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Estate Planning Questions & Answers

Wisconsin Law

Estate planning has several goals, which include providing for the distribution of assets, reducing administrative expenses, and avoiding or reducing estate taxes. This description was developed to address a number of questions which may arise in the context of estate planning.

What is a will?

A will is a written document which directs the distribution of your property after your death, states who will act as your personal representative to administer and distribute your property and names a person as guardian to care for minor children.

What happens if you die without a will?

If you die without a will, your property will be distributed according to the laws of Wisconsin. For a married person, the spouse receives the entire estate unless there are children of the decedent's prior marriage. If there are children of a prior marriage, the estate will be divided between the spouse and children of the decedent. If there is not a surviving spouse or children, then the law lists parents, brothers and sisters, nieces and nephews, grandparents, and other relatives as the order in which the property is distributed. The property of a person who dies without any relatives and without a will is distributed to the state school fund.

How can a will save taxes for your estate?

Properly drafted provisions in a will can reduce estate taxes. For instance, you can distribute up to \$675,000 without being subject to estate taxes. In addition, any property which is distributed to your spouse is not subject to estate taxes. A will should be drafted to take full advantage of these two credits.

How can a will reduce administrative expenses?

The cost of a bond may be eliminated by including a simple clause stating that no bond is required. Clear provisions naming a guardian and establishing trusts for minor children help avoid a costly court supervised guardianship.

What are "living trusts"?

A trust is an arrangement in which one party (the trustee) agrees to hold property for the benefit of another party (the beneficiary). A "living trust" is created during the lifetime of the individual (the grantor) rather than under the terms of a will. Generally a "living trust" is revocable during the lifetime of a grantor. Often the grantor is also the trustee and the beneficiary of a living trust. The property which is transferred into a trust during the lifetime of the grantor is not subject to probate. This reduces probate expenses and generally allows the property to be distributed more quickly and efficiently. The use of living revocable trusts have become a very popular alternative to probate in recent years.

Can a will or trust be changed?

A will is changed by the execution of a new will. A will can also be changed by drafting a codicil. A codicil may be used to add, change or delete provisions of a will.

A trust may only be amended if it is a revocable trust. An amendment to the trust may be drafted to add, change, or delete provisions. The provisions of an irrevocable trust may not be changed.

Do some assets pass outside a will?

Joint tenancies and assets held as survivorship marital property pass to the survivor directly, outside a will. The same is true for assets which designate a beneficiary, such as an IRA or life insurance policy.

Should I make lifetime gifts?

In a large estate, making lifetime gifts to family members can be a tax saving strategy. Generally, such gifts should not exceed \$12,000.00 per donee per year (\$24,000.00 from a husband and wife). These amounts are indexed for inflation. Also, it is often advisable not to gift appreciated assets.

What is a Durable Power of Attorney?

A Durable Power of Attorney is a document in which a person (the principal) delegates certain powers to an attorney-in-fact or agent regarding the handling of financial matters. The term "Durable" means that the Power of Attorney is effective even if the principal becomes incompetent.

A power of attorney can be immediately effective or may only become effective after a physician certifies that the principal is incompetent. A well drafted power of attorney can serve to avoid the cost, inconvenience and delay of having to go to court and establish a guardianship.

What is a "living will"?

The term "living will" describes a document in which an individual issues directions regarding medical care in the event of future incapacity. The will is "living" because it takes effect before death. The Declaration to Physicians is a living will which was enacted in Wisconsin. This document permits an adult of sound mind to authorize the withholding or withdrawal of life sustaining procedures if the person is in a terminal condition or in a persistent vegetative state.

What is a Durable Power of Attorney for Health Care?

A *Durable Power of Attorney for Health Care* is a document in which an individual appoints a health care agent to make health care decisions if the person is incapacitated. The individual can determine whether the agent would have the authority to permit the discontinuation of nutrition and hydration or whether the agent may admit the individual to a nursing home or to a community based residential facility. It is very important for all adults to execute a Power of Attorney for Health Care.