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Estate Planning Options

Everyone needs a complete estate plan. You're probably not surprised to hear me say that; after all, I'm a lawyer who makes her living helping people plan their estates. My purpose in providing you with the following information is to acquaint you with some key elements in an estate plan and demonstrate how a modest investment in estate planning documents can save you and your family a great deal of money, time, and heartache.

Before I proceed, however, I need to define "estate plan." When some people hear the word "estate," they think of an English Tudor home tucked in a beautifully landscaped countryside with horses grazing nearby and a luxury car parked in the circular driveway. That's not what I mean. Everyone who owns any property at all has an estate. Actually, your estate is anything you own: your car, your bank account, or that English Tudor home. Estate planning, then, involves planning to take care of yourself and your property, both during your life and after your death.

I am very concerned about the number of people who do not have a complete estate plan. Not planning can have very serious consequences, some of which I will later discuss. There are several reasons why people do not have an estate plan. The primary reason is that people do not want to think or talk about disability and death. They suspect that planning for disability and death will make them happen. Actually, the opposite is true. People who are able to confront their fears openly and honestly are physically, psychologically, and spiritually healthier, and therefore less likely to die or become disabled, than those who procrastinate planning because of their fears, because unresolved conflict can produce illness.

Another major reason why people do not plan is because they think that planning will cost them a fortune. In reality, a thorough estate plan is a modest investment compared to all of the costs that can occur without any kind of plan. Costs are greatly increased if a person fails to plan or plans improperly, because legal fees are expensive. Thousands of dollars are lost to families because of inadequate or improper planning.

Another reason why people don't plan for the future is because they don't know how they want to arrange their affairs. No decision is a decision, though. If you don't make arrangements for yourself, someone will have to make them for you, and who makes these arrangements and how they are made may not be to your liking. Many people find that just getting started with their estate plan helps them decide what to do.

PLANNING FOR DISABILITY

As previously mentioned, estate planning involves planning for the care of yourself and your property during your life and after your death. First I will discuss legal planning to provide for you during your life.

Statistics tell us that the younger a person is, the more likely that person is to become disabled than to die. Therefore, a complete estate plan includes planning for disability. Planning for disability involves providing for both personal care and the management of property. Several approaches are used for these purposes: guardianships, durable powers of attorney, trusts, and health care directives.

Guardianships

A guardian is a person, association, or corporation appointed by the probate court to manage the personal and financial affairs of an incompetent adult or an Ohio resident who is under age eighteen years. (The probate court is the division of the county common pleas court that is responsible for adoptions, guardianships, marriage licenses, and managing estates after a person dies.) An incompetent adult is a person who is (1) so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that he is incapable of taking care of himself or of his property, or fails to provide for his family or for other persons for whom he is charged by law to provide, or (2) confined to an Ohio penal institution.

A guardianship is initiated when a person interested in the ward's situation applies to the probate court to be appointed guardian. (The word "ward" refers to the person for whom the guardianship is needed.) The interested person for a guardian of your finances must be a resident of Ohio unless selected by a minor over fourteen years old.

After the interested person has applied to the court for appointment, at least seven days notice of the time and place of the hearing on the appointment of a guardian must be given to the allegedly incompetent person and his or her next of kin to enable them to respond to the application. Before the hearing, an investigator from the probate court will investigate the circumstances of the alleged incompetent and file with the court a report of the investigation. At the hearing, clear and convincing evidence is required to prove that the appointment of a guardian is necessary.

A guardian of the estate generally must purchase a bond, which is a type of insurance policy that protects the ward's estate from losses. If the guardian misuses the ward's estate, the bonding company will repay the ward's estate for the amount of the loss.

After a guardian is appointed, the guardian must file with the probate court within three months of his or her appointment an inventory of the estate of the ward. In addition, the guardian must file a yearly account of the ward's finances and a report on the ward's condition.

