

ESTATE PLANNING 101

Presented By Attorney Amber L. Desselles

CHURCHILL, QUINN, HAMILTON & VAN DONSELAAR, LTD.

INTRODUCTION

- An estate plan is comprised of legal documents created to predetermine the disposition of a person's property upon his or her death. The ideal estate plan ensures that a person's intentions are fulfilled and that he or she can pass the maximum amount of assets to beneficiaries while incurring the least amount of taxes and costs. If a person dies without a formal plan, his or her assets will instead be disposed of according to state statutes.
- When considering an estate plan, many issues need to be addressed:
 - What assets do I own?
 - Who should inherit my assets?
 - How should my assets be split up?
 - When and how should my assets be transferred to my beneficiaries?
 - What are the differences between (and advantages of) a last will and testament, a revocable or irrevocable living trust, and a testamentary trust?
 - What is probate?
 - What are the responsibilities of an executor, trustee or guardian?
- Only an experienced attorney who specializes in estate planning should draft your documents. My job is to counsel you through the estate planning process in order to achieve and execute the most advantageous plan for you and your beneficiaries.

VOCABULARY

- AGENT – The person you choose to act on your behalf with regard to property or healthcare decision-making using a Power of Attorney document. Also referred to as “Attorney-in-Fact”
- BEQUEST – Money or property received by an individual or organization through a Will.
- BENEFICIARY – Someone who inherits assets
- CODICIL – An amendment or addition to a Will
- DECEDENT – The person who has died
- EXECUTOR – The person named in the Will in charge of carrying out the Testator’s wishes
- GRANTOR – The creator of the trust, also known as the “Trustmaker,” the “Trustor” or the “Settlor”
- HEIR – The statutory term for someone who is the legal “next of kin” (related)
- INTESTATE – The term for dying without a Will
- LAPSE – A bequest that is extinguished if the beneficiary dies before the decedent.
- LEGATEE – Someone who is specifically named in an estate plan to receive a benefit (does not have to be related)
- PER STIRPES – A bequest that is divided equally between a deceased beneficiaries’ descendants. In Illinois, this is the default way of distribution.
- PRINCIPAL – The person creating a Power of Attorney & appointing another to act on their behalf
- SUCCESSOR – The person named as “next in line” to act as a fiduciary
- TESTATE – The term for dying with a Will
- TESTATOR – The maker of the Will
- TRUSTEE – The person in charge of managing the Trust

PROBATE

Probate is the formal legal process by which the decedent's assets are distributed to heirs or legatees.

If there is no Will, the court will appoint an Administrator of the Estate and assets are distributed via the "Intestacy" statute to the decedent's heirs at law.

If there is a Will, the court appoints an Executor to administrate the Estate and assets are distributed according to the Will to the legatees.

The Probate Process is typically around 8-12 months for a simple estate but can last much longer.

Illinois law requires an Attorney to probate an Estate (cannot be done "Pro Se.")

On average Probate costs families between \$4,000.00 - \$6,000.00.



ESTATE PLANNING TOOLBOX

- Living Trusts
 - Revocable & Irrevocable
- Wills
 - Last Will & Testament
 - Pour-Over Will
- Small Estate Affidavit
 - Can be used to avoid Probate where certain requirements are met
- Transfer on Death Instrument
 - Also referred to as a “TODI”
 - Allows for automatic transfer upon death
- Powers of Attorney
 - Finance
 - Healthcare
- POLST
 - Portable Medical Order (DNR)

DO I NEED A WILL OR A TRUST?

WILL

- Ensures assets are passed to designated beneficiaries in accordance with the Testator's wishes
- Named Executor oversees the distribution
- Can name a Guardian for minor children
- Effective only at death
- Must be Probated

TRUST

- Ensures assets are passed to designated beneficiaries in accordance with the Trustmaker's wishes
- Named Trustee oversees the distribution
- Can name a Guardian for minor children
- Effective upon funding
- Avoids Probate

TRUSTS

- Trusts grant authority within the document to the Trustee to access assets titled in the Trust, thereby avoiding the need for Probate
- Appoints a “Trustee” to administer the Trust
- Can have specific distributions of Trust assets and/or “remainder beneficiaries” who divide what remains after specific distributions have been made

WILLS

- Can be used to ensure the Testator's final wishes are adhered to
- Appoints an "Executor" to administer the Estate
- Does not in itself grant authority - Must be Probated to get "Letters of Office" which grants Executor his/her authority
- Can have specific bequests and/or "remainder beneficiaries" who divide what remains after specific distributions have been made
- Will must be filed with the County Clerk where the decedent was domiciled within 30 days of death

POUR-OVER WILL

- Used in conjunction with a Trust
- The beneficiary of a Pour-Over Will is a Trust – The Will “pours over” into the Trust
- Generally used as a clean-up document for any assets that were not transferred into the Trust prior to death
- Must be filed with the County Clerk where the decedent was domiciled within 30 days of death

SMALL ESTATE AFFIDAVIT (SEA)

- Allows access to assets without the requirement of Probate
- Only permitted where the total assets of the decedent are less than \$100k AND the decedent owned no real property (real estate)
- Typically used to access bank accounts and to transfer vehicles

TRANSFER-ON-DEATH INSTRUMENT (TODI)

- Used to transfer interest in real property upon the owner's death
- Drafted similar to a deed and recorded with the County Recorder's office
- Beneficiary must file an acceptance after the death of the owner to complete the transfer
- Can be used to avoid Probate in smaller estates

POWER OF ATTORNEY – HEALTHCARE

- Statutory
- Grants broad authority to appointed Agent to handle healthcare matters – Agent has access to all medical records
- Can have successor agents but not co-agents
- Effective upon signing, terminates upon death (survives for limited purposes of authorizing organ donation, autopsy and disposition of remains)
- Ensures Principal has a choice in court-appointed Guardianship matters

POWER OF ATTORNEY – PROPERTY / FINANCE

- Statutory
- Grants broad authority to appointed Agent to handle financial matters
- High potential for abuse
- Effective upon signing, terminates upon death
- Can have successor agents, but not co-agents
- Ensures Principal has a choice in court-appointed Guardianship matters

POLST (PORTABLE MEDICAL ORDER)

- DNR – Used in conjunction with the Healthcare Power of Attorney
- Instructional – allows for specificity in wishes
- Completed with Healthcare Provider
- Always voluntary

EXPERIENCE MATTERS

- Located on the same street corner for over 100 years, and serving Lake County for over 120 years, Churchill, Quinn, Hamilton & Van Donselaar, Ltd. has earned its reputation as a firm that combines large firm expertise with the attractive atmosphere of a smaller practice.
- The strong foundation and vast history of Churchill, Quinn, Hamilton & Van Donselaar, Ltd. are testaments to the Firm's ability to remain dynamic, flexible and responsive to all of our valued clients.
- With CQHV on your team, you can rest assured that we will be around for all your current *and future* Estate Planning needs.