

Spring Cleaning for your Estate Plan

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It's time to rake out the flower beds, plant annuals, clean out the garage and get ready for the warm weather. Spring is also a good time to take stock of your estate plan. We recommend that you review your estate plan annually especially if your health or finances have changed in the past year. In the course of your review, we suggest that you consider the following documents:

General Durable Power of Attorney (“financial POA”) The financial POA is your most important estate planning document. In this document you name an Agent to stand in your shoes and make all financial decisions for you if you become unable to manage your finances. We suggest that you name two successor Agents to serve in the event a prior Agent is unable to serve. If you do not execute a financial POA or no Agent is able to serve, your family will be required to petition the Court to have a judge name a guardian to manage your financial affairs if you lose capacity to manage your finances. Pennsylvania financial POA law changed twice in the years 2015 and 2016. Your financial POA must now specifically grant your Agent certain powers if you want your Agent to have such powers. It is important that your financial POA include powers to handle all of your affairs including protecting assets from the cost of long-term care.

Durable Healthcare Power of Attorney with Living Will (“Health Care POA”) We usually combine these two documents into one document called an Advance Health Care Directive. In order to trigger either document your physician must first determine that you are unable to make your own healthcare decisions. In the Health Care POA you name an Agent to make health care decisions for you. We suggest that you name successor Agents to serve in the event a prior Agent is unable to serve. Note that if no Agent can serve, your healthcare providers will consult your closest relatives to make your healthcare decisions. The Living Will contains your wishes regarding the receipt of life sustaining treatment in the event you cannot make your own decisions and your physician has determined that you are either suffering from an irreversible coma, a persistent vegetative state or an end-stage medical condition from which you are not expected to survive even with medical treatment. Pennsylvania Healthcare law was broadened in 2018 to allow you to provide in your Healthcare POA for donation of your hands, feet, limbs and other organ systems in addition to the organs we traditionally think of when directing organ donation, such as eyes, heart, kidney, liver or lungs. It is important to name an Agent to make your healthcare decisions for you when you are unable to make them and to direct the type of treatment you desire including your wishes for organ donation and for the receipt of life

sustaining treatment under the Living Will portion of your Healthcare POA. The directions in your Healthcare POA give your healthcare providers the legal authority to honor your wishes.

Last Will and Testament or Trust The terms of both a Last Will and Testament (“Will”) and a Trust dictate how your property will pass upon your death. However, a Trust contains further provisions to manage assets during your lifetime. Assets held in Trust also avoid probate, which is time consuming, can be expensive and makes the value of your estate and the identity of your beneficiaries a matter of public record. Because of the increased incidence of disability in our world, we recommend that your Will and/or Trust also include a Supplemental Needs Trust that will hold any inheritance to be received by a beneficiary who is disabled and receiving needs-based government benefits so that the receipt of the inheritance does not render your disabled beneficiary ineligible for government benefits. You may also want assets to be held in trust for your other beneficiaries until they are able to wisely manage their inheritances.

Asset Protection Trust An irrevocable Asset Protection Trust holds assets to shelter them from the cost of your long term care and reduces or eliminates inheritance tax for your beneficiaries.

Retirement Plan Trust After your death, a Retirement Plan Trust holds distributions from your retirement accounts (IRA’s) in trust under terms you set for distribution to your beneficiaries. This type of trust will protect retirement plan assets from your beneficiary’s creditors and can control distributions from the retirement accounts to your beneficiaries over their lifetimes while keeping the retirement plan assets in the family bloodline, if desired. In addition, if your beneficiary is disabled or chronically ill at the time of your death, this trust is an excellent vehicle to stretch the distribution of retirement assets throughout the lifetime of a beneficiary who is disabled or chronically ill.

Beneficiary Designation Forms We suggest that you review all beneficiary designation forms to be sure that they are correct and that the designations comply with your comprehensive estate plan.

We recommend that you review all of your documents listed above to update the current terms of the documents. You should also review your beneficiaries, and the identity and order of the persons you name to serve as your Agents under your POAs, Trustees of your Trusts and Executors of your Will. We suggest that you update your documents so that they reflect your wishes for today and for the immediate foreseeable future. You can always revise your documents at a later date as your life changes.

Once you have reviewed and perhaps updated your documents, it will be time to relax on your patio and enjoy the upcoming dog days of summer knowing that your estate plan Spring cleaning is complete.