A guardianship of an incompetent adult may be terminated under several situations. First, death of the ward terminates the guardianship. Second, if the value of the estate becomes less than $25,000, the guardianship may be terminated. If an estate does not exceed $25,000 in value, the ward's property may be deposited in a bank or other financial institution authorized to receive fiduciary funds in the name of a suitable person designated by the court. Third, if the disability ceases, the guardianship may be terminated upon proof that the disability no longer exists.

Durable Powers of Attorney

A power of attorney ("POA") is a written document that authorizes another person, who is called your agent or attorney in fact, to perform acts on your behalf during your life. Death terminates a POA. A POA is a private arrangement that gives another person authority to make decisions for you. That authority can be as broad, narrow, general, or specific as you want it to be. In other words, you can authorize your agent to do many things for you, or you can limit the authority of your agent to only a few matters. Your POA can relate to only financial and property matters, or the POA can also contain personal care provisions. For example, a POA can give another person the authority to manage your business and investments, conduct banking transactions, employ advisors, buy and sell assets, file tax returns, deal with retirement plan benefits, nominate a guardian for you, and continue a program of gift giving, to name a few of the powers that you can give your agent.

Assuming that you do not need a POA if you are married is a common but dreadful estate planning mistake. If you are married, you do not automatically have legal authority to handle personal and financial matters for your spouse. A married person therefore needs a POA as much as a single person.

A POA that does not become ineffective if you become incapacitated is called a durable POA. Under current Ohio law, a POA signed after March 22, 2012, is durable unless otherwise specified.

You can design your POA so that your agent has authority to act upon your behalf (1) when you sign the POA, (2) only when your doctor decides that you are unable to make decisions for yourself, or (3) upon a certain date.

Because a POA is a private arrangement between you and another person, the probate court does not have to be involved. Thus, there are no accounts to file, no bond to post, and no ongoing attorney fees to pay. A general durable POA can be an inexpensive and easy way to avoid guardianship. Your estate plan would be incomplete without a general durable POA.

Trusts

Another private arrangement that can provide for the management of your property is a funded trust. There are many different types of trusts, such as living, testamentary, revocable, and irrevocable trusts. A testamentary trust is usually created in a will and becomes operative when you die. A trust that is set up separate from a will during a person's life is called a living trust. The most common and popular trust is the revocable living trust ("RLT"). (I limit my discussion of trusts in this article to RLT's.) An RLT is created by signing a written document called a trust agreement. The RLT is funded by transferring ownership of property to the trustee of the RLT. No minimum amount of money or property is required to set up an RLT.

The trustee is the owner and manager of the trust fund. Generally, the trustee is responsible for investing the trust assets, collecting the trust income, distributing funds to beneficiaries, and other administrative duties. A person or financial institution can serve as the trustee. Most people act as their own trustees and then designate successor persons or a financial institution to take over as trustee when they are no longer able to serve as their own trustee.

Having an RLT is particularly useful when you have transferred all of your property to your RLT, because if you become incapacitated, your trustee can just continue managing your trust property for you. Your trustee would not, however, have authority over any of your property that was not put into your RLT.

An RLT is called revocable because you have the power to change or terminate the trust during your life. It is called a living trust because it is established and becomes active during your life, as opposed to some trusts that become active only upon your death.

Generally, an RLT is involved in managing only your property. Therefore, I recommend that if you set up an RLT to manage your property, you also give someone POA's to manage your personal affairs and health care if you become incapacitated.

A significant difference between RLT's, guardianships, and POA's is that RLT's generally do not end when you die, while guardianships and POA's do. An attractive feature of the RLT is that the property in the RLT does not need to go through probate after your death. I will talk more about that later, but I mention avoiding probate now to point out that an RLT can serve the dual purpose of managing your property both before and after your death.

Comparison of Guardianships, Powers of Attorney, and Trusts

I have presented three methods for managing your personal care and property if you become incapacitated. Each method has advantages and disadvantages. A comparison of these will hopefully clarify which approach is best for you.

