

Estate Planning Data Questionnaire

Date this form completed _____, 20__
Do not complete this date until the form has been completed.

Make certain you sign and date page 2.

Collecting Information for Your Estate Plan

Name(s) _____

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Part I — Introduction

Purpose of this Form

This form collects preliminary information for reviewing your estate information for possible estate planning and drafting of documents to be recommended. Your completion of this form does not evidence commitment by this firm to proceed with rendering legal services on your behalf.

We look forward to evaluating the scope of our potential representation of you after you complete this form.

Achieving Effective and Efficient Services

It is important for you to understand that estate planning will be only as good as the information which you provide to us. Accordingly, incomplete or inaccurate data may materially harm our ability to give you proper counsel and prepare proper documents in an efficient manner.

It is important for you to understand that our ability to give you efficient service may be materially harmed if you:

- Are not organized.
- Are not complete and accurate in providing information.
- Are not prompt in providing information.
- Are not prompt in reviewing and responding to draft documents.
- Are not prompt in following on the signing of the final documents.
- Change your drafting instructions.
- Change the scope of the planning or drafting instructions.
- Require excessive education, explanation, or counsel. Note that we have provided you or can provide you with educational materials. See Part VIII — “How Do I Reduce the Cost of Estate Planning?”
- Overly complicate planning ideas or drafting instructions.

Acknowledgment

I have reviewed the entire information collection form, understand it, and have had opportunity to ask questions of the attorney. Because of phase-in of tax laws and changes in personal circumstances, I understand it is my responsibility to frequently review my estate plan.

Signature

Spouse's signature

_____, 20__

_____, 20__

About the Estate Planning Process

Estate planning should be a process of

- reviewing your concerns and objectives for lifetime and death situations;
- reviewing family and other personal concerns and objectives;
- reviewing your financial situation and project it into the future;
- reviewing tax impacts;
- formulating strategies to attaining your reviewed goals and concerns;
- implementing your strategic plans; and
- periodically revisiting and evaluating your then current situation.

The estate planning process almost always results in some retitling of assets — the transferring of assets from one spouse to another; change of beneficiary designations; and decisions with respect to burdens of estate tax and expenses. Inheritance rights, beneficiary rights, marital rights, and property rights are affected in one way or another. In other words, any change made in your current estate plan has its direct effect on some “right” of someone. Accordingly, your decisions necessarily create conflicts of interest, “trade offs,” and compromises. There are circumstances that warrant even spouses to seek separate and independent legal counsel. *This is important for you to understand.*

Drafting your estate planning documents may be a large task. Documents will be drafted in accordance with our conversations and these documents may have complicated terms and interactive provisions. There are many decisions which need to be made by you. As professional draftsmen, we will make some technical decisions based on the general direction, philosophy, and methodology which you will articulate to us. We will attempt to explain as best as possible alternatives available to you based on your stated goals. We will provide you with explanations of the considerations — by way of dialogue, letter, memo, brochure, questionnaire, and the like — to the extent practical.

It is not possible to ask every question or give the most complete disclosure for every item, decision, and effect with respect to your estate plan. If this was done, the process would too burdensome and your new estate plan would never be consummated. Planning and implementing your estate plan prioritizes your stated goals and balances your desires with limitations mandated by tax and other bodies of law and practical considerations. In other words, there are many choices which are mutually exclusive. We will attempt to point out the “forks” in the road. Your input is essential if we are to assist in the planning and implementation which reflects your intentions.

Because of the personal nature and importance of the process we are about to go through, we strongly encourage you to ask questions and express your concerns. It is only through communication that your objectives will be met and your desires fulfilled.

It is our goal to have this process be highly satisfying for you. We trust it will result in

- *A high economic return on your investment.*
- Gauging whether *your lifetime goals* are being pursued in the most direct and balanced way.
- Identifying opportunities to *enhance and leverage* your situation.

- Providing an opportunity to create safeguards for the *protection* and *preservation* of your assets.
- *Identifying difficult areas or issues* and providing you with an *opportunity to cure* them now with your help (rather than later on without your help).
- *Assuring* your family that the appropriate mechanisms are in place for their future security.
- Providing an *orderly and fair* means of managing and distributing your property in case of your disability or death.

We look forward to being of service to you and developing a relationship whereby you readily refer to us as “my attorney.”

Part II — Basic Information

	Your Information	Your Spouse's Information
Full legal name		
Name to be used in your new estate planning documents		
Home address		
Street		
City		
State		
ZIP		
County		
Telephone number		
Home		
Office		
FAX		
E-mail		
Social security number		
Birth date		
Place of birth city/state/country		
U.S. Citizen?	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Yes <input type="checkbox"/> No
Vocation		
Employer's name		
Annual income		
Children and their birth dates If any child is deceased, disabled, institutionalized, qualified for special state entitlements, adopted or not the natural child of your present marriage, please provide details.		
Approximate total value of all your assets — See Part V		

Part III — Additional Information

If you answer “yes” to any question or need to respond to any question, respond in the space provided on pages 8 and 9.

