

WILLS & TRUSTS

Basics of Estate Planning

2019

What You Need to Know - And What You Don't.

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The Inevitable - Death and Taxes

- We are all going to pass away
- We all have to pay some taxes (income)
- We all will have something “in our name” when we die
- We can leave a mess or be a blessing to our families
- We can say a lot about how we plan for passing on
- We need to consider Estate Planning as really Succession Planning and Asset Preservation
- We need to plan now while we can, because once we are incapacitated or die, it is too late! Think COST

Definitely need to know

- You need a written Power of Attorney to authorize someone to speak or act on your behalf - otherwise a *legal guardian* has to be appointed *by a Judge*.
- You need a written Healthcare POA to authorize someone to make healthcare decisions for you if you are incapacitated for any reason.
- You need to have a Last Will and Testament to make sure property you have *in your name alone* goes to whom you desire and not to heirs at law or escheats to the State of Indiana. *IF all POD, how to cover costs?*

Possibly Don't need to know

- If you have less than **\$11.5mm+**, don't need to worry about Federal death tax OR gift tax. Congress has said it will review again. With Spouse, up to **\$22mm+** avoids Federal tax.
- No Indiana Inheritance tax. Kentucky, tax if goes to other than spouse and children.
- If you don't have property, you don't need a will or trust, but you do need a POA and DHCR, especially if you have children to *appoint a guardian*, not a Judge.
- Annual gift exclusion is still **\$15k** a year. Lifetime: **\$11.5+M**

What is a WILL and a TRUST

- A “Last WILL and Testament” is a written instruction of who you want your property to go to when you die.
- It also appoints who is to handle the administration
- It also can appoint a guardian for kids
- A Testamentary TRUST is a legal vehicle or box to hold property until a future date for the benefit of others, usually kids.
- This type of Trust is created at death under a LWT where a Trustee or decision maker is named to carry out your wishes.

Types of TRUSTS- Irrevocable, Revocable, Pre & Post Death

● AFTER DEATH

- Testamentary – set in will
- Created at death not before
- PR/Trustee takes charge to dole out money to kids, etc.
- Separate taxpayer with own EIN and IRS form 1041
- Trusts pay higher income taxes than individuals
- Examples: Credit shelter, A/B trusts, usually for large estates

● BEFORE DEATH

- Revocable up until death
- Created during life as a “Living” trust = inter vivos
- Private - not public & not Court supervised
- Avoids “probate” which is court process to transfer assets at death
- Flexibility – special needs
- Real Estate in several states
- Must for blended marriages with kids from both

Dying with and without a WILL

- With Will = “testate”
- Your will says who gets what and how much
- Your will names a “personal rep.” or executor to handle your affairs
- Your will names guardian for minor children
- Without will = “intestate”
- Each State law has made a will for you
- Spouse doesn't *get everything* if kids – one “child” – they get $\frac{1}{2}$ net estate – surviving spouse gets other $\frac{1}{2}$
- No kids, but parents – surviving spouse gets $\frac{3}{4}$

What do I need at a minimum?

- Die with nothing in your name! But: *Buyer Beware!*
 - How'd they do it? Joint Tenancies, Paid or Transfer on Death Accounts, Designations of Beneficiary, etc. Heirs still pay final costs but only to the extent of assets received within a year of death and after.

A real plan consists of:

- Either a Last Will & Testament (probate) or a Revocable Living Trust (no probate)
- Advance Directives:
 - Living Will – Tells DOCTOR if I am dead let me die.
 - Health Surrogate – Appoints someone to act on your behalf
- “Durable” Power of Attorney for your affairs
 - Survives incapacity and avoids need for guardianship
 - Option - Have a “springing” POA – only effective upon incapacity.

Conclusions

- To do nothing is really planning to leave a mess!
- Talk to loved ones and let them know your wishes.
- Then talk to an attorney to write down your wishes in documents that can act for you when you can't.
- Look at you assets and earning power and obtain adequate **life**, LTC and disability **insurance** for security.
- Take advantage of all the benefits your company offers to add disability, life insurance and other family benefits.
- Don't leave your family with a bad impression of YOU!
- Next Steps – Decide to at least face the questions below:

Next Steps in Estate Planning

- Waters, Tyler, Hofmann & Scott, LLC
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Succession is a fact of life, so don't be one of the 70% of people who do NOT have valid written instructions and other legal tools , such as ,“advance directives”

ESTATE-PLANNING QUESTIONNAIRE

For a married couple or for a single:

- First, give some thought to the following questions in this confidential estate planning questionnaire. Then set an appointment with one of our estate attorneys to discuss your particular needs. Everyone needs at least to have a properly executed (“triple threat”): 1. Last Will (or Revocable Living Trust), 2. Power of Attorney and, 3. Designation of Healthcare Representative & Living Will.
- This Questionnaire is intended to give and seek some Preliminary Information needed to advise you on an estate plan. **After** the initial appointment we will work with you to insure your plan is properly funded by aligning beneficiaries or joint account holders to coincide with your estate plan to make sure your practice matches your plan for holding assets and passing them on to the people you want and hope to receive them.