Precisely discussing costs is difficult, but I can give you a general idea of what you can expect to pay. Costs of an uncontested guardianship will start at approximately $3,000.00 for court costs and attorney fees. Uncontested means that who serves as your guardian and whether a guardianship is appropriate for you are not disputed. If the guardianship is contested, the attorney fees will increase considerably. A major cost involves the bond that the guardian has to post. An agent under a POA and a trustee of an RLT generally do not have to post bond, however.

Attorney fees for a durable POA generally start at approximately $150.00. There are no probate court costs. There may be a nominal fee to record the POA in the county recorder's office if recording the document is appropriate in your case.

Attorney fees and recording costs for setting up a simple funded RLT will start at approximately $2,000.00. Although no probate court costs are involved in setting up an RLT, trust companies do charge fees for their ongoing trust services if you choose a financial institution as trustee. Because fees for RLT's vary widely depending upon the nature and extent of your property and whether you are single or married, costs for RLT's are the most difficult to estimate.

Another difference involves accountability. A guardianship is a public proceeding, while POA's and RLT's are private arrangements, which can be both good and bad. Because a guardianship is a public proceeding, a judge declaring you incompetent may be humiliating for you and your family. Not that the judge is going to shout his decision from the courthouse roof, but the probate files are public documents that any person can read. You may not want just anyone to have access to your personal and financial information. Also, your guardian will have to submit an inventory to the court disclosing the

nature and extent of your assets and subsequently account to the court for every expenditure made on your behalf. Again, this may not be information that you want publicly disclosed.

At the same time, however, the accountability required of a guardian or institutional trustee can be good. When you set up a private arrangement like a POA or RLT that does not require any account, your agent or trustee may take advantage of your finances. Recent newspaper articles have exposed the financial abuses that vulnerable people have suffered at the hands of others in both the guardian and POA contexts. You may never have this problem if you carefully choose your agent or trustee, but you should know that it could happen at a time when you are helpless to do anything about it.

Generally a guardianship is established because an incompetent person has not made other arrangements for his or her care. Someone, whether a family member or other interested party, has to come forward and ask the court to be appointed as guardian. Ohio law does not say who that person should be; the law only says an interested party. Therefore, the court may appoint a guardian who you would not otherwise choose. Also, if your family disagrees about whom should be chosen as your guardian, a family dispute could increase the court costs and cause friction in the family. This is in contrast to having a POA or an RLT in which you have chosen the person who you want to act on your behalf. You can, however, choose your guardian in a POA if you like the guardianship concept.

Another difference involves residency requirements. Because a guardianship is a court proceeding, court rules must be followed. One rule is a residency requirement. The guardian of your finances must be an Ohio resident, but the guardian of your person need not be an Ohio resident. Although, there are no residency requirements for an RLT or POA, residency may be a practical consideration. Your agent or trustee living in reasonable proximity to you would probably be more convenient for both of you.

Another difference involves the amount of money that you have. Previously I mentioned that a guardianship may be terminated if the value of the estate becomes less than $25,000. No minimum amounts are necessary for a POA or an RLT, however. In fact, the less you have, the more you need a POA. A RLT may be terminated if the value of the assets in the RLT is less than $100,000 unless the RLT contains language prohibiting the termination.

Yet another difference involves a guardian's scope of authority. Guardians have been given certain powers by the laws of the state of Ohio. Beyond those laws, the guardian must look to the probate judge for authority to act on your behalf. In contrast, the authority of your trustee or agent primarily depends upon state law and the document creating the relationship. In many cases, the trustee and agent have more freedom to act.

A final difference involves continuity. If you have signed a POA or an RLT, your agent or trustee can step in and provide management and care for you right when needed. A guardianship is obviously not as speedy because a court proceeding is involved.

