



ESTATE PLANNING ESSENTIALS:
The Legal Documents Everyone Needs
AND HOW THEY WORK



LEGACY LAW FIRM, P.C.
Estate Planning • Elder Law • Business Planning

7404 S. Bitterroot Place • Sioux Falls, South Dakota, 57108

PHONE 605-275-5665 | FAX 605-275-5667

www.LegacyLawFirmPC.com

© 2018 Copyright by Legacy Law Firm, P.C.



TABLE OF CONTENTS

Introduction	3
Last Will and Testament	4
Powers of Attorney	6
Living Will	8
HIPAA Release.....	10
What About Trusts?.....	12

Disclaimer: This presentation is for general informational purposes only. It shall not be construed to contain legal advice or establish an attorney client relationship with any individual. Please consult with your estate planning attorney for specific advice tailored to your personal facts and circumstances.





INTRODUCTION

Many people think they don't need an estate plan. They say to themselves "Only wealthy people need estate plans" or "Estate planning is only for old people and I'm still young" or "I'm too busy right now but maybe some day I'll make a plan."

The truth is that everyone should have an estate plan of their own and they should do it sooner rather than later. A proper estate plan, one created by an experienced estate planning attorney, allows you to protect yourself, your loved ones and your assets when it matters most. It gives you control over "who gets what," who can make financial and medical decisions on your behalf if you become incapacitated, who has access to your financial and medical information, and much more.

We are pleased that you are now thinking about estate planning and have taken a first step by reading this booklet. We created it to provide you with an introduction to the most important estate planning documents and how they work in real-world situations. We hope it inspires you to take the next step and contact us for a consultation. We have found that most of our clients feel a sense of relief and greater confidence about the future after their first meeting with us. Let's talk about your needs and goals soon. We welcome the opportunity to meet you in person.

Jayna Voss and Bobbi Thury

Co-Founders and Attorneys



LEGACY LAW FIRM, P.C.
Estate Planning • Elder Law • Business Planning

CHAPTER ONE

LAST WILL AND TESTAMENT

A Last Will and Testament, commonly referred to as a Will, is one of the most fundamental components of any estate plan. A Will is a legal document that controls the distribution of property after you pass away. When properly drafted and implemented, a Will can help you accomplish all of the following goals: name a guardian and/or conservator for your minor children; determine who receives your assets after you pass away, rather than the state making this decision for you based upon established guidelines for asset distribution; name the person or institution you want to manage your estate after you pass away; make gifts to charity; and determine who will be responsible for paying estate and other taxes.

If you die without a Will your assets will be distributed according to “intestate succession” laws—formulas determined by state statutes. That is, the state, not you, will control who gets what. These statutes are set in stone and make no exceptions for family members in need or what your loved ones claim you might or might not have wanted. The state also dictates who can be appointed to manage your estate, quite possibly a person you never would have wanted to handle this important matter. In addition, the cost of probating your estate without a Will may very well be significantly higher than if you had created one.

It is important to note that intestate laws do not affect some assets. These include property you’ve transferred to a living trust; assets that have a beneficiary designated, such as life insurance or an IRA; securities held in a transfer-on-death account; payable-on-death bank accounts; and property you own with someone else in joint tenancy.

These assets will pass to the surviving co-owner or to the beneficiary you have named, whether or not you have a Will. This does not mean a Will is unnecessary. Everyone should have one, for the reasons outlined above. Now, let’s take a look at how assets are distributed according to intestate succession laws in South Dakota.

INTESTATE SUCCESSION IN SOUTH DAKOTA

Under intestate succession in South Dakota, who gets what depends on whether or not you have living children, parents, or other close relatives when you die. Here is a quick overview of how assets are distributed in various family situations.