• **Print YOUR name(s)**, as used generally by you or as your name appears on most your assets:

• _____ SSN: _____ DOB: _____

• _____ SSN: _____ DOB: _____

• Address: _____ Home: (_____) _____

• City: _____ Office: (_____) _____

• Indiana (Kentucky) Zip Code _____ Cell:(_____) _____

• **LAST WILL/REVOCABLE TRUST OF HUSBAND or male client:**

• First, give some thought to the following questions in this confidential estate planning questionnaire. Then set an appointment with me to discuss your particular needs. Everyone needs at least to have a properly executed Last Will (or Living Trust), Power of Attorney and a Designation of Healthcare Representative.

• Who do I want to receive my estate after payment of debts, expenses and death taxes of passing?

• Who do you want to take care of your affairs and carry out the directives of your will or trust?

• Any special instructions?

• **Personal Representative:**

• 1st Name: _____

• Phone: _____

• State/County of Residence: _____

• 2nd Name: _____

• Phone: _____

• State/County of Residence: _____

Guardian:

(minor children, if any)

1st Name: _____

Phone: _____

State/County of Residence: _____

2nd Name: _____

Phone: _____

State/County of Residence: _____

Trustee:

(minors or special needs)

1st Name: _____

Phone: _____

State/County of Residence: _____

2nd Name: _____

Phone: _____

State/County of Residence: _____

Intended Beneficiaries of Estate:

	Name	Relationship	Address	DOB	(Optional) SSN
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____
5.	LIST AS MANY AS YOU DESIRE ON SPERATE SHEETS with all the particulars of they needs and your wants.				

• **His Specific Bequests of Personal Items to Heirs:**

• _____
• _____

• **LAST WILL/REVOCABLE TRUST OF WIFE or female client:** Print:

• First, give some thought to the following questions in this confidential estate planning questionnaire. Then set an appointment with me to discuss your particular needs. Everyone needs at least to have a properly executed Last Will (or Living Trust), Power of Attorney and a Designation of Healthcare Representative.

- Who do I want to receive my estate after payment of debts, expenses and death taxes of passing?
- Who do you want to take care of your affairs and carry out the directives of your will or trust?
- Any special instructions?

• **Personal Representative:**

• (Executrix- "authorized one")

1st Name: _____ Relation _____

Phone: _____

State/County of Residence: _____

2nd Name: _____ Relation _____

Phone: _____

State/County of Residence: _____

• **Guardian:**

• (Self &/or for Minors)

1st Name: _____ Relation _____

Phone: _____

State/County of Residence: _____

2nd Name: _____ Relation _____

Phone: _____

State/County of Residence: _____

• **Her Plan Continued:**

- **Trustee:**
- (minors or special needs)
-
-
-
-
-
-
-

1st Name: _____ Relation _____

Phone: _____

State/County of Residence: _____

2nd Name: _____

Phone: _____

State/County of Residence: _____

• **Intended Beneficiaries of Estate (“What’s left”):**

• Name Relationship Address DOB

- 1. _____
- 2. _____
- 3. _____
- 4. _____

5. LIST AS MANY AS YOU DESIRE ON SPERATE SHEETS with all the particulars of they needs and your wants.

• **Specific Bequests or Special Instructions you want to spell out:**

• _____

• _____

● Your decision makers:

● **POWER OF ATTORNEY OF HUSBAND or **male client**:** Springing Power or other restriction: _____

● **Attorney-in-fact** 1st Name: _____
● (acts for you when Phone: _____
● you can't) State/County of Residence: _____

● 2nd Name: _____
● Phone: _____
● State/County of Residence: _____

● 3rd, or others?

● **POWER OF ATTORNEY OF WIFE or **female client**:** Springing Power or other restriction: _____

● **Attorney-in-fact** 1st Name: _____
● (acts for you when Phone: _____
● you can't) State/County of Residence: _____

● 2nd Name: _____
● Phone: _____
● State/County of Residence: _____

● 3rd, or others?

Medical decision makers:

DESIGNATION OF *HEALTHCARE REPRESENTATIVE* & LIVING WILL OF HUSBAND or male client

1st Name: _____

Phone: _____

State/County of Residence: _____

2nd Name: _____

Phone: _____

State/County of Residence: _____

Yes _____ No _____ If a physician certifies that I am terminable ill I don't want heroic care.

(i.e. If I am dead, let me die when my Rep and Doc say so)

DESIGNATION OF *HEALTHCARE REPRESENTATIVE* & LIVING WILL OF WIFE or female client

1st Name: _____

Phone: _____

State/County of Residence: _____

2nd Name: _____

Phone: _____

State/County of Residence: _____

Other life circumstances to consider: _____

- **FEES and their ranges:**
 - Basic package: \$450 for an individual to \$800 for a couple.
 - Basic Revocable Living Trust package is \$2,500 to \$3,500 plus out-of-pocket
*Additional work as required at \$225 per hour for attorneys
and \$135 for paralegals*
 - *For Estate Planning counsel and advice contact:*
 - *J. Scott Waters, IV*
 - *swaters@wthslaw.com*
 - Waters, Tyler, Hofmann & Scott, LLC
 - Attorneys-at-Law
 -
- *“Big enough to meet your needs, small enough to be the lawyers you love.”*
 -

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