

ESTATE PLANNING

Wills, Trusts and Powers of Attorney

- ◆ Who will inherit your estate?
- ◆ Who will care for your children if you die while they are young?
- ◆ Who will distribute your estate?
- ◆ Who will manage your affairs if you are unable?
- ◆ Who will make your health care decisions?
- ◆ How will they know what your wishes are if you are unable to communicate?

An estate planning attorney can help you answer all of these questions and relieve the burden on your loved ones.

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LAST WILL AND TESTAMENT

Your Last Will and Testament allows you to control how your property passes at your death. Without a will, state law will determine who receives your property. This may include your children, your parents, and your siblings depending on your circumstances. There are formal requirements established by N.C. law that must be met for a will to be valid. If you attempt to draft your will yourself without the assistance of an attorney, your family may have difficulty probating it with the Clerk of Court. This could mean that your property will be distributed according to the state law, rather than your will. You should always consult an attorney to draft a document as important as your Last Will and Testament.



What is probate? Probate is the administration of a person's estate that is overseen by the Clerk of Court. When a person dies owning assets in his or her name, the probate process must be started by an administrator who will settle the decedent's affairs.



What happens after probate is started? The administrator's job includes notifying debtors and beneficiaries, gathering assets, paying debts, accounting for all property that comes into and goes out of the estate, and properly distributing the decedent's property. The Clerk of Court's job is to make sure that the administrator is the only person legally authorized to deal with the assets of the estate and handle the administration.

MINOR CHILDREN

As a parent, you want your child to be loved and nurtured, even after your death. You can nominate a guardian in your will to care for your child. You can also set aside funds for the child's care and well-being.



What are the considerations in choosing a Guardian? Choose a family member or close friend you and your child know well and who shares your values and beliefs. Consider the personal circumstances of the guardian. Where the guardian lives as well as his or her financial, health, and emotional well-being will affect your child. The person you nominate as guardian must be officially appointed by the Clerk of Court.

How can I leave property to my minor children? You should arrange for the management of property inherited by your young children. Your will can provide that your child's inheritance will pass into a trust for the child's benefit. The trust can ensure that the funds are used for the child's education, health and general well-being. You can determine how old your child should be before receiving those funds.

Who will manage the trust for my child? You can appoint a "Trustee" in your will. This person will make decisions about how to manage the assets in the trust and will maintain and care for any property in the trust. The trustee and guardian may be the same person, but they don't have to be.

There are many options for how to distribute the property in your trust to your beneficiaries and you should speak with your attorney about what will best benefit your children.

TRUSTS

What is a Revocable Living Trust? A revocable living trust (RLT) is an agreement between its maker and a trustee. The maker transfers assets to the trustee and gives instructions concerning the management of the assets. The instructions specify how they are to be held and used during the maker's lifetime, as well as how the assets are to be distributed at the maker's death. The maker and trustee can be the same person. If the maker is also the trustee, he can make all decisions concerning the assets in the trust. The trust agreement can provide that any assets held in the trust will avoid probate at the maker's death. However, the trust will require additional annual accounting and tax returns. Unless your estate is very large, it is unlikely that you will need to go to the expense of creating a revocable living trust.

BUYER BEWARE!

Living trusts are sometimes marketed by individuals who are not attorneys. They may exaggerate the costs and time involved in the probate process to convince you to "buy" these trusts, even though the trust may not be suitable for you. Please contact Mr. Sneed before agreeing to buy documents. A licensed attorney is the only professional authorized to draft documents under North Carolina law and is bound by ethical requirements to help you determine if a trust is a suitable estate planning tool for your particular situation. Often, there are much less expensive ways to protect and control your assets.

ESTATE TAXES



You may think you need a will or trust to avoid estate taxes. Most people are not affected by the estate tax. Currently, you may pass up to \$3.5 million in 2009, and an unlimited amount in 2010 with the repeal of the federal estate tax. But, in 2011 the tax is scheduled to be back in force, and you may only pass \$1 million free of tax. The law may change at any time, and there may never be a repeal of the estate tax. Mr. Sneed can help you decide if you need to arrange your assets to protect against estate taxes.

POWERS OF ATTORNEY

What is a power of attorney? A power of attorney (POA) allows you, the "principal," to appoint an agent to act for you while you are alive. There are two types of POAs. The General or Durable Power of Attorney allows you to name someone to pay bills and handle business or property transactions for you. The Health Care Power of Attorney allows you to name someone to make health care decisions for you.

How will my agent make decisions? Your agent must act according to your wishes. If the agent doesn't know what you would have wanted, he must act in your best interest. The agent's responsibility is to you, not your family. He may not act to benefit himself unless you authorize him to make gifts when you sign the power of attorney. Mr. Sneed can help you decide if it is wise to allow you agent to make gifts to himself or others.

When is a POA effective? A General or Durable Power of Attorney is effective after it has been recorded with the county Register of Deeds. A Health Care Power of Attorney takes effect only after a doctor determines that you cannot make medical decisions. A POA is only effective while you are alive.

LIVING WILL

A living will allows you to specify how much life support you would like to receive if you are incapacitated. Making the decision now can help make a difficult time easier for your family. The living will allows you to specify whether you want to receive IV nutrients and liquids and whether you want to receive other life sustaining aids such as assisted breathing.

Now that I have my documents, where should I keep them? Keep your documents in a safe place with your other important papers.

Your will does not need to be registered with the court until after your death. You may not want to keep your will in a safe deposit box unless someone else is able to easily gain access to it. If you'd like, we can provide you with copies to be given to your executor, although he will need to know where to locate the original after your death.

You should provide your doctors with copies of your Health Care Power of Attorney and your Living Will. If you have to go to the hospital, take copies of these documents with you. The intake nurse will usually ask whether you have them.