I don't know whether I sound like I favor one of these methods over the other. Persuading you to choose one plan over the other is not my goal. The only way that you can choose what is best for you is to sit down with your attorney and review the unique circumstances in your life. Because everyone is different, I could not prescribe a particular plan for you before knowing more about you, just like a doctor could not prescribe medication before knowing the nature and extent of your illness. My main

goal is to encourage you to discuss these matters with your advisors so that you can best provide for your future if you become disabled.

Moving on from managing your financial affairs to directing your medical and physical care during your life, health care directives are important documents to include in your estate plan.

Health Care Directives

Most people would prefer not to think about the possibility of a life or death decision having to be made for them if they are in a terminal condition or permanently unconscious state, but putting those closest to us in the unfortunate position of lacking the knowledge or authority to make such a decision would be far worse. In addition, the extent of your health care can have a significant impact upon your financial resources. Therefore, health care directives are an essential part of a complete estate plan. A health care directive is a written document containing your wishes about your health care. Ohio law has created several kinds of health care directives; this article discusses those and some others.

A living will is a written document in which you declare your intentions regarding the use of life-sustaining treatment if you become terminal or permanently unconscious. A living will usually directs that life-sustaining medical treatment be withheld or withdrawn if a you are unable to make informed medical decisions and are terminal or permanently unconscious.

A health care power of attorney is a written document that authorizes another person to make health care decisions for you when you become unable to make them for yourself. The scope of the health care power of attorney is much broader than that of the living will because the health care power of attorney permits the authorization of medical treatment in situations other than terminal conditions and permanently unconscious states.

A Do Not Resuscitate ("DNR") order means CPR is not administered. A DNR order must be issued by a physician and is not self-executing by means of any patient document. DNR identification is a card, form, or patient document, necklace, or bracelet and signifies either (1) the person has an operative living will authorizing withholding of CPR or (2) a physician has issued a DNR order.

The Authorization to Disclose Protected Health Information ("HIPAA") form is a written document designed to protect your personal health information. With this form, you can declare which persons are authorized to receive your relevant medical information at any time. This authorization can help those designated within your health care power of attorney to make informed decisions regarding your heath care. Without this authorization, your agent may be denied access to important information concerning your health.

The advance medical directive form is a written document that allows you to specifically identify your wishes regarding the use of life-sustaining medical treatment if you become unable to make such decisions for yourself. This form provides the opportunity to choose or reject specific treatments--thus enabling you to narrowly define any general decisions made in your living will. While your doctor will not use this form to make medical decisions against his or her professional opinion, the form can help your doctor and agent understand your wishes in complicated situations.

I recommend that you have health care directives and not include health care provisions in your general durable POA. First, most people do not want their desires with respect to various forms of health care to gain the exposure that often occurs with a general durable POA. Second, you may want a different person to make health care decisions for you than the person who takes care of your financial matters. Third, a busy doctor may not have time to read through a lengthy document before making a critical decision about your health care.

The standard forms for each health care directive are available through our office. We will gladly customize your health care directives if the standard forms do not properly reflect your wishes; however, I encourage you to use the standard forms if they do reflect your values because these forms will be easily recognized by health care providers, avoid any delays caused by interpreting personalized documents, and reduce legal fees.

These documents are an aid to understanding your choices if you become incompetent; they should be used to supplement, not replace, communication among you, your family, and your physicians. You should discuss your wishes about your health care with your family and doctors and give each of your doctors a copy of each of your health care directives.

PLANNING FOR DEATH

I now change the focus of this article from planning for disability to planning for death. I first want to briefly address the subject of premarital agreements because they can significantly affect the distribution of your property when you die.

Premarital Agreements

A premarital agreement is a contract between two people who plan to get married. The contract is made before and in contemplation and consideration of marriage. Such agreements are generally made by people who wish to provide for children of a previous marriage or who have accumulated substantial wealth. The typical premarital agreement alters the statutory property rights and interests of a surviving spouse and provides for the support and maintenance of the spouses and their children.