If your spouse’s response is different from your’s, explain in the space provided on pages 8 and 9.

1. **Disability:** Is planning for the event of your disability or incapacity a priority of yours for either property management or healthcare matters?
 No Yes If yes, my motivation is high moderate low
2. **Probate:** Is avoidance of probate a priority of yours?
 No Yes If yes, my motivation is high moderate low
3. **Taxes:** Is minimizing estate taxes a priority of yours?
 No Yes If yes, my motivation is high moderate low
4. **Gift or Inheritance — future:** Are you anticipating to be the recipient of any significant gift or inheritance? No Yes
5. **Gift or Inheritance — past:** Have you received a significant gift or inheritance in the last 10 years?
 No Yes
6. **Trust Interests:** Are you a beneficiary of any trust created by a person other than yourself?
 No Yes
7. **Powers of Appointment:** Do you have an interest in a power of appointment? A power of appointment is the ability to direct the disposition of property without actually owning it. No Yes
8. **Nuptial Agreements:** Are you a party to a prenuptial or postnuptial agreement? No Yes
9. **Divorce:** Have you been divorced? No Yes
10. **Support Obligations:** Do you have any child support obligations for children who do not live with you? No Yes
11. **Special Obligations:** Do you have any personal or business contracts or obligations which materially affect your estate planning? No Yes
12. **Gifting:** Have you ever made any significant gifts? No Yes
13. **Gift Tax:** Have you ever filed a gift tax return? No Yes
14. **529 Plan Account Funding:** Have you set up a 529 plan that carries forward annual exclusion gifts?
 No Yes
15. **Charitable Pledges:** Do you have any outstanding charitable pledges? If yes, do you want any such pledges that are unsatisfied at your death to be paid by your estate?
Pledge? No Yes Paid by estate? No Yes

16. **Community Property:** Have you ever lived in, will live in, or own property in any of these community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin? No Yes
17. **Other State:** Do you spend a substantial amount of time in any state other than Illinois? No Yes
18. **Organ Donations:** Are you interested in providing organ donations or other anatomical gifts?
 No Yes
19. **Funeral and Burial or Cremation:** Do you have specific wishes concerning your funeral and burial or cremation? No Yes
20. **Funeral:** Have you made your funeral arrangements? No Yes
21. **Long-Term Care:** Have your made specific plans or arrangements for “long-term” healthcare?
 No Yes
22. **Family Considerations:** Are there any special family relationships or personality considerations?
 No Yes
23. **Estate Contest:** Are there family or friends who might seriously question or object to your estate plans? No Yes
24. **Current Documents:** List any existing estate planning documents you have and the date each was last signed.
25. **Top Priorities:** What are your major interests or concerns with respect to estate planning?
26. **Legal or Fiduciary Services:** Do you want to direct in your estate planning documents the use of our law firm’s legal or fiduciary services?
 No Yes

Optional

27. **Obituary:** How would you like your obituary to read?
28. **Eulogy:** Write yourself a brief eulogy — a statement about yourself to be read at your funeral.
29. **Financial Services:** If you feel a need to find new members for your financial team, would you like to discuss recommendations for accounting, banking, insurance, investment, tax, or trust services?
 No Yes

Explanations for Part III “Yes” and Other Responses

Provide number of Part III question to which you are responding. Overflow information to page 9.

Also provide copies of all pertinent documents that support your “yes” answer to a query. These documents may include: existing wills, trusts, other estate planning documents, divorce decrees, child support orders, prenuptial or postnuptial agreements, business agreements, life insurance policies with current beneficiary designation, annuity contracts with current beneficiary designation, all gift tax returns ever filed (Form 709), etc.

Explanations for Part III “Yes” and Other Responses — continued

Provide number of Part III question to which you are responding.

Part IV — Document Information

Executor

Naming. Who should manage your estate upon your death in the short term? The title of this role is “executor.” See Part VII for some ideas on selecting a fiduciary.

Definition. The executor is the person appointed and acting as your personal representative to administer your probate estate upon your death. It is the executor’s responsibility to collect assets, pay bills, pay taxes, liquidate assets to make such payments, and distribute probate assets to proper recipients.

Joint Responsibility. Should this role be filled by two or more persons simultaneously — called “co-executors”?

Successors. Unless otherwise stated by you, people listed below will be “successors” to each other and will act in the order named. The second listed person will act only if the first listed person is unable or unwilling to act. The third listed person will act only if the first and second listed persons are unable or unwilling to act.

1st	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number
	Is this person to be a co-executor? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?

2nd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number
	Is this person to be a co-executor? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?

3rd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number
	Is this person to be a co-executor? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?

