

WHAT IS ESTATE PLANNING??

You may have visited our web site or called our office to make or revise your Will. But, there is much more to estate planning than just making a Will, such as planning for your incapacity and avoiding a prolonged probate. Read on, and hopefully, some of your questions about what documents you need and what services we provide will be answered.

WHAT HAPPENS IF I DIE WITHOUT A WILL?

If you die without a Will, the laws of Florida will decide who gets your property, who administers your estate and who becomes the guardian of your children. Did you know that in Florida, if you are married, and die without a will, part of your property may go to your children instead of all to your spouse?

WHY SHOULD A LAWYER PREPARE MY WILL?

Your Will should cover many possibilities to avoid serious problems for your beneficiaries. Only an attorney can assure the correct language, form and manner of signing the Will and having it witnessed so that it is an effective legal document, minimizing the possibility that it will be challenged.

IF I OWN EVERYTHING JOINTLY WITH MY SPOUSE, DO I STILL NEED A WILL?

Yes.

Joint ownership is no substitute for a carefully drafted Will. You may have property in your sole name which you have forgotten; you may inherit from others; you and your joint owner may die in a common accident; or a number of other reasons make it prudent to have a Will.

WHY IS IT NECESSARY TO DISCLOSE TO THE ATTORNEY INFORMATION REGARDING MY ASSETS WHEN I MAKE A WILL?

We cannot properly advise you unless we have a complete understanding of your assets and how they are titled. This information will affect how your property passes at your death and whether we need to plan for the payment of taxes to be paid at your death or that of your spouse. As Attorneys, we are bound by a very stringent ethical code. We will keep confidential any information we receive from you and any communication we have with you.

WHAT CAN I DO TO PREPARE FOR MY APPOINTMENT?

- (1) You can make an inventory of your property. We will provide you with an Information Sheet to complete.
- (2) You can decide who will be the Personal Representative (executor) and Trustee. You may also nominate the Guardian of your children in the event that you and your spouse die while your children are minors.
- (3) You can decide who will receive your personal clothing, jewelry, furniture, car, etc. usually these are left to the spouse or a particular member of the family.
- (4) You can decide who will receive cash sums.
- (5) You can decide who will receive your residence, subject to certain legal rights of your spouse and children.
- (6) You can decide to make gifts of income by setting up a trust.
- (7) You can decide who receives the balance, or residue, of your estate and how and when.

WHO MAY SERVE AS PERSONAL REPRESENTATIVE, TRUSTEE AND GUARDIAN?

Your Personal Representative may be an individual or a trust company, bank or similar organization. Any Florida resident who is 18 years of age or older will generally qualify to serve as your Personal Representative. Trust companies, banks and similar organizations may serve as Personal Representatives provided they are authorized to exercise fiduciary powers in Florida. Non-Florida residents and their spouses who are related to you by blood are also able to serve as the Personal Representative of a Florida estate.

You may select an individual or corporate Trustee to serve as the Trustee or successor Trustee of your trust. There are no restrictions on nonresidents serving as Trustee of your trust.

I HAVE A WILL PREPARED IN ANOTHER STATE. DO I NEED A FLORIDA WILL?

You should. If a Will was executed according to the laws of the State where you previously resided, then that Will is valid in Florida. Florida does not recognize,

however, oral Wills or holographic Wills, which are made in handwriting of the Testator without witnesses.

Even if your out-of-state Will is valid in Florida, it is important to have it reviewed. It may be best to execute a new Will. Your out-of-state Will may not be self-proving. This would mean that at your death, at least one witness would have to be located before the Will could be admitted to probate in Florida. This can be an expensive and time-consuming procedure. Additionally, there are restrictions on who can be named to serve as your Personal Representative. So if you live in Florida, it is a good idea to have a Florida Will.

WHAT ESTATE AND INHERITANCE TAXES MUST BE PAID AT MY DEATH?

The Federal Government imposes a Federal Estate Tax on assets in your “gross estate.” The amount that can be transferred tax-free at death is \$2 million for taxpayers dying in 2006 through 2008, and \$3.5 million in 2009. In 2010, the estate tax is scheduled to be repealed, but only for one year. In 2011, however, the amount, which can be, transferred tax-free returns to \$1 million. Because of the uncertainty of the exempt amount, planning should be reviewed frequently over the next several years.

