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## Summary of Important Estate Planning Considerations

Many clients ask us what estate planning documents they should have, and why. Here's a brief summary. There are basically two areas to be concerned about:

1) What if you have an accident, or become ill, and you don't die, but you become incapacitated and can't make decisions for yourself, either temporarily or permanently? We suggest three documents:

First - a financial power of attorney. You name someone (an agent), and perhaps an alternate, to step in and handle any and all financial decisions, such as accessing your bank accounts, paying for medical or custodial care expenses, pay on-going bills like your mortgage, income taxes, etc. The agent would also have authority to handle investments, sell your house, and do just about anything else you could do regarding your financial affairs.

Second - a health care power of attorney (also sometimes called a health care proxy). You name an agent to make any medical or personal decisions you can't make for yourself. This could include accessing all medical records, consenting to treatment or surgery, placement in a hospital or nursing care facility, and all other medical decisions. You do not need to be terminally ill for the health care power of attorney to be in effect. It would be effective whenever you are unable to make medical or personal decisions for yourself.

Third - a living will (also known as an advance directive). This document doesn't appoint an agent. It is simply a declaration of the nature and type of care you would want if you were terminally ill, in an irreversible coma, or in a persistent vegetative state. This document typically says that you would not want to be CPR, to be fed through IV tubes, or other "heroic measures". This document is designed to provide guidance to your doctors and/or your health care agent(s). But, again, it's only applicable in limited situations.

2) The other estate planning issue is determining distribution of your assets in the event of your death. Many documents can affect this, including life insurance policies, IRA or pension plan beneficiary designations, jointly owned assets, your Will, or a Trust. If you don't have a Will, state "intestacy" statutes must be considered. "Probate" administration may or may not be required, depending upon the nature and amount of your assets. Here are the important points:

First - A designation of beneficiary for a particular asset will be controlling for that asset. Most life insurance policies, IRAs, annuities, and 401(k) or pension/profit sharing plans require you to specify a beneficiary in the event of your death. Many people also add POD (payable on death) designations to bank or brokerage accounts. If the named beneficiary(s) are living at the time of your death, these designations will be controlling - even if they are contrary to the terms of your Will.

Second - Most jointly owned assets will pass to the survivor when the first owner dies. This applies to bank accounts, vehicles, and also to real estate if the ownership is "with rights of survivorship". Again, the joint ownership designation is controlling, even if contrary to your Will.

Third - Many people, especially those with large or complicated estates, put their assets into a Revocable Living Trust. The Trust is a separate legal entity which takes title to the assets. You typically start out as Trustee, managing the trust assets, but you designate a successor trustee to take over in the event of your death or disability. The Trust contains instructions to the successor trustee as to how to manage or distribute the assets. Since you no longer own the assets (the trust does), the assets are not subject to probate or the terms of your Will in the event of your death. A Trust is similar to a Will in that it can also contain special provision for the distribution or management of assets after your death.

For the most part, all of the foregoing are revocable - you can change the disposition of your assets at any time prior to your death. They also typically avoid probate - the judicial process of administering your estate after your death.

Fourth - Your Will (or the state intestacy statutes) determines the disposition of the remainder of your property. Your Will names a Personal Representative to handle the administration, and can provide:

Specific items to go to specific people.

Defined amounts of money to go to specific people, or to charities.

Disposition of "the residuary" of your estate to a named beneficiary - or in percentages to various beneficiaries.

On-going trusts for minor or disabled beneficiaries.

Finally, it is necessary to say a word about probate. Unless your estate (that portion which is subject to the terms of your Will) is small (less than \$50,000 in Arizona), your estate will need to go through probate after your death. This is the judicial procedure of winding up your financial affairs. Assets are collected; property is sold; debts, expenses of last illness, and other bills are paid; final income tax returns are prepared and filed; and assets are distributed in accordance with your wishes. Creditors claims are cut off after a four-month publication period. Probate is not nearly so expensive, so time consuming, or so evil as some persons would have you believe. With occasional exceptions (generally when family members are fighting over the estate, there are tax issues, or there are assets that are difficult to sell), most probates are efficient and orderly.