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Practice Areas

Estate Planning and Probate

Good Company

Yesterday's "I'll get to that tomorrow" is here today!

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Sometimes, we forget to attend to basic but nonetheless important matters. Every person should take the time to discuss estate planning with an estate planning attorney. This should be done sooner rather than later. If left undone, your specific wishes as to the disposition of your assets may not materialize. Worse yet, failure to attend to these matters can have serious tax consequences.

The cruel fact is that all of us are going to die. Assuming we have assets at the time, and some intent about where those assets are to go, we should be able to express a binding intent about those wishes. State law affords us that right - to write our own wills and/or trusts. If we do not, the state of residence at the time of death will write a will for us. That is called *intestate succession*. It is the best guess the legislature could make about what we want to do. More often than not, it gets it right - everything to spouse if there is one, or to children equally and if a child has died, leaving children, in trust for those grandchildren. Usually. Maybe. But not naming an executor, guardian or trustee or naming the age at which children or grandchildren are to receive assets can present a problem. Not dealing with state or local tax considerations can present a barrier to distribution of the assets and perhaps a burden to the beneficiaries.

OK. What estate planning documents do you need? The following basic documents are the minimum, and everyone should have these:

1-Will. This is the document that expresses the wishes a person who has died (the decedent) has for distribution of property and for naming a guardian for minor children who may survive, if the other parent does not survive. It has to be in writing and witnessed by the number of witnesses required by state law.

2-Trust. This may be a good idea to provide a means to manage assets when a person gets beyond the stage of managing assets, and provides a means to maximize tax savings for an estate that may be taxable under state or federal law. It names a trustee (and the person setting it up can be the trustee first, with his or her spouse second, and then children or other trusted persons next.) Trusts also provide a chance to avoid probate, which may be complex or simple, depending on state law and the circumstances of an estate, but if avoided, will be simpler than otherwise. Trusts can be simple or complex, and need to be customized to the needs of each client.

3-Durable Power of Attorney. This document names an agent, called an attorney-in-fact, to do the business of another person. The reason it is part of estate planning is that it substitutes for a guardianship if the principal becomes unable to make decisions. A guardianship can be expensive and



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require complex legal proceedings, whereas having a power of attorney is simple and inexpensive to implement.

4-Medical Advance Directive/Living Will. Depending on state law, these may be one or two documents called Durable Power of Attorney for Healthcare (DPAHC) and Living Will. New Hampshire has a combined document contained in statute. Massachusetts and other New England states, as well as Florida, have state forms. They name agents (DPAHC) to make healthcare decisions if the principal has been declared unable to do so, or express the wishes of the principal in the event there is no hope at the end of life. No one has to execute these, but these documents make the provision of medical care easier. New Hampshire law recently added provisions regarding DNR orders to matters that can be covered by these documents.

The disturbing fact to us is how many clients have dealt with business or other legal needs, but have not dealt with the comparatively easy matter of planning estates.

The attorneys of the Sheehan Phinney Bass +Green Estate Planning and Probate Practice Group would be delighted to discuss client or to review existing documents for clients, to be sure clients have their affairs in order.

As a final note, clients should recall that at present, each person has a tax credit of \$3.5 million and can make tax free gifts each year in the amount of \$13,000 per recipient with a maximum lifetime gift amount set by law. We expect Congress will pass a law before the end of 2009 clarifying exempt amounts. Clients should follow Congressional action carefully. Stay tuned.

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