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You Need an Estate Plan Even if you are Not Elderly

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We are frequently asked if our firm works with clients who are not elderly. The answer is "yes," we do. The question is frequent enough that it has led to the creation of this article. However, there are still a number of people who, for whatever reason, do not believe they need to engage in estate planning until they retire. As the saying goes, failing to plan, is planning to fail. Regardless of your age or net worth, every competent adult needs an estate plan. Past articles in our newsletter have discussed the terms that comprise a comprehensive estate plan. This article seeks to give you "why" you need an estate plan and why our firm is well suited to create estate plans for non-elderly clients as well. Consider the following:

- **What does an effective estate plan cover?**

When most people think of an estate plan, they tend to only think about how, and to whom, their property will be distributed upon their death. While this is an important aspect, it is only one aspect of any comprehensive estate plan. A comprehensive estate plan will also cover what happens if a person becomes disabled or incapacitated during his or her life. Disability and incapacity are often over looked reasons by people who fail to create an estate plan. The following documents are fundamental to an effective estate plan:

- **Financial Power of Attorney**

A financial power of attorney ("POA") is the most critical estate planning document to have. A POA allows another person (an agent) to handle a person's legal and financial matters in the event that a person is incapacitated or disabled to a point that he or she cannot handle such matters. Failure to have a POA subjects a person to having to be deemed incapacitated through a guardianship hearing which is both time consuming and expensive. Further, a guardianship can often limit the type of financial and legal transactions a court appointed guardian can engage in for a person. Conversely, by having a POA in place, a person can specify what powers should be given to an agent. The specific terms of a POA are extremely important to consider with your attorney. Often times, internet forms and attorneys not well versed in estate and disability planning tend to gloss over the powers being given to an agent and take a one-size fits all approach for clients. While some provisions should be in every POA, other provisions should be carefully considered. For example, should a person's agent be given the power to make gifts for estate and long-term care planning purposes if a person becomes disabled or incapacitated? If the answer is yes, then should the agent have a limited or

unlimited gifting power? Should an agent be given the power to change beneficiary designations for estate and long-term care planning purposes? If yes, then should the class of permissible beneficiaries be limited? Failure to include relevant powers for a person's situation can have disastrous financial effects for a person and his or her family. Only attorneys well versed in estate and disability planning can properly counsel a person as to their options.

- **Health Care Power of Attorney with a Living Will**

The second fundamental document to create an effective estate plan is a Health Care Power of Attorney with a Living Will ("HCPOA"). Like a POA, a HCPOA allows another person (an agent) to make health care decisions in the event that a person is incapacitated or disabled to a point that he or she cannot make such decisions. Through the Living Will portion of a Health Care Power of Attorney, a person sets forth his or her wishes regarding life sustaining treatment options (for example: feeding tubes, artificial respiration etc.) in the event of permanent unconsciousness or terminal illness. Having a HCPOA in place avoids fights between family members as to what should be done regarding life sustaining treatment because a person's treatment preferences are memorialized. Failure to have a HCPOA can also cause a person to have to be deemed incapacitated through a guardianship hearing and the court has discretion to decide who should make medical decisions for you—which may or may not be the person you would have chosen.

- **Last Will and Testament or a Revocable Living Trust**

Both a Last Will and Testament ("Will") and a Revocable Living Trust ("Trust") set forth how a person's property will be distributed after death. A well drafted Will should include terms that set forth how and when assets should be distributed to your beneficiaries and what should be done if assets are left to underage or disabled beneficiaries. Whether a Will is preferable to a Trust or vice versa depends on a person's circumstances. One major distinction between the two documents is that a Will is subject to "probate" (the process by which the Will is filed with the court in order for the court to prove its validity) while a Trust is not. Once a Will is probated, there are many statutory filing requirements that can, depending on the estate, add a layer of administration complexity and cost. On the other hand, a Trust is not subject to probate because assets have been titled into the name of the Trust during a person's life for his or her use. A person can be the trustee of his or her own Trust assets for life. In the event of a person's disability or incapacity, a successor trustee can manage much like an agent under a POA. However, because a person's assets are already titled in the name of the Trust, assets can be managed much more efficiently by the successor trustee during a period of incapacity or disability and distributed in a more efficient and cost-effective matter upon death.

While it is almost never too late to start planning, creating an effective estate plan now, will save a person and his or her family time, money and most importantly, stress, later.