Because the subject of this article is estate planning, I limit my discussion of premarital agreements to how they affect the way your property is distributed when you die. First, I would like you to refer to the chart you received, entitled "State of Ohio, When a Person Dies Without a Will, Property Descends and is Distributed as Follows." This chart demonstrates how your property will be distributed after your death if you die without a will. As you can see, if you are married when you die and your spouse survives you, your spouse will not automatically receive all of your property if you die without a will and your spouse is not the natural or adoptive parent of all of your children.

Many people who have married again after the death or divorce of a previous spouse want to leave all of their property to their children and none to their new spouse. Ohio law prohibits that, however, without a premarital agreement because Ohio law gives that new spouse certain property rights in your estate just by virtue of your marriage, even if you have a will that does not give anything to your new spouse. The most significant right is the statutory share, which is either one-half or one-third of your estate, as the chart shows, depending upon how many children you have. Other marital rights include the $40,000 allowance for support and the right to receive two cars, trucks, or motorcycles, the combined value of which is under $40,000. The answer, then, if you want to be sure that your children

or other beneficiaries receive all of your property is to have a premarital agreement and a will disinheriting your new spouse. Premarital means before marriage, so the document must be signed before you get married. If you are considering marriage or remarriage, I urge you to read the book, *Prenups for Lovers*, by Arlene G. Dubin, and talk to your attorney about whether a premarital agreement would promote your best interests.

Although a premarital agreement may not affect your estate plan, how your property gets distributed to your loved ones after you die definitely will. Your property can be distributed a number of ways after you die. The four most common ways are by owning property as joint tenants with rights of survivorship, designating beneficiaries on assets, setting up a funded trust, and going through the probate court, with or without a will. Several of these methods usually affect each person's estate plan.

Joint Tenancy With Right of Survivorship

Many people own property as joint tenants with rights of survivorship ("JTWROS"). Most commonly, husbands and wives have joint bank accounts and survivorship deeds to their homes. When one of the spouses dies, the interest of the deceased person ("decedent") automatically passes to the survivor and avoids probate. Owning property as JTWROS avoids probate in the estate of the first spouse to die, but if both spouses die in a common disaster, the property must be probated. Probate has gotten a lot of negative publicity in the past; some of it is justified, some of it is not. Because probate involves court costs, attorney fees, and sometimes delays in distributing assets to beneficiaries, avoiding probate can be advantageous in many cases. I do not, however, recommend the indiscriminate use of JTWROS just to avoid probate, and I usually oppose JTWROS arrangements between parents and children because of possible problems with taxes and creditors.

Furthermore, many people unintentionally disinherit loved ones because of JTWROS arrangements. If you are considering adding another person's name to any of your bank accounts or other property, please talk to your attorney before doing that so your attorney can review the pros and cons with you and help you make a fully informed decision.

Beneficiary Designations

Another method of passing property to your survivors is through beneficiary designations on assets such as life insurance, pension plans, annuities, and IRA's. Your attorney should review beneficiary designations with you and help you coordinate them with your estate plan. You should designate at least one contingent beneficiary in addition to a primary beneficiary. This is especially important for (1) life insurance, which is not included as a taxable asset of your estate for Ohio estate tax ("OET") purposes if the life insurance is paid to a named beneficiary, and (2) retirement benefits, the beneficiary of which has serious and sometimes irrevocable income tax consequences. Beneficiary designations are among the most important but neglected estate planning tools because they usually involve substantial amounts of money. If you have designated minor children or relatives as beneficiaries, you should establish arrangements such as a custodianship or trust so that proceeds that are payable to a minor will not require a legal guardian to be appointed, which would involve extra court costs and legal fees.

Trusts

Another method of passing property after you die is through a trust set up either in (a testamentary trust) or outside (a living trust) of your will. You may need a trust if you want to minimize federal estate taxes ("FET"), regulate the conditions upon which your beneficiaries receive property from you, or avoid probate. The 2015 FET individual exclusion amount is $5,430,000, indexed for inflation. The Ohio estate tax was repealed effective January 1, 2013.

