

## ESTATE PLANNING PROCESS

### OVERVIEW

Generally, the estate plan consists of 4 documents: a will, revocable trust, healthcare power of attorney, and financial power of attorney. In larger estates (over \$10M for a married couple in 2013), there is often the need for an irrevocable life insurance trust.

Twenty or more years ago, people had comprehensive wills which set forth all of the testator's wishes with respect to specific bequests (including charitable bequests), burial instructions, and the disposition of the remainder of the estate. The modern approach is to have a simple "pour over" will, which might make specific bequests and include burial wishes, but most of the important directions are set out in the revocable trust, and the simple will "pours over" into the Trust.

### REVOCABLE TRUST ("RT")

There are several advantages to the revocable trust. First, all of the assets which you transfer to the RT during your lifetime avoid probate at your death. You will be your own trustee initially, so you make all of the decisions and administer the trust while you have capacity to do so, and you continue to use your soc sec #. However, if you become incapacitated, or die, the successor trustee you name will take over the administration of the Trust. The successor trustee doesn't have to be the same person as your executor, but usually that's the case. There is no probate tax to pay with respect to the assets in the RT, and if your probate estate is less than the threshold amount at the time of your death (currently \$50,000 in CO), probate might be avoided entirely. Another advantage of the RT is privacy. Unlike a will, which is probated and filed in the Clerk's Office, the RT remains private. Also, if you want to make changes in the future, you don't need 3 witnesses and a notary public, only you and a notary. Finally, the trustee doesn't have to wait, or file an inventory or an accounting in order to deal with the assets already in the Trust; he or she can deal with them immediately.

There are important decisions you have to make with the RT. Perhaps the most important is who you name as trustee to serve after you. Many people choose their spouse or a child, but there is no correct answer to this. If you don't have a trusted family member or friend you would want to serve as a trustee, banks and trust companies are always available. If you name an individual, it's probably wise to name an alternate. Although unlikely, if something happens to you (and your spouse) before your children are the age or ages at which you would want them to receive the principal of the trust, you need to consider the age the trustee will be when your youngest child reaches the age he or she will receive his or her final distribution. I recommend at least 2 installments of principal, such as ½ at 30, and ½ at 35. The age(s) for distributing principal is a personal decision, and you know your "customers" better than anyone.

You also need to establish the instructions to the trustee for administering the trust. These vary, based on the size of the trusts and how much income will be generated, who the trustee(s) is/are, and how much faith you have in their judgment and experience. For example, if the trustee is someone you know well and trust completely, you might authorize the trustee to distribute as much of the income *or principal* for any purpose, as the trustee shall determine. If it is bank, you might authorize the distribution of as much income as the Trustee wants, but limit

the distribution of principal to certain specific purposes (e.g. health, education, a wedding or honeymoon, a down payment on a house, within certain limits, opening an office, etc.). I would assume that if (God forbid) one of your children dies before he or she receives the principal, his or her share would go to his or her kids (remaining in trust until they reach a specified age), if he or she has children, or to his or her sibling(s) if he or she doesn't. Under the final very unlikely scenario, you should name the people and/or institutions you would want to receive your assets if all of you were to go in a common accident.

## **CUSTODIAN /GUARDIAN**

If you have minor children and are married to their father/mother, you should name the person(s) you would want (and who would be willing) to serve as their guardian until they reach 18. If you are divorced, unless there are unusual circumstances, the children's mother/father would in all likelihood be appointed their guardian.

## **HEALTHCARE POWER OF ATTORNEY**

If you don't already have one, you should. Obviously, as with the trustee of your RT and the holder of your P/A, the person you entrust to make healthcare decisions for you is very important. You should probably name an alternate also. Once you have executed this, you should register it with your local hospital, and with the national registry, if you haven't already.

## **FINANCIAL POWER ATTORNEY**

The successor trustee you name will be able to deal with everything you've transferred into your RT, but for any assets you haven't yet transferred, the person to whom you give a power of attorney will have the power to take care of these. Usually, this would be drafted so it only becomes effective in the event of your incapacity, as determined by your physician and/or another physician or psychologist.

