

A Legal Update

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COURT APPOINTS BUSINESS PARTNER AS GUARDIAN OVER OBJECTIONS OF SPOUSE AND CHILDREN! DOES EVERYONE NEED AN ESTATE PLAN?

Estate planning is the process of taking care of your affairs so that your property is managed by or transferred to your spouse, children and other loved ones in accordance with your wishes. It often requires a combined effort between you and professional advisors such as lawyers, accountants, insurance agents and financial planners. Proper planning could have prevented the business partner from becoming guardian and taking control away from the wife and children. In such circumstances the execution of a simple Durable Power of Attorney will often prevent the turmoil faced by this family. To avoid such problems and for many other reasons most adults should have an estate plan that includes one or more of the following documents:

◆ *Will*

A Will is a document written with the formalities of law that allows you to personalize the distribution of your property. Without a Will your property will be distributed in accordance with state law and perhaps, contrary to your wishes.

◆ *Healthcare Proxy*

A Healthcare Proxy is an instrument recognized by law that allows you to designate another (usually a family member) to make medical decisions for you if you become incompetent or incapacitated.

◆ *Living Will*

A written statement describing your wishes regarding medical treatment. Typically this statement enumerates life sustaining medical care that you wish to avoid.

◆ *Durable Power of Attorney*

This document allows you to give another the power to handle your personal property, real estate and financial matters. It is particularly valuable because it avoids the need to have a court appointed guardian in the event you become incapable of managing your own affairs.

◆ *Trust*

A Trust is a device that gives someone (the trustee) the authority to manage property for another (the beneficiary) according to guidelines established in the Trust document. Although Trusts have many uses they are commonly used to avoid probate court and estate taxes and to protect assets.

Estate Planning for a Young Family

Often the goal of parents with children is to protect their spouse financially and to provide for their children in the event of a mutual disaster. Typically this type of plan incorporates a simple Will with a Trust that holds the estate assets for the benefit of the children until they reach a mature age. Once the children reach the defined age, any funds remaining are distributed to them in equal shares. One of the key aspects of such a Will is that the parent can appoint a guardian who is responsible for the day to day care of children until they reach adulthood. Without a Will, the surviving spouse receives only one-half of the estate and, if both parents die, no Trust is created and the court will appoint a guardian.

Children or not, everybody can ensure that their property passes as they wish by drafting a Will. Under Massachusetts' law, when a person dies leaving a spouse but no children, the surviving spouse may have to share the estate with the deceased spouse's relatives. Regardless of the situation, a Will, Healthcare Proxy, and Durable Power of Attorney are essential pieces of any estate plan.

Reducing Estate Taxes

As of 1999, an individual with an estate valued in excess of \$650,000 is subject to an estate tax at the federal level. The tax due is determined by multiplying the estate value in excess of \$650,000 by a tax rate ranging from a minimum of 37% to a maximum of 55%. Married couples can take advantage of their individual \$650,000 deduction by use of a Trust called a *Credit Shelter Trust*. This Trust can reduce, and in many circumstances, eliminate the tax entirely. The beauty of the Trust is that it usually is not funded until death. It can be amended or altered if necessary, and it is drafted in such a manner that it allows sufficient access for family members, including the surviving spouse.

Senior Planning

The estate plan for people not responsible for young children often has different goals. While a Will, Durable Power of Attorney, and Health Care Proxy are still essential, planning for a possible nursing home stay must be considered. This planning often includes the transfer of assets using such vehicles as a Trust, life estate, annuity and outright gift. In some situations, long term care insurance that provides coverage

meeting certain state requirements for home health and nursing home care is an alternative to the outright transfer of assets.

Not only can estate tax planning be achieved through the use of a Credit Shelter Trust, but outright gifts of \$10,000 or less, per year per person, can be made without adverse estate tax consequences.

Special Situations

Family members with special needs can also be provided for with an appropriate estate plan. Trusts can be drafted that provide financial assistance and name guardians for individual family members who are not able to provide for themselves. More importantly, they can be drafted in such a manner so they do not reduce any public benefit received as a result of a disability.

Proper planning can often prevent financial hardships and help preserve family assets. In many situations, only a simple plan is required. Whether simple or complex, everyone should determine what his or her goals are and then plan appropriately.

The Attorneys at **Russell, McTernan & McTernan** are available to answer any questions you may have regarding Estate Planning and are ready to help you establish an appropriate plan.