Part IV — Document Information — continued

Guardian of Minor Children

Naming. Who should have custody of minor children upon your death? The title of this role is “guardian.” See Part VII for some ideas on selecting a fiduciary.

Definition. The guardian of minor children is the person(s) who will have custody of any minor children and their estates. This role may be split between a guardian of the “person” and a guardian of the “estate.” Should the role of guardian be split or should the same person act in both roles? It will be assumed that the same person will fill both roles unless specifically indicated to the contrary.

Joint Responsibility. Should this role be filled by two or more persons simultaneously — called “co-guardians”?

Referencing. If any person named here is named elsewhere in this Part IV and all information has been provided elsewhere, you may merely make reference to the person here.

Successors. Unless otherwise stated by you, people listed below will be “successors” to each other and will act in the order named. The second listed person will act only if the first listed person is unable or unwilling to act. The third listed person will act only if the first and second listed persons are unable or unwilling to act.

1st	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-guardian? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	---

2nd	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-guardian? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	---

3rd	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-guardian? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	---

Part IV — Document Information — continued

Trustee

Naming. Who should manage your estate upon your death in the long term? The title of this role is “trustee.” See Part VII for some ideas on selecting a fiduciary.

Definition. The trustee is the person(s) who will manage your estate for the benefit of your surviving family pursuant to the terms of the trust. The trustee is the long-term assets manager and determines discretionary distributions to family.

Joint Responsibility. Should this role be filled by two or more persons simultaneously — called “co-trustees”?

Referencing. If any person named here is named elsewhere in this Part IV and all information has been provided elsewhere, you may merely make reference to the person here.

Successors. Unless otherwise stated by you, people listed below will be “successors” to each other and will act in the order named. The second listed person will act only if the first listed person is unable or unwilling to act. The third listed person will act only if the first and second listed persons are unable or unwilling to act.

1st	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-trustee? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	--

2nd	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-trustee? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	--

3rd	Name Relationship Street address Home telephone number Office telephone number Is this person to be a co-trustee? <input type="checkbox"/> No <input type="checkbox"/> Yes If yes, with whom?
-----	--

Part IV — Document Information — continued

Agent under a Power of Attorney for Property

Naming. Who should manage your property upon your disability? The title of this role is “agent” under a power of attorney for property. See Part VII for some ideas on selecting a fiduciary.

Definition. The agent for a power of attorney for property is the person who will represent your interests in the event of your disability or unavailability.

Joint Responsibility. No “co-agents” may be named under an Illinois statutory form power of attorney.

Referencing. If any person named here is named elsewhere in this Part IV and all information has been provided elsewhere, you may merely make reference to the person here.

Successors. Unless otherwise stated by you, people listed below will be “successors” to each other and will act in the order named. The second listed person will act only if the first listed person is unable or unwilling to act. The third listed person will act only if the first and second listed persons are unable or unwilling to act.

1st	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

2nd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

3rd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

Part IV — Document Information — continued

Agent under a Healthcare Power of Attorney

Naming. Who should manage your healthcare upon your disability? The title of this role is “agent” under a power of attorney for healthcare. See Part VII for some ideas on selecting a fiduciary.

Definition. The agent for a power of attorney for healthcare is the person who will represent your interests and act as a “surrogate decision-maker” in your place when you are unable to make your own healthcare decisions.

Joint Responsibility. No “co-agents” may be named under an Illinois statutory form power of attorney.

Referencing. If any person named here is named elsewhere in this Part IV and all information has been provided elsewhere, you may merely make reference to the person here.

Successors. Unless otherwise stated by you, people listed below will be “successors” to each other and will act in the order named. The second listed person will act only if the first listed person is unable or unwilling to act. The third listed person will act only if the first and second listed persons are unable or unwilling to act.

1st	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

2nd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

3rd	Name
	Relationship
	Street address
	Home telephone number
	Office telephone number

Healthcare Standards and Limitations

Do you have any specific standards for life support/maintenance? No Yes

If yes, please explain. If you answer no, a healthcare power of attorney will still be prepared for you and at the time you sign the document you will choose one of the three standards for life support presented at the bottom of this page.

Are there any medical care restrictions that you want to make? No Yes

If yes, please explain. If you answer no, a healthcare power of attorney will still be prepared for you and the named agent will be permitted to make decisions as the agent believed you would have made them, but without expressed restrictions in the document.

Are there any *specific organs* that you would like to make as anatomical gifts? No Yes

If yes, please itemize. If you answer no, the healthcare power of attorney leaves the option to make anatomical gifts of “any organ” if you so authorize the agent.

