

Basic Estate Planning

Paul L. Miller, Attorney, MBA
3465 S. Arlington Rd. Suite D
Akron, OH 443312

Tel. 330-896-2889

Fax. 330-896-0696

Email: paul@ohiowealthlaw.com



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A. Client Intake and Education

- Use of forms and the initial client meeting.
- Establish in initial meeting:
 - Who are the players?
 - Heirs?
 - Partners?
 - Children from prior marriages?
 - Listen to your client.
 - find out their frame of reference
 - understand what their concerns are



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A. Client Intake and Education

- Own v. owe
- Own: what, value, title, and beneficiary
- Owe: \$, to whom, guarantor ?, Due on Death?
- Educate yourself – and educate them. A working knowledge of the probate process is necessary to be useful to your client in the area of estate planning



A. Client Intake and Education

Contract Asset

- Passes outside probate “by contract” to named beneficiary or joint owner
- Examples:
 - Life insurance
 - POD/ TOD Accounts
 - IRA’s, Annuities, 401(k) Plans
 - Real property deeded as joint tenants with rights of survivorship
 - Property held in Trust
 - Jointly held accounts

Probate Asset

- Public forum
- Costly
- Time consuming
- What is considered a probate asset?
 - Property titled in decedent’s name and not transferable on death.
 - Distributed according to Will *OR* if intestate according to statute.



B. The 5 Basics

- 1) Valid Last Will and Testament
- 2) Power(s) of attorney
- 3) Health Care Power of Attorney
- 4) Living Will declaration
- 5) HIPAA release



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B. The 5 Basics

1) Valid Last Will and Testament

- Who to pick as Executor / Are the Executors still correct?
 - “check book” test
- Minor children? -
 - At what age should they receive funds?
- Guardian v. Executor
- Is plan of distribution feasible? How is this plan really going to work out?
- Guide them regarding specific bequests and options
 - Ugh - What constitutes a pick?



B. The 5 Basics

2) Power(s) of attorney

- Is more than one POA necessary?
 - Consider: limited, general, springing
- Naming alternates
- Gifting ability
- Statutory form v. other options
- Recording of the Power of Attorney



B. The 5 Basics

3) Health Care POA

- How is this different from previous POA?
- Who will have decision making capacity if client is medically unable?
- Are the parties named and current?
- Nutrition and hydration paragraph
 - Agent prevails



B. The 5 Basics

From the Health Care Power of Attorney:

“Special Instructions: By initialing below, I specifically *authorize my agent* to refuse, or if treatment has commenced, to withdraw consent, to the provision of artificially supplied nutrition and hydration if:

1) I am in a permanently unconscious state and;

2) My physician and at least one other physician who has examined me have determined, to a reasonable degree of medical certainty, that artificially supplied nutrition and hydration will not provide comfort to me or relieve my pain and;

3) I have placed my initials on this line: _____”



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B. The 5 Basics

4) Living Will Declaration

- Client wishes regarding life sustaining treatment.
- Anatomical gift section.
 - Donor Registry Form
- Again- nutrition and hydration paragraph
 - 2 Drs.



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B. The 5 Basics

“Special Instructions: By placing my initials at number 3 below, I specifically *authorize my physician* to withhold or to withdraw artificially supplied nutrition or hydration if:

1) I am in a permanently unconscious state; and

2) My physician and at least one other physician who has examined me have determined, to a reasonable degree of medical certainty, that artificially supplied nutrition and hydration will no provide comfort to me or relieve my pain; and

3) I have placed my initials on this line:_____”



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B. The 5 Basics

5) HIPAA Release

- Open dialogue with loved ones
- Useful with aging parents
- Useful with domestic partners



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B. The 5 Basics- *Other Items*

6) Other items to provide to client:

- Disposition of bodily remains
- Transfer on death form for vehicles
- Donor registry form (with Living Will)



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C. Assets and Title

Critical part of estate planning – educate them about what is not impacted by their Will

Non probate property/ Contract Assets:

- property decedent and another person held as joint tenants with rights of survivorship
- property held in trust
- accounts payable on death (“POD”) or that will transfer on death (“TOD”) to a named beneficiary
- insurance or retirement benefits that are payable to a named beneficiary(ies).



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C. Assets and Title

Real estate options:

- Held jointly held with rights of survivorship (JROS)
- Tenants in common
- Held by Trustee of a Trust
- TRANSFER ON DEATH DESIGNATION AFFIDAVIT (O.R.C. Section 5302.22)– *User beware, not always best for all situations*



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C. Assets and Title

Bank and Brokerage Account Options:

- Jointly held with rights of survivorship
- Transfer on death (TOD)
- Payable on death (POD)



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D. IRA's/ 401(k)/ 403(b)/ Life Insurance / Annuities

Client concern is - “will my wishes be honored and where will these specific assets go?”

- 1) Are beneficiary selections up to date?
 - Primary and contingent
- 2) Will minors or young adults potentially be in line to receive a benefit at a time when they are not prepared to handle it?
- 3) Do not let client guess about beneficiary designations – have them confirm and document for their records
- 4) Stress to client the importance of how they fill out the form



E. Trusts

Why should client consider this option?

- Closely held business
- Rental real estate
- Special plans
- Privacy and speed
- Net worth and estate taxes
- Avoidance of probate
- Out of state assets
- Minor children – pooled trust



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E. Trusts- Other Items to Include:

If a trust is implemented what other items are needed?

- 1) Basic pour over will
- 2) POA - financial
- 3) Health care POA
- 4) Living will
- 5) HIPAA release
- 6) Bill of sale transferring tangible goods to trust
- 7) Deed(s) transferring real estate and recording of the deed(s)
- 8) Titling instructions and follow-up
- 9) Address owner of closely held entities- LLC, S and C corp., and limited partnership interest



E. Trusts

Other Trust options available:

- Irrevocable life insurance trust
- IRA trust
- Special needs trust
- CRUMMEY trust for children/ grandchildren
- Land trust (certain purposes)
- Testamentary trust springing up from under the will
- Credit shelter trust
- Charitable trusts
- Educational trusts
- Blind Trust – Lottery Winner – privacy protection



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F. Use of Entities in Estate Planning

Should client consider forming an LLC or a Corp (C or S) as part of their estate planning?

- Business to go down stream? Continue on post DOD
- Separate real estate from exposure to business risk
- Easy way to gift to kids without spousal dower rights
- Minimize exposure to potential liability from risky activity on the land (i.e. oil & gas)
- Management vehicle for business continuation
- Option to buy provided to beneficiary



G. Client Service and Mechanics

1) Document execution:

- Time to reflect for the client
- Blue ink
- Lawyer as notary and/or witness
- Going to the hospital or other client locations
- Client competency



G. Client Service and Mechanics

2) Document retention and safeguarding:

- The “Binder”
- Scans of documents for client
- Originals to client with copies for their use
- Retention of originals - ?, when, why, develop your SOP



G. Client Service and Mechanics

3) Confidentiality:

- Maintain confidentiality- “the fact I have met you, and may do work for you is no one’s business.”
PERIOD.
- Working with other advisors
- When children come calling



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Question:

When is the right time to advise your client to complete their estate planning?



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Answer:

NOW.

I like to let my clients know that “I eat my own cooking”
Working through your own plan will educate you and give
you essential perspective.

You owe it to the loved ones in your life.



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