

Estate Planning

Our attorneys and paralegals work closely with clients and their families to develop a plan that is tailored to the particulars of the people and estate in question. The proper preparation of an estate plan can maximize the amount of assets passed on to heirs, while minimizing taxes as well as an executor's or trustee's stress. The procedures our office follows for estate planning are relatively straightforward. We initially gather basic demographic and financial information, and then take the time to talk with our clients personally in order to best understand their wishes. After meeting with clients and deciding upon an appropriate estate plan, the proposed documents are drafted and refined, as needed.

The following is a summary of common aspects of estate planning:

Advance Directives

Advance directives are documents which provide instructions to others, such as family members, medical providers or financial institutions, concerning what type of medical care or financial asset management that person would want (or not want) at some point in the future (i.e., in "advance"). Two basic types of advance directives are durable powers of attorney for finances and health care.

Durable Power of Attorney for Financial Matters

A Power of Attorney for Financial Matters is a document that appoints a person (the "agent" or "attorney-in-fact") to make financial decisions for an individual (the "principal"). As the title implies, the Power of Attorney for Financial Matters grants the agent control over the principal's assets. Because medical and financial decisions are governed by separate laws, each power of attorney document is established separately. A "durable" Power of Attorney is distinguished from a non-durable Power of Attorney by the fact that a durable document remains in effect even after the principal becomes mentally incapacitated. A Power of Attorney for Financial Matters that is "durable" should be created as part of any sound estate plan when the client is competent, as a preventative measure for the possibility of future loss of mental capacity to manage one's own finances.

Durable Power of Attorney for Health Care and Living Will

The advance directive known as Durable Power of Attorney for Health Care (HCPOA) names one or more persons to make medical decisions for the signer in the event of mental or physical incapacity. Specifically, the HCPOA document empowers an individual (the agent) named by the individual signing the document (the principal) to sign consents, discuss health care issues with the principal's care team, secure second medical

Practice Area Chair
Bradford E. Cook

Members

- Bradford E. Cook
- Peter T. Beach
- Judith L. Bomster
- Ann N. Butenhof
- Alisha E.A. Cahall
- Madeline Christie Hutchings

opinions, and ultimately make final decisions regarding health care matters, including end-of-life decisions such as withholding life support or administering palliative care. Many people wonder what the word “durable” means in relation to a Durable Power of Attorney for Health Care. In New Hampshire, all Health Care Powers of Attorney are “durable” because they do not become effective until the principal is declared to be mentally incapacitated by a doctor. A Living Will is another type of advance directive. In 2007, the Living Will form became part of the Durable Power of Attorney for Health Care document, and is contained in a separate section and requires a separate signature. A Living Will enables a client to state whether life support should be provided or withheld under certain medical scenarios when there is no agent to make a decision for the principal. A will is a document created to express a client’s wishes with regard to the disposition of his or her estate upon the client’s death. A will becomes effective only upon the death of its maker (the Testator or Testatrix), and may be used in conjunction with a revocable or irrevocable trust or may stand alone to direct the final distribution of assets. Unlike an inter vivos trust document, a will requires the assistance of the Probate Court to administer any assets left behind by the maker, which often results in delay and additional expense.

Last Will and Testament

A will is a document created to express a client’s wishes with regard to the disposition of his or her estate upon the client’s death. A will becomes effective only upon the death of its maker (the Testator or Testatrix), and may be used in conjunction with a revocable or irrevocable trust or may stand alone to direct the final distribution of assets. Unlike an inter vivos trust document, a will requires the assistance of the Probate Court to administer any assets left behind by the maker, which often results in delay and additional expense.

Living Trusts (Revocable and Irrevocable)

An *inter vivos* trust may be revocable or irrevocable. “Inter vivos” means made during life and, thus, these documents commonly are referred to as “living” trusts. Irrevocable trusts may be used for asset protection from creditors, to hold life insurance and resulting proceeds and to remove assets from a taxable estate. As the name implies, an irrevocable trust cannot be revoked once created. Consequently, the creation of an irrevocable trust should be undertaken only after careful consultation with an attorney. Revocable trusts are a common alternative to wills, as they similarly direct the distribution of assets upon death. Like an irrevocable trust, a revocable trust is established during the lifetime of the creator (also known as the “grantor,” “trustor” or “settlor”). For more basic estate planning revocable trusts, the creator generally is the lifetime beneficiary and also typically serves as the primary trustee. The trust agreement often provides that the creator retains full control over the trust assets and has the right to revoke or

SHEEHAN PHINNEY

amend the trust at any time. Many individuals appoint an adult family member or a trusted friend as the successor trustee, while others prefer to appoint a bank or trust company to fill this role. If a revocable trust is funded with all of the creator's assets during life, the Probate process will be avoided successfully at death. In addition, because a successor trustee may manage assets if the creator is under a disability, revocable trusts can prove to be a useful asset management tool, offering a near seamless transition from life, through any disability, and after death. For a more comprehensive discussion of the purpose and operation of wills, trusts and advance directives, you may visit the New Hampshire Bar Association Website to view their booklet titled, "Wills, Trusts & Advance Directives."