For Your Information Only

The following are the alternative standards for life support listed on the Illinois statutory power of attorney:

- “I do not want my life to be prolonged nor do I want life-sustaining treatment to be provided or continued if my agent believes the burdens of the treatment outweigh the expected benefits. I want my agent to consider the relief of suffering, the expense involved and the quality as well as the possible extension of my life in making decisions concerning life-sustaining treatment.”

or

- “I want my life to be prolonged and I want life-sustaining treatment to be provided or continued unless I am in a coma which my attending physician believes to be irreversible, in accordance with reasonable medical standards at the time of reference. If and when I have suffered irreversible coma, I want life-sustaining treatment to be withheld or discontinued.”

or

- “I want my life to be prolonged to the greatest extent possible without regard to my condition, the chances I have for recovery or the cost of the procedures.”

Part IV — Document Information — continued

Distribution of Estate

Who. Upon your death, to whom should your assets pass? The “natural objects of your bounty” — your family, other loved ones, and charities?

How. How should your assets pass? Outright or trust? In stages? When? Equally or disproportionately? Do you want to protect assets for ultimate distribution to children because of spouse’s spendthrift spending, possible remarriage, inability to manage assets well, potential for being “taken advantage of,” etc.?

Special. Is there any item of property which you want to give — gift in-kind — or other special or unique gift — fixed amount — which you want to make?

Identification. If someone named here has not already been listed before, give full name, relationship, and street address. If a charity is named, be exact with its name and address.

Overflow information to pages 17 and 18.

Part IV — Document Information — continued

Distribution of Estate — continued

Part IV — Document Information — continued

Distribution of Estate — continued

Part V — Estate Summary

Complete the schedule on the next page so that it reflects your current asset and liability situation.

The identification of the assets, their value, how title is held, liability information, contingent liability information — personal guarantees, pledges, and the like — and any beneficiary designation information are important for our analysis of your estate plan and our attendant recommendations. Accordingly, any incompleteness or inaccuracies may materially affect the effectiveness of our recommendations and the efficiency of our services. Our planning recommendations are only as good as the information which has been provided to us. If this information is not accurate or complete our recommendations and strategies may be different.

Use the “comment” column on the far right of the following Estate Summary schedule or pages 20 and 21 to indicate beneficiary designations — including named successor or contingent beneficiaries; debt attached to an asset; other obligations attached to an asset; any other details on asset titling, such as, if a jointly held asset is tenancy by the entirety; any unique characteristics of the asset or liability; and if the asset is held in any kind of trust.

You should anticipate that the estate planning process will result in recommendations on changing asset titles, beneficiary designations, and perhaps other pertinent documents—like a business agreement. Implementation of asset allocation recommendations, change of beneficiary designations, and the like are your responsibility unless you have asked us, in writing, to implement these changes on your behalf or unless we have acknowledged, in writing, that we will undertake such implementation.

Additional information which you may provide:

Personal Property. Unique *tangible* personal property, such as antiques, jewelry, collections, etc.; *intangible* personal property, such as patents, copyrights, royalties, etc.

Business Interests. Form of business — corporation (S or C tax status), limited liability company, general partnership, limited partnership or sole proprietorship; owners and percentages of ownership; family members active in business; buy-sell provisions; and life insurance on your life held by the business or other co-owner.

Life Insurance. Owner; insured; primary beneficiary; contingent beneficiary; type of insurance; cash surrender value; and death benefit.

Retirement Benefits. Type of plan or account; primary beneficiary; contingent beneficiary; and vested benefits.

Estate Summary

Name: _____, 200
 Data as of: _____

NOTE: If assets are held in trust or have a payable on death beneficiary designation, indicate same and indicate beneficiary as a comment
 NOTE: Show assets "net" of accompanying debt, indicating asset value and related debt as a comment

ASSET DESCRIPTION	HIS	HERS	JOINTLY OURS	JOINTLY WITH OTHERS	COMMENTS
Cash or Cash Equivalents:	\$	\$	\$	\$	
1.					
2.					
3.					
4.					
Marketable Securities					
Stocks (total):					
Bonds (total):					
Other (total):					
Personal Property:					
Personal Residence:					
Vacation Residence:					
Other Real Estate:					
1.					Indicate if title held in a so-called land trust.
2.					
3.					
Partnerships:					
1.					Indicate whether general or limited partnership.
2.					
3.					
Closely-Held Business Interests:					
1.					Indicate legal entity form.
2.					
Life Insurance (Face Value) or Annuities*:					
1.					Please note any cash surrender value(s).
2.					
3.					
4.					

* To the extent there are annuities, provide copies of the annuity agreement and any beneficiary designation separate from the annuity agreement. Show underwriting company, owner, insured, beneficiary, face amount, cash surrender value, and type of insurance (term, whole life, universal, etc.).