**ESTATE PLANNING QUESTIONNAIRE**

Date \_\_\_\_\_  
 Home Phone No. \_\_\_\_\_  
 Husband's Work Phone No. \_\_\_\_\_  
 Husband's Cell No. \_\_\_\_\_  
 Email Address \_\_\_\_\_  
 Legal Insurance Member #/SSN: \_\_\_\_\_  
 Legal Insurance Case/Claim #: \_\_\_\_\_

Wife's Work Phone No. \_\_\_\_\_  
 Wife's Cell No. \_\_\_\_\_  
 Fax No. \_\_\_\_\_  
 Legal Insurance Member #/SSN: \_\_\_\_\_  
 Legal Insurance Case/Claim #: \_\_\_\_\_

**A. PERSONAL DATA**

**(Husband)**  
 Full Name \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City \_\_\_\_\_  
 Birth Date \_\_\_\_\_  
 Annual Income \_\_\_\_\_

**(Wife)**  
 Full Name \_\_\_\_\_  
 State \_\_\_\_\_ Zip \_\_\_\_\_  
 Birth Date \_\_\_\_\_  
 Annual Income \_\_\_\_\_

**B. CHILDREN**

Child's Name	Address	Phone No.	Date of Birth

Does Husband have any children by a previous marriage? \_\_\_\_\_ Yes \_\_\_\_\_ No  
 Does Wife have any children by a previous marriage? \_\_\_\_\_ Yes \_\_\_\_\_ No  
 Are all of your children in good health? \_\_\_\_\_ Yes \_\_\_\_\_ No  
 Are any of your children blind or disabled? \_\_\_\_\_ Yes \_\_\_\_\_ No  
 Are any of your children receiving SSI or other form of government assistance? \_\_\_\_\_ Yes \_\_\_\_\_ No

**C. GRANDCHILDREN**

Grandchild's Name	Address	Phone No.	Date of Birth

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**D. DISPOSITIVE INTENTIONS**

**1. SPOUSE AND CHILDREN**

Do you wish to provide primarily for your spouse and secondarily for your children? \_\_\_\_\_ Yes \_\_\_\_\_ No

Do you wish to treat all of your children equally? \_\_\_\_\_ Yes \_\_\_\_\_ No

If not, why not? \_\_\_\_\_

After your spouse's death, at what age do you want distribution of your estate to your children? \_\_\_\_\_  
 (e.g. typical plans provide for 1/2 at age 25 and 1/2 at age 30, or 1/3 at age 25, 1/3 at age 30 and 1/3 at age 35, or immediate)

**2. GRANDCHILDREN**

Do you want to leave a specific amount of money or a percentage of your estate to your grandchildren? \_\_\_\_\_ Yes \_\_\_\_\_ No

Do you wish to treat all of your grandchildren equally? \_\_\_\_\_ Yes \_\_\_\_\_ No

If not, why not? \_\_\_\_\_

How much do you want to leave your grandchildren? \_\_\_\_\_

At what age do you want distribution to your grandchildren? \_\_\_\_\_  
 (e.g. typical plans provide for 1/2 at age 25 and 1/2 at age 30, or 1/3 at age 25, 1/3 at age 30 and 1/3 at age 35, or immediate)

**3. CHARITIES**

Do you want to lave a specific amount of money or other assets to any charity? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, please list:

Name of Charity	Address of Charity	Dollar Amount

**4. OTHER BENEFICIARIES**

Do you want your Will to benefit anyone other than children, grandchildren or a charity? \_\_\_\_\_ Yes \_\_\_\_\_ No

If so, please list:

Name of Beneficiary	Address of Beneficiary	Relationship	Dollar Amount

**5. ALTERNATE BENEFICIARIES**

If none of the beneficiaries you have designated are living, how would your assets be distributed?  
(e.g. nieces, nephews, charities, 1/2 to Husband's family and 1/2 to Wife's family)

\_\_\_\_\_

**E. EXECUTOR**

Whom do you want to serve as your Executor?

**(Husband)**

First Choice: \_\_\_\_\_ Spouse \_\_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Executors, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_\_ Both \_\_\_\_\_ Either Survivor \_\_\_\_\_ Yes \_\_\_\_\_ No

**(Wife)**

First Choice: \_\_\_\_\_ Spouse \_\_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Executors, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_\_ Both \_\_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

**F. TRUSTEE**

Whom do you want to serve as your Trustee?

**(Husband)**

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Trustees, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_\_ Both \_\_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

**(Wife)**

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Trustees, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_\_ Both \_\_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

**G. GUARDIAN**

If your spouse has predeceased you and you have minor or disabled children, whom do you want to act as Guardian?