If you pass away with:

- Children but no spouse, the children inherit everything
- Spouse but no descendants, the spouse inherits everything
- Spouse and descendants from you and that spouse, the spouse inherits everything
- Spouse and at least one descendant from you and someone other than that spouse, the spouse inherits the first \$100,000 of your intestate property plus one half of the balance. Your descendants inherit everything else
- Parents but no spouse or descendants, the parents inherit everything
- Siblings but no spouse, descendants, or parents, the siblings inherit everything

LAST WILL AND TESTAMENT—HOW IT WORKS

SHARON AND DON



Sharon and Don have been happily married for 37 years and raised two boys together, Mark and Dave, who were now adults. Sharon and Don never made a Will because they knew that when one of them passed away the other would inherit all of their assets, and when the surviving spouse passed away Mark and Dave would inherit whatever assets remained. When Don died, however, Sharon decided that she needed to make a Will. She loved Mark and Dave equally, of course, but Mark was a very successful businessman and owned a number of car dealerships in another state. Dave, on the other hand, had a decent job but was not nearly as wealthy as Mark. He also had a wife and four children of his own. Sharon decided to consult with an estate planning attorney to see whether she could leave her entire estate to Dave. The attorney told her that he could certainly design a Will naming Dave as the sole beneficiary, but he raised an important point. What would Mark think about Sharon's decision? He suggested that Sharon speak with Mark first before signing her Will. Sharon did so and was surprised to discover that Mark had for years assumed he would simply give Dave any inheritance he received because Dave needed the money and Mark did not. Sharon, relieved, then had the attorney leave everything to Dave in her Will. (Dave, as one might expect, had no problem whatsoever with her decision.)

CHRIS AND HEIDI



Chris and Heidi are the proud parents of two young children, Samantha, age nine, and Timothy, age seven. Now that the kids were in school and enjoyed the company of Heidi's parents, who lived in the same town, Chris and Heidi decided it would be okay to finally go on their honeymoon, which they'd been unable to afford immediately after their wedding. Heidi's parents would look after Samantha and Timothy for a week while Chris and Heidi went to Hawaii. On the long flight to Oahu, however, the plane experienced heavy turbulence. The oxygen masks came down, fellow passengers were screaming, and Heidi and Chris were terrified. Fortunately, the turbulence passed but it made a powerful impression on the young couple. If they had both been killed, what would have happened to Samantha and Timothy? Who would raise them? When they returned from their trip they immediately contacted an estate planning attorney. She designed a Will for them that named their best friends—another young couple with kids who lived in their neighborhood and shared their values—as guardians for Samantha and Heidi. This ensured the kids would be raised together by people Chris and Heidi trusted and Samantha and Timothy already knew.

CHAPTER TWO

POWERS OF ATTORNEY

A Power of Attorney is a legal document created to appoint an individual to handle one's affairs if you are incapacitated or otherwise unable to do so yourself. The person you name to make decisions on your behalf is called an "agent" or "attorney-in-fact." You are called the "principal." One of the most important aspects of creating an effective durable power of attorney is choosing the proper agent. Your agent should be a person you trust to carry out your wishes, a person who won't take advantage of you when you are incapacitated, and of course, a person who is willing and able to serve as your agent. It is also a good idea to name another person as an "alternate" agent in case your first choice is unable to accomplish his or her duties. Many people name a close friend or family member to serve as the agent, although you can choose any mentally competent adult you wish.

You are able to set forth the amount of power you wish your agent to have and specify when that power should be used. Perhaps most importantly, a Power of Attorney communicates your wishes and desires to your loved ones and prevents questions about (or disputes over) your intent.

There are many types of Powers of Attorneys, but the two you must have are a Financial Power of Attorney and a Healthcare Power of Attorney. As the name implies, a Financial Power of Attorney allows your agent to make financial and legal decisions on your behalf. These decisions can include, but are not limited to, the filing of tax returns; buying and selling real estate property; managing property; handling bank transactions; entering safety deposit boxes; acquisition of life, health, and automobile insurance; settling claims; entering into contracts; managing stocks; operating businesses; and transferring assets to a Revocable Living Trust.

A Healthcare Power of Attorney, on the other hand, allows your agent to make medical decisions for you in the event of incapacity. You can give your agent broad power and responsibility to make decisions regarding your medical treatment, including medications, tests, nourishment and hydration, as well as decisions regarding surgery, doctors, hospitals and rehabilitation facilities. However, you can limit your agent's authority and responsibilities by including specific restrictions in your Healthcare Power of Attorney.

One of the most important benefits of having a Financial Power of Attorney and a Healthcare Power of Attorney is that it can prevent court proceedings known as Conservatorships and Guardianships. The end result of these proceedings is that the court chooses who will make financial and healthcare decisions for you in the event of incapacity. Unfortunately, the person chosen by the court might not be someone you would have wanted to make these decisions. In addition, the Conservatorship and Guardianship processes are time-consuming, expensive and stressful for everyone involved. With properly designed and implemented Powers of Attorney, a person of your choosing will make decisions on your behalf, and your family will be spared the painful experience of a Conservatorship and Guardianship proceedings.