ASSET DESCRIPTION	HIS	HERS	JOINTLY OURS	JOINTLY WITH OTHERS	COMMENTS
Qualified Retirement Benefits:					
1.	\$	\$	\$	\$	
2.					
3.					
4.					
Individual Retirement Accounts:					
1.					Make a special note if a "Roth" account.
2.					
3.					
4.					
Other Assets and Other Debt*:					
1.					Show Debt as Negative.
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
* For debt show creditor, liable party, collateral, guarantor, and other relevant terms.					
TOTALS:					
TOTAL NET VALUE OF ALL FOUR COLUMNS:					
Includes face value of life insurance.					
NET WORTH:					
Excludes face value of life insurance, but includes cash value of permanent life insurance.					

Have you personally guaranteed an obligation for another person or business interest? No Yes If yes, explain.

Are any of your assets subject to some sort of restriction or performance agreement? No Yes If yes, explain.

THE COMPLETENESS AND ACCURACY OF ASSET AND LIABILITY INFORMATION IS ESSENTIAL TO PROPER ESTATE PLANNING. INCOMPLETE OR INACCURATE DATA OR INFORMATION WHICH IS SUBJECT TO IMMEDIATE CHANGE MAY MATERIALLY IMPACT PLANNING STRATEGIES.

The undersigned certifies that the foregoing information is substantially accurate and complete.

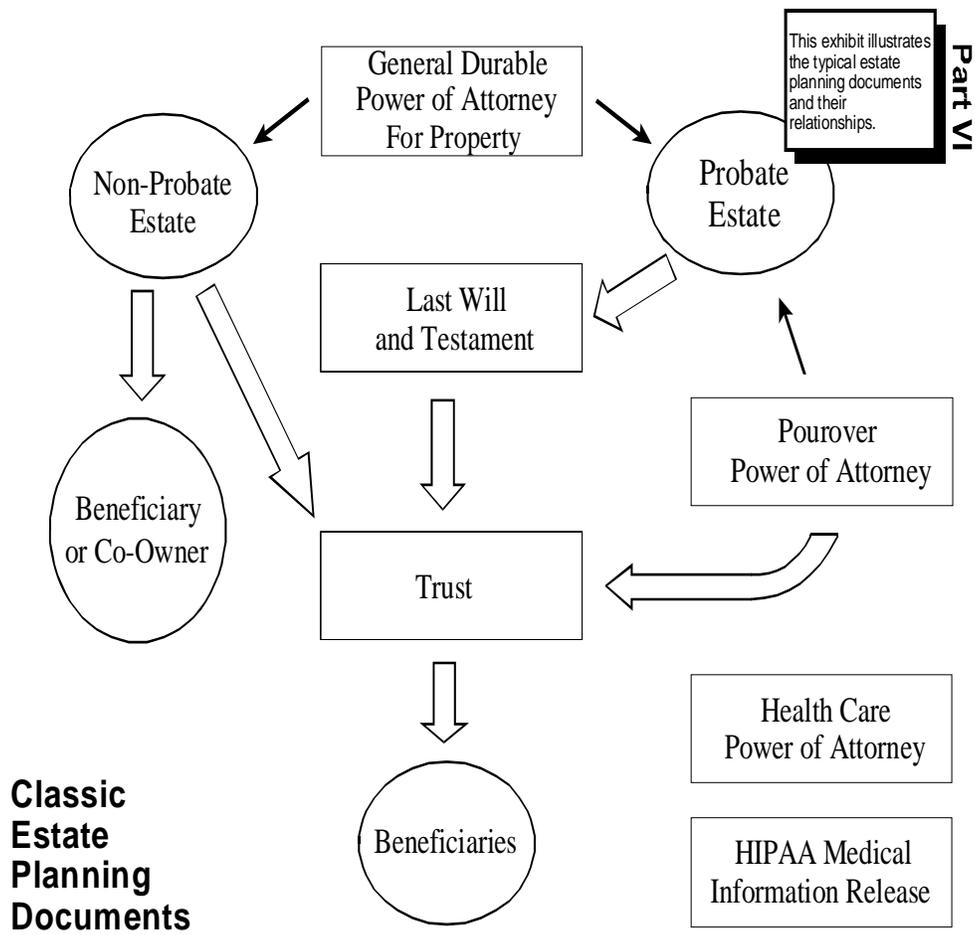
Signature _____ Signature _____ Dated _____, 200__

Part V — Estate Summary — continued

Overflow Information and Comments Overflow information to page 22

Part V — Estate Summary — continued

Overflow Information and Comments



Part VI — Summary of Estate Documents

General Durable Power of Attorney for Property

A general durable power of attorney for property creates legal authority for another person to administer your assets in the event of your unavailability or incapacity. It is called “durable” because it survives in its authority even if you become legally incompetent. It usually contains broad powers to manage assets. It can also be used to name the guardian of your person and estate.

