ESTATE PLANNING SUMMARY

Wills. A will contains a person’s, or testator’s, intentions regarding the distribution of their assets upon death. When preparing a will, consider who you would want to fill the following roles:

- **Personal representative**: The PR, which used to be called an executor, is responsible for certain administrative tasks, such as taking an inventory of the deceased person’s property, dispersing the property to the appropriate beneficiaries, and paying any outstanding bills.
- **Guardian**: Parents with minor children also need to select a guardian, or who they would like to have custody of their children if something should happen to them. The guardian is responsible for rearing the children, consenting to medical care and similar “parental” duties.
- **Trustee**: A testamentary trust is contained within a Will, and is overseen by the trustee, usually for the health, education and support of minor or disabled children, until they reach a specified age.

Living Trusts. A trust can also be created during lifetime to hold a person’s assets. The goal of such a trust is typically to minimize estate taxes and/or avoid probate. While the client is usually the initial trustee, they still need to select a successor trustee to take over upon their incapacity or death.

Marital Property Agreements. Marital property agreements classify ownership of a married couple’s assets. MPAs can be used to classify all of the assets owned by a couple as marital property, a special type of joint ownership reserved solely for married people which avoids probate and has capital gains tax advantages. Alternatively, MPAs may be used to classify the assets of the spouses as their individual property, such as in a prenuptial agreement, to keep the couple’s assets segregated.

Health Care Powers of Attorney*. A health care POA allows an individual to designate an agent to make health care decisions in the event he or she cannot. A health care POA is a “springing power”, because it ‘springs’ to life only after two physicians, or a physician and a psychologist, nurse practitioner, or physician assistant, certify in writing that an individual is incapacitated, or unable to communicate his or her wishes regarding health care decisions. The designated agent is then authorized to make health care decisions on behalf of the incapacitated individual.

Declaration to Physicians (otherwise known as a Living will)*. This describes the kind of life-sustaining care you would want only if you had a terminal condition or were in a persistent vegetative state. The declaration directs your physician whether to withhold or withdraw life-sustaining treatment or a feeding tube if you develop an illness or injury that cannot be cured and your death is imminent. This does not authorize anyone to make health care decisions on your behalf. Therefore, if you must later go to a nursing home, guardianship and protective placement proceeding may be required, which can be costly.

Durable Power of Attorney*. A financial POA also allows an agent to make financial or administrative decisions on behalf of a person. Unlike health care, a financial POA is typically not a springing power. Once signed, a financial POA is immediately effective and the agent is authorized to perform financial or administrative tasks on behalf of the individual. If the person ever becomes incapacitated, the agent is still authorized to make decisions on his or her behalf (the POA endures the person’s incapacity). Typically, a financial POA is used for convenience, such as an elderly couple authorizing their children to pay bills for them. That’s why an agent is often referred to as a “gopher” – the agent has the authority to ‘go for’ this and ‘go for’ that.

Authorization for Final Disposition. This voluntary document allows you to designate someone to make funeral arrangements on your behalf and express your preferences for funeral services, burial and/or cremation.

* FYI – Living Wills, Health Care and Durable Powers of Attorney all terminate at death.
Assisting families in the Fox Valley with their legal needs since 1949

The attorneys at McCarty Law LLP can help in the following areas:

**Estate Planning:** Many of life’s decisions involve legal considerations that will impact your family’s future. The attorneys at McCarty Law LLP can help you:
- Establish a will, trust or comprehensive estate plan
- Implement powers of attorney for health care and financial decisions and living wills
- Arrange marital and prenuptial agreements

**Elder and Special Needs Law:** Our attorneys who specialize in elder and special needs law advise clients on matters of concern to older people and individuals with disabilities. Related issues include:
- Medicaid, Family Care and asset protection planning
- Disability planning and special needs trusts
- Long-term care, including assisted living & nursing home care
- Guardianships and conservatorships

Please call our Estate Planning and Elder and Special Needs Law attorneys if you have questions or need assistance at 882-4070.

Ben Adams  
Bill Woodrow  
John Russo

Reg Wydeven  
Melissa DeVantier  
Jon Fischer  
Alicia Rodriguez

2401 East Enterprise Avenue, Appleton WI 54913  
920.882.4070  
www.mccarty-law.com