POWER OF ATTORNEY—HOW THEY WORK



BILL AND HAZEL

Bill and Hazel were enjoying their retirement together and had just celebrated their 40th anniversary. Something was bothering Hazel, however: Bill seemed to be forgetting a lot of things lately... not the usual stuff, like putting the milk back in the refrigerator or where he'd put the car keys. Bill had actually gotten lost driving home twice in the last month even though the couple had lived in the same house for 27 years. After two failed attempts, Hazel convinced Bill to see their physician. Following numerous tests, the doctor informed them that Bill was likely in the early stages of Alzheimer's disease. The doctor asked them if they had an estate plan in place. Bill told him they had a will but that was it. The doctor recommended a local estate planning attorney, who in turn informed the couple that Bill should have two powers of attorney and a living will. With these vital documents, the attorney explained, Bill would be able to give Hazel the authority to make financial and medical decisions on his behalf when he could no longer make these decisions on their own. While the news of Bill's prognosis was devastating, both he and Hazel were relieved to have a plan in place to manage some of the consequences.

CHAPTER THREE

LIVING WILL

Many people are confused about the difference between a Living Will and a Healthcare Power of Attorney. A Living Will specifies life-prolonging treatments you do or do not want in the event you either suffer from a terminal illness or are in a permanent vegetative state. It does not become effective unless you are incapacitated, and it typically requires your doctor and another physician to certify that you are indeed suffering from a terminal illness or have been rendered permanently unconscious. What does this mean in practice? Let's say you suffer a heart attack but are not terminally ill or in a permanent state of unconsciousness. In this situation, a Living Will does not have any effect. You would still be resuscitated, even if you had a Living Will indicating that you don't want life-prolonging procedures. A Living Will is only used when your ultimate recovery is hopeless.

ANOTHER WAY TO THINK ABOUT A LIVING WILL

Living Wills are sometimes referred to as “love letters.” Why? By making your healthcare wishes known and clearly describing them to your family, you not only ensure your wishes will be carried out, you also spare your loved ones the stress of having to make critical decisions about your care on their own. Even though your ultimate recovery may be hopeless, making decisions about whether extraordinary means should be used to keep you alive can lead to ugly disputes and severely damage relationships between family members. There could also be stressful disputes between your loved ones and hospital staff, as well as expensive court battles, over your right to live or die. Emotionally charged disputes like these can saddle your loved ones with guilt and/or anger that lasts for years.

In essence, a Living Will is a final, thoughtful expression of love for your family and your hopes for their emotional well-being in the future. Of course, a Living Will won't do any good unless your physician and loved ones know about it. This may be a very difficult conversation to have (especially with your family), but letting them know what you want, and why, truly lessens their burden and helps them come to terms with your wishes in advance.

To ensure your wishes are carried out and your loved ones are spared the responsibility of making heartbreaking decisions in an end-of-life situation, you need a Living Will.

LIVING WILL—HOW IT WORKS



DAN AND BECKY

Dan and Becky were busy preparing for tomorrow's annual Thanksgiving Day family get-together when Becky mentioned she had a splitting headache. Dan couldn't find any aspirin in the medicine cabinet so he went to the store to buy some. When he came back Becky was unconscious on the kitchen floor. Dan called an ambulance and went with Becky to the hospital. According to the doctor, Becky had suffered a massive stroke and was on life support. The prognosis was not good. Even if she regained consciousness Becky had likely suffered irreparable brain damage. Dan informed the family, who rushed to the hospital. When they arrived and were given the tragic details of Becky's situation, they fought over whether Becky should be kept on life support or taken off it. Dan was devastated but surprisingly calm. He explained that he and Becky had decided long ago that if either of them was faced with the prospect of being kept alive solely by life support or living in a vegetative state, they would rather be allowed to pass away with some amount of dignity. The family accepted this but the attending physician balked at carrying out Dan's decision. Dan contacted his attorney, who came to the hospital immediately with a copy of Becky's Living Will. Becky's wishes were honored and everyone concerned was able to carry on with a clean conscious.