Healthcare Power of Attorney

A healthcare power of attorney names an agent to make healthcare decisions on your behalf if you are unable to make your own healthcare decisions — the agent is a “surrogate decision-maker.” The healthcare power of attorney can set standards for life support and restrictions on healthcare. It can also name a guardian for your person. A healthcare power of attorney differs from a living will declaration in that it is effective for decisions other than terminal care decisions. A healthcare power of attorney is often used in lieu of a will living declaration.

HIPAA Medical Information Release

A HIPAA medical information release names a personal representative (agent) to access your medical information pursuant to the federal Health Information Portability and Accountability Act (HIPAA).

Living Trust

A living trust provides probate avoidance mechanisms in the event of your disability or death. It acts as the main document for disposing of your estate — this is the receptacle for the will and other “pourover” assets. A living trust provides for the long-term administration of your estate for the benefit of your family. A living trust is usually revocable — meaning it can be changed.

Pourover Power of Attorney

A pourover power of attorney creates legal authority for another person to transfer assets into your living trust if circumstances warrant — for example, your incapacity or anticipation of imminent death.

Trust

An arrangement into which property is transferred with the intention that it be administered by a trustee for the benefit of a named beneficiary. The trustee takes legal title to the property and is responsible to administer it in accordance with the trust’s terms. The trust may be created during the creator’s lifetime — called a “living trust” — or may be created at the death of the creator — called a “testamentary trust.”

Will — Last Will and Testament

A will distributes the probate estate; names an executor; and names a guardian of any minor children. A will can also contain trust provisions — called a “testamentary trust,” as contrasted to a “living trust.”

Part VII — Selecting a Fiduciary

A fiduciary is a person acting officially as an agent in a relationship of trust who has the responsibility of acting on behalf of the beneficiary within the established fiduciary purpose. In estate planning, fiduciaries include an *agent* under a power of attorney, *executor*, *guardian*, and *trustee*. When you have established the fiduciary relationship, the fiduciary is responsible to carry out your instructions and to act in the *best interests* of you and your named beneficiaries.

You should have *confidence* that the fiduciary named by you has the *judgment* to fulfill his or her responsibilities. You should note that I did not say *expertise* to fulfill his or her responsibilities. A fiduciary can use judgment in hiring the necessary expert counsel (legal, accounting, tax, investment, etc.). You should be reasonably certain that the fiduciary which you name is *willing* to do the job.

The fiduciary should be *available* and have the *time* to carry-out his or her responsibilities. Telecommunications is making the world smaller by giving the ability to carry on business over great distances much easier. However, there may be circumstances in which it is desirable to have the fiduciary's physical presence readily available.

The fiduciary should have a *natural disposition*, "*fit*" or *synergy* to succeed in his or her role. *For example*, if Uncle Jesse enjoys following financial matters, is good at dealing with legal and financial professionals, but is not so good with children, he might be a good choice as trustee or guardian *of the estate* — but not as guardian of the person of a minor. Aunt Megan, who loves children — but cannot balance her checkbook — may be a good choice as guardian *of the person* of a minor.

The fiduciary should be able to avoid or manage the legal or interpersonal *conflicts* which may be present in the estate situation.

A fiduciary is *entitled to compensation*. Many times nonprofessional fiduciaries (family members or close friends, *for example*) choose to act without compensation.

There are two generic categories of fiduciaries: *professional/corporate* and *individual*.

Professional/Corporate Fiduciary

A professional fiduciary is someone, most often a bank or trust company, who, as a full-time and permanent vocation, acts as a fiduciary.

Advantages of using a professional fiduciary include:

- independence from pressures other than to fulfill your desires;
- objectivity and impartiality;
- knowledge;
- experience and seasoning;
- effectiveness;
- efficiency;
- knows whom to hire as additional experts;
- readily available (always has time);
- "tax effect" independence (ability to provide greater flexibility in trust provisions and still yield desired tax benefits);
- avoidance of conflicts of interest;
- permanency.

Important note: In many respects you can hire the services of a professional fiduciary for all of the above reasons and purposes without actually permanently naming such a professional as the fiduciary. However, you cannot merely hire “*tax effect*” independence or avoidance of *conflicts of interest*. Tax effect independence and conflicts of interest avoidance are either drafted into the estate planning document or they are not. This is a threshold drafting consideration from which there is no return.

Disadvantages of using a professional fiduciary include:

- perceived high cost;
- not as “close” or “warm” as family or friends;
- possible personnel rotation on your “account.”

Individual Fiduciary

An individual fiduciary is someone other than a professional fiduciary, usually a family member or friend.

Advantages of using an individual fiduciary include:

- possible lower cost;
- better understanding of your beliefs, values, and mind;
- may be closer, warmer, more constant, and more sensitive in relationships.