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Guardians, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_\_ Both \_\_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

**H. HEALTHCARE POWER OF ATTORNEY**

Who do you want to serve as your Agent to make healthcare decisions if you are unable to make those decisions?

(Husband)

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Agents, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_ Both \_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

(Wife)

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Agents, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_ Both \_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

I. **FINANCIAL POWER OF ATTORNEY**

Who do you want to serve as your Agent to make financial decisions if you are unable to make those decisions?

(Husband)

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Agents, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_ Both \_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

(Wife)

First Choice: \_\_\_\_ Spouse \_\_\_\_ Other \_\_\_\_\_

Second Choice: \_\_\_\_\_

Third Choice: \_\_\_\_\_

If you name 2 people as Agents, do you want both of them to serve acting together, either of whom may act, and would the survivor serve alone if one cannot serve? \_\_\_\_ Both \_\_\_\_ Either Survivor \_\_\_\_ Yes \_\_\_\_ No

**J. MISCELLANEOUS**

Do you have any legal issues which I should be aware of? \_\_\_\_\_ Yes \_\_\_No

If you, please explain \_\_\_\_\_  
\_\_\_\_\_

Do you have any specific burial or cremation instructions?  
\_\_\_\_\_

Have you ever made gifts to any one person in excess of \$13,000 in any one calendar year? \_\_\_\_\_ Yes \_\_\_No

Have you ever filed a federal Gift Tax Return? \_\_\_\_\_ Yes \_\_\_No

Are you a trust beneficiary? \_\_\_\_\_ Yes \_\_\_No

**K. MONTHLY INCOME**

	<u>Husband</u>	<u>Wife</u>
Salary	\$ _____	\$ _____
Social Security Benefits	\$ _____	\$ _____
Medicare Part B Deduction (if applicable)	\$ _____	\$ _____
Other Health Insurance Premiums	\$ _____	\$ _____
Retirement Benefits (if applicable)	\$ _____	\$ _____
VA Disability Benefit	\$ _____	\$ _____
Annuity Income	\$ _____	\$ _____
Rental Income	\$ _____	\$ _____
Other Income	\$ _____	\$ _____
<b>TOTAL MONTHLY INCOME</b>	<b>\$ _____</b>	<b>\$ _____</b>



**L. ASSET SUMMARY**

	<b><u>ASSETS</u></b>			<b><u>LIABILITIES</u></b>
	Husband	Wife	Joint	
Bank Accounts	\$ _____	\$ _____	\$ _____	\$ _____
Real Estate (residence)	\$ _____	\$ _____	\$ _____	\$ _____
Real Estate (other)	\$ _____	\$ _____	\$ _____	\$ _____
Savings Certificates (CD's)	\$ _____	\$ _____	\$ _____	\$ _____
Stocks – Non Mutual Funds (Not held by Broker)	\$ _____	\$ _____	\$ _____	\$ _____
Stocks – Non Mutual Funds (Held by Broker)	\$ _____	\$ _____	\$ _____	\$ _____
Bonds – Non Mutual Funds (Not held by Broker)	\$ _____	\$ _____	\$ _____	\$ _____
Bonds – Non Mutual Funds (Held by Broker)	\$ _____	\$ _____	\$ _____	\$ _____
Mutual Funds	\$ _____	\$ _____	\$ _____	\$ _____
Note & Mortgage Receivables	\$ _____	\$ _____	\$ _____	\$ _____
Business Interests	\$ _____	\$ _____	\$ _____	\$ _____
Inheritance, etc.	\$ _____	\$ _____	\$ _____	\$ _____
Automobiles	\$ _____	\$ _____	\$ _____	\$ _____
Jewelry & Collections	\$ _____	\$ _____	\$ _____	\$ _____
Non-IRA Tax Qualified	\$ _____	\$ _____	\$ _____	\$ _____
Retirement Plans				
IRA'S	\$ _____	\$ _____	\$ _____	\$ _____
Life Insurance	\$ _____	\$ _____	\$ _____	\$ _____
Annuities	\$ _____	\$ _____	\$ _____	\$ _____
Other Assets	\$ _____	\$ _____	\$ _____	\$ _____
<b>TOTALS</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>	<b>\$ _____</b>