Your “gross estate” includes all property you own individually or jointly, including real estate, cash, stocks, bonds, mortgages, notes life insurance, pensions, annuities, personal property like furniture and automobiles, and certain interests in trust established by you or for your benefit. There are certain deductions, which may be taken for various expenses, as well as a deduction for amounts passing to charity or to your spouse.

Florida, unlike many other states, does not have a separate inheritance tax.

IF I MAKE A WILL, DOES IT HAVE TO BE PROBATED?

Maybe. Probate is the court-supervised process which ensures the payment of your creditors and the proper distribution of your assets to your beneficiaries or heirs. Any assets you hold in your own name at your death are subject to this process, whether you die with or without a Will. There are, however, methods of minimizing the need for probate that we will discuss with you.

WHAT IS A LIVING TRUST?

A trust is a transfer of property from one party, the Grantor, to a second party, the Trustee. The Trustee holds the trust property for the benefit of the Grantor or whomever the Grantor directs. Generally, you will choose initially to act as your own trustee. Under

a Living Trust, you may receive all of the income, as well as the right to use the principal of the trust as you wish. The trust directs who will receive the assets when you die.

Though this type of trust has no estate or income tax advantage for you, it provides a means to manage your assets if you were to become incapacitated and may avoid the need for a formal court guardianship administration. You do this by designating a successor Trustee who will pay bills for you and administer the trust property if you are unable to do so. The successor Trustee will be responsible for administering the assets and making distribution upon your death.

When you have a Living Trust, it is still necessary to have a Will, called a “pour over Will”, to direct distribution of any assets not titled in the trust.

SHOULD I HAVE A POWER OF ATTORNEY?

Yes. A durable power of attorney is important whether you have a Will or a trust, regardless of your age. A power of attorney is a delegation of authority from you to another person or a bank, trust company or similar organization possessing trust powers. The Florida Statutes authorize the use of a durable power of attorney which is valid until your death or until you are adjudicated incompetent by a court. Even if you have a stroke or are otherwise totally incapacitated, someone will be able to make decisions for you and transact your affairs.

WHAT IS A LIVING WILL?

Under the Florida Life Prolonging Procedures Act, you may sign a declaration directing your doctor to provide, withhold or withdraw life prolonging procedures if you are diagnosed as being in a terminal condition, and end-stage condition or are in a persistent vegetative state, and you may designate a specific person to carry out the provisions of your living will. You should always discuss the use of your declaration concerning life-prolonging procedures with your doctor. You may also use this document to state your wishes concerning the donation of your organs at your death.

SHOULD I APPOINT A HEALTH CARE SURROGATE?

Yes. Under Florida law, you always have the right to direct your medical treatment. If you are determined by two physicians to be incapacitated and unable to make medical decisions for yourself, then a health care surrogate may make these decisions for you. You may name the surrogate in advance. Your health care surrogate may consent to or withhold consent to health care procedures. The health care surrogate has decision-making authority even if your condition has not been diagnosed as terminal. A number of medical service providers prefer working with a health care surrogate instead of an attorney-in-fact, since the surrogate’s authority is in the Florida Statutes. If you have not

made a health care surrogate designation or do not otherwise have a power of attorney, the hospital or other medical facility may ask that a health care surrogate (usually one of your family members) be appointed by you.

IF I NEED A GUARDIAN, MAY I CHOOSE MY OWN?

By planning for incapacity, we can minimize the need for you to ever have a court-appointed guardian. Even through the careful use of powers of attorney, health care surrogates and living trusts, there are certain circumstances in which a court-appointed guardian may be needed. You may choose your own guardian by executing a Designation of Pre-Need Guardian and filing the designation with the Clerk of the Court. If a guardian is ever appointed by the Court, then preference will be given to your choice.

HOW OFTEN SHOULD I REVISE MY ESTATE PLANNING DOCUMENTS?

Any time there is a change in circumstances, such as moving to another state, births or deaths in the family, a substantial change in your assets, or a change in the tax law, you should discuss it with us; otherwise, we recommend a brief review of your estate plan every three to five years.

SHOULD I MAKE AN APPOINTMENT WITH ELIZABETH G. BOURLON, P.A.?

Yes!!