Disadvantages of using an individual fiduciary include:

- may be more likely to succumb to pressure;
- may be less objective and impartial;
- possibility of conflicts of interest;
- personal relationships may be placed in jeopardy over disagreements;
- may lack professional judgment, knowledge, and experience (resulting in very costly mistakes);
- may be less effective and efficient;
- may make poor judgments in hiring experts;
- may not always be available (may not have time to appropriately devote);
- may require less administrative flexibility due to lack of “tax effect” independence.

Co-Fiduciaries

Estate plans frequently name two or more persons to act together as fiduciaries. The mix can be individual fiduciaries and/or a professional fiduciary.

Things to consider when choosing co-fiduciaries:

- assists in balancing inherent strengths/advantages and weaknesses/disadvantages;
- provides inherent safeguards and checks and balances;
- creates greater administrative bureaucracy;
- eliminates need to choose between certain persons;
- creates possibility for conflict and deadlock.

Consider the true cost of not using a professional fiduciary. A professional fiduciary’s fees usually include services for accounting, tax, investment, certain legal, and distribution evaluation. These are services a nonprofessional fiduciary will probably have to hire advisors to provide.

Removal of Professional Fiduciary

One idea which frequently sways the decision in favor of naming a professional fiduciary is knowing you can provide that the professional fiduciary can be fired and that a new professional fiduciary can be appointed. Providing for this flexibility keeps the named professional fiduciary attentive and pleases the beneficiaries who then know they are not “stuck” if the professional fiduciary turns out to be unsatisfactory. One descriptive term for this position is “corporate trustee remover.”

Naming an Executor under a Will

Naming an executor under a will (also called a “personal representative”) can be relatively easy for the following reasons. The executor’s job is relatively short-lived. Perhaps the executor’s biggest decision is who to hire as the attorney for the estate. The estate’s attorney should thereafter adequately advise the executor. In other words, if the executor has the interest and time to devote to the estate’s administration and also has good judgment, all the estate work which requires specialized expertise can be hired by the executor. Therefore, your choice of an executor should be someone you feel has the time and interest — for “leg work,” has good judgment to hire the right advisors, and will follow your will’s instructions. Note that it is at this time that family conflicts may come to the surface, and your executor should have the constitution to deal with any of these conflicts head on.

Naming a Trustee under a Trust

The right choice of a trustee is critical because of the longer time a trustee usually will have to act. For a long period of time the trustee will have to focus on accounting, financial, and tax matters; evaluate the needs of beneficiaries; and be responsible for other legal determinations. Even though the trustee can hire appropriate specialized expertise, the responsibility still lies with the trustee for the length of the trust. Therefore, your choice of a trustee should be someone you are confident has appropriate time and interest; has the skills to deal appropriately with the beneficiaries; has the good judgment to hire the right advisors; and will follow your trust’s instructions. You can also provide that an acting trustee or the surviving successor trustee name a successor to himself or herself. You can further name someone to remove a trustee and appoint a successor.

Naming an Agent under a Power of Attorney

When you name an agent under a power of attorney, your considerations are dependent on what type of power of attorney you are giving. Is it a power of attorney concerning *property matters* or *healthcare matters*? Does it grant *broad powers* or *narrow powers*?

Property Power of Attorney: If you give broad powers to an agent under a power of attorney which governs general property matters, you need to be very confident in the agent’s integrity to act as you would have acted. If the agent “runs amuck” and abuses the power of attorney, it is difficult to rein in the agent.

Healthcare Power of Attorney: An agent under a healthcare power of attorney has to make very personal decisions and should have a courageous and decisive personal constitution to make some potentially tough decisions and should also know you well enough to make decisions as you would have made them if you were able.

Naming a Guardian for Yourself

If you are unable to make decisions for yourself, you have no applicable durable powers of attorney, and circumstances require the court to appoint someone to act on your behalf, who would you like to act for purposes of personal and financial matters? You can name a guardian (also called a “conservator”) for yourself. It is usually done within a power of attorney but can be done in a separate writing that should be executed with the same formalities of a will. A guardian can have two different functions: guardian over estate (financial) matters and guardian over personal matters. These two roles can be legally separated by naming both a “*guardian of the estate*” and a “*guardian of the person*” and therefore two different persons can be named, each having separate responsibilities. If you name just a “guardian,” then the named guardian will have responsibility to look after both your financial and personal interests. The guardian’s role is to act in your best interests and is accountable to the court. Whether you split the estate and personal roles will depend on your options and comfort levels of available people resources. The named guardian has the ability to hire the necessary expertise to carry-out his or her responsibilities on your behalf, for example, the hiring of an attorney, accountant, physician, social worker, financial or investment advisor, etc. So the choice of a guardian for yourself should be someone who knows you well enough to make decisions as you would, shares your values, has good judgment, and has the time and interest to devote to your affairs should the need arise for him or her to act as guardian. A professional fiduciary is trained and experienced to have or learn these matters for you.