CHAPTER FOUR

HIPAA RELEASE

The Health Insurance Portability and Accountability Act (HIPAA) established national standards to protect the privacy of patients' health care information. The Privacy Rule took effect in 2003. It mandated that health care providers and insurance companies who released the medical information of patients could be subject to civil fines, criminal penalties, even imprisonment. While most of us would agree that our medical information should be kept private, HIPAA is an example of a well-intentioned law that has resulted in unfortunate consequences for patients and their families. Why? The penalties associated with violating HIPAA often makes health care providers extremely cautious about sharing medical information with anyone except their patient. This can include family members, spouses and children.

In effect, your loved ones might not be able to get information about your condition, or be allowed to visit you in the hospital, in a medical emergency. You can imagine the frustration and stress this situation would cause for your loved ones. At the same time, you could be denied the love and support of the people who matter to you in life at the very time you need them most.

Fortunately, a HIPAA authorization allows you to specify individuals authorized to have access to your medical information. With a properly drafted and implemented HIPAA authorization, care providers will be far more likely to share information about your condition to the loved ones of your choosing in an emergency medical situation. And, allow them to visit you in your hour of need.



HIPAA RELEASE—HOW IT WORKS



DANNY

As Eric and Tina left the parking lot in front of their eldest son's college dorm, they cried. Danny was a fine young man, an honor student and star athlete. They trusted Danny, but still it was hard to let go. Several weeks later Eric and Tina received a call from the university. Danny had been involved in a car accident and was in the university hospital's emergency room. Eric and Tina asked about his condition but the person on the phone said she didn't know. They rushed to the hospital but the nurse on duty would not provide them with any information about Danny other than that he was now unconscious and in intensive care. Eric and Tina demanded to see the doctor, but he, too, wouldn't provide any details. Eric began to threaten the doctor, who informed Eric that the law prevented him from providing information about Danny's condition to anyone not named in advance by Danny—even the parents. Only a valid HIPAA release would allow the doctor to do that and Danny did not have one. Fortunately, Danny regained consciousness two days later and ultimately recovered from his injuries. Upon waking, Danny gave permission for his parents to visit him. When they were let in, there were teary smiles all around and a HIPAA release in Eric's hands, prepared by an estate planning attorney, ready for Danny's signature.

CHAPTER FIVE

WHAT ABOUT TRUSTS?

As we have seen, Wills are an essential component of any estate plan. Everyone should have one. For some people, a Will is enough to ensure assets will be distributed according to their wishes. However, this is rare. Most people can benefit from additional protections, including Trusts. There are many types of Trusts, capable of helping you accomplish a wide range of planning goals. Together they represent some of the most powerful tools in the estate planner's toolbox.

One of the most commonly used trusts is called a Revocable Living Trust. Like other Trusts, it gives you complete control over your assets while you are alive and after you pass away. With a Revocable Living Trust, you do not need to transfer your assets all at once, but can do so as you acquire new assets—and, at the time of your own choosing. One of the primary benefits of a Revocable Living Trust, besides allowing your estate to avoid probate, is that it lets you make adjustments to your trust as your personal and financial situation changes.

As the creator of the Trust, you may appoint any competent adult to serve as your trustee, including yourself. The Trust will establish guidelines for how the trustee can administer and distribute the assets of the trust.

The benefits of a Revocable Living Trust include, but are not limited to:

- Avoiding probate. The probate process is time-consuming, needlessly expensive and exposes your assets and estate to public scrutiny.
- It can be changed over time, to compensate for changes in your financial and family situation.
- Basic Wills can lead to disagreements among family members. A Revocable Living Trust can help eliminate challenges to the Will and ensure beneficiaries receive what you have intended for them.
- It allows for ongoing financial management. As you age, a Revocable Living Trust can be used to help manage assets on your behalf if you are impacted by disability, incapacity, or lack of mobility.

If you want privacy, the cost-effective and speedy distribution of assets to heirs, flexibility, and the ultimate in protection for yourself, your loved ones and your assets, a Revocable Living Trust is right for you.



Call us today for a FREE initial consultation.



LEGACY LAW FIRM, P.C.
Estate Planning • Elder Law • Business Planning

7404 S. Bitterroot Place • Sioux Falls, South Dakota, 57108

PHONE 605-275-5665 | FAX 605-275-5667

www.LegacyLawFirmPC.com