Depending upon the size of your estate and plan for distributing your assets after your death, FET savings may be achieved with a trust. Having a trust does not in and of itself, however, eliminate FET liability. If you (1) are married and give all of your property to your surviving spouse or (2) give your estate to charity, the marital and charitable deductions can reduce the FET liability to zero.

Perhaps the most attractive advantage of having a trust is that you have more control over how your property is distributed to your beneficiaries. For example, you can postpone distributions to people until they reach a certain age or if they are incompetent, handicapped, or financially unstable. You may not want your twenty-five year old daughter who was born to shop to receive all of her inheritance at once, but if you do not set up a trust, she will receive all of her inheritance at one time when you die.

I have already described the advantages of an RLT for the purpose of planning for disability. An RLT also has significant advantages with regard to passing property after you die. (Having an RLT does not mean, however, that you do not need a will. Your will is still your basic estate planning tool. You need a will to provide for contingencies not controlled by or included in your RLT.)

One advantage of an RLT over a testamentary trust is that the property that you transfer to your RLT is not subject to probate administration after you die. Because legal title to your property is held by your trustee when you die, your trustee can settle your estate without having to get approval from the probate court. Therefore, the cost of settling your estate and delay in distributing your assets to your beneficiaries are usually reduced. Generally, your assets can be distributed much sooner if you have an RLT than they can when your assets must be probated. Furthermore, when your estate avoids probate, the value of your assets and distribution of your estate are not matters of public record because your RLT is a private arrangement. This protects the privacy of the beneficiaries.

Controlling the state law that governs your RLT is another advantage. This would usually be the state in which you live, but if the laws of some other state would favor your estate plan, you can designate a different state's laws to govern your RLT.

Probate

A final method of passing property upon your death is through probate, with or without a will. If you own your property individually, not as JTWROS, not in an RLT, and without a beneficiary designation, your property will have to go through probate to be distributed after you die, whether or not you have a will. I have already discussed how property passes to your surviving spouse and children if you die without a will. If you are not survived by a spouse, the chart also shows how your property will be distributed if you die without a will.

What is probate? It is a legal proceeding to determine the decedent's assets, their value, and the method of distribution to heirs. Probate takes place in the probate court of the county where the decedent resided. Probate is necessary to protect the decedent's assets for the estate heirs, creditors, and beneficiaries. Probate enables (1) paying the decedent's debts, taxes, and administration expenses; and (2) distributing the remainder of the decedent's estate to its beneficiaries.

Probating an estate requires appointing a person to conduct the administration of the estate. If there is a will, this person is usually named in the will and called an executor. If there is no will, this person is appointed by the probate court and called an administrator. The executor or administrator may be a person, bank, or trust company.

The executor or administrator handles the following tasks: protecting the decedent's property; receiving payments and income due the estate; collecting debts, claims, and notes due the decedent; determining the names, ages, residences, and degree of relationship of all heirs; investigating the validity of all claims against the estate and paying all outstanding obligations including federal, state, and local estate and income taxes; planning for federal and state taxes; carrying out the instructions of the probate court pertaining to the estate; and distributing the assets of the estate to the beneficiaries. The probate court judge supervises the work of the executor or administrator.

These actions require preparing and filing numerous legal documents, publishing notices, attending court hearings, appraising the assets, completing income tax and possibly gift and estate tax returns, inventorying and accounting for funds, and transferring assets to beneficiaries. The average estate administration usually lasts no more than one year, although an extraordinary case involving a contested will or complicated tax litigation may take several years. Because of the complexity of these procedures, the assistance of an attorney usually is needed.

If the total value of all property in the decedent's individual name is less than $35,000, the estate can be relieved from most of these administrative requirements. Nevertheless, although all of the assets may avoid probate, a FET return will have to be filed if the decedent's gross estate is $5,430,000 or more, indexed for inflation, in 2015.