Naming a Guardian for a Minor Child

Naming a guardian for a minor child is one of the more important motivating factors for parents doing or redoing their wills. Generally, a guardian for a minor child can be named only in a will and is effective only when both parents are deceased. A guardian can be named in a separate written instrument that is executed with the same formalities of a will. The guardianship ends when the child attains the age of majority in the state which has jurisdiction of the child (for example, in Illinois the age of majority is 18). If the child is considered disabled because of a serious physical, mental, or emotional condition, the guardianship can be arranged to continue beyond the age of majority. If you merely name a “guardian,” then the named person will have the responsibility to oversee both the financial and personal affairs of the child. These two roles can be legally separated by naming both a “*guardian of the estate*” and a “*guardian of the person.*” Therefore, you can name two different persons, each having separate responsibilities, one for “estate” matters and the other for “personal” matters.

The guardian’s role is to act in your child’s best interests and is accountable to the court. Whether you split the estate and personal roles will depend on your options and comfort levels of available people resources. The named guardian has the ability to hire the necessary expertise to carry out his or her responsibilities on your child’s behalf, for example, the hiring of an attorney, accountant, financial or investment advisor, physician, social worker, etc. So the choice of a guardian for your minor child should be someone who knows you well enough to make decisions as you would, shares your values, has a compatible lifestyle, has a stable home environment, has good judgment, and has the time and interest to devote to your child’s affairs should the need arise for him or her to act as guardian.

Often people think of their parents as guardian candidates for obvious reasons. However, consideration should also be given to the energy, declining health, and life expectancy of the parent and the potential of premature transition for your child — yet another change of family environment.

Compatibility: What is the importance to you that the guardian be of your age, be in similar family circumstances as you, have children of your child’s age, and have an enthusiastic attitude towards a larger family through the addition of your child(ren)? In other words, does the guardian and his or her own circumstances have the dynamics which you feel can embrace your child(ren)?

You should further consider whether the named person is likely to be able to continue to act throughout the time your child is a minor. If you name your mother as guardian, will Grandma live long enough or be healthy enough to continue to act? What is the importance and possible affects of the potential loss of the “stand-in” parent while the child is still a minor? A parent can also create a healthcare power of attorney for a minor child.

Some states, Illinois for example, have special procedures for naming a guardian of the person for a short-term absence of the parents (for example, a vacation) or in anticipation of the imminent disability of the custodian parent (for example, a known progressively serious disease). These types of guardianships are respectively referred to as “*short-term guardianship*” and “*stand by guardianship*.”

Naming a guardian for a minor child is often the most difficult decision in the estate planning process. It is so personal and so critical. It involves the evaluation of people’s maturity, values, stability, and the like — all of which is fertile ground for disagreements between the parents having to make this important decision. Don’t let this decision become a roadblock to your estate planning. *In this decision you cannot achieve perfection*, because perfection is having both parents continue to be alive and active in the child’s daily life. Go for the choice that seems the better alternative under your circumstances. It is better that you make a choice, rather than defaulting to the potential ensuing choice by the court and the disorder of having no estate plan.

Part VIII — How Can I Reduce the Cost of My Estate Planning?

Assuming the greatest cost for the typical estate plan is attorneys' fees, the answer to this question is two words: *Be organized*.

Attorneys' "stock in trade" is their time, training, knowledge, and counsel. Hourly rates may vary. But the estate planning attorney will largely charge *based on the time* devoted to his or her client's matters. The more quickly and efficiently you can communicate to the attorney what you want to accomplish and the facts of your situation, then the less time the attorney will need to spend on your matter. This results in lower fees. Think of a construction project. Having the blue prints done once, with slight modifications perhaps, is efficient. Major changes to the blue prints are costly. Changes to the actual construction are very costly. Likewise, changes to estate planning documents in unsigned draft can be somewhat costly and making changes to signed estate planning documents can be very costly.

We have found it is relatively expensive to change an estate planning document after it has been drafted if a client later *changes his or her mind*. It is important to do it right the first time. This results in lower fees.

We have also found that *time delays* in the estate planning process — the period over which the estate planning takes place — increases the amount of time it takes to handle a matter. Keeping the process time short keeps the time down.

So, estate planning fees increase if you

- are not organized;
- are not complete and accurate in providing information;
- are not prompt in providing information;
- are not prompt in reviewing and responding to draft documents;
- are not prompt in following up on the signing of the final documents;
- change your drafting instructions;
- change the scope of the planning or drafting instructions;
- require excessive education, explanation, or counsel; or
- overly complicate planning ideas or drafting instructions. For example, often an estate planning lawyer has good and proven document language that works in many situations and can be delivered to the client at a relatively low cost. However, a client who self-designs a highly intricate philosophy and distribution design that then must be interpreted by the lawyer into a legally enforceable and understood custom provision(s) will incur greater fees.

Estate planning really costs little in the grand scheme of things. *It is an investment* with a high rate of return when done properly.

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