speak for her. Just like a DPOA, usually spouses, children or close family/friends are appointed in that role. This is something that you should discuss with the person you intend to appoint to make sure they're comfortable in that role. If you are married, each of you will have your own such document.

Drafting a detailed Durable Power of Attorney for Health Care and Health Care Directive ensures that the medical treatment you receive will meet your wishes. Second, the existence of this document almost always removes a great burden from your relatives who would otherwise be faced with an extremely difficult decision at a time when they are already very emotionally upset and traumatized.

Our office is well versed in the law surrounding health care directives, can answer your questions and guide you through this sometimes complex maze. After a thorough consultation with you, your document will be drafted to meet your specific needs.

**OTHER DOCUMENTS THAT MAY ALSO BE
DRAFTED AS PART OF YOUR ESTATE PLAN
(we will discuss these in greater detail at our consultation)**

Other documents that are routinely drafted as part of your estate plan, and may be applicable to your situation, are:

- A Certification of Trust
- An Assignment of Personal Property into your Trust
- Instructions for Distribution of your Personal Property
- HIPAA Medical Authorizations (to allow your doctors to speak to your agents)
- Beneficiary Designations
- Affidavits to correct the titling of real estate
- Real Estate Deeds
- A Memo to Loved Ones (information left for those you leave behind)

A NOTE ABOUT ESTATE AND GIFT TAXES

Estate Taxes (e.g., Death Taxes):

For 2019, the Federal Estate Tax Exemption is set at \$11,400,000 for individuals and \$22,800,000 for married couples. These amounts are scheduled to increase each year with inflation until 2025. On January 1, 2026, the exemption amounts are scheduled to revert to the 2017 levels of \$5,490,000 for individuals and \$10,980,000 for married couples. This exemption allows an individual or married couple upon their death to pass an estate valued under the above amounts to their descendants completely federal tax free. E.g., as long as your total estate is under that threshold, there will be no estate or death taxes imposed - - the inheritance will be tax free. The State of Missouri uses the above federal exemption limits, so neither will there be an estate/death tax imposed on a state level if you're under those limits. Nevertheless, if you relocate to another state, different states may impose their own Estate/Death tax that may be different than Missouri. Please note that the U.S. Congress and State Legislatures can change these exemptions as they deem fit, so please keep apprised on this issue as it could affect your estate plan.

Gift Taxes:

Each person may give \$15,000 per year to as many individuals he or she desires without incurring a gift tax and without using any of their gift tax exemption. Married couples can combine their gift tax exclusion and jointly give \$30,000 per year to as many individuals as they wish. You can still gift more than that sum on a yearly basis, but you will have to file a gift tax return with your personal tax return and your lifetime gift tax exemption may be reduced accordingly.

INITIAL INFORMATION NEEDED TO DRAFT ESTATE PLANNING DOCUMENTS

You'll need to make many decisions in order to allow our office to customize your estate planning documents to your particular needs. While you don't need to stress about immediately getting all of this information together, it's good to review the items below as it allows you to begin the process of formulating your thoughts as to how you'd like your estate planning documents drafted. All of these decisions are very involved and are well beyond a simple "fill in the blank" form. Our office will talk through all of these matters at our drafting appointment and discuss the implications of any decisions you make. Nevertheless, it will be helpful for you to give some thought to the questions below:

Will & Trust

1. Who you'd like to appoint as the Personal Representative ("Executor") in your Will and who

you'd like to list as backups to that main person. Usually spouses appoint each other as the main PR. You can list as many backups as you like. Our office recommends at least 2 backups.

2. If you have minor children, who you'd like to name as the Guardian of those children should each of their parents pass away while they are under age 18. Please provide backups to that main person. Our office recommends at least 2 backups.
3. If you're drafting a Trust, who you'd like to name as the successor Trustee (backup trustee) to handle and distribute your Trust assets after you and your spouse both pass away or become incapacitated. Again, please provide at least 2 backups.
4. Generally, how you'd like your assets distributed upon your death. Usually spouses will give everything to the other spouse upon their passing, but consider a situation where you both pass at the same time or your spouse has already predeceased you. Think of everyone you'd like to provide for, and please think about a secondary or contingent distribution plan in the event that a particular beneficiary predeceases you (e.g., do you want that gift to go to someone else, down to the deceased beneficiary's children, or to lapse and revert back and increase the shares of the other living beneficiaries.)
 - A. Note that children under 18 cannot receive money outright. If you're planning for children or young adults, what age or ages would you like the children to receive money outright? Rather than giving the entire gift to children at a certain age, many people prefer to spread it out over several years (e.g., 1/3 at ages 25, 30 and 35 or 1/2 at 25 and 30 - or at any ages and percentages that you prefer.)

General Durable Power of Attorney

1. Who you wish to name as your Agent in your Durable Power of Attorney (usually spouses appoint each other). Please provide at least 2 backups.

Durable Power of Attorney for Health Care & Health Care Directive

1. Who you'd like to name as your Agent to make health care decisions for you if you're incapacitated and unable to communicate those on your own (usually spouses appoint each other). Please provide at least 2 backups.
2. What health care directives do you wish to leave for your Agent if you are persistently unconscious or there is no expectation of your recovery from a terminal injury or illness? E.g., do you wish to be put on a respirator, CPR, surgery, given tube feeding, etc.? Don't worry, as this is a complicated topic, we'll spend some time discussing this issue.
3. Do you wish to be an organ donor? If so, are there any restrictions that you wish to place on this donation?

Please bring full names, addresses and telephone numbers of all the above individuals you wish to name in your estate planning documents. I'll need to get those from you at our drafting meeting.

Don't worry if you don't have answers to all of these questions or if these questions raise other questions you'd like to ask - - we'll talk through all of this at our appointment. If need be, you'll leave the appointment with a "To Do List" of items you need to think about and get back to me on.

Our office looks forward to discussing these matters with you and/or answering any questions that you may have. You're invited to call us on the telephone with any questions or to set up an initial consultation where we can delve into your needs and options in much greater detail. We look forward to hearing from you and being of service!!

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