Wills

A will is a written document in which you designate how you want your property and personal affairs to be handled after you die. Your will has no legal effect until you die. In your will, you name who you want to (1) receive your property, (2) care for your children if they are minors or incapacitated when you die, and (3) serve as executor--the person who is responsible for settling your estate. You can also include in your will a statement of your spiritual beliefs, values, and other personal sentiments that may comfort and encourage your loved ones after your death.

To be valid, your will must be a written document that you have signed at the end of the document in the presence of two witnesses. Therefore, oral promises, unwitnessed letters, and names taped onto objects do not have any legal effect. Your witnesses should not be related to you or named in your will in any way, such as beneficiary, guardian of minor children, or executor. You must be of sound mind and not acting under any restraint when you sign your will. Sound mind means that you are able to understand what you are doing. Not acting under any restraint means that you are signing your will freely and voluntarily because you want to, not because anyone or anything is making you sign your will.

If you already have a will and want to change or revoke it, please talk to your lawyer about how you should do that because you cannot just change your will by writing on it. Changes have to be made in a very special way, just like signing your will. The same goes for revoking your will. If you have a will, don't like it, and don't want it anymore, please ask us how to revoke your will.

A will may be the only document or one of a number of documents in your testamentary estate plan. For example, if you retain complete ownership of your property--that is, you make no other arrangements that will control how your property passes when you die--your will is your testamentary estate plan if the will disposes of all of the property that you own. On the other hand, if you have established various other property arrangements (such as JTWROS, RLT's, or beneficiary designations on assets), very little of your property may pass under your will. In that event, your will may not be a very significant document in your estate plan, but your will is still a necessary document because you do not know how and under what circumstances you will die. If you are married, you and your spouse need wills.

If you die without a will, the state has written one for you by what is called the law of descent and distribution. This law is illustrated by the chart that accompanies this article. Although the distribution on this chart may be what you would have chosen anyway, there are other important reasons why you still need a will, such as appointing your executor and guardian for your minor children and dispensing with bond for these persons, which can be quite costly.

Planning for Your Children

Planning for the care of your children following your death involves several considerations. First, you should decide who will have physical custody of your children. This person is called the guardian of the person of your children. The person and alternates who you choose should be those whose values and lifestyles most nearly resemble yours. They may or may not be family members. They can live out of state. Whoever they are, I urge you to discuss this decision with your children and the people who you have in mind. This is often the most difficult decision that parents face when they are deciding on the guardianship provisions in their wills. Being a parent myself, I share your feeling that no one is as capable as you are of nurturing your children. However, please do not let indecision in this area keep you from doing your will. I suggest that if you absolutely cannot decide on the guardian for your children, omit that provision from your will, because having an incomplete will is far better than having no will at all.

Second, you need to choose the means by which you want the property you give to your children to be managed and distributed. You have three options: guardian of the estate, custodian under the Ohio Transfers to Minors Act, or trustee under either a testamentary trust in your will or an RLT. (The person who you choose for this role can be the same individual who is the guardian of the person of your children.)

The guardian of the estate of your child's property would be responsible for protecting your child's property, using your child's property for your child's benefit, and paying your child's bills until your child's eighteenth birthday. At that time, the guardian distributes the child's remaining property to the child. Until a child's eighteenth birthday, the probate court supervises the guardian's activities. The guardian must periodically file a financial account describing how the guardian managed your child's property. Furthermore, the guardian must post bond to protect your child's property if you die without a will.

Like the guardian of the estate, an Ohio Transfers to Minors Act custodian would be responsible for using your child's property for your child's benefit, paying your child's bills, and so on. However, the custodian usually does not have to post bond or account to the probate court. Additionally, the custodian can hold the child's property until the child's twenty-first birthday.

