**ESTATE PLANING 101**

**BY: WILLIAM G. MORRIS, ESQ.**

I get a lot of questions about estate planning. Most of them are about the most basic components. Even though clients have met with other attorneys in the past, they tell me they never really got a good explanation of estate planning documents. This column will hopefully fill that gap.

The first question is what is estate planning? It is the process of managing one’s assets during life and making arrangements for transfer of assets at death. The lifetime part is important, as it includes investing, and keeping good records and preparing documents to make sure that assets are maintained during one’s incapacity.

What do I need is often the next question. Need depends on what someone wants to do with their assets, but most people “need” the following documents.

A power of attorney is a document by which someone authorizes another person to act in his or her place. It can be as broad or narrow as desired. Powers of attorney can be used for specific real estate transactions but for estate planning we generally want to grant very broad authority to someone as we don’t know exactly what will be needed in the event our client becomes incapacitated.

A power of attorney deals with financial and contractual issues. One of the most important reasons to have a power of attorney is to grant someone authority to deal with insurance companies in the event medical treatment is needed and the person granting the authority is unable to act. A power of attorney ceases to be usable when the principal cannot act, unless the terms of the power make it durable. A durable power of attorney continues through incapacity of the principal. All powers of attorney and with death of the principal.

If someone becomes incapacitated, it can be important that they have appointed another person to make medical decisions for them during their incapacity. Florida has a strong public policy that allows everyone to make their own medical decisions, even if the decision is foolish. Sometimes we are not able to make those decisions (i.e. stroke, coma). A person can appoint another to make medical decisions by creating a Designation of Health Care Surrogate.

A Health Care Surrogate is authorized to make medical decisions, as broadly or narrowly as the principal authorizes in the Designation. Since we are never sure exactly what decision might be needed, we generally recommend our clients grant broad authority. But the decision is up to the client to place someone in position to make quick decisions that may be needed.

We strongly recommend not appointing a group to make medical decisions, even if our client wants to pick all of the client’s children to work as a committee. If the committee disagrees, resort to court may be needed to appoint a guardian to make decisions. If the committee takes too long, their decision may be irrelevant.

Most people want a Living Well. A Living Will expresses one’s desire not to be kept hooked up to machines if there is no reasonable medical probability that the person will recover and have any quality-of-life. A Living Will is not a “do not resuscitate,” which must be obtained from a doctor.

In case someone might ever need a guardian, Florida also allows creation of Designation of Pre-Need Guardian in which’s one can express preference for guardian in the event that a guardian is appointed by the court. We try to keep our clients out of guardianships because they are cumbersome and expensive, but if one is needed this document helps limit arguments among family members and others about who should be appointed. It is not binding on the judge, but is persuasive.

A Will is a document by which a person directs distribution of assets after death and who is to do the distributing. Drawback to a Will is the Will forces assets through probate. Probate is a court administered process which requires application for authority and issuance of Letters of Administration to authorize accessing assets. After Letters are issued, the appointee (known as a Personal Representative) goes about marshaling assets, notifying creditors of the decedent’s death and must follow steps required by statute and court rules.

People gifting assets usually want to make the process as easy as possible for the beneficiaries. That makes a Revocable Trust a good option (also known as Revocable Living Trust and Living Trust). In a Revocable Trust, the person establishing the trust usually appoints himself or herself as a trustee to hold assets “in trust.” The trust provides the person establishing the trust can do whatever that person wants with assets in the trust during that person’s lifetime. The IRS understands the nature of these trusts, and Has rules that say the person continues filing tax returns with the person’s Social Security number.

The trust provides direction for distribution of assets when the person establishing trust dies and who is to act as the successor trustee. Assets transferred into the trust are considered owned by the trust and that is why they avoid probate. Death certificate for the person establishing the trust is the key which opens the door for the successor trustee access assets and the successor trustee does not have to go through probate unless an asset was left out of the trust.

Understanding estate planning documents is a good step in the process of estate planning. Also important are consultation with an expert, explaining one’s intent for assets after death and working with the expert to craft a plan that meets that intent, whatever it might be.

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