

ESTATE PLANNING

Estate planning involves discussion with your attorney and other advisors, decisions regarding your personal and financial affairs in the event of your death or disability, and the preparation of a Last Will and Testament, Trust, General Power of Attorney, Durable Power of Attorney for Health Care, Living Will and other necessary documents to carry out your wishes.

Last Will and Testament. The primary purpose of a Last Will and Testament is to assure that your property is distributed as you wish after you die. A Will also controls the way your heirs receive their bequests to take advantage of substantial tax savings. Good estate planning can result in a Will that can save thousands of dollars in Federal Estate taxes.

You should review your Will and other estate planning documents every 3 to 5 years to make sure that they still address your wishes and take into account the changes in your life situation. We can provide timely advice that may mean big savings and avoid problems after you die.

What is a Will? A Will is a written document that directs the distribution of your property at death, states who will care for and distribute your property and names a Guardian to care for your minor children.

Your estate plan will include a Last Will and Testament, a General Power of Attorney and a Durable Power of Attorney for Health Care / Living Will.

What happens if you die without a Will? Iowa law determines who receives your assets if there is no Last Will and Testament. According to these laws, your property will be distributed to your relatives based upon their relationship to you.

A Last Will and Testament may be made by anyone who is 18 years old or married, and of sound mind. The Will must be written and you will need to sign it in the presence of two witnesses who are at least 16 years old, who also sign the Will in your presence and in the presence of each other; you must tell the witnesses that it is your Will. Although not legally required, the Will may be notarized so that it is not necessary to find the witnesses and ask them to sign a document after you die. You should have an attorney prepare the Will for you to make certain that it is valid and that your estate is distributed as you desire.

Your Will should name an Executor who will carry out the provisions of your Will, plus an alternate or substitute Executor if your first choice is not able to serve. If you do not name an Executor who is willing and able to serve, the Court will appoint an Executor for you. You may have more than one Executor, but at least one of the Executors should be an Iowa resident.

Under your Will, you may direct the distribution of property as you wish, except you may not completely exclude your spouse from receiving any of your assets. If your Will excludes your spouse, the law gives him or her the right to take a certain percentage of the assets.

A Will that has been properly prepared and signed is good until it is changed or revoked. Cir-

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cumstances such as marriage, divorce, birth, adoption, death or changes in the law may require an addition or correction. These changes may be documented in a Codicil which must comply with the same requirements as the original Will. If the changes are substantial, you will likely be required to completely redo the Will. You may change your Will as often as you wish, as long as you are of sound mind. You may revoke your Will by cancelling it or destroying it, or by executing another Will.

Your Will goes into effect when you die and it is filed for Probate with the local Court. Your property is not affected by the Will until it is filed for Probate.

What is Probate? Probate is a formal Court procedure that occurs after your death and serves the following purposes:

1. It allows the transfer of clear title to property that you own at your death which was not held in joint tenancy with someone else who had the right of survivorship and does not have named beneficiary (such as a retirement plan or life insurance).
2. It allows your Will to be established as your official Will in order to dispose of your Estate.
3. It allows your Estate to be distributed to your intended beneficiaries after the payment of all debts, charges, taxes, and cuts off further claims by your creditors against your property. In some situations, your Estate may avoid Probate; however, certain documents may need to be filed and taxes paid to properly finalize your affairs. You should contact us if you have any questions about Probate.

A Will does not increase Probate expenses. In fact, a Will may even save Probate expenses because less Court involvement is required. A well-drafted Will and a proper estate plan may save your family substantial costs and taxes. A good estate plan may also eliminate several other potential family problems.

Certain assets are not controlled by a Will.

1. Life insurance benefits will be paid by the Company to the named beneficiaries, regardless of the terms of your Will, unless you designate your Estate as the beneficiary.
2. Your IRA, 401(K) and other retirement funds will be paid to the people whom you have named as beneficiaries.
3. Assets that are owned as joint tenants with full right of survivorship, such as real estate, bank accounts and other property, will pass to the surviving Co-owner, regardless of who you have named as beneficiaries under your Will.

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A Living Trust which has been properly drafted will avoid Probate if all of your assets are properly titled in the Trust at your death. If you have a Living Trust, you should also have a Will which will control assets that may have been left out of the Trust. For example, if you have a Trust and receive a check from an investment just prior to your death, a Will may be needed to direct the distribution of said funds through your Trust.

You should contact our office to discuss the specific details of a Last Will and Testament and Living Trust.

The cost of a Will can vary depending on the complexity of the Will and the extent of your assets. We will be happy to give you an estimate of our fees.

General Power of Attorney. A general power of attorney appoints someone to take care of your personal business and financial affairs. The person whom you appoint is called your "attorney in fact". You can name more than one person to serve in this capacity, or you can name your primary choice with a successor or alternate attorney in fact. A general power of attorney can be plenary, meaning it authorizes the attorney in fact to take care of all of your personal business and financial affairs, or you can limit the authorization to certain specific activities, such as the execution of a mortgage and other documents necessary for a real estate closing.

A general power of attorney is a very important and inexpensive tool, particularly if you become disabled. We advise all of our estate planning clients to execute a general power of attorney.

A Living Will, also called an "Advanced Care Directive", sets forth your personal wishes regarding your medical care. The standard Iowa State Bar Association form essentially states that in the event you have a terminal condition and are not expected to live very long, your health care provider shall not use artificial life support to keep you alive.

There are other variations of the living will. We can provide you with alternatives and discuss your choices.

Since these documents involve health care decisions, you may also wish to consult with your primary physician or someone else in the health care profession.

A Durable Power of Attorney for Health Care gives another person the authority to act on your behalf and make health care decisions in the event of your incapacity. Federal law requires medical facilities to inform all patients, prior to admission, of the right to sign a living will or health care power of attorney.

The health care power of attorney can be exercised only in the event you are unable to make your own health care decisions. As long as you are mentally able to make health care decisions, the person whom you appoint will have no such authority.

As with the general power of attorney, you should nominate an alternate or successor attorney in fact in the event that your first choice is unable or unwilling to serve.

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