The trustee of a trust would also be required to use your child's property for your child's benefit. The advantage of having a trust is that you choose at what ages and upon what conditions you want your children to receive their property; therefore, you can delay distributions to your children until the time when they are more likely to be financially responsible. The trustee of a testamentary trust in a will would have to make periodic accounts to the probate court, which would involve court costs and attorney fees in the ongoing administration of the trust. The trustee of an RLT, however, would not have to account to the probate court because an RLT is a private arrangement. Neither a trustee in a testamentary trust nor a trustee of an RLT would have to post bond if the document creating the trust dispenses with bond.

After you decide upon the guardians for your children and how their inheritance will be managed, you should consider whether the guardian would need funds from your estate in order to assimilate your children into the guardian's home or purchase a larger motor vehicle to accommodate your children. Therefore, you may want to consider a monetary gift from your estate or trust to the guardian so that the guardian is not burdened financially by caring for your children.

Funeral and Burial Instructions

Another important aspect of your estate plan that can have a significant financial impact upon your estate is the type of funeral and burial that you want. You should discuss these matters with your family and provide written, signed instructions regarding your wishes. (I do not recommend including these matters in your will.) You should consider the emotional needs of your family. They may not care whether you are cremated or where you are buried; on the other hand, they may care a great deal.

Included in your written instructions could be whether or not you want to be cremated, what mortuary you prefer, what kind of funeral service you desire, who you wish to serve as pallbearers, where you want to be buried, and what kind of gravestone you want. You may even want to write your obituary. If you don't care at all what arrangements your family makes, your family should know that, too, so that they can be assured that they are doing what you wanted.

The Right of Disposition of Remains form is a written document that gives you the opportunity to designate a representative to be in charge of your funeral and burial arrangements after you die. This form is necessary even if you have prearranged and prepaid your funeral. The last page of our form is an optional form that you can use to declare specific wishes and instructions regarding your funeral and burial to your designated representative.

I am amazed at how little thought most people put into planning their own funerals! During our lives, we spend an enormous amount of time planning our weddings, vacations, and other events. But when we die, we delegate to others the details of the last event that could make the most significant statement about our lives. What a lost opportunity!

One of the major reasons why you should plan these matters well before your death is that they can cost a significant amount of money. Just like grocery shopping on an empty stomach can increase your food bill, making such decisions at a time of emotional distress can also cost much more.

You can get more information and guidance about funeral planning at the following resources: *www.funerals.org*; *www.nfda.org*; and from helpful books such as *At Journey's End: The Complete Guide to Funerals and Funeral Planning* (Fatteh, Health Information Press); and *The Profits of Death* (Roberts, Five Star). *"Always go to other people's funerals; otherwise, they won't come to yours."* --Yogi Berra

Letter of Instruction

The best written legal documents are worthless if they cannot be located when they are needed. Therefore, you should not only sign appropriate legal documents but also organize your personal and financial paperwork and advise your agents and executors where to find the paperwork. If you need a resource to help you get organized, I recommend the "Homefile Financial Planning Organizer Kit," which you can purchase through our office. You should also write a letter of instruction to the people who will assist you during disability and after death. Because you do not know under what circumstances illness or death may occur, having your affairs in order can be one of the best gifts that you give to your family.

Gifts

Planned gift-giving is a great opportunity to both control the size of your estate for estate tax purposes and benefit your loved ones and favorite charities before your death. One person can give away $14,000 per year in 2015 to any number of people without incurring any federal gift-tax consequences, and a married couple can give away $28,000. In addition, in 2015 each person can exclude $5,430,000, indexed for inflation, in lifetime gifts. Gifts exceeding these amounts are subject to gift tax that must either be paid by the donor or credited against the donor's lifetime FET exclusion amount. In addition there are a number of charitable gift alternatives that can provide significant income tax and estate tax advantages. I cannot stress strongly enough, however, that you should consult your accountant or attorney before making gifts of appreciated property, such as stock or your home. I say this because some people want to deed their property to their children before they die in order to avoid probate and estate taxes, but in doing so, when the children sell the home, the children may incur capital gains tax that is significantly greater than any probate costs or estate taxes that the children